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THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE – THE PROTECTION OF THE EU'S FINANCIAL INTERESTS AS A SUPRANATIONAL INTEGRATION PROJECT[1]

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This article presents an overview of the competencies of the recently established European Public Prosecutor's Office (EPPO), a supranational body that investigates and prosecutes criminal offences affecting the financial interests of the European Union. Various aspects related to criminal procedure and substantive criminal law will be discussed to explain how the EPPO is embedded in the national judicial systems despite its supranational origin. Among the matters to be examined will be the requirement to prosecute crime efficiently while ensuring that the procedural rights of the suspects and the accused persons will be duly respected. A particular focus will be on cooperation with the other EU entities and national authorities both in the member states as well as in third countries. This article provides elements to help readers assess the EPPO's performance against the legislative objectives set by the EU.

Keywords: European Union; European Public Prosecutor; international cooperation; financial interests; law enforcement; criminal procedure; fundamental rights; rule of law.

[1]The content of this article reflects solely the author's personal view.

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ИНСТИТУТ ЕВРОПЕЙСКОГО ГОСУДАРСТВЕННОГО ОБВИНИТЕЛЯ: ЗАЩИТА ФИНАНСОВЫХ ИНТЕРЕСОВ ЕВРОПЕЙСКОГО СОЮЗА КАК НАДНАЦИОНАЛЬНЫЙ ИНТЕГРАЦИОННЫЙ ПРОЕКТ

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Представлен обзор компетенций недавно учрежденного института европейского государственного обвинителя – наднационального органа по расследованию и уголовному преследованию преступлений против финансовых интересов Европейского союза. В ходе обсуждения различных аспектов процедурного и материального уголовного права раскрывается, что институт европейского государственного обвинителя укоренен в национальных правовых системах, несмотря на его наднациональный характер. Затрагивается проблема выполнения требования эффективного преследования преступлений при обеспечении надлежащего соблюдения процедурных прав подозреваемых и обвиняемых. Особое внимание уделяется сотрудничеству государственного обвинителя с другими органами ЕС, а также с национальными государственными органами как в государствах ЕС, так и в третьих странах. Исследование дает представление о результатах работы европейского государственного обвинителя в соответствии с законодательно установленными целями его деятельности.

Ключевые слова: Европейский союз; европейский государственный обвинитель; международное сотрудничество; финансовые интересы; правоохранительная деятельность; уголовный процесс; основные права; верховенство права.

Introduction

After many years of debate, the European Public Prosecutor's Office (EPPO) has finally become a reality. With the adoption of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the EPPO by the Council on 12 October 2017 (hereinafter – EPPO regulation), the competencies of this new EU body – which creation was foreseen in the EU treaties – were defined. With the adoption of EPPO regulation implementing enhanced cooperation on the establishment of the EPPO, the competencies of this new EU body have been set out, its creation was foreseen in the EU treaties. Similar to Europol and Eurojust, primary EU law presupposes the existence of EPPO. However, the former two EU agencies – that also happen to operate in the area of home affairs – have already been in existence for an extensive period. EU agencies are only established when the need for a delegation of competencies to specialised bodies arises (as regards the creation and the functioning of EU agencies, see [1, p. 44]). The considerable delay in the establishment of the EPPO may be interpreted as an indicator of its contentious nature, among the member states, at the Council, and among the EU institutions in the framework of the legislative procedure that led to the adoption of the founding regulation. It is particularly important to bear this aspect in mind when examining the geographical scope of the EPPO regulation, the organisational structure of the new EU body and the powers conferred upon it. The present paper will shed light on all these subjects and explain the advantages that the establishment of the EPPO brings for the protection of the financial interests of the EU but also the obstacles that it is likely to face in the pursuit of its mission.

The establishment of the EPPO

As the European communities were providing themselves with their own budgets – by adopting Council Decision 70/243/ECSC, EEC, Euratom of 21 April 1970 on the replacement of financial contributions from member states by the communities' own resources – concern arose that the decision did not grant the community sanctioning power to protect the community's financial interests. For this reason, the Commission presented in 1976 a project to amend the treaties related to the use of criminal law for the protection of the community's financial interests. The first initiative that opened the debate concerning the creation of a European Public Prosecutor was the report "Corpus juris: introducing penal provisions for the protection of the financial interests of the European Union" (hereinafter Corpus juris), delivered in 1997 by an expert group, whose main proposals would later be collected in the Green paper on criminal-law protection of the financial interests of the community, and the establishment of a European Prosecutor, and published by the Commission in December 2001. This text sought to generate a public debate on the practical repercussions of the creation of a European Public Prosecutor without intending, in any case, to create a complete and autonomous community penal system. This is because the Corpus juris contemplated a mixed system, in which national and supranational elements were so combined that the member states would apply criminal law, not the community itself.

