



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 I: THE ROAD TO EPPO

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***Operational activity with the  
extra judicial implication. The  
contribution of the italian  
financial police***



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**EUROPEAN COMMISSION JEAN MONNET MODULE  
THE EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION  
THE 2ND CYCLE OF THE MODULE (2023)**

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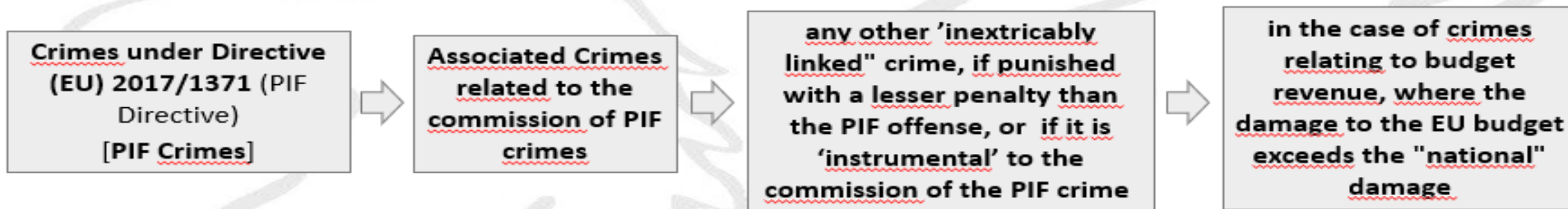
**E.P.P.O.'s COMPETENCES AND  
THE INSTUTIONAL MISSION OF THE FG**



**THE FG IN EXTRA NATIONAL  
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# EPPO COMPETENCES

**E.P.P.O.'s Competences: Art. 22 of Council Regulation (EU) 2017/1939 (EPPO Regulation)**



As regards to VAT fraud, EPPO has jurisdiction only where the intentional actions or omissions defined in that provision relate to the territory of two or more Member States and involve a total loss of at least EUR 10 million

**EPPO is not responsible for offences relating to direct national taxes**

*Guardia di Finanza*

# EPPO competences

E.P.P.O. Directive (EU) 2017/1371 – P.I.F.

Crimes that affect the financial interests of the Union under Directive (EU) 2017/1371 (PIF Directive)

Crimes which inevitably affect the financial interests of the European Union (Art. 3)



**Fraudulent behavior**, both in terms of EU budget expenditure (**misappropriation, retention or misappropriation of funds, illegal procurement**) and in terms of revenue (**cross-border VAT fraud or, in any case, lower revenue**)

Crimes which may adversely affect the financial interests of the European Union (Art. 4)



**Money laundering** (as defined by Directive (EU) 2015/849), active and passive corruption and embezzlement, committed intentionally. Such conduct may, **under certain conditions**, cause damage to the EU budget

# THE FINANCIAL GUARD'S INSTITUTIONAL MISSION

## FINANCIAL GUARD: THE «EUROPEAN» PERSPECTIVE OF THE INSTITUTIONAL MISSION

D. Lgs. 19 March 2001, n. 68 («*Adjustment of the duties of the Financial Guard Corps*»)

### Art. 2 - Budgetary protection

«[...] , *the Financial Police Corps performs the functions of economic and financial police to protect the public budget, the regions, local authorities and the European Union* [...]».

### Art. 4 - International activity to protect the budget of the State and the European Union

The FG «*promotes and implements, [...] forms of operational cooperation, at the international level, with foreign collateral bodies, to combat violations in economic and financial matters to protect the budget of the State and the European Union* [...]».

# THE FINANCIAL GUARD'S INSTITUTIONAL MISSION

## FINANCE GUARD: THE «EUROPEAN» PERSPECTIVE OF THE INSTITUTIONAL MISSION

In addition, in the light of the coordination of the specialized sections of the Police Forces defined by the Ministry of the Interior by decree of 15 August 2017, the Finance Guards exercises:

- **Exclusively, the task of detecting and combating fraud affecting the EU budget and customs offences**”;
- **a prominent role, in the field of Community fraud, “also with regard to the protection of the Community’s financial interests in the agricultural and fisheries sectors**
- **and a prominent role** in prevention and combat:
  - A. infringements of national, European and foreign currency, securities, securities, means of payment, **financial and capital movements**
  - B. **Money laundering**, counterfeiting, fraud involving non-cash means and payment systems, etc.



