

## Progetto Monet – Intervento e capitolo Dr. Pietro Suchan su “ Relazioni EPPO – )

Initial general remarks.

1 ) EPPO is now and recently has become part ( and I should add : at this moment one of the most important) of the reality of the European Judicial Cooperation System ( as Jits and EU Regulation 784 / 21 concerning the EU removal order which will enter into force the next 7 th of June ) and therefore has to develop and strengthen strict links with the so called )classical or " traditional " agencies of Judicial and Lea cooperation : Eurojust, Olaf and Europol at first.

2) EPPO for the necessary cooperation and for a concrete possibility of fruitful results in the frame of its tasks and competences needs Eurojust but Eurojust also needs EPPO , both with the need of a strict respect of the different specific competences ( art. 86 TFEU )

3 ) EJ is legally considered the " mother " of EPPO : I don' t think realistically that this definition is fully appropriate but it stresses the special link between the two main EU Agencies : the " mother " at the moment is in a good , nearly perfect health and will surely give its contribution to EPPO in the next future and let me speak about their concrete relationships and possible concrete added value of EJ for EPPO as follows.

B ) Main points of specific interest

1 ) Let us remark at first that a collegial management structure has been strongly privileged compared to the initial project model of management of the Office in a more hierarchical form by the European Prosecutor and his Deputy Prosecutors .

The fundamental definitive choices of a procedural nature and nature concerning the trial are reserved to the "Permanent Chambers", while the "strategic" ones and, in any case , of a general nature to the "College", with a strong analogy, as regards the latter governing body, with Eurojust, which, however, mainly performs mediation and coordination functions and not so much (although now, following the recent entry into force on 12 / 12 / 2019 of the new EJ Regulation, strong changes have intervened, also with respect to this European Judicial Agency), of a direct investigative nature. On the basis of Art. 86 T.F.U.E. however " the EPPO was born from Eurojust ", even if this wording does not appear very clear.

Even the choice ( also modifying the original project) to appoint the European Prosecutors representing each individual member State, recalls the typology of the national members of Eurojust.

To what extent this choice of collegiality ( certainly not usual for a Prosecutor's Office, which must make choices, even immediate, of impulse of the judicial activity) will scratch the requirement and the value of speed and slenderness, avoiding deleterious or otherwise harmful blocks and delays, represents one of the so-called "

open bets" .

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2) Surely Eurojust will be asked in the next future to support the following specific aspects and topics of concrete cooperation between national judicial and police authorities and EPPO as foreseen in art. 100, par. 2 Reg. 1939 / 17:

An impact on the (limited) availability of the national judicial police, whose role is essential for the success of EPPO investigations, is provided by Article 5, par 6 "The competent national authorities shall assist and support the investigations and prosecutions of the EPPO".

Particularly relevant is also the provision in Article 13 Reg: "the European Delegated Prosecutors act on behalf of the EPPO in their respective Member States and have the same powers as national prosecutors in matters of investigation and acts aimed at bringing to trial ..." and therefore it is they who, at least as far as Italy is concerned, concretely dispose, by directives and orders, of the national LEAs (albeit, in turn, placed in a relationship of dependence by the Permanent Chambers and the European National Prosecutors).

Singular appears the provision referred to in art. 28, 2 par. Reg. (while the one referred to in 1 par. is broad to the competences of the European Public Prosecutor: "The European Public Prosecutor may adopt investigative measures or other measures in person or instruct the competent authorities (I would say not only of LEAs., but also perhaps judicial) of his Member State, which, in accordance with national law, ensure and adopt the measures assigned to them) according to which "at any time, during investigations conducted by the EPPO, national authorities shall, in accordance with national law, take the urgent measures necessary to ensure the effectiveness of the investigations, even when they do not act specifically on the instructions of the Relevant EDP, and the national authorities shall inform the relevant European Delegated Prosecutor without delay of the urgent measures taken."