As a project of regional integration, the idea to create a supranational body tasked with protecting the financial interests of the EU took shape at a time when the Treaty establishing a Constitution for Europe was being debated. In the aftermath of the unsuccessful referenda in France and the Netherlands that brought the ratification process to an end, a period of reflection was initiated, eventually leading to the Treaty of Lisbon. This treaty incorporated many of the basic ideas underlying the EPPO, albeit without specifying in detail how it would be organised and on the basis on which rules it would operate. Instead, it was assumed that these aspects would be regulated in an act of secondary EU law. Article 86(1) of the Treaty on the functioning of the European Union (TFUE) stipulates that regulations to be adopted "shall determine the general rules applicable to the EPPO, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions".

Admittedly, however, the proposal to create an EPPO was not received with enthusiasm by all the member states, as some of them feared that their sovereignty could be compromised [2, p. 464]. This initial attitude is understandable given that the area of criminal law is traditionally connected with the notion of sovereignty. The norms of criminal law usually reflect the ethical values of a society and can therefore be considered deeply rooted in national culture [3]. Having said this, whilst the EU is indeed obliged to respect the cultural traditions of the member states according to art. 3(3) of the Treaty on the European Union (TUE), the treaties leave no doubt that protecting the financial interests of the EU constitutes a legitimate objective that the legislature can pursue at the supranational level. Consequently, it would be logical to claim that this objective must prevail over potential national interests. This is even more so when the effect of this diversity is to hamper the protection of the financial interests of the EU. The principle of subsidiarity would not impede this course of action – as enshrined in art. 5(3) of the TUE that reads: "The EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at the central level or at a regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level". The difficulties in the protection of the financial interest of the EU were put forward as an argument in favour of the creation of the EPPO.

The EU could overcome the opposition of some member states by resorting to the mechanism of enhanced cooperation laid down in art. 20 of the TUE. Whilst unanimity at the Council would, in principle, have been required to adopt the EPPO regulation, art. 86(1) of the TFEU provides that at least nine member states engage in such enhanced cooperation by adopting the said regulation. The legal consequence of resorting to this mechanism is that the EPPO regulation only applies to the participating member states but not those outside of this group. The fact that art. 86 of the TFEU expressly refers to the possibility of enhanced cooperation (although it remains open in any policy area outside the exclusive competencies of the EU) shows that the member states were aware of the opposition to this integration project in their ranks. Twenty member states had initially agreed to be a part of the enhanced cooperation. Since then, the Netherlands and Malta have joined it. This implies that, to date, five member states have remained outside the scope of enhanced cooperation, namely, Denmark, Hungary, Ireland, Poland and Sweden. Denmark, Ireland and the United Kingdom (before Brexit) did not join the EPPO due to a derogation provided by Protocol No. 21 and Protocol No. 22 to the EU treaties that allowed these member states to refrain from participating in the adoption of measures falling within the area of freedom, security and justice under title V of part three of the TFEU (for an analysis of the legal and political aspects of Brexit, see [4, p. 64]). Whilst Denmark enjoys a permanent opt-out from the EU measures concerning criminal justice, Ireland, Hungary, Poland and Sweden can join at any time. Despite this situation, the EPPO may in practice seek judicial cooperation with at least some of these non-participating member states (NPMS) and vice versa. It is worth mentioning in this context that the EPPO regulation contains specific provisions on judicial cooperation with NPMS as well as third countries, which will be examined later in this paper.

The establishment of the EPPO took some time to complete in practice. In this context, one might recall that whilst the EPPO regulation entered into force on 31 October 2017, the EPPO did not begin to operate until 1 June 2021. There are several reasons for this delay, mainly related to the regulatory and practical measures that had to be taken in the meantime. Firstly, the participating member states had to adopt and publish, by 6 July 2019, the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2017/1371 of the European Parliament and Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (hereafter PIF directive), which, as will be explained in this paper, defines the material competence of this EU body. Secondly, the EPPO itself had to adopt the necessary internal legal acts, recruit staff, set up a case management system and conclude several working arrangements with national authorities and EU entities to ensure the proper implementation of the provisions of the EPPO regulation.

