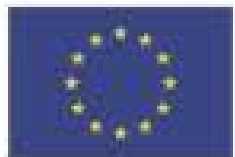
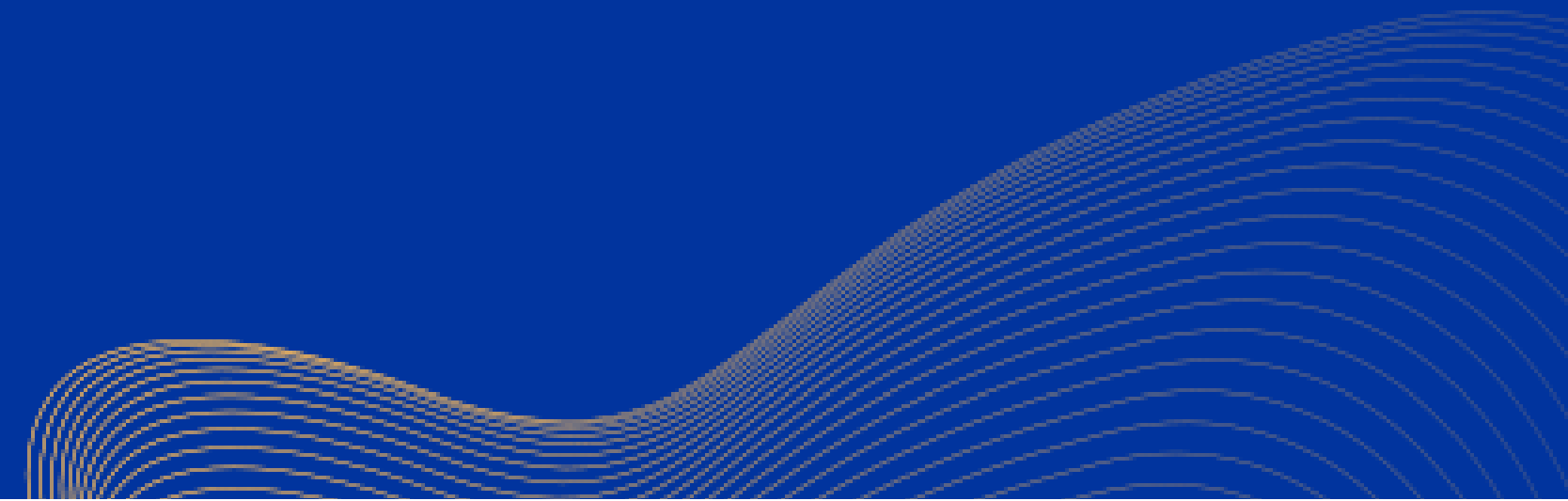


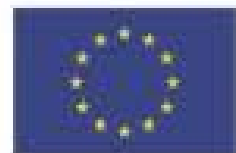
EPPO and EU Law

(Jean Monnet Centre of Excellence - STEPPO)



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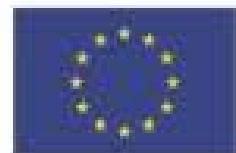


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Starting point for a transversal law of evidence

LECTURER: Ludovica Tavassi
Researcher in Procedural Criminal Law –
University of Milano-Bicocca



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ANNUAL REPORT 2022

Foreword

Our objective is a truly independent, efficient and strong European Public Prosecutor's Office (EPPO). Our task is to build an institution that the citizens will trust. For this, we need to work consistently well.

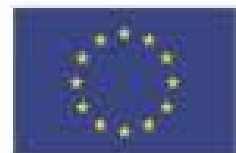
What does this mean?

- To investigate, without delay and thoroughly, in full respect of the principle of equality in front of the law, any solid suspicion of criminal wrongdoing, and to prosecute whenever the investigation confirms an offence has been committed against the EU's financial interests.
- To recover the damages caused to the greatest extent.
- To scrupulously respect the fundamental rights of the suspects and all the applicable laws.

On 1 June 2021, the EPPO started to exercise its

By the year's end, we had a total of **1117 active investigations** for **overall estimated damages of €14.1 billion** (47% of which linked to VAT fraud). Judges granted **the freezing of €359 million** in EPPO investigations.

These are encouraging numbers. They will most likely increase in the future, insofar as our current workload does not yet mirror the expected gradual improvement of the overall level of detection of EU fraud. With the first projects funded under the Recovery and Resilience Facility only starting to be implemented, neither does it mirror the growth in volume of the EU's financial interests to protect. In any case, these numbers should not make us believe that we are already as efficient as we should be. We are on the right track, but we need to do more. The EPPO is far from having deployed its full potential.