This provision reflects the current relationship <sup>in an opposite way</sup> between Eurojust national member and national judicial authorities in matter of urgent active and passive EIOs. The question that needs to be asked is whether or not the measures need to be validated by the , at the end , competent EPPO —I would say that the answer must certainly be :yes

3 )Further concretely possible or highly probable involvement of Eurojust concerning the following questions : The creation of a unique European evidence brings with it the need to adopt a balance between the rules for the valid taking of evidence in the State of Collection and those of the State of Recognition of judgment. This can be a source of criticality for systems such as the Italian one (art. 111 Cost) informed by the general principle of the formation of evidence in the adversarial of the parties.

4) In addition, the EPPO is independent of the National Prosecutor's Office, but the LEAs (Sections, Services and Offices in general) depend functionally on the National Prosecutors and from a disciplinary point of view also on the Prosecutor General.

The definitively approved regulation differs considerably from the original proposal of 2013 also in terms of the current and actual availability of an investigative staff of the EPPO directly available on place , (essentially coming from OLAF) as a so-called "intergovernmental" spirit prevailed more – as already noted in another aspect – with European Prosecutors chosen on a national basis – similarly to the Eurojust National Members – and with investigations – therefore with strong and essential involvement of the national LEAs- devolved substantially on a decentralized basis to the European Delegated Prosecutors. But the possibility is not excluded also for the Central Office to



carry out investigations (substantially of an integrative nature with respect to those carried out by the EDP on a territorial basis).

The concrete structure of EPPO is highly similar to the structure of Eurojust - also if we consider the recent loss of the "double hat" concerning the EDP - by decision of the EPPO college.

5) Further concrete and also informal possible involvement of Eurojust functions of coordination in the following cases in order also to avoid or limit possible cases of conflicts:  
- A special discipline, which constitutes a further example I would say "scholastic" of the discretionary exercise of European criminal prosecution, is dictated in the matter of competence for crimes "inextricably" linked to PFI crimes of direct competence, which falls under art. 25, paragraph 3 lett. a - in case of a) greater <sup>competence of national jurisdiction but better</sup> seriousness of the related crime - provided that this is not "instrumental" to the consummation of the PFI crime; b) in any case - and in any case (and therefore, it is presumed, even in the case of direct jurisdiction, if (letter .b) "there is reason to believe that the actual or potential damage caused to another victim is greater than the actual or potential damage caused to the financial interests of the Union caused by a PFI offence - except that - but only, and exclusively in this specific residual case, - there is the consent of the national A.G: "if it appears that the EPPO is in a better position to investigate or prosecute.

6) They are also and always within the competence of the EPPO - in the cases referred to in the 2nd paragraph of art. 22-, which would ordinarily be of the competence of the national judicial authority, the associative crimes even if of greater seriousness of the crimes - pfi as purpose crimes and are therefore the latter to determine, in these cases, in a derogatory sense, the EPPO competence, while always the art. 22 Regulation in the 4th paragraph drastically and unavoidably reiterates the lack of competence EPPO for crimes in the field of national direct taxes and related crimes. - with, perhaps, possible, even if very marginal, problems in relation to our art. 416 bis c.p. -

9) The unfortunate formulation of the last paragraph of the same article 25 - according to which it would seem that to decide on the competence by connection is the National Judicial Authority - leads us, however, to the competences concerning the European Court of Justice, enucleated by art. 42, which (as well as competent, like that already existing at national level, to assess the conformity of the EPPO activity directly with respect to Community law, for the removal of the European Chief Prosecutor or the European Prosecutors, for compensation for damage caused by the EPPO - cf. our Pinto law -) is also so with regard to the preliminary resolution of any conflicts of competence between AA, National GG and EPPO.

10) In all other cases, and in particular as regards, specifically, conflicts concerning crimes of organized criminality and related to crimes "inextricably connected" to crimes PFI now applies the art. 16 D.lvo n. 9 / 21, which attributes the competence regarding to our Attorney General at the Court of Cassation, as the national J . A competent to resolve conflicts of competence between EPPO and national J . A.

It is nearly sure that by the concrete support and involvement of Eurojust ( of course if requested by the Member States or EPPO ) conflicts or problems - besides the more specific legal competence of this Agency , I will speak about further on- could be avoided.