Hybrid organisational structure

The EPPO is defined by its founding regulation as "an indivisible EU body operating as one single office with decentralised structure". However, this short description is not enough to understand the institutional setup conceived by the EU legislator. One of the most remarkable aspects of the EPPO is its hybrid nature, as a single body that operates simultaneously at the EU and the national level, as evidenced by its organisational structure and powers. Furthermore, unlike the other EU entities, the EPPO is anchored in the judicial systems of the member states, while at the same time preserving its independence. For the sake of clarity, the organisational structure will be examined first, before looking in detail at the competencies of each of the organs within the EPPO.

The central level. The central level of the EPPO comprises a college consisting of the European Chief Prosecutor, selected following an open call for candidates and appointed by the European Parliament and the Council of the EU for a non-renewable term of 7 years, and European prosecutors (one from each participating member state), appointed by their respective member state. In October 2019, Laura Codruţa Kövesi was appointed as the first European Chief Prosecutor. In July 2020, the Council appointed 22 European prosecutors. The college establishes the so-called permanent chambers that steer national-level operations. The permanent chambers are composed of a chairperson and two permanent members. They monitor and direct the investigations and prosecutions, thereby guaranteeing the coherence of the EPPO's activities. The number of permanent chambers, the composition thereof, and the division of competencies reflect the functional needs of the EPPO and are laid down in its rules of procedure. Essentially, the European prosecutors assume coordinating and strategic tasks. They decide within the college in coordination with the European Chief Prosecutor. It is safe to conclude that the EPPO's power lies not with the European Chief Prosecutor but with the college and above all the permanent chambers as organisational units within the EU body. The European Chief Prosecutor can nevertheless exercise some influence and power if it manages to persuade the members of the college of a certain course of action. Notably, the European Chief Prosecutor, in her role as primus inter pares, not only performs the said coordinating function at the college, but also participates in the day-to-day work and decision-making within the permanent chamber to which she has been assigned, like any other European Prosecutor.

The EPPO is structurally independent in terms of organisation and planning, as it is not incorporated into another EU institution, agency or body. It is nonetheless accountable for its general work to the Council, the European Parliament as well as the European Commission. Article 7 of the EPPO regulation vests this EU body with the duty to draw up and publish an Annual report on its general activities in the official languages of the institutions of the EU. It must transmit the report to the European Parliament and national parliaments, the Council and the Commission. Furthermore, the European Chief Prosecutor is required to appear once a year before the European Parliament, the Council, and the national parliaments of the member states at their request, to report on the general activities of the EPPO. In the latter case, the European Chief Prosecutor may be represented by one of two deputy European chief prosecutors, appointed to assist in the discharge of duties and act as substitute when European Chief Prosecutor is absent or is prevented from attending to those duties. As any other public prosecutor, the EPPO is obliged to respect the fundamental principles, such as legality, proportionality and due process. The European Chief Prosecutor can be dismissed only by a decision of the Court of Justice of the European Union (CJEU), following an application by any of the aforementioned EU institutions.

The decentralised level. The decentralised level is anchored in the judicial system of the participating member state and is composed of the so-called European delegated prosecutors (EDPs). Upon a proposal from the European Chief Prosecutor, the college shall appoint the EDPs nominated by the member states. The EDPs act on behalf of the EPPO in their respective member states and have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition, and subject to, the specific powers and status conferred on them, and under the conditions set out in the EPPO regulation. The EDPs are responsible for those investigations and prosecutions that they have initiated, that have been allocated to them or that they have taken over using their right of evocation. The EDPs are also responsible for bringing a case to judgment. In particular, they have the power to present trial pleas, participate in taking evidence and exercise the available remedies in accordance with national law. There are two or more EDPs in each member state. They must be active members of the public prosecution service or judiciary of the member states, entrusted with criminal investigations and prosecutions. The EDPs continue to exercise their duties as national public prosecutors and have therefore a double function; however, they are entirely independent of their national prosecution authorities [5, p. 128]. This requirement is of particular importance, as, firstly, the status of the prosecuting authorities may vary from one national system to another (with either the judiciary or the public prosecution service taking prominence) and, secondly, the public prosecution service may not enjoy the same level of independence from the executive branch of the state as the judiciary [2, p. 457].

