

THE EPPO and EU law: a step forward in integration



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EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC 6: THE EPPO AND OTHER
JUDICIAL BODIES JOINING
FORCES

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THE EPPO WORKING ARRANGEMENTS WITH THE E.C.A. AND THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI



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THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

The EPPO Working Arrangement with the European Court of Auditors



THE EPPO WORKING ARRANGEMENT WITH THE EUROPEAN COURT OF AUDITORS

- The European Court of Auditors – www.eca.europa.eu – was established to audit the EU's finances. The starting point for its audit work is the EU's budget and policies, primarily in areas relating to growth and jobs, added value, public finances, the environment and climate action.
- The ECA audits the budget in terms of both revenue and spending. Its publications include annual reports, specific annual reports, special reports, opinions and position papers.
- The results of the ECA's work are used by the European Commission, the European Parliament, the Council and the Member States to oversee the management of the EU budget and, where necessary, make improvements. The ECA's work provides an important basis for the annual discharge, a procedure in which the Parliament decides, on the basis of a recommendation from the Council, whether the Commission has satisfactorily implemented the previous year's budget.



THE EPPO WORKING ARRANGEMENT WITH THE EUROPEAN COURT OF AUDITORS

- Up to 80% of the EU's budget management is shared with the Member States. Member States cooperate with the Commission in setting up supervisory and internal control systems to ensure that EU funds are spent properly and in accordance with the rules. Audit therefore has both an EU and a national dimension.
- As the EU's external auditor, the ECA does not have a mandate to investigate cases of suspected fraud against the EU's financial interests. However, it actively contributes to fighting fraud against the EU budget by reporting to the European Anti-Fraud Office (OLAF) any suspicion of fraud, corruption or other illegal activity affecting the EU's financial interests.
- The ECA may identify cases of potential fraud in the course of its work, or receive reports of such cases from third parties.

THE EPPO WORKING ARRANGEMENT WITH THE EUROPEAN COURT OF AUDITORS

- The European Public Prosecutor's Office signed a working arrangement on **3 September 2021** with the European Court of Auditors (ECA). This arrangement aims to provide a structured framework for establishing and maintaining a cooperative relationship between both parties, for the purpose of protecting the EU budget.
- The assumption is that the EPPO and the ECA share a common interest in maximising efficiency in the fight against fraud, corruption and any other criminal damage to the EU's financial interests, and in avoiding the duplication of effort wherever possible.
- The arrangement outlines the conditions for the close cooperation, in full respect of the respective mandates of the EPPO and the Court.

THE EPPO WORKING ARRANGEMENT WITH THE EUROPEAN COURT OF AUDITORS

- Commitments include:
 - initial information → “*In line with Article 24 of the EPPO regulation, ECA shall transmit to the EPPO any information and evidence which come to its attention where it considers the existence of possible criminal conduct in respect of which the EPPO could exercise its competence in accordance with Article 22, Article 25(2) and (3) of the EPPO Regulation*”;
 - timely collaboration on information transmission, access and exchange;
 - precautionary measures on the part of the ECA;
 - the EPPO’s access to ECA premises for conducting investigations;
 - the EPPO’s provision of information to the ECA for auditing purposes;
 - training in areas of common interest and exchange of staff.

THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

The EPPO Working Arrangement with the General Prosecutor's Office at the Corte dei conti



THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

- The Corte dei conti, under the Italian Constitution, has jurisdiction on:
 - public accounting, including administrative liability;
 - other matters determined by specific acts of the Parliament.



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- Administrative liability implies a damage to public funds and entails its reparation.
- It is governed by special rules, different than the ones governing civil liability.
- Both individuals or companies are subject to it.



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- It pursues the further objective of ensuring the sound management of public resources.
- It exists not only when the damage has been caused intentionally, but also in case of gross negligence (unlike, in most cases, criminal liability).



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- The damage caused by unlawful acts can include:
 - illegal expenses or waste of money;
 - loss or reduction of incomes;
 - costs incurred to ascertain irregularities;



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- detriment caused by inefficiency of the public service;
- loss of reputation of the entity involved;
- costs of rectifying quality or quantity of public works



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Since 2006, the jurisdiction of the Corte dei conti on frauds in public grants and misuse of them, including EU funds, has been recognized (Cass., Sez. Un., ord. n. 45 I I/2006).



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When a damage to public resources is ascertained, the claim for administrative liability is brought by the Prosecutor's Office at the Corte itself.



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The Prosecutor's Office carries out investigations about damages and sues in front of the Corte dei conti those who are deemed responsible for them.



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The PO is entitled to:

- request documents held by the judiciary and administrative authorities;
- make direct inspections and verifications;
- hire technical consultants;
- delegate investigations to civil servants;



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- order the production and even the confiscation of documents;
- delegate investigations or specific inspections to the Guardia di Finanza and other police bodies (Carabinieri, State Police, ecc.);



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- ask the judge to issue precautionary measures, in any phase of the procedure, even at the end of the investigations, before the trial.



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- The aim of precautionary measures is to allow the enforcement of the judgment once the defendant has been condemned to compensation.
- They prevent the defendant from dispersing his assets before the Corte reaches its decision.



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- Duty to report:
 - audit sections of the Corte dei conti;
 - administrative and accounting bodies;
 - judiciary.
 - police forces.



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- Other sources:
- whistle-blowers;
- press articles.



VPG Arturo Iadecola – Corte dei conti

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- The Criminal Prosecutor's Office is obliged to inform the PO at the CDC when public resources are involved in criminal proceedings.
- The PO at the CDC is, on the other hand, obliged to report to the CPO any crimes it is made aware of (art. 331 c.p.p.)



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Art. 24, par. 1, Regulation (EU) 2017/1939

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 (...)