Further involvement of Eurojust and also of OLAF in the following issues of competence on a specific legal basis : Art.27 of the Regulation finally provides for a right to attract national investigations, with respect to which it has received due information, from the EPPO for the hypotheses of crime provided for by Articles 22 and 23 of the EPPO Reg.

11) Another issue of particular relevance and to be illustrated compulsorily – because this extends significantly the common European legal area – is the regime of acquisition, use and validity of evidence by the EPPO, fundamentally based on the so-called "lex loci": Under this fundamental point of view it should be mentioned a) art. 37 , which establishes and fixed a relative freedom - of an undifferentiated nature - of acquisition of evidence, in particular for the National Judge (see second paragraph) and b) art. 31 : in the case of so-called cross-border investigations, because they involve two Member States that have joined the EPPO, a second European Delegated Prosecutor is involved for the collection of evidence, within the territorial scope of a second country, and no EIO is required (as is necessary if the evidence to be collected in a non-member Schengen Member State ( e.g. in Poland) and in this case an EIO must be issued pursuant to art. 31, 6 paragraph) and normally a single judicial authorization is sufficient - if necessary - indifferently by the national court of reference of the European Delegated Prosecutor in charge or by the one territorially competent and called to assist the first.

Perhaps a small step backwards from the actual creation of the common European area of justice is provided by the 2nd paragraph of art. 33 : no question about the interpretation of the principle referred to in paragraph 1 ( possibility for the European Delegated Prosecutor to order or request the so-called "preventive" arrest, if allowed in similar national cases), while if the arrester should be outside the territory of that State – Member (and therefore also in the territory of the common space EPPO ), in any case, an EAW must be issued and executed by the European Prosecutor himself.

To close this essential part, I would like to recall again, always as proof of a "timid" creation of the common area of justice, leaving aside for a moment the goods of security and freedom, of direct competence of others, the fundamental principle that regulates the acquisition of evidence by the PPO which provides assistance in its own territorial area of competence, provided for by art. 32 : "The measures assigned shall be carried out in accordance with this Regulation and the law of the Member State of the European Delegated Prosecutor responsible for providing assistance. The formalities and procedures expressly indicated by the handling European Public Prosecutor shall be observed, unless such formalities and procedures conflict with the fundamental principles – and therefore not individual provisions – of the law of the Member State of the European Delegated Prosecutor in charge of providing assistance " . This is a principle of balance and " peaceful coexistence between the respective principles of the two distinct legal systems concerned , " almost of an compromising nature ", within the legal area of " Enhanced common cooperation " .

12) Particularly relevant is the discipline provided for by Article 30 of the Reg. regarding the specific acts of investigation of an invasive nature that can be adopted: penalty of more than 4 years, compliance with the principle of proportionality and that it is a "serious crimes", such as searches, interceptions, seizures also of computer data and acquisition of bank data, with the further residual possibility of arrange for technical interception activities in all cases where it would be lawfully enforceable in all similar national cases.



For interceptions and undercover operations only, Article 17 of our. Legislative Decree no. 9 / 21 would provide for a reserve of specific national discipline.

13) In relation with EU States, that do not participate in the "enhanced cooperation" or with Third States <sup>or</sup> third parties, the EPPO is equivalent to the National Judicial Authority of a Member State and in the first case the legislation of Directive 2014 / 14 on OEI is applicable with attribution of a fundamental role to Eurojust , also , in an other way , with regard to third states - see art. 104 and 105 Reg, by creating so called working arrangements and contact points, based on art. 99 of the Regulation , but it should be deeply different in relation with Eurojust, only with which , in a general manner , personal datas can be freely exchanged and , at any rate , sent from EPPO.

14) Article 14 of Legislative Decree no. 9 / 21 provides for the simultaneous transmission to the DEP <sup>EDP</sup> and the national Public Prosecution Office of all communications referred to in Article 347 of the Italian <sup>Penal</sup> Civil Code, of complaints and further acts however named in relation to the crimes for which the European Public Prosecutor's Office could exercise its competence (and cfr. Circular of the GdF General Command of 28 May 2021 ).