Competence and tasks

Supervision and instructions. The European prosecutors are those who, from a legal and organisational point of view, supervise the investigations and prosecutions on behalf of the competent permanent chambers at the EU level, for which the EDPs are in turn responsible in their respective member states of origin. As a rule, a European Prosecutor is in charge of the supervision of the EDPs in his or her member state of origin. Only in exceptional cases, for example, when there is a high number of investigations and prosecutions, a European Prosecutor may request that the supervision of certain investigations and prosecutions in his member state of origin be assigned to other European prosecutors. They constitute, from a functional point of view, a junction between the central office in Luxembourg and the decentralised level in the member states. In this role, they facilitate the functioning of the EPPO as a single office. As a rule, the EDPs are bound by the instructions given by the permanent chambers and the European prosecutors. Consequentially, the national rules prescribing that a public prosecutor must comply with the instructions of his national superior, may not apply to EDPs.

Material competence. Pursuant to art. 22 of the EPPO regulation in connection with art. 86(1) and art. 86(2) of the TFEU, the EPPO is in charge of combatting criminal offences affecting the financial interests of the EU. The PIF directive, as implemented by national law, is relevant for the determination of the material competence of the EPPO. It can investigate cases of fraud in connection with EU funding. The latter may comprise regional funds, financial resources of the common agricultural policy or other projects financed by the EU. One area of focus could be the manipulation of award procedures (for an overview of the latest reform in this area of EU law, see [6, p. 150]). In particular, the EPPO will investigate complex cases related to the value-added tax (VAT) carousel fraud. Article 3(2) of the PIF directive contains a definition of fraud affecting the EU's financial interests, which essentially amounts to any damage inflicted on the EU budget from the use of public funds for purposes other than those specified by the law or contract.

An effective investigation by the EPPO of criminal offences punishable under EU law may necessitate its extension to other criminal offences punishable under national law when the latter are inextricably linked to criminal conduct detrimental to the financial interests of the EU. The EPPO is also in charge of prosecuting criminal offences that, despite not falling within the scope of the PIF directive, relate to the same facts. In general, the competence and powers of the EPPO are far-reaching. The EPPO is also competent for offences regarding participation in a criminal organisation if the focus of the criminal activity is on the commission of any of the offences referred to in the PIF directive. However, the EPPO is not competent for criminal offences in respect of national direct taxes including offences inextricably linked thereto.

The EPPO regulation contains important restrictions on material competence. As regards VAT fraud, it states that 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 10 mln euro. Another restriction follows from art. 25(2) of the EPPO regulation, according to which where a criminal offence caused or is likely to cause damage to the EU's financial interests of less than 10, 000 euro, the EPPO may only exercise its competence if the case has repercussions at EU level which require an investigation to be conducted by the EPPO; or officials or other servants of the EU, or members of the institutions of the EU could be suspected of having committed the offence. The EPPO shall, where appropriate, consult the competent national authorities or bodies of the EU to establish whether the above criteria are met. By all accounts, the material competence provisions aim to ensure that the EPPO only intervenes if its involvement is justified by the nature and (or) the gravity of the criminal offence, otherwise leaving the investigation and prosecution to national authorities.

Territorial competence. The EPPO is competent for the aforementioned criminal offences where such offences are committed in whole or in part within the territory of one or several member states. A procedure initiated by an EDP or following the instructions of a permanent chamber is generally conducted by the EDP of the member state in which the focus of the offence lies. In appropriate cases, an EDP from another member state can be assigned, for example, when the suspected person has a habitual residence in that member state, has the nationality of that member state or the financial damage had mainly been produced there.

Initiation, termination of the investigation and prosecution. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, an EDP of a member state with jurisdiction over the offence under national law shall initiate an investigation and note this in the case management system. The EPPO may be informed of those offences through a dedicated platform on its website (www.eppo.europa.eu)[2], but also through European and national institutions, including the judicial authorities already entrusted with an investigation. Once an offence has been notified to the EPPO, it has 20 days to initiate an investigation and, if an investigation

[2]Members of the public are advised to go to the category of report a crime, in which they will find ample information on the criminal offences falling within the competence of the EPPO, as well as a web form to fill out if they wish to report a crime.

is already being carried out at the national level, the EPPO has a deadline of five days to exercise its right of evocation and to inform the national authorities of its decision.

