

The EPPO Functioning: A Practical Overview

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EUROPEAN PUBLIC PROSECUTOR'S OFFICE

A practical overview

- ❖ *Undertakes investigations*
- ❖ *Carries out acts of prosecution*
- ❖ *Exercises the functions of prosecutor*

Undertakes investigations: Who?

Council Regulation (EU) 2017/1939

(25) 'The Permanent Chambers should monitor and direct investigations...'

(28) 'The European Prosecutors should in principle supervise, on behalf of the competent Permanent Chamber, the investigations and prosecutions handled by the European Delegated Prosecutors in their Member State of origin'

(29) 'The investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors in the Member States.'

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

STRATEGY



European Chief Prosecutor (supported by 2 Deputies)

- > Heading the EPPO, 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.



So what does
this mean?

European Delegated Prosecutors carry out the investigations in their **Member State**, supervised by a **European Prosecutor**, which derives from the **Permanent Chamber**.



Case is tried before the **national court**.




- ▶ **140 European Delegated Prosecutors** in **22 countries** will investigate, supervised by **Permanent Chambers in Luxembourg**.

European Delegated Prosecutor Investigations

While carrying out the investigation, and although such investigations are put in place on behalf of the EPPO, the EDPs must act abiding by the national law of their Member States – 69, 71 and 81 of the Council Regulation.

In order for the EDPs to investigate on behalf of the EPPO, the Member States must implement the adequate legal framework to allow the effective and independent investigation of crimes by the EDPs, by assigning them the adequate powers to request and conduct at the national level all investigative measures that are needed.

A person is seated at a desk covered with a blue cloth featuring the European Union flag. In the background, a tall European Union flag is visible against a wood-paneled wall. The scene appears to be a formal meeting or press conference.

This means that different Member States may provide EDPs different investigative powers.



Council Regulation
2017/1939 addresses this
by setting a minimum
standard for rules on
investigations and
investigative powers.

SECTION 1
Rules on investigations

Article 26

Initiation of investigations and allocation of competences within the EPPO

1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.
2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).
3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.
4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the 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 has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:
 - (a) the place of the suspect's or accused person's habitual residence;
 - (b) the nationality of the suspect or accused person;
 - (c) the place where the main financial damage has occurred.
5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:
 - (a) reallocate the case to a European Delegated Prosecutor in another Member State;
 - (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.
6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case, it shall take due account of the current state of the investigations.
7. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

An aerial photograph of a city with various buildings and green spaces, overlaid with a blue rectangular box on the left side. The box contains white text. The background is slightly blurred, and there are decorative curved lines in the top left and bottom right corners.

How does a European Delegated Prosecutor initiate an investigation?

We look to the Council Regulation.

Article 26(1):

Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.

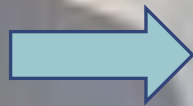
What happens if an investigation is being undertaken by the competent authorities of a Member State which EPPO has competence for?

Right of Evocation – Article 27

3. *If the EPPO becomes aware, by means other than the information referred to in Article 24(2), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.*

This means that EPPO can evoke its jurisdiction to investigate a case even if the competent authorities of a Member State have begun the investigation.

(2) Carries out acts of prosecution



Just like rules on investigation, we look to two sources of law to find **how** these delegated prosecutors exercise their functions relating to carrying out acts of prosecution...

1. National laws of Member States
2. The Council Regulation, which sets the minimum standards.

The background of the slide is a low-angle photograph of a modern glass skyscraper under a blue sky with scattered white clouds. Several European Union flags are visible on tall poles in the foreground. A semi-transparent blue rectangular box is overlaid on the center of the image, containing white text. The text is organized into a title on the left and a list of four articles on the right.

Council Regulation 2017/1939

There are four main articles that deal with rules of prosecution:

Article 34 – Referrals and transfers of proceedings to the national authorities

Article 35 – Termination of proceedings

Article 36 – Prosecution before the national courts

Article 37 – Evidence

Article 34

1. Where an investigation conducted by the EPPO reveals that the facts subject to investigation do not constitute a criminal offence for which it is competent under Articles 22 and 23, the competent Permanent Chamber shall decide to refer the case without undue delay to the competent national authorities.
2. Where an investigation conducted by the EPPO reveals that the specific conditions for the exercise of its competence set out in Article 25(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without undue delay and before initiating prosecution at national courts.