15 ) As already mentioned , with third countries it is envisaged the stipulation (as well as, more generally, with Eurojust) of so-called "Working Agreements" directly by the EPPO or international agreements between the EU and third countries, the posting of liaison officers of third countries to the EPPO and establishment of EPPO contact points concerning third countries and / or International Organizations. I have to stress once again that in the absence of such an international agreement between the EPPO, the EU and third countries, the EDP acts with the powers of a National Prosecutor.

16) A further problematic aspect: pursuant to Articles 5, paragraphs 4 and 6, on the one hand, the EPPO must carry out its investigations impartially and collect all evidence, both against and in favor of discharge, and enjoys a form of independence, but pursuant to Article 6, 2 par. is responsible for its activity, albeit in general terms, towards the European Parliament, the Council and the European Commission.

17) The EPPO remains distinct from Eurojust (although it would " start " from it) and OLAF.

Article 100 provides for and prescribes "close" relations with Eurojust, which will have, in particular, as already noted above, a fundamental role in facilitating the EPPO-National Judicial Authorities relations of the Schengen countries not belonging to the EPPO (and therefore not part of the "enhanced cooperation" area),- and also belonging in an informal manner while the report of an investigative-active nature also appears very useful the EPPO would receive from OLAF (see Article 101), which will integrate the EPPO knowledge elements, will refrain from carrying out investigations of an administrative nature parallel to the criminal ones (which the EPPO is called upon to carry out directly and at first through the police forces of the Member States concerned territorially) in the same common PFI and matter, if not within the limits requested by the EPPO, which therefore, we can say, from this point of view, "has OLAF for its own purposes" even if, while providing particular support in computer and forensic matters, there would not be the possibility of conferring a delegation of investigations of a general nature for OLAF (unlike the original project), but only of an integrative nature, being the national Law Enforcement Agencies , under the direction of the DEP, delegated to this.



On 5 July 2021, in this respect, a first cooperation agreement was signed between the EPPO and OLAF with which, moreover, it is expressly agreed, confirming the above, a) the suspension of OLAF investigations (basically of an administrative nature) if the EPPO initiates a criminal investigation into the same subject matter and b) the extension of the delegation of EPPO investigations to OLAF, but to verify the effective operation of this principle, it is necessary to wait for its application in practice.

18 )The legal basis, as regards, in particular, the relationship with Eurojust, is Articles 85, 86 and 325 TFEU, Articles 3(3) and Articles 3. from 22 to 27 , 39, 48.54 , 99 and 100 and 113 Reg. 1939/2017, as well as by Reg Eurojust 1727/2018 and EU Directive PFI 1371 /2017.

The basic principle is the need for the conclusion between the EPPO and the European Judicial Cooperation Agency Eurojust of working arrangements governing their complex relationships.

The first of these agreements has already been stipulated in February 2021 and has as its main object the possibility of mutual access to the respective computer systems with exchange of information data-including personal datas- and with the main concrete result that the EPPO will acquire <sup>most</sup> of the news of crime of its competence on the basis of EJ data, which thus becomes a valuable if not main source in this regard. In this respect, Eurojust will also communicate to the EPPO any fact of interest to it, while the EPPO will communicate to Eurojust the outcome of its investigations and, in particular, the possible transfer of its criminal investigations or trials by competence to the competent National Judicial Authorities and will obtain support in the field of judicial cooperation with third countries or countries not belonging to the enhanced cooperation area with the provision of Eurojust's "classic" instruments in the field of judicial cooperation (Meetings or Coordination Centers, JIT establishments, Prevention and resolution of conflicts of jurisdiction).

The European Chief Prosecutor and the President Eurojust will meet periodically, while with regard to another <sup>important</sup> extremely important aspect: on the basis of a subsequent working agreement EJ will be able to provide EPPO with services, including administrative and training, of so-called common interest.