When the handling EDP considers the investigation to be completed, it submits a report to the supervising European Prosecutor, containing a summary of the case and a draft decision on whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure. The supervising European Prosecutor forwards those documents to the competent permanent chamber accompanied, if it considers necessary, by its own assessment. The final task of the permanent chamber is to decide whether to bring a case to judgment or to close it. A case can be closed by a permanent chamber when the prosecution becomes impossible due to lack of evidence, prescription, the ne bis in idem principle, amnesty, immunity, etc. A possible investigation based on new facts shall remain unaffected thereby. A case is brought to court by the EDP in accordance with national law.

Lifting of privileges or immunities. Given that the EPPO will have to investigate and prosecute criminal offences affecting the financial interests of the EU – for example in the area of customs, VAT and public procurement, where both EU and national public servants exercise key functions – the privileges and immunities accorded to some high-ranking public servants might pose obstacles to the investigation. As immunities are not meant to offer impunity but rather aim at ensuring the fulfilment of a public servant's tasks by shielding him from undue interference, these immunities must be lifted in specific cases to guarantee compliance with the law. The EU legislator seems to have been aware of these challenges, as art. 29 of the EPPO regulation provides that EPPO shall make a reasoned written request for the lifting of such privilege or immunity in accordance with the procedures laid down, as appropriate, by EU or national law.

Rights and procedural safeguards provided in EU law

Rights enshrined in the EPPO regulation and harmonised minimal standards. The EPPO regulation contains numerous rights and procedural safeguards applicable to suspects, accused persons and witnesses. The objective is to guarantee the legality of the activities carried out by this body as well as the strict respect of EU law. This requirement is important, as national law governs all aspects of the proceedings if not explicitly dealt with by this regulation. More concretely, art. 41(1) of the EPPO regulation prescribes that these activities shall be carried out in full compliance with the rights enshrined in the Charter, including the right to a fair trial and the right to defence. Among the rights guaranteed by the Charter that may prove relevant in cross-border investigations the presumption of innocence should be mentioned (art. 47 of the Charter)[3], and also the principle of ne bis in idem (art. 50 of the Charter)[4], and the legality and proportionality of criminal offences and penalties (art. 49 of the Charter)[5].

Furthermore, art. 41(2) of the EPPO regulation provides procedural rights already foreseen in several EU directives:

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings;
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings;
- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;
- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings;
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

By referring to these directives, the EU legislator recalls that the minimum standards for the procedural rights of suspects or accused persons apply in all member states [7, p. 503]. Consequently, it would be logical to assume that the differences in legislation from one member state to another will not be particularly striking given the degree of harmonisation that currently exists. However, it cannot be ruled out that these procedural rights might not be implemented entirely or correctly in all national legal systems. In such a case, the reference to the aforementioned directives would allow suspects and accused persons to invoke those rights directly against the EPPO. It can be expected that the precise scope of the procedural rights guaranteed by EU law will be a contentious issue that will require clarification by the CJEU by way of preliminary rulings pursuant to art. 267 of the TFEU[6]. The interpretation given by the CJEU to the

[3]CJEU order of 12 February 2019 in case C-8/19 PPU, RH, EU: C:2019:110.
[4]CJEU judgment of 26 February 2013 in case C-617/10, Åkerberg Fransson, EU: C:2013:105.
[5]CJEU judgment of 20 March 2018 in case C-524/15, Menci, EU: C:2018:197. Para 55.
[6]See, for example, CJEU judgment of 12 March 2020 in case C-659/18, VW (right of access to a lawyer in the event of non-appearance), EU: C:2020:201 ; CJEU judment of 23 November 2021 in case C-564/19, IS (illégalité de l'ordonnance de renvoi), EU: C:2021:949.

procedural rights guaranteed in other EU legal instruments that fall within the domain of judicial cooperation in criminal matters could be useful as well. It should not be forgotten in this context that the Council Framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between member states provides for procedural safeguards such as the *ne bis in idem* principle that qualify as a ground for mandatory non-execution of a European arrest warrant [8]. In the same vein, art. 11 of the aforementioned framework decision guarantees the right of access to information for the requested person by demanding that he or she be informed of the warrant, its contents and of his or her entitlement to legal representation by the issuing member state. The said principles as well as other concepts inherent to this domain as a whole should be interpreted uniformly in the interest of consistency.

