



DIPARTIMENTO DI
GIURISPRUDENZA
SCHOOL OF LAW

THE EPPO and EU law: a step forward in integration



Co-funded by the
Erasmus+ Programme
of the European Union

EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC I: THE ROAD TO EPPO

Funded by the European Union. However, the views and opinions expressed are only those of the author(s). They do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Therefore, neither the European Union nor EACEA can be held responsible for them.

A PRACTICAL ANALYSIS OF EPPO FUNCTIONS



**Co-funded by
the European Union**

How enhanced cooperation on the EPPO began, and paid off;
EPPO regulation: rules on the law to be
applied by European Delegated Prosecutors

Milano, 1 marzo 2023

Serena Cacciatore -

Código Orcid: <https://orcid.org/0000-0002-8123-5666>

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

INTERVIEW & MEDIA SUB-COMMITEE: «PRACTICAL» PERSPECTIVE

INTERVIEWS

- European delegated prosecutors: **Amelia Luise / Calogero Ferrara / Pasquale Profiti**
- Deputy Supreme Court Prosecutor of Kingdom of Spain and Head of the International Cooperation Unit at the General Prosecutor's Office: **Francisco Jimenez Villarejo**
- Prosecutor of the Special Prosecutors's Office against Corruption and Organized Crime in Spain: **Concepción Sabadell Carnicero**
- Honorary professor of the Procedural Law Department at Malaga University and one of the course coordinators and lecturer for the Criminal Law Diploma course run by the International University of Andalusia. He coordinates the Criminal Law Department at Malaga Law Society and is authorised to act in the International Criminal Court: **Salvador Guerrero Palomares**

INTERVIEW & MEDIA SUB-COMMITEE: «PRACTICAL» PERSPECTIVE

INTERVIEW TO LAW PROFESSIONALS

Interview & Media Sub-committee.



The EPPO and EU Law: A Step Forward in EU Integration.

Professional Interviewed PROPOSED GENERAL QUESTIONS

Interviewed by:

Date:

INFORMATION: The aim of this group is to interview professionals specialised in the field of European integration, such as lawyers, magistrates, or Deputy European Public Prosecutors, with particular emphasis on the role of the European Public Prosecutor's Office. Through the various interviews (with Spaniards and Italians in particular), useful information, statistical data and experiences gained in the "field" will be collected, which are necessary for the purposes of the project.

Request permission to record interview:

Authorisation signed:

General questions

1. How was the establishment of the European Public Prosecutor's Office welcomed in the job field of reference?
2. Which PIF offences are for the most part ascertained in the judicial experience within the country or the geographical area of reference?
3. What issues arise from the provisions governing the material competence of the EPPO as envisaged by the Regulation (EU) 1939/2017?
4. Do the provisions concerning cross-border investigations provide an added value compared to the international cooperation mechanisms already in force?
5. Does the EPPO represent a useful countermeasure to the corruptive conducts perpetrated by criminal organizations in order to illicitly drain European Union funds (see the National Recovery and Resilience Plans)?
6. Would you consider it appropriate for the European Public Prosecutor's Office to extend its substantive jurisdiction to offences that are not confined to the protection of the EU's financial interests or membership of criminal organisations?
7. Poland, Hungary, Denmark, Ireland, and Sweden do not participate in the Regulation, and do you think there is a need for rules governing the investigation of the misuse of European funds in these countries?

HOW HAS THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE BEEN RECEIVED IN YOUR FIELD OF WORK?



“Messina, frodi contro il bilancio Ue al centro del seminario riservato all'Arma”, *Gazzetta del Sud* online, disponibile in

<https://messina.gazzettadelsud.it/foto/cronaca/2022/06/15/messina-frodi-contro-il-bilancio-ue-al-centro-del-seminario-riservato-allarma-a691e23a-a0f9-4ca5-816e-c04588c0f0b0/> (last accessed: 23.12.2022).