In force of the above – mentioned working agreement ( 4 and 11 February 2021 ) , Eurojust has already supported EPPO recently in two cases concerning criminal investigations of EPPO competence towards EU Member States which are not part of the enhanced cooperation area and third states and , in particular, in one case has met serious difficulties and problems.

19 )Starting from the date on which the European Public Prosecutor's Office has effectively assumed its investigative and judicial tasks (June 2021), in accordance with the provisions of Article 102, par. 2 of EU Reg 2017/1939, the Agency formally no longer exercises its direct competence (but only of EPPO support) with regard to crimes affecting the financial interests of the Union with the following relevant exceptions: if there is a request from the EU Member State that has not joined the so-called "enhanced cooperation" area or if the EPPO has decided not to exercise its competence in practice (art. 3 par. 1 of Reg. EJ).



20 ) Finally, it should be mentioned the recent circular of the General Command of the Guardia di Finanza, which establishes the sending of the information of crime of possible relevance EPPO either to the competent National Prosecutor's Office or also directly to the DEP.

21 ) Two last remarks in this frame : a ) as already mentioned, EPPO in its relationships with third countries , international organizations and M.S not taking part to the enhanced cooperation , in absence of a specific agreement , is considered as a competent national judicial authority . b ) Where it is necessary to request the extradition of a person ( not by an EAW ), the handling EDP may request the competent authority of his /her M.S to issue an extradition request in accordance with applicable treaties and / or national law – system , which represents an example of lack of “ direct power “ – ( artt. 104 and 105 EPPO Regulation ). c) the transfer of operational personal datas to a third country or to an international organization is highly limited with strict respect of the specific provisions foreseen by paragraph 80 of the same EPPO Regulation ( that means concretely : with the need of a specific authorization of the relevant competent national judicial authority ) , except emergency – cases foreseen by paragraph 83.

The best proposal is to develop specific cooperation or working agreements In this matter in order to try to resolve this problem , or to receive the specific authorization from the Commission that states that a specific third country or international organization ( or part of them ) , in accordance with art. 36 of EU Directive 2016 / 680 , ensures an adequate level of data protection.

C) OLAF – last part – and Europol Before dealing especially the relationship with Europol , let me add , concerning the specific tasks of OLAF in relation to EPPO that OLAF has to send at any way , if of criminal value in the matter of possible EPPO competence an “ EPPO Crime Report Template ( ECR ) and let me speak about the relevant functions and competences especially of those two fundamental European Police Agencies ( without forgetting Interpol, Frontex , now “ Agency of Protection of the external borders of EU” and Aro )

C1 ) Europol.

Europol, consisting of more than 1000 staff members and more than 100 analysts

of crime, based, like Eurojust, in The Hague in the Netherlands, was established to provide assistance and support for the development of investigations - even if only potentially - of a transnational nature - currently provides more than 40,000 per year on an international scale - mainly to the 27 States - Members of the Union ( as well as to other international agencies and organizations like EPPO and also, under certain conditions, to Third States), in the fight against major crime (so-called "Serious Crimes"), represented by Terrorism, International Drug Trafficking, Money Laundering and other goods and utilities resulting from crimes, from the relevant tax fraud on an organized basis (and therefore mainly the so-called "Fraud – Carousel") from the Falsification of the Euro and from the Trafficking of human beings with related or related crimes, as well as from computer crimes, so-called "Cyber Crimes".

Europol shall, in order to implement appropriate and concrete forms of combating these criminal phenomena, offer: (a) an operational support centre for the implementation of



such effective means of law enforcement; (b) a computer centre on criminal and analytical activities.

In this last aspect, the analysis, the heart of Europol's institutional activities, is carried out at the request of the national police forces, including the GdF, and basically concerns the so-called "links" of national investigations with other investigations carried out elsewhere and which are considered connected or connected and studies, like Interpol, the so-called "trends" of the criminal groups concerned, indicating the most appropriate tactics and strategies of contrast.