The relation between the rights guaranteed by the aforementioned directives and those foreseen in the EPPO regulation is likely to be another matter of contention when interpreting EU law, in particular where there is an overlap of their material scope. As an example, art. 41(2)(b) of the EPPO regulation refers to the right to information and access to the case materials, as provided in Directive 2012/13/EU, while also laying down the conditions of access to the "case file", which in turn is defined in art. 45 of the EPPO regulation. A potential conflict could arise if there were to be a contradiction between the provisions of Directive 2012/13/EU and those of the EPPO regulation, thus requiring clarification as to which provisions prevail in a concrete case. In that regard, it must be pointed out that, on the one hand, art. 45(2) of the EPPO regulation states that "access to the case file shall be granted by the handling EDP in accordance with the national law of that prosecutor's member state", which implies that Directive 2012/13/EU might be relevant in so far as it imposes certain requirements on national law. Recital 31 of Directive 2012/13/EU lists some of the materials that may be contained in a case file (documents, photographs and audio as well as video recordings).

On the other hand, attention should be drawn to the fact that art. 45(1) of the EPPO regulation specifies that "the case file shall contain all the information and evidence available to the EDP that relates to the investigation or prosecution by the EPPO". Questions could therefore be raised as regards the precise content of the "case file" to be made accessible to a suspect or a person accused in criminal proceedings. An answer could only be given by means of a systematic interpretation. Given the fact that Directive 2012/13/EU, firstly, imposes general requirements for criminal proceedings and, secondly, was adopted before the adoption of the EPPO regulation that introduces specific provisions, it would be reasonable to assume that those conflicts would have to be solved by relying on the rule of interpretation *lex specialis derogat legi generali*. As a result, the provisions of the EPPO regulation must prevail over those of Directive 2012/13/EU if they contain specific rules for implementing the procedural right in question. An interpretation by the CJEU would be in order since a solution to these questions might not always be easy to find.

The European convention on human rights. Where the case law of the CJEU does not provide sufficient guidance as to how to interpret the provisions of the EPPO regulation requiring this EU body to handle criminal proceedings in compliance with the rule of law, in particular the principles of due process, the case law of the European Court of Human Rights (ECtHR) is likely to fill those gaps. This concerns in particular the admissibility of evidence, an aspect that has been the subject of abundant case law under art. 6(1) of the European convention on human rights (ECHR). Whilst art. 37(1) of the EPPO regulation states that 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, it is not difficult to imagine circumstances that might potentially raise questions as to whether the evidence obtained in an investigation may be used in court. After all, art. 37(2) of this regulation recognises the freedom of national courts to assess the weight of the evidence presented by the defendant or the prosecutors of the EPPO.

Consequently, there is a risk that national courts might develop different views on this subject. Furthermore, it is noteworthy that, as recital 80 recalls, national courts may apply "the fundamental principles of national law on the fairness of the procedure that they apply in their national systems". The risk of a lack of uniformity as regards the admissibility of evidence might be contained by the minimum standards set by art. 6(1) of the ECHR, as interpreted by the ECtHR. Even though the EU has not yet acceded as a contracting party to the ECHR[7] and therefore the latter does not constitute a legal instrument which has been formally incorporated into EU law[8], one should recall, in the interest of completeness, that these minimum standards would equally apply in circumstances in which the member states were to "implement EU law" within the meaning of art. 51 of the Charter, because these standards are recognised as having the status of general principles of EU law, according to art. 6(3) of the TEU [9, p. 175].

[7]In its opinion 2/13 of 18 December 2014, EU: C:2014:2454, adopted pursuant to art. 218(11), the CJEU concluded that the draft agreement on the accession of the EU to the ECHR was not compatible with art. 6(2) of the TEU or with Protocol (No. 8) relating to art. 6(2) of the TEU on the accession of the EU to the ECHR.

[8]CJEU judgment of 20 March 2018 in case C-524/15, Menci, EU: C:2018:197. Para 22.

