

EPPO and EU Law

(Jean Monnet Centre of Excellence - STEPPO)



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Topic 6 - THE EPPO AND OTHER BODIES JOINING FORCES

3rd April 2024 | 16:30-18:30

The EPPO Working Agreement with the European Commission

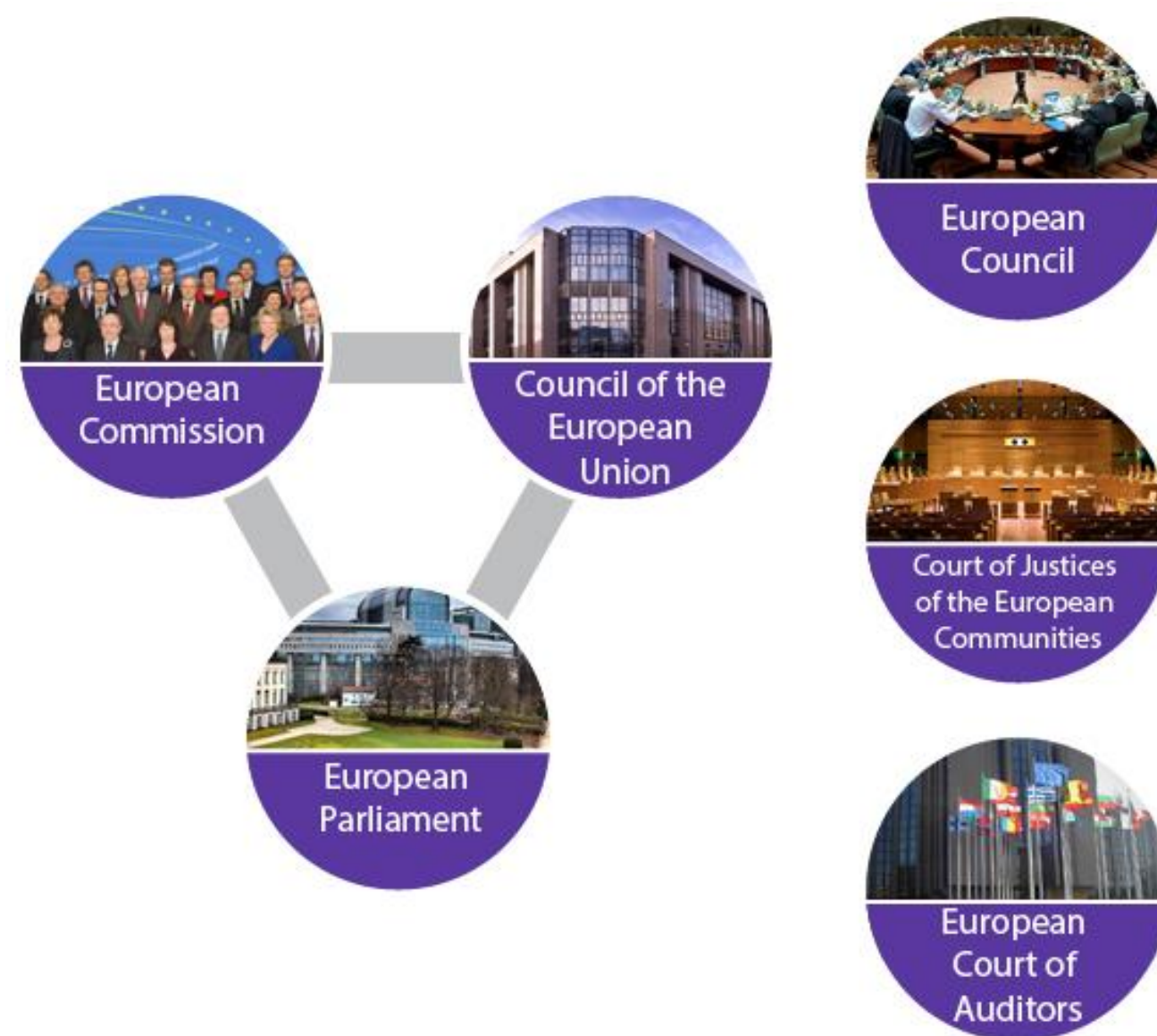
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THE EPPO IN THE EU IBOAS GALAXY





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THE EPPO IN THE EU IBOAS GALAXY





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COOPERATION WITH IBOAS AND PARTNERS

GENERALITIES

Article 99 EPPO Regulation – Common provisions

- 1. In so far as necessary for the performance of its tasks, the EPPO **may establish and maintain cooperative relations** with **institutions, bodies, offices or agencies of the Union** in accordance with their respective objectives, and with the **authorities of Member States of the European Union which do not participate** in enhanced cooperation on the establishment of the EPPO, the **authorities of third countries** and **international organisations**.*
- 2. In so far as relevant to the performance of its tasks, the EPPO may, in accordance with Article 111, **directly exchange all information**, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.*
- 3. For the purposes set out in paragraphs 1 and 2, the EPPO may conclude **working arrangements** with the entities referred to in paragraph 1. Those working arrangements shall be **of a technical and/or operational nature**, and shall in particular aim to facilitate cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States.*



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COOPERATION WITH IBOAS AND PARTNERS EUROPEAN COMMISSION

Article 103 EPPO Regulation

“1. 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, they shall conclude an agreement setting out the modalities for their cooperation.”

Recital(107) EPPO Regulation:

“The EPPO should enable the institutions, bodies, offices or agencies of the Union and other victims to take appropriate measures. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as a civil party in the proceedings in accordance with national law. The exchange of information should take place in a manner that fully respects the independence of the EPPO, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations.”