From an operational point of view, the Europol Operations Centre is active 24 hours a day and 7 days a week, while the following are available for individual crime sectors: a) The European Cybercrime Centre "EC3" and the "Task Force" for Action against Cybercrime "I – Cat "; b) The European Counter-Terrorism Centre "ECTC"; c) The European Centre for Combating Migrant Smuggling "EMSC" and d) The Coordinated Coalition for combating crimes against intellectual property "IPC3" and finally e ) The European Centre for the Fight against Organized Crime and "Serious Crimes" "ESOCC".

At the level of "secure and confidential" computer and communication systems, Europol has, in addition to the so-called Europol platform for experts "EPE" and the European information system, with the inclusion of all the useful personal identification data for the fight against crime, A) FIU net - computer network that supports the financial intelligence unit - FIU - in the EU in the fight against money laundering and terrorist financing and finally B ) in general "Siena " which represents the network for the secure exchange of information with and from all national police authorities.

Europol has at its disposal, for the performance of these tasks of operational support of major national investigations, even a so-called "Mobile Office" equipped to provide, in real time, the additional data and information necessary or even only useful during the execution of relevant measures of a transnational nature, even if only potentially, and this especially during a so-called "Action-Day" –simultaneous execution of measures relating to related investigations in several States – Members " or even " States – Third Parties " , normally within the framework of a so-called " Coordination Center " of Eurojust –

Since 1 May 2017 Europol, the EU agency "for cooperation in the fight against the so-called serious crime" is governed by a new Regulation strengthening its powers.

Relevant, in terms of topicality, is the " Terrorist Finance Tracking Programme ", while since 1 August 2010 it has been in force, always with a view to effective prevention and counter-attack of terrorism on an international and global scale, the EU-United States of America Anti-Terrorism Agreement and Europol is its main actor within Europe.

Based on art. 88 of the Treaty on the Functioning of the European Union, Europol has become the main holder of computer equipment data from all European police forces (and in part also not), with the elaboration of strategic plans for the prevention and contrast of so-called "serious" crime to avoid further threats to security and civil coexistence and the provision, after analysis, of the national police forces within the EU , of this international information heritage , with active support at the operational level with the most advanced techniques, and it constitutes a reality of very significant value.



## C2) OLAF.

The Olaf (European Anti-Fraud Office) was created in 1999 on the basis of EC Regulation no. 1073 / 99 and succeeds the previous UCLAF body, at a particular time when the European Commission itself was affected by a serious scandal of a corrupt nature and which led to the resignation of the entire European Commission and its President Santer and which required the establishment of an investigative body with penetrating ascertaining powers in full autonomy.

Olaf is- on police-level ( while EPPO on judicial one ) in fact an independent body within the European Commission, in charge of carrying out investigations of an administrative nature - in a large manner in order to protect the financial interests of the EU a) on conduct that damages the budget of the European Union, as well as b) on the conduct of officials of the European institutions that can integrate serious irregularities and in particular real facts of a corruptive nature with criminal relevance.

The use of Olaf for investigations concerning especially crimes of a corruptive nature , attributable to EU officials and agents (provided for in our internal criminal law by art. 322 bis c.p., introduced in Italy with law n. 300 / 2000, realizes for EPPO our National Judicial Authorities and LEA s(including GdF) the following advantages and notable utilities:

A) On the one hand, it must be borne in mind that European servants and officials are covered by immunity for acts performed in the frame of their duties and that without the so-called "levée d'immunité" no authority can legitimately carry out coercive and/or invasive criminal investigations against them.

But with regard to Olaf this limit does not exist, neither with reference to its own so-called "internal" investigations, nor if requested to provide assistance in carrying out criminal investigations s.c. "external", moreover also facilitating, in terms of further collaboration and coordination, the relations between National Judicial Authorities committed by different States or by EPPO.