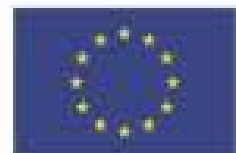


BASIC PRINCIPLES OF THE ACTIVITIES

Article 5

Basic principles of the activities

1. The EPPO shall ensure that its activities respect the rights enshrined in the Charter.
2. The EPPO shall be bound by the principles of rule of law and proportionality in all its activities.
3. The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.

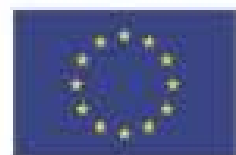


COMPETENCE OF THE EPPO

Article 22 Eppo Regulations (EU) 2017/1939

Material competence of the EPPO

1. The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million.



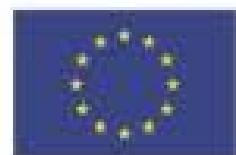
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PREVENT THE FORUM SHOPPING

Also, about the rules for prosecute the crime and to choose in front of which jurisdiction, there aren't well-defined regulatory limits.

The issue of determining the investigative and then judicial competence represents one of the most delicate points of the entire construction of the EPPO.



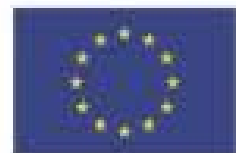
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THE DISCRETION OF EPPO TO PROSECUTE

Within the heterogeneous category of VAT fraud identified in art. 3 par. 2 lett. d) PIF directive, the Eppo's competence is rooted only for those cases in which the related actions or omissions are connected to the territory of two or more Member States and involve a total damage equal to at least 10 million euros (art. 22 par 1 EPPO Regulation).

There is no specification that indicates precisely how to identify in which of the Member States involved the conduct is most rooted, nor therefore which of the national jurisdictions should be entrusted with the investigation of the criminal hypothesis.

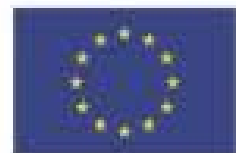


FUNDAMENTAL RIGHTS

Article 47 par. 2 Charter of Nice

Right to an effective remedy and to a fair trial

«Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented»

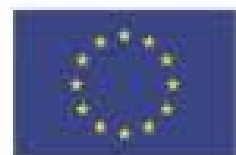


FUNDAMENTAL RIGHTS

Article 6 par. 1 ECHR

Right to a fair trial

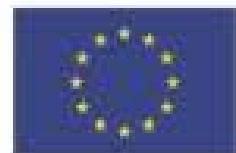
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.



COURT OF STRASBOURG JURISPRUDENCE

In this regard, the jurisprudence of the Court of Strasbourg has specified that

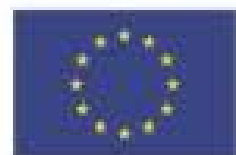
- a) court must be «constituted by law» to «ensure that the judicial system of a democratic society does not depend on the discretion of the executive, but is regulated by a law promulgated by Parliament» (ECHR, 2th section, case *Coëme and Others v. Belgium*, judgment of 22 June 2000, § 98; ECHR, 4th section, case *Richert v. Poland*, judgment of 25 October 2011, § 42);
- b) the organization of the judicial system cannot be entrusted to the discretion of the judicial authorities themselves, even if this does not mean that the courts do not have, within certain limits, the possibility of interpreting the relevant provisions of domestic law (ECHR, 2nd section case *Coëme and Others v. Belgium*, cit., § 98, ECHR, 2th section, case *Gorgiladze v. Georgia*, judgment of 20 October 2009, § 69).



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Therefore, a regulation lacking in the identification of the rules of competence, as the Eppo Regulation proves to be, constitutes, already on an abstract level, a violation of the art. 47 par. 2 of the Nice Charter and art. 6 par. 1 of the ECHR as it does not allow us to identify, on the basis of predetermined criteria with respect to the commission of the crime, the judge who will be competent to exercise the jurisdictional function and the national system within which the European delegated prosecutors will be able to act, having the same powers of national prosecutors (art. 13 Eppo Regulation).

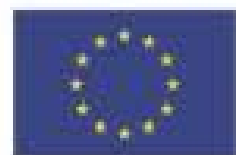


AN UNSTABLE REGULATORY BUILDING

The EPPO regulation is built on a regulatory edifice with weak foundations and unstable roof.