«At first we were also content with mere reports, almost letters with summaries of the proceedings they wanted to send us for possible avocation in favor of the European Public Prosecutor's Office as long as we could meet their needs to adjust to the new regulations. And now they are adjusting progressively». *Amelia Luise*

“[The EPPO was welcomed] with interest by some, with mistrust by others and with doubts by still others. Nonetheless, our day-by-day duty will be to manage to overcome those controversial aspects that are undeniably there”. *Calogero Ferrara*



Gli eroi tragici della mafia che canta, i neomelodici riempiono le piazze con inni ai boss, URL <https://gds.it/foto/cultura/2022/10/13/gli-eroi-tragici-della-mafia-che-canta-i-neomelodici-riempiono-le-piazze-con-inni-ai-boss-36bff69d-576c-4d37-9959-5f0c4128a600/> (access: 23.11.2022).

HOW HAS THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE BEEN RECEIVED IN YOUR FIELD OF WORK?



Speech by a magistrate: "Witnesses, in spite of ourselves". URL: <https://trucioli.it/2013/01/31/intervento-di-un-magistrato-testimoni-nostro-malgrado/> (access: 27.07.2022).

«Our position was well received by colleagues and in particular, when I confronted the judges, I must say that we found a welcome no different from that of the national prosecutors; there is curiosity towards this institute which poses new juridical questions».
Pasquale Profiti

«I must emphasize that the Spanish Prosecutor's Office has supported the European Public Prosecutor's Office project since the idea of the same was launched more than 30 years ago and has now become a reality. For many Spanish prosecutors, myself included, it represented the most ambitious institutional harmonization project ever undertaken in a landmark criminal justice institution and, therefore, in an area particularly resistant to reform, as the last bastion of national sovereignty».
Francisco Jiménez Villarejo



Francisco Jiménez Villarejo: «El modelo del fiscal instructor supondría modernizar la Justicia», URL: <https://www.diariosur.es/sucesos/francisco-jimenez-villarejo-20220504123154-nt.html> (access: 12.12.2022).

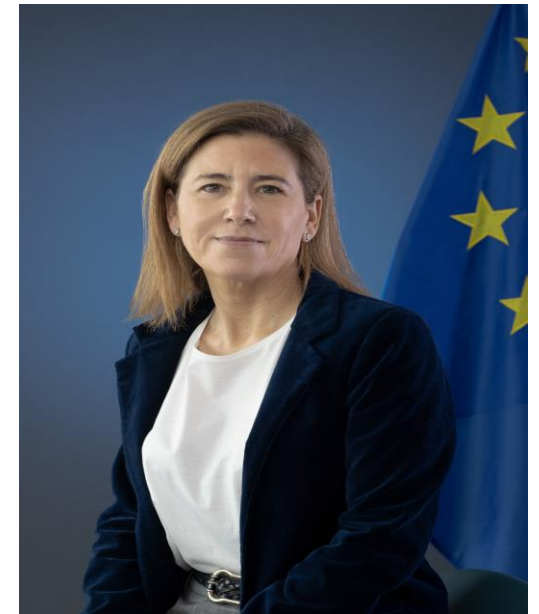
WHAT ISSUES THE FRAMEWORK ON JURISDICTION OUTLINED IN REGULATION (EU) 1939/2017 RAISE? AND FROM THE REFERENCE THE REGULATION MAKES TO DIRECTIVE (EU) 1371/2017?

Italy	Spain
<p>Are there competence problems? Are there overlapping competencies?</p> <p>“Clearly, there are issues on the competence regime. Nonetheless, we have faced none of this so far: the Italian legislator envisaged a system providing that the competence of the EPPO shall prevail when a PIF offence occurs, that the judicial police must report both to the EPPO and the national public prosecutor and prescribing that the EPPO shall evaluate in the first place whether it falls within its competence. Clearly, the national public prosecutor (...) may file a sort of conflict of jurisdiction before the competent national authority, which is the General Public Prosecutor before the Court of Cassation”. Calogero Ferrara</p>	<p>Are there competence problems?</p> <p>«Relations between the European Public Prosecutor's Office and the Spanish Public Prosecutor's Office are good. Regarding the principle of mutual cooperation and trust, both Prosecutor's Offices support each other and regularly exchange information in the promotion of justice, with the aim of effectively combating PIF crimes. In particular, the Anti-Corruption Prosecutor's Office has exchanged relevant information with the European Public Prosecutor's Office, and the statistics included in EPPO's 2021 Report are eloquent, reflecting the relevance of this information flow and the practical functioning of cooperation». Francisco Jiménez Villarejo.</p>