- A) With regard to the assistance and coordination to be provided to the National Authorities and EPPO, Olaf's are full as regards those of an administrative nature, while with reference to those of a criminal nature it is limited: In fact, when OLAF investigations reveal additional facts of a crime, OLAF informs the competent national judicial authorities and EPPO . - without however informing the Community institutions - and remains in constant contact with them, providing its support, but cannot receive a real general delegation of criminal investigations.
- B) At the end of its administrative investigations, the Olaf draws up a summary report of the investigative results, the irregularities ascertained and the damage suffered by the European Union, which if not of criminal relevance is transmitted to the Community Authorities for the purpose of adopting the administrative and disciplinary measures envisaged.
- C) What matters for the National Judicial Authorities and LEA s and EPPO is that this relationship can be validly used in proceedings (including criminal) in the Member States in formal proceedings, having the same value as documentary evidence – for national – and therefore EPPO - system. Arts. 234 and / or 238 c.p.p. – of the



reports( ECRs) drawn up by the national administrative authorities, while OLAF investigators can be cited as witnesses in the trial.

D) Finally, to validly acquire these Olaf relationships, it is not necessary to carry out (neither for Olaf itself, nor for the national A.A.G.G.) rogatory letters or issue OEI, and this on the basis of the Community Regulations governing the institutional activity of the Office (n.1073 / 99 and following), according to the recent guidelines of the national judges (Courts of Marsala, Turin, Milan, Florence, Rome, Ancona, Venice and Saluzzo) and the Court of Appeal of Paris.

These principles, together with the Olaf investigative competence – repeated mainly, but not only, of an administrative nature – throughout the Community territory and also in part in third countries, mean that the Office presents itself as a supranational investigative body of considerable interest and support for the National J.A s and also for EPPO in a particular way engaged in the search for evidence abroad for facts of Community fraud and corruption of EU agents and officials.

With regard to this whole range of public active entities, Olaf is competent and in substance and in summary terms, Olaf represents an administrative investigative service body operating within the framework of Community law – but it can also make use of so-called "penetrating" and invasive investigation tools such as the acquisition and analysis of computer data from computers – and is competent to investigate cases of fraud, corruption and other irregularities – of administrative and even criminal value – to the detriment of Community financial resources.

It carries out its action in a relationship of "partnership", that is, in a relationship of collaboration with the national judicial and police authorities and EPPO, the only ones moreover endowed with extensive investigative powers, in the mutual interest.

The main real and concrete problem is the not uncommon collusive and corruptive phenomenon, which guarantees "cover" for fraud and makes cooperation for cooperative purposes considered particularly relevant, if not decisive.

From this point of view for Italy , the memoranda of understanding with the National Anti-Mafia Directorate in force since 1999 and with the General Prosecutor's Office of the Court of Auditors must be highlighted, as well as various agreements with various Public Prosecutor's Offices.

It should be noted that Community aid to Member States and third countries uses funds which are public in two ways:

a) on the one hand, these are funds financed by the contributions of all citizens of the European Community;

(b) on the other hand, these funds are intended to meet public needs;

Cooperation and the evolution of the most up-to-date means of investigation are fundamental as transnational fraud, detrimental to the financial interests of the EU and corruption of EU officials and agents require a so-called "mobility" of goods, services and people between several States and / or the use of means of communication and sophisticated information with action that can only be effectively countered by close cooperation between Olaf and national authorities.



It is certain that in today's globalised society only through constant transnational dialogue, always and in any case respectful of individual national sovereignties, it will be possible to achieve the objective of effective control and combating of crime on a transnational basis.

Dialogue and operational cooperation must be based on at least the following five levels:

- a) Receipt of reports from – Member States leading to the opening, even formal, of an investigation;
- (b) Once an investigation file has been opened by Olaf, receipt of additional information for the effective development of investigations;
- c) Synergy between the Olaf investigation and the other so-called "parallel" national investigations;
- d) Guarantee of the flows of information in real time or in any case close between the Olaf and the other investigative bodies with the main aim of executing, effectively and promptly, not only in criminal proceedings, but also in accounting and administrative proceedings, precautionary measures of a patrimonial nature.