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Art. 39, par. 4, Regulation (EU) 2017/1939

Where a case has been dismissed, the EPPO shall officially notify the competent national authorities (...). The dismissed cases may also be referred to OLAF or to the competent national administrative or judicial authorities for recovery or other administrative follow-up.



THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

13 September 2021



The Working Arrangement

VPG Arturo Iadecola – Corte dei conti

THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

Article I - Purpose and scope

1. This Working Arrangement aims to provide a structured framework for cooperation between the EPPO and the Italian General Prosecutor's Office of the Court of Auditors.

2.(...)

3. This Working Arrangement aims to establish and maintain a cooperative relationship between the Parties.



THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

Article 2 - Exchange of information

I. Without prejudice to the obligations of the Parties pursuant to Articles 24(1), 36(6) and 39(4) of the EPPO Regulation, the EPPO and the General Prosecutor's Office of the Court of Auditors will exchange information also in the following cases...



THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

a) The General Prosecutor's Office of the Court of Auditors, either directly or via the Regional Prosecutor's Office in charge of the investigation, will inform the EPPO of any credible allegations of fraud, irregularities or any other misconduct affecting the financial interests of the Union, of non-criminal nature, when:



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I. The misconduct caused or it is likely to cause damage to the Union's financial interests of at least EUR 100 000;

II. The case might have repercussions at Union level;

III. Officials or other servants of the Union, or members of the institutions of the Union, are suspected of being responsible of the misconduct; or

IV. The misconduct has a cross-border dimension involving at least two participating Member States.



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b) The EPPO will inform the competent Regional Prosecutor's Office and the General Prosecutor's Office of the Court of Auditors of any investigations, in respect of which the EPPO exercised its competence, which could entail a damage to the financial interest of the Member State or of the European Union, in order to enable the initiation of an investigation necessary for the possible filing of the indictment before the Court of Auditors and for the purpose of recovery.



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2. Upon the other party's request or at its own initiative, each Party may transfer to the other Party specific documents part of the respective case-file.



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3. The EPPO will inform the other Party respecting the applicable rules on confidentiality of the criminal investigations, in accordance with the Regulation and the applicable national legislation on the secrecy of pre-trial investigations.



THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

Until 31 December 2022



15 communications EPPO → POCDC



3 communications POCDC → EPPO

THE EPPO WORKING ARRANGEMENT WITH THE GENERAL PROSECUTOR'S OFFICE AT THE CORTE DEI CONTI

Article 3 - Access to relevant information in the General Prosecutor's Office of the Court of Auditors' databases

In accordance with Article 43 of the Regulation, upon a reasoned request addressed to the contact person specifying the relevant information needed, the competent Prosecutor's Office of the Court of Auditors will provide the EPPO with an immediate access to the relevant information in its databases or secure such information for later collection.



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Article 4 - Coordination in case-related matters

1. When, following the exchange of information foreseen in this agreement, the EPPO and the Prosecutor's Office of the Court of Auditors in charge of the investigations respectively carry out connected investigations, the Parties will coordinate each other in respect of investigative actions.

2. The Parties may invite each other to participate on a peer-to-peer basis to coordinating meetings or other coordinating initiatives.



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Article 6 - Training and workshops

1. The Parties will cooperate on training in areas of common interest, as appropriate.
2. Training programs of the General Prosecutor's Office of the Court of Auditors and of the EPPO may be open to participation of the staff of the other party.
3. The General Prosecutor's Office of the Court of Auditors and the EPPO may exchange trainers and organise joint training activities.



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- Among the activities carried out in 2022 were the rulings of the Court's judicial sections on the compensation of damage resulting from the **undue receipt of public grants, both national and European.**
- In 2022, there was, as in previous years, a heterogeneous caseload, with the compensation of damage to public resources amounting to **€ 36,780,615.83.**



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- The **principle of assimilation** laid down in Article 325 of the Treaty on the Functioning of the European Union, is thus fully applied.
- The Corte dei conti responds to the multiple purposes identified by the **Regulation of the European Parliament and of the Council of 16 December 2020** (Regulation n. 2020/2092), aimed at protecting the budget and the resources allocated by the European Union in close correlation with the respect for the rule of law.

Art. 325 TFEU

the Member States “shall take the same measures to combat fraud affecting the financial interests of the EU as they normally take to combat fraud affecting their national financial interests”

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- In the first months of 2023, the Regional Prosecutor's Office of the Corte dei conti for Lombardy has obtained and executed an ***ante causam* seizure decree of € 2,085,810.96**, against a leading company (and its managers and consultants) in the wine sector which had unduly received EU grants of the same amount for the financing of the project called "Native Grapes Academy" aimed at strengthening the competitiveness of the agricultural sector of the European Union.



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- The preliminary investigation, which allowed to discover an illicit scheme hiding a relevant conflict of interest, was carried out in **close synergy and coordination** with the European Public Prosecutor's Office and OLAF and with the collaboration of the Economic and Financial Police Unit of the Milan Guardia di Finanza.



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- The **European Research Executive Agency**, damaged administration, has intervened in the proceeding, supporting the Prosecutor's Office (*ad adiuvandum*).
- After the execution of the seizure, the defendant spontaneously reimbursed **the whole amount of the damage**.



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- The judicial activity of the Corte dei conti, related to administrative liability, has proved to be an effective deterrent, since it allows to recover assets or money obtained through illegal activities.



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- In this way, it can prevent illicit behaviours, because the offenders should know that they won't get any advantages from their conduct.



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Therefore, the Corte may play a leading role in the fight to illicit behaviours in detriment of the Next Generation EU – PNRR funds.



The Working Arrangement with EPPO goes in this direction

THANK YOU!