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NEGOTIATIONS

- Negotiation from July 2020 through May 2021.
- Scope: EC (≠ OLAF, EEAS, Executive Agencies, Agencies)
- Cooperation framed by the following principles:
 - Full respect for the independance of the EPPO,
 - Without prejudice to the proper conduct and confidentiality of investigations.



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MAIN CHALLENGES

- Framing cooperation vs creating new obligations
- Time-limits
- Contact persons
- Templates



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MAIN CHALLENGES

Reporting of information

1) EC → EPPO

→ Article 24(1) EPPO Reg.

“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 in accordance with Article 22, Article 25(2) and (3)”

→ Art. 24(5) EPPO Reg.

“The EPPO shall also be informed, in accordance with paragraphs 1 and 2 of this Article, of cases where an assessment of whether the criteria in Article 25(2) are met is not possible”



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MAIN CHALLENGES

Reporting of information

2) EPPO → EC

→ EPPO Regulation:

- Art. 24(7), 26(2), 34(8), 39(4) of initiation/non initiation, dismissal, referral to national authorities
- 103(2) of the EPPO Regulation:

“Without prejudice to **the proper conduct and confidentiality of its investigations**, the EPPO shall without delay, provide the institution, body, office or agency of the Union and other victims concerned **sufficient information** in order to allow them to take **appropriate measures**, in particular:

- a) administrative measures, such as **precautionary measures** to protect the financial interests of the Union, in this regard, the EPPO may recommend specific measures to the institution, body, office or agency of the Union;
- b) intervention as a **civil party** in the proceedings;
- c) measures for the purpose of **administrative recovery** of sums due to the Union budget or **disciplinary action**.”



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MAIN CHALLENGES

Reporting of information

2) EPPO → EC

→ Article 86 of the framework financial regulation for Union bodies that receive contributions charged to the Union budget:

« Where the Commission's responsibility to implement the Union's budget may be affected or in cases involving a potentially serious reputational risk for the Union, the EPPO and/or OLAF shall inform the Commission without delay of any ongoing or completed investigation, without endangering its confidentiality and effectiveness.»



MAIN CHALLENGES

Waiving privileges and immunities

- Notions (see Protocol VII on the privileges and immunities of the EU):
 - inviolability of EU premises and archives
 - immunity from legal proceedings for EU agents
 - authorisation to testify (Art 19 Staff Regulations)
- Waiving privileges and immunities for the purpose of EPPO investigations



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MAIN CHALLENGES

Access to databases

→ Article 43 EPPO Reg - Access to information by the EPPO

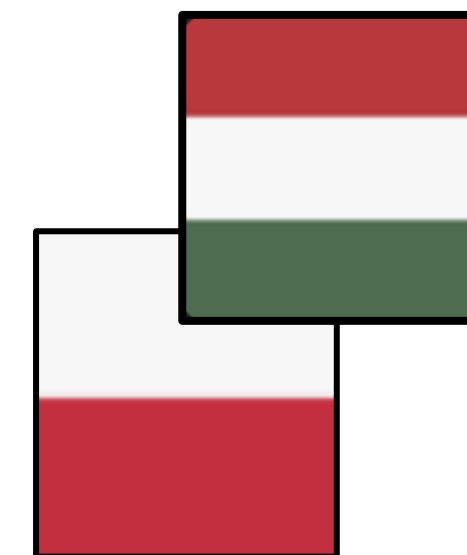
“1. European Delegated Prosecutors shall be able to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registers of public authorities, under the same conditions as those that apply under national law in similar cases.

2. The EPPO shall also be able to obtain any relevant information falling within its competence that is stored in databases and registers of the institutions, bodies, offices and agencies of the Union”

→ Problem: direct vs indirect access

CONDITIONALITY MECHANISM

- Rule of law: founding principle of EU (art. 2 TUE)
- Highly sensitive matter from a political viewpoint
 - Opposition from Hungary and Poland to the adoption of a specific mechanism linking EU funds and rule of law
 - One of the reasons why Hungary and Poland are not participating Member States?





CONDITIONALITY MECHANISM

- **Conditionality mechanism**
 - Aim: avoid mismanagement of the EU budget linked with serious breaches of the rule of law
 - Conditionality mechanism ≠ procedure under art. 7 TUE
 - Procedure lays in the hands of the Commission and Council
- **Central role for the EPPO** → communicate with the Commission about possible violations and help start the proceedings
 - Article 14 Cooperation regarding the ‘General Conditionality Regulation’ (*Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1).*)



CONDITIONALITY MECHANISM

- The case of Hungary
 - 27 April 2022 : Commission starts proceedings to freeze 65% of the regional funds to Hungary for the years 2021-2027,
 - 12 December 2022: Council decides to suspend €6.3 billion given only partial remedial action by Hungary (55% of the total funds)
- What role for EPPO?
 - Paradox: Hungary is not a participating Member State, OLAF remains the sole Union investigative **administrative body** competent to investigate allegations of fraud, corruption or any other illegal activity affecting the financial interests of the UE
 - **Still:**
 - on 26 March 2021 EPPO and the Prosecutor General of Hungary in Budapest signed a working agreement
 - EPPO and OLAF cooperate closely through a separate working arrangement...



CONDITIONALITY MECHANISM

- The case of Poland
 - The Commission has not triggered the budgetary conditionality mechanism against Poland as it could not demonstrate that the infringements of the rule of law (mainly the independence of judges) directly threaten the management of the budget and the financial interests of the Union, as required by the Regulation.
 - Poland is in the process of becoming part of EPPO.





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Thank you for your attention