Article 35: Termination of the investigation

- 1. When the handling European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure in accordance with Article 34, 39 or 40.



Article 36: Prosecution before National Courts

1. When the European Delegated Prosecutor submits a draft decision proposing to bring a case to judgment, the Permanent Chamber shall, following the procedures set out in Article 35, decide on this draft within 21 days. The Permanent Chamber cannot decide to dismiss the case if a draft decision proposes bringing a case to judgment.

Article 37: Evidence


1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.

2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.



**What about the
rights of the
accused?**

Again, we look to the Council Regulation!



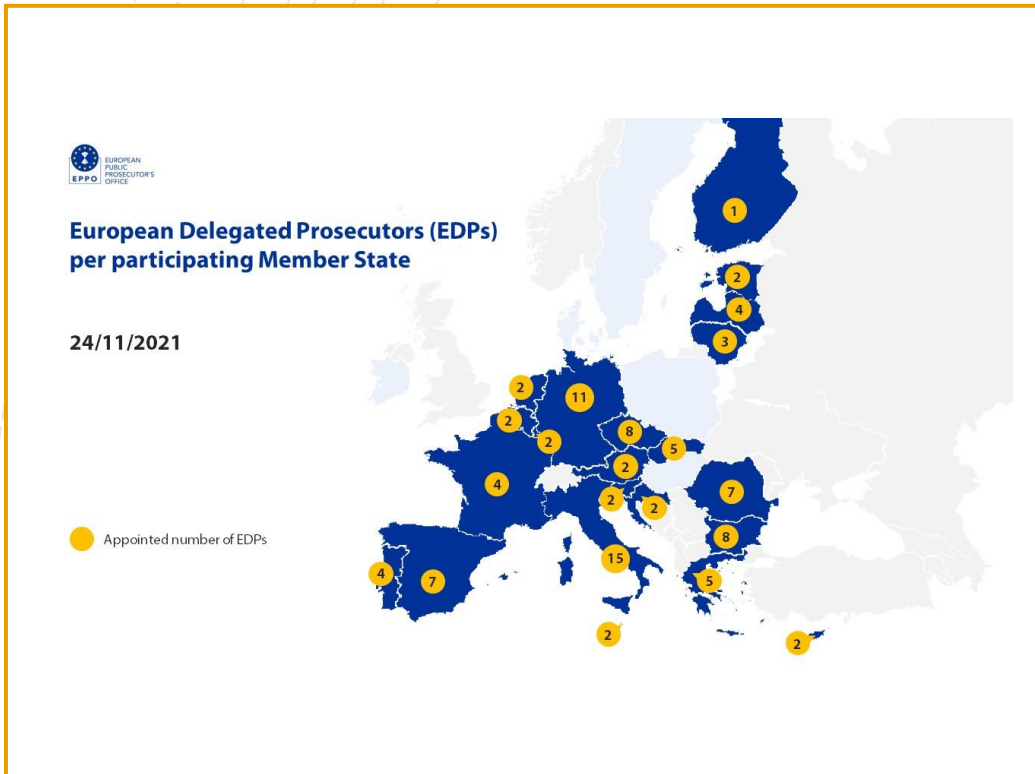
Chapter VI – Procedural Safeguards

There are two main articles dealing with procedural safeguards during investigations and prosecutions:

Article 41 – scope of the rights of the accused

Article 42 – Judicial review

Article 41 – scope of rights



- 1. The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence.
- 2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law, such as:
 - The right of interpretation and translation
 - The right to information and access to case materials
 - The right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention
 - The right to remain silent and be presumed innocent
 - The right to legal aid.



Article 42: Judicial Review

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. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

Article 42: Judicial Review

The Court of Justice shall have jurisdiction in accordance with Article 267 TFEU, to give preliminary rulings concerning:

- 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.
- The interpretation or the validity of provisions of Union Law, including this Regulation;
- The interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence between the EPPO and the competent national authorities.