About the foundation of the normative building, it failed to define, on the wider European territory, the central core of fundamental rights such as the rules

- to prosecute a crime
- to guarantee equality between the parties,
- the right of defence,
- and a transversal law of evidence to the whole European territory.

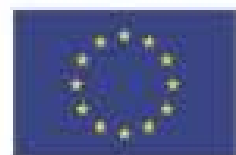


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THE LEGAL MEANING OF EVIDENCE

The word “**evidence**” has certainly many meanings. In each of them, for all the different country involved, there is a very different legal concept which reveals a diverse discipline of the methods of acquiring information for the judicial assessments.



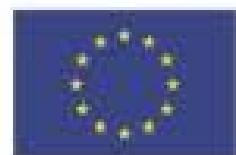
A «NON-DISCRIMINATION CLAUSE» OF THE FOREIGN EVIDENCE

This distinction between evidence collected unilaterally by the European prosecutor and proof made by the cross examination is not considered in the Eppo Regulation.

Article 37 REGULATION (EU) 2017/1939

Evidence

1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.
2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.

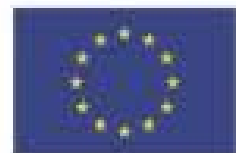


A «NON-DISCRIMINATION CLAUSE» OF THE FOREIGN EVIDENCE

Rather, it establishes a "non-discrimination clause" of the foreign evidence which re-proposes the traditional model of international rogatory letters, now replaced by the **European Investigation Order**.

So, evidence presented to a court by the EPPO prosecutors or by the accused is not excluded on the sole ground that it was collected in another Member State or in accordance with the law of another Member State, even if that evidence was formed in breaking the rules on the circulation of evidence from one phase to another, from one State to another.

In this way, the legislative function in the area of the law of evidence is renounced and the faculty of evaluating illegitimate evidence is left to the indiscriminate power of the judge.

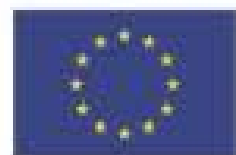


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The European Investigation Order

The EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (1) ('the Convention') and in Council Framework Decision 2002/465/JHA (2), other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.

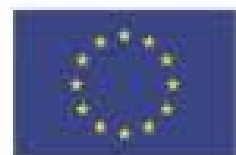


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RULES FOR ACQUIRING ENCRYPTED COMMUNICATIONS

What rules must be followed when you want to acquire encrypted communication stored on foreign servers?

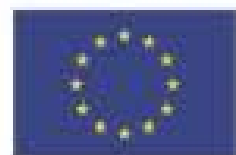


PRINCIPLE OF THE ADVERSARIAL PROCESS

Can it be acquired as documentary evidence?

Or through the rules for intercepting communications?

Or through the rules of evidentiary seizure?

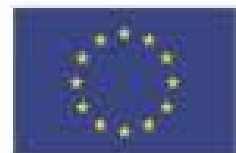


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PROSPECTIVE TO REBALANCE THE EPPO REGULATION

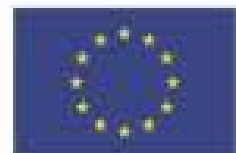
What's the point?



PROSPECTIVE TO REBALANCE THE EPPO REGULATION

Today, the Eppo Regulation represents a give-and-take choice in which the European Union lost the opportunity to form a statute of uniform rules for the prosecution of all transnational significance crimes calibrated on the maximum standard of protection of **FUNDAMENTAL RIGHTS**, like:

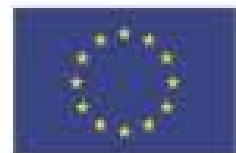
- Presumption of innocence (rules of treatment for the defendant)
- Obligation to prosecute to ensure equality and legality
- Equality between the parties
- Right to defense
- Prevention of forum shopping
- Transversal Law of evidence



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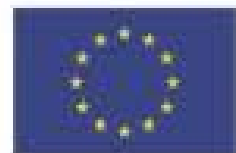
The establishment of the European Public Prosecutor's Office, on the other hand, could have been an opportunity to draw up a **Constitution of rights** transversal to the whole of European territory.



The far-reaching goal to be achieved, in order of the purpose foreseen in the art. 86 TEU, instead it is indicated by that nucleus of fundamental rights provided:

- in the European Convention for the Protection of Human Rights,
 - in the Charter of Fundamental Rights of the Union and
 - in the constitutional traditions common to the Member States,to which the art. 6 EU Treaty recognizes

the rank of **general principles** of the European Union.



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**LOOKING FORWARD, AND HOPING FOR THE BEST,
I WANT THANK YOU ALL FOR THE ATTENTION**