In this respect, of particular interest to the Gd F Judicial National Authorities and EPPO, Olaf can have, also thanks to its databases – data, guiding elements with respect to them, both at national and foreign level, with high effectiveness and without the need for complex investigations and collateral activities of a rogatory nature or without the need for the issuance of an OEI- specifically provided for in this matter, but, as far as I know, never concretely applied-.

The "added value" of Olaf, as well as with reference to the aforementioned so-called "classic" activities of a collaborative and investigative nature (and it would be desirable, within the wider European Judicial Network, their extension), in the immediate future will also be expressed and fundamentally in the contribution it will provide, pursuant to art. 101, 3 paragraph OF EU Reg 1939 / 2017- Reg EPPO-, to the newly established European Public Prosecutor's Office (active from 20 November 2020) as a complementary police body, to whom sending an European Criminal Report ( ECR ) alongside the national public authorities, for the conduct of EPPO investigations, thus increasingly assuming the structure (also) of judicial police.

However, the investigative action of the Olaf that can carry out its own investigations, repeated in nature and with tendentially administrative purposes, without the need for specific authorization in all the Member States, with extension also to Third Countries with which it has stipulated specific collaboration agreements and without excluding collaboration, as highlighted above, also in the criminal field, will continue to develop in the context of administrative investigations for its institutional purposes related to the protection of the economic and financial interests of the EU - including that relating to VAT - in the latter aspect by acting, pursuant to art. 101 EPPO Reg., as a collateral unit of LEA of the EPPO. With transmission to EPPO of the ECR s and with strict respect of the principles contained in the body of the working – agreement EPPO – OLAF of July 2021 ( in particular concerning the suspension of the administrative investigations in the case of the opening of an EPPO criminal investigation and with useful specialized investigative



support furnished to EPPO in those cases.

.....:

C3 ) One of those important working- agreements has been signed in January 2021 between EPPO and Europol, " establishing cooperative relations between the European Public Prosecutor's Office and the European Union Agency for Law Enforcement Cooperation ( EPPO- EUROPOL ).

A particular value , from this point of view , has to be reserved to the pre -eminent and relevant role given to Europol in the frame of EU Regulation 784 / 21 , that will enter into force the 7th of June 2022 , concerning the execution of removal orders and obtaining of datas of investigative interest , issued directly towards Service Providers in the matter of Electronic Evidence in terrorism – content and I am sure this Regulation – at least in an indirect way , because of lack of direct EPPO competence in matter of terrorism – can be of interest also to EPPO.

Let me mention the most relevant provisions , principles and rules of this agreement , also because of its more common and more general value in relationship with other similar working- agreements .

Art. 1 : the purpose is to exchange " information between the Parties ( personal – and not personal datas ) in order to establish a fruitful cooperation " .

Art. 5 " Each party shall designate a single point of contact through which all exchange of operational information under this Arrangement is undertaken " .

Art. 6 : Consultations and closer cooperation by regular high level meetings between EPPO and Europol and in particular EPPO may attend the meetings of the Heads of Europol National Units as observers.

Art. 7 : Possible future agreement to the secondment of liason officers or experts.

Art. 8 : Exchange of information between the Parties shall only take place in accordance with their respective legal framework and the provisions of this Arrangement , in particular concerning the respect of the strict rules of exchange of personal datas ( artt. 9, 13 and 14 ) , with exclusion of the sensitive ones and necessity of its protection .

Art. 12 : Needs of assessment of the source of the information and of the information itself.

Art. 18 : Establishment , implementation and operation of a secure communication line for the purpose of exchange of information between the EPPO and Europol shall be agreed between the Parties in a Memorandum of Understanding ( with liability for any damage caused to the other party ).

As already mentioned , this specific working- agreement is similar to the other ones signed by EPPO with the most relevant European judicial or police agencies ( Eurojust and Olaf ) and only the real experience of the next future will determine its concrete and , as we hope, fruitful results in the higher interest of the improvement of an European area of justice.



Conclusions : In this field of strengthening of cooperation EPPO – other European Agencies, institutions or third countries a lot of work has already be done and a lot of work yet has to be done : and we are present.

Thank you for your kind attention.

Dr Pietro Suchan Magistrate