



DIPARTIMENTO DI
GIURISPRUDENZA
SCHOOL OF LAW

THE EPPO and EU law: a step forward in integration



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EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC 4: THE EPPO
PROGRAMMING 2021-23:
HIGHLIGHTS

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THE EPPO AND THE ROLE OF THE EUROPEAN PROSECUTOR



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LEGAL NATURE AND STATUS OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

- Is the **independence of the European Prosecutor** guaranteed in the same way in all the EU Countries?
- How important is it for **Italy to participate in EPPO**, and how important is this new system for the **European Union**?
- In light of EPPO's operational experiences in recent years, can we expect it to **evolve towards a 'federal' prosecution model**, or is it more likely to be strengthened as a **system of prosecutors parallel to the national ones**?
- EPPO was set up as a body to **protect the financial interests of the European Union** and is composed of magistrates who have the competence to identify, prosecute and bring to trial perpetrators of offences against the European budget. Was there a lack of protection of the financial interests of the European Union before the establishment of EPPO?
- Is an **extension** of this enhanced cooperation to **all EU Member States** desirable?

STRUCTURE OF THE EPPO

- What are the reasons behind the **high number of Deputy European Prosecutors in Italy** compared to the other 21 Member States?
- Which **criteria** is the **selection of a European Delegated Prosecutor** based on?
- **Permanent Chambers:** On the basis of the **article 10 of EPPO Regulation**, the EPPO Regulation allows the **internal rules of procedure to supplement these provisions** with regard to the number of permanent chambers, the allocation of cases between them, and the composition of the permanent chambers. Since the first part of the article expressly states that the European Chief Prosecutor or one of the Deputy European Chief Prosecutors or a European Public Prosecutor appointed as President and two other permanent members are required, what is meant by the phrase **"composition of permanent chambers"**? Can the rules of procedure establish a **different number of persons composing the permanent chambers** since the most important decisions during a trial derive from their will? (e.g. can the IRP establish a smaller number of participants – such as only one permanent member instead of two permanent members?); or does this composition refer to a **specific individualization** (e.g. instead of permanent member X, permanent member Y can participate)?

OPERATIONAL ACTIVITY OF THE EPPO

- How could any individual **report alleged cases of fraud and other types of offences to EPPO?**
- Do you think that there will be an **increase in the EPPO's activities due to mafia infiltrations** in operations involving recovery fund and Next gen EU?
- What role can EPPO play in the fight against corruption in relation to **European immigration funds?** Has EPPO ever made a move on this front?
- How are **seized assets** handled during and after the investigation and trial?
- What are the **most interesting cases** you have dealt with?
- What are the most **positive aspects** of the EPPOs' cooperation with national investigating authorities, and what are the **major difficulties** and critical issues you have encountered in your experience in this role?
- How is the **collaboration** between **EPPO** and the **National Anti-Mafia and Anti-Terrorism Directorate?**

LEGAL ISSUES RELATED TO THE ACTIVITY OF THE EPPO

- Which are the most **relevant issues** that may arise related to the **effectiveness of investigative acts carried out by the Deputy European Public Prosecutor of a state, subsequently declared incompetent?**
- If the national magistrate also (mistakenly) fails to activate the EPPO, could this result in a procedural defect that could lead to the **nullity of acts, procedures, etc.?**
- Article 14 of Legislative Decree 9/2021 governs the **communication and registration of reports of offences falling within the jurisdiction of the European Public Prosecutor's Office** by providing that, when they concern offences in relation to which the European Public Prosecutor could exercise his jurisdiction, they are to be submitted or forwarded **not only to the national public prosecutor but also to the delegated European Public Prosecutor**. The legislature's choice has thus been in the direction of "double communication", with a copy, therefore, also addressed to the national prosecutor with territorial jurisdiction at the same time as the communication to the EPPO. Should the transmitting authority mistakenly **fail to notify the EPPO**, can this task be similarly performed by the national magistrate?