# THE FINANCIAL GUARD'S INSTITUTIONAL MISSION

## FINANCIAL GUARD: THE «EUROPEAN» PERSPECTIVE OF THE INSTITUTIONAL MISSION

Lastly, the Financial Guard plays a **central role** in the fight against money laundering and the financing of terrorism, constituting for the other police forces the fundamental pole of information gravitation and analysis, by virtue of the cited D.Lgs. n. 68/2001 and especially as a result of the legislation relating to the prevention of the use of the financial system for **the purpose of money laundering and terrorist financing**.

The anti-money laundering legislation, in particular, is outlined in Italy as a **three-part model**, in which the Financial Information Office (FIO) of the Bank of Italy are exclusively entrusted financial analysis functions while two investigative bodies, The **Financial Guard** Special Unit of the Currency Police and the **D.I.A.**, is recognized as the administrative ownership of special powers of **investigation of suspicious transaction reports**.

# THE FINANCIAL POLICE IN EPPO

## FINANCE GUARD: THE «EUROPEAN» PERSPECTIVE OF THE INSTITUTIONAL MISSION

The Office of the European Public Prosecutor's Office (EPPO - European Public Prosecutor's Office) legally assumes the task of criminal law protection of the **Union's financial interests**, the **European Public Prosecutor's Office** operates essentially in the institutional areas entrusted, in the national context, to the garrison of the **Financial Guard**, which therefore stands as its **natural partner**

# THE FINANCIAL POLICE IN EPPO

## FINANCIAL GUARD: THE «EUROPEAN» PERSPECTIVE OF THE INSTITUTIONAL MISSION

Development of systematic dialogues with PDEs

Ensures maximum cooperation and assistance

To that end, and with a goal to ensure a complete and immediate response to their investigative needs, **PDEs will be able to make use of the entire operational device of the Structured Body. As well as, the Departments widely distributed throughout the territory - *primarily* the Economic and Financial Police Units – and the competent Special Departments.**

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# THE FG IN ACTIVE INTERNATIONAL INVESTIGATIONS

EXECUTION OF DELEGATED INVESTIGATIONS

CROSS-BORDER INVESTIGATIONS: Art. 31 Regulation (EU) 2017/1939 (EPPO Regulation)

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PREVENTATIVE ARREST AND TRANSNATIONAL SURRENDER

USE OF ADDITIONAL EXTRA-NATIONAL INVESTIGATIVE TOOLS

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# FG ACTIVITIES IN THE E.P.P.O.

## E.P.P.O - CROSS-BORDER INVESTIGATIONS: Art. 31 Regulation (EU) 2017/1939 (EPPO Regulation)

*The European Delegated Prosecutors (EDPs) shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a **needs to be undertaken in a Member State (MS) other than that of the EDP in charge of the case, the EDP shall decide on the adoption of the necessary measure and assign it to a EDP located in the Member State where the measure needs to be carried out.***

***The EDP in charge of the case may assign any measure at their disposal in accordance with Art. 30. The justification and adoption of such measures are governed by the law of the Member State of the EDP in charge of the case. If the EDP assigns an investigative measure to one or more EDPs of another MS, it shall at the same time inform their supervising European Prosecutor.***

***If a judicial authorization for the measure is required under the law of the MS of the assisting EDP, the assisting EDP shall obtain that authorization in accordance with the law of that MS.***

*If judicial authorization for the assigned measure is refused, the handling EDP shall withdraw the assignment.*

*However, if judicial authorization is not required by the law of the EDP in charge of providing assistance's MS, but the law of the MS of the handling EDP requires it, the authorization shall be obtained by the latter EDP and submitted together with the assignment.*

# FG ACTIVITIES IN THE E.P.P.O.

## E.P.P.O. – ENFORCEMENT OF ASSIGNED MEASURES: Art. 32 EPPO Regulation.

*The assigned measures shall be implemented in accordance with this Regulation and the law of the Member State of the assisting EDP. Formalities and procedures expressly indicated by the handing EDP shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.*

# FG ACTIVITIES IN THE E.P.P.O.

## E.P.P.O. – PRE-TRIAL ARREST AND CROSS-BORDER SURRENDER

### Art. 33 EPPO Regulation

The handling EDP may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases.