DO THE PROVISIONS ON CROSS-BORDER INVESTIGATIONS PROVIDE AN ADDED VALUE COMPARED TO THE INTERNATIONAL COOPERATION MECHANISMS ALREADY IN FORCE?

- They involve greater agility and direct cooperation among the Deputy European Prosecutors. About that, a preliminary judgment is noted from an Austrian court (Case C-281/22, GK and Others, lodged at 25 April 2022), the Oberlandesgericht Wien, Austria). **Concepción Sabadell Carnicero**
- This should represent the actual added value of the EPPO as it allows to bypass those dispositions on cooperation instruments such as letter rogatory, investigative orders and exchange of information. Working as in a unique office which operates in 22 Member States makes it possible that with the simple participation of the EDP of the assisting Member State we conduct a joint operation. There still are some issues, such as the fact that judicial systems across the EU are very different among each other and therefore some activities that in Italy are carried out by the public prosecutor, in another state they must be subject to a judicial request.

“Just to give an example: in Italy, searches are authorized by the public prosecutor, while in most Member States they are authorized by the judge. If I am conducting an investigation and need for a search to take place in one of those states, shall I issue a decree and ask my colleague to execute the measure, or will he be required to ask for the authorization to the judicial authority in their state?” **Calogero Ferrara**



«Los fraudes de subvenciones, principal preocupación de la Fiscalía Europea en España URL

<https://abogar.info/contenido/311/los-fraudes-de-subvenciones-principal-preocupacion-de-la-fiscalia-europea-en-esp> (access: 12.12.2022).

DO YOU THINK IT IS APPROPRIATE FOR THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE TO EXTEND ITS JURISDICTION TO CRIMES THAT ARE NOT LIMITED TO THE PROTECTION OF THE EU'S FINANCIAL INTERESTS OR BELONGING TO CRIMINAL ORGANIZATIONS?

- The European Public Prosecutor's Office should extend its jurisdiction to crimes that are not limited to the protection of the Union's financial interest or membership of criminal organisations, for example with reference to the 2018 European Commission proposal to extend jurisdiction to terrorist offences. **Pasquale Profiti**
- Before extending the competence of the European Public Prosecutor's Office, we should have a better perspective on its functioning and, above all, on its compatibility with national public prosecutors' offices. **Francisco Jiménez Villarejo**
- For some crimes it would be absolutely necessary: I'm thinking about transnational environmental crimes, which is one of the big topics under discussion at the moment; I'm thinking about terrorism hypotheses, I'm thinking about human trafficking, all those crimes that necessarily involve more than one country. But this would also require a transfer of jurisdiction from national authorities as well as a reinforcement of offices. **Calogero Ferrara**



CONCLUSIONS

- It would be advisable for every Member State to take part in the EPPO, but this is mostly a political stand more than a judicial one. Agreements have been made with several non-EU countries as several issues arise in this regard, as it is happening with Switzerland.
- We need legal certainty from the CJEU for the interpretation of the rules in a more or less similar way.
- The European Commission's proposal for the EPPO regulation, which was then scrapped, stated that it would create a single legal area within Europe in which there would be a European Public Prosecutor's Office to combat crime. Then, of course, it did not materialise, because we certainly do not have a harmonised system either procedurally or substantively.
- The possibility of extending its scope of action exists and will depend on the results of its operation in its first years and its ability to resolve its disagreements with the national prosecutors' offices. We should have a better perspective on the functioning of the European Public Prosecutor's Office and, above all, on its compatibility and understanding with the national prosecution services before extending its jurisdiction.



THANK YOU
FOR YOUR
ATTENTION



UNIVERSIDAD
DE BURGOS

Serena Cacciatore