LEGAL ISSUES RELATED TO THE ACTIVITY OF THE EPPO

- In the EPPO regulation, there is no express sanction providing for what happens if the national authorities do not inform Eppto about the issues listed within article 24 par. (1) & (2) & (3) + Recital (58) of EPPO Regulation. Can **sanctions under national law** be applied in situations where, for example, a lower prosecuting authority carries out an investigation for which it is not competent? Since the authors of the Regulation insisted on this obligation, both in the Regulation's recitals and in its articles, should we understand that the applicable sanctions are those under national law?
- How are the relations between the National Prosecutor's Office and the European Prosecutor's Office regulated when there is **overlap of crimes and jurisdiction on the same subject**?
- Since EPPO is a specialised body and all competent national bodies are obliged to notify EPPO, can we speak of a **priority competence of the EPPO** to investigate cases?

RECITAL 13: This Regulation provides for a system of shared competence between the EPPO and national authorities in combating crimes affecting the financial interests of the Union, based on the right of evocation of the EPPO.

LEGAL ISSUES RELATED TO THE ACTIVITY OF THE EPPO

- Organised crime: Considering that “According to Article 22.2 of COUNCIL REGULATION (EU) 2017/1939 of 12 October 2017, the **EPPO shall also be competent for offences relating to participation in a criminal organisation** as defined in Framework Decision 2008/841/JHA, as implemented by national law, if the criminal activity of that criminal organisation is focused on the commission of one of the offences referred to in paragraph 1; and that according to Article 3.2.b) of the decision of the College of the European Public Prosecutor's Office of 21.04.2021, in accordance with Article 22(2) of the EPPO Regulation, the EPPO shall exercise its **competence for offences relating to participation in a criminal organisation** if the criminal activity of that criminal organisation is aimed at committing one of the offences referred to in Article 22(1). In such a case, and without prejudice to Article 25(3), the EPPO shall initiate the investigation irrespective of the simultaneous presence of other underlying offences and irrespective of the damage caused or likely to be caused to the Union's financial interests by offences other than those referred to in Article 22(1)...
What is the **relationship between associative crimes and EPPO's competence?**
- Would there be any **repercussions for a Member State** that decided not to participate or assist EPPO in conducting an investigation?

LEGAL ISSUES RELATED TO THE ACTIVITY OF THE EPPO

PROCEDURAL RIGHTS


- In previous lessons, we have seen that the European legal system provides a whole series of **guarantees for natural and legal persons under investigation by the EPPO**. So what is the least serious consequence, on a criminal law level, that one would face if the suspect's rights were not respected during an investigation?
- Do you think that the EPPO could be one of the instruments through which the EU could interfere in the **procedural disciplines relative to each Member State**, such as to strengthen the procedural guarantees provided by them? In this way, could Member States have increasingly **harmonised and also more efficient procedural disciplines**?

COMPETENCE OF THE EPPO – POSSIBLE EXTENSION

- Why was it decided to concentrate investigative powers at the European level in one body first for **financial crimes and not for crimes against humanity**?
- Do you think it is important to extend the **jurisdiction of the EPPO to include terrorism**? Why is there **so much obstruction from states** if it should be so important?

COOPERATION OF THE EPPO WITH IBOAs (INSTITUTIONS, BODIES, OFFICES, AGENCIES) AND NON PARTICIPATING MEMBER STATES

- A reading of Article 86 TFEU (the legal basis for the establishment of EPPO) shows the close link between the European Public Prosecutor's Office and Eurojust. In particular, the working agreement dated 2 February 2021 provides for the exchange of information (Art. 5 et seq. of the agreement) between the two institutions to be implemented in various ways, including access to each other's computer records. What are the practicalities of activating this information channel? Has the 'template' mentioned in the agreement already been implemented?
- How do the investigative activities of the newly operational European Public Prosecutor's Office (EPPO) and the judicial cooperation activities of pre-existing EU agencies such as Eurojust relate to each other?
- How has the cooperation between EPPO and other European agencies such as Europol, Olaf and Eurojust changed over the years?
- Which are the most relevant issues that may arise when it is necessary to involve states that do not participate in enhanced cooperation in investigation activities?

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- What would happen if a Member State **falsified documents in order to divert the investigation conducted by EPPO?**
 - In your opinion, does the EDP have the power to influence the **judge's free conviction?**
 - How did your **career** develop before you came to be EPPO's European Public Prosecutor for Italy (i.e. what path did you take)? What career steps would you like to take after your tenure at EPPO is over?
 - What **motivated** you to become a Prosecutor?



ANY OTHER QUESTIONS?

THANK YOU!



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