Where it is necessary to arrest and surrender a person who is not in the Member State in which the handling EDP is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA

### Art. 15 D.Lgs. 9/2021 («Provisions on the European arrest warrant»)

The delivery of procedures relating to MAE issued by EDP are governed by Law no. 69 of 22 April 2005.  
For the purposes of the passive surrender procedure, 'issuing Member State' shall mean the European Union MS where the EDP which issued the European Arrest Warrant is located



# ADDITIONAL EXTRA-NATIONAL INVESTIGATIVE TOOLS

## The European Criminal Investigation Order (EIO)

SOURCE OF EUROPEAN LAW	NATIONAL IMPLEMENTATION
Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014	D. <u>Lgs.</u> 21 June 2017, n. 108

## The Freezing of Assets

SOURCE OF EUROPEAN LAW	NATIONAL IMPLEMENTATION
EU <u>Regulation</u> 2018/1805 – dal 19.12.2020	D. <u>Lgs.</u> 15 <u>February</u> 2016, n. 35

## Joint Investigation Teams (JITs)

SOURCE OF EUROPEAN LAW	NATIONAL IMPLEMENTATION
<u>Council Framework Decision</u> of 13 <u>June</u> 2002 (2002/465/GAI )	D. <u>Lgs.</u> 15 <u>February</u> 2016, n. 34

# ADDITIONAL EXTRA-NATIONAL INVESTIGATIVE TOOLS

## EUROPEAN ORDER OF INQUIRY

Instrument by which the **competent authority of one MS** requires the counterpart body of another EU country to **carry out specific investigative acts, aimed at obtaining targeted evidence**

### active procedure

Issued in the context of **criminal proceedings** or **proceedings for the application of a Capital MP**, and transmitted directly by the PM to the Executing Authority

### *passive procedure*

Performed in accordance with the **forms requested by the foreign authority**, provided they are not contrary to the fundamental principles of the State legal order

The issuing Authority **may require** that, in the execution phase of the EIO in the other State, its *direct* participation or **the participation of Judicial Police Officers is allowed.**



To this end, the Authority may promote the **establishment of a Joint Investigation Team (JIT)**

# ADDITIONAL EXTRA-NATIONAL INVESTIGATIVE TOOLS

## THE FREEZING OF ASSETS

Regulation (EU) 2018/1805 obliges MS's (respectively "issuing State" and "executing State") to **automatic recognition** of all types of seizure and confiscation orders issued as part of a "**criminal proceedings**" including **extended confiscation orders, confiscation of third parties** and, in particular, confiscation without conviction (including MP)

The application of the **principle of mutual recognition of judicial decisions in criminal matters**, as the basis of Judicial Cooperation in the Union, not only in the process but also in the **pre-trial context**, with particular reference to measures allowing the **competent judicial authorities to proceed with the seizure of evidence and confiscation**

# ADDITIONAL EXTRA-NATIONAL INVESTIGATIVE TOOLS

## JOINT INVESTIGATION TEAMS

SOURCE OF EUROPEAN LAW	NATIONAL IMPLEMENTATION
Council Framework Decision of 13 June 2002 (2002/465/JHA)	D. Lgs. <u>15 February 2016</u> , n. 34

**International Investigation Group** that acts under a common objective and operate simultaneously in various Member States concerned by the investigations, in order to achieve **greater repressive effectiveness of crimes of international scope**, are often hampered by differing criminal laws in the various Member States.

Overcoming the limits of judicial and investigative cooperation in the fight against cross-border crimes is characterized by the **interaction between associations of different nationalities** with the **fragmentation of criminal activities** in countries subject to different national jurisdictions.

**The acts carried out abroad by the JIT** have the **same effectiveness** as those made according to the provisions of the Code of Rite and are **usable** according to Italian law

# INVESTIGATION TOOLS IN POLICE COOPERATION

## INVESTIGATIVE INSTRUMENTS IN THE FIELD OF POLICE COOPERATION

The Convention implementing the **Schengen Agreement** (signed on 19 June 1990) has initiated cooperation at the European level between **police agencies, customs administrations and judicial bodies**, so that the **abolition of border controls does not lead to an increase in crime**

Among the **measures** to compensate for the reduced security resulting from the **abolition of border controls**, the Convention provided for:

The creation of an automated search system: the **Schengen Information System (S.I.S.)**, inserted within S.D.I. - CED Interforze (Law n. 121/1981)

the obligation to provide other SSMMs with **all information relevant to the prevention and combating of crime**

**intensive and uniform controls** at the external borders of the **Schengen area**, including the possibility of **cross-border surveillance** and the **right to pursue offenders across borders**

# INVESTIGATION TOOLS IN POLICE COOPERATION

## THE EXCHANGE OF POLICE INFORMATION

### UPON REQUEST

In compliance with national law and within the limits of their competence, **for the purpose of preventing and detecting criminal offences**, except where national law reserves the application to the judicial authorities or the application (or its execution) involves the application of coercive measures by the requested State

### OWN-INITIATIVE

Subject to the limits imposed by national law, in specific cases, each Contracting State may voluntarily send useful information "**for the suppression of future crimes, the prevention of crimes or threats to public order and public security**" (Art. 46 Conv. Schengen)

The exchange of information shall be carried out:



### *in ordinary cases*

through the National Central Body (for Italy: the **International Police Cooperation Service**)

### *in cases of emergency*

directly between the police authorities concerned, **promptly informing** the designated National Central Body

# INVESTIGATION TOOLS IN POLICE COOPERATION

## CROSS-BORDER OBSERVATION AND TRACKING (1/2)

### CROSS BORDER SURVEILLANCE

May be carried out in **the context of a judicial investigation** against a person who is **likely to have committed an extradition offence**

#### Ordinary Way

When action is **authorized in advance** by the country in which the police actions are to be carried out **following a request for legal assistance** submitted in advance

#### In emergency (I.E.)

When the prior authorization of the other State cannot be acquired

In this case, the staff shall be obliged to forward a request for legal assistance without delay. If the observation is not authorized within 5 hours of the request for legal aid, the observation must cease

If the Authorities in whose territory the observation took place request, the agents assigned to the surveillance **shall contribute to the investigation following the operation in which they participated**, as well as to the **judicial procedures**

# INVESTIGATION TOOLS IN POLICE COOPERATION

## CROSS-BORDER OBSERVATION AND TRACKING (2/2)

### CROSS-BORDER PURSUIT

Available if the Authorities of the State in which a person is being pursued:

- ✓ In case of emergency, have not been notified in advance of entrance into their territory;
- ✓ Was not able to go to the place in time to resume the pursuit

The police officer shall be given the opportunity, **without the need for prior authorization**, to continue on the territory of another State, party to the Convention, in pursuit of the **escaped person**, or of **a person who has been caught or accused of a serious offence**.

The forms of assistance referred to in **art. Articles 40 and 41 of the Schengen Treaty also apply to Switzerland**, a country bordering Italy, which **although not joining the European Union** has been part of the Schengen area since **2008**.



# FG AND EPPO = OPERATION «KOMOSECHIAMA»

OPERATION KOMOSECHIAMA: A COLLABORATION EXPERIENCE BETWEEN E.P.P.O. AND THE FINANCIAL GUARD

**International strike against organised crime group: 10 arrests and seizures worth at least €13 million in Germany, Italy and Bulgaria**

[epo.europa.eu/en/news/international-strike-against-organised-crime-group-10-arrests-and-seizures-worth-least-eu13](https://epo.europa.eu/en/news/international-strike-against-organised-crime-group-10-arrests-and-seizures-worth-least-eu13)

**First executed European case of personal and real precautionary measures, ordered at the end of investigations conducted, by delegation of the European Prosecutor's Office, in collaboration between German and Italian EDPs.**

# FG AND EPPO = OPERATION «KOMOSECHIAMA»

## OPERATION KOMOSECHIAMA: A COLLABORATION BETWEEN E.P.P.O. AND THE FINANCIAL GUARD

Economic and financial investigations carried out on behalf of EPPO by the PEF Group of Milan, in collaboration with **the Department of the Central Criminal Police of Upper Bavaria North**, regarding a **complex international tax fraud** in the luxury car trade.

Execution of a **European Arrest Warrant** against 10 persons under investigation and a **decree of preventive seizure of movable property, real estate and financial assets** for a total value of over **13 million euros**, as a result of tax crimes.

# FG AND EPPO = OPERATION «KOMOSECHIAMA»

## OPERATION KOMOSECHIAMA: A COLLABORATION BETWEEN E.P.P.O. AND THE FINANCIAL GUARD

Simultaneously, at the end of investigations coordinated by the local **Anti-Mafia District Directorate** and conducted also with the collaboration of the **Central Directorate for Drug Services**, a Provisional Custody Order was carried out against 4 additional subjects, involved in a **complex drug trade**.





# ***THANK YOU FOR YOUR ATTENTION***

**Colonel Giuseppe D'Urso**

*Commandor of the Economic Financial Police Unit*

*Of Milan's Finance Guard*