Procedural rights available under the applicable national law. Last but not least, it should be mentioned that according to art. 41(3) of the EPPO regulation, suspects and accused persons as well as other persons involved in the proceedings of the EPPO "shall have all the procedural rights available to them under the applicable national law", including the possibility to present evidence, to request the appointment of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence. In other words, national law is likely to function as an additional "safety net" in the sense that it will guarantee protection in all aspects not dealt with by the EPPO regulation. Furthermore, national legislation might potentially guarantee procedural rights that are not foreseen in EU law or the law of other member states. More interestingly, national legislation might even offer more advantageous rights, which is not per se ruled out as long as it does not compromise the primacy, unity and effectiveness of EU law[9]. Given the fact that the issue of how multiple sources of fundamental rights interact is far from being resolved [10, p. 250], it can be expected that the CJEU will be called upon to defuse potential conflicts between EU law and national law related to the scope of protection, as has already been the case in the past.

Data protection rules. The EPPO necessarily processes personal data in order to fulfil its mission. This is in particular the case when the EPPO transmits to other public entities personal data that has been collected during its investigations. The EPPO regulation provides a set of data protection rules for operational purposes so that this EU body does not need to rely on Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the union institutions, bodies, offices and agencies and on the free movement of such data. However, an important exception applies to data processed for administrative purposes, such as human resources, budget and security-related purposes. As a result, the EPPO's legal framework distinguishes between two main purposes of the processing, namely operational and administrative, each of them with separate sets of rules. Whether the personal data in question is processed for operational or administrative purposes has consequences for several aspects, such as how and where the personal data is processed, for how long, and with whom it may be shared, but also as regards the rights of data subjects and the reasons why they may be restricted.

According to the data protection rules laid down in the EPPO regulation, personal data may only be used in compliance with EU law, in other words, processed lawfully and fairly, collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes. The competencies to ensure efficient, reliable and uniform oversight of the fulfilment of this legal obligation are conferred on the European Data Protection Supervisor (EDPS)[10]. It can advise the EPPO and exercise control of the latter's activities that prove relevant for the protection of personal data. It is important to note in this context that the EDPS is expected to monitor personal data processing according to the EPPO's special data protection regime [11, p. 38].

Procedural rights in cases involving non-participating member states and third countries. It is necessary to stress that the above explanations apply first and foremost to cross-border cases involving the member states that participate in the enhanced cooperation on the establishment of the EPPO. As will be explained further in this paper, the EPPO is supposed to cooperate as well with NPMS and third countries, which poses certain challenges to the protection of procedural rights. However, that does not mean that a suspect or an accused person will be fully deprived of their procedural rights. As explained later in the text, the degree of protection might nonetheless vary depending on whether a case involves an NPMS or a third country. Although art. 41 of the EPPO regulation, the cornerstone of the protection of procedural rights under this legal act, would not formally apply to an NPMS, there is little doubt that the consequences for the protection of procedural rights in criminal proceedings would not be entirely different, as an NPMS would, in any case, be bound by the Charter and the directives harmonising national legislation referred to above by virtue of its status as an institution of an EU member state. Merely those procedural guarantees explicitly enshrined in specific provisions of the EPPO regulation would not apply. In addition, it can be maintained with certainty that the NPMS would have to respect the procedural rights guaranteed by other EU legal instruments of judicial cooperation already mentioned in this paper, such as those regulating the European arrest warrant and the European investigation order.

If those legal instruments are inapplicable to a particular NPMS in question, the Convention on mutual assistance in criminal matters between the member states of the European Union could be invoked, which however provides very limited safeguards, namely the respect for basic principles of the member state's national law and compliance with the ECHR. In this context, the minimum standards of protection in criminal proceedings set by art. 6(1) of the ECHR would apply as binding on every member state. The situation would only be considerably different if a third country were involved, depending on whether it is a party to the ECHR or not. Should this not be the case, merely the procedural

[9]CJEU judgment of 26 February 2013 in case C-399/11, Melloni, EU: C:2013:107. Para 60.
[10]Interpretation of the EPPO regulation in light of its supervision by the EDPS (report of 12 April 2021) provides an overview of the data protection rules applied by the EPPO.

rights guaranteed in the domestic legislation of that third country would apply, probably in the implementation of international human rights agreements into domestic law. An example would be the International covenant on civil and political rights, its art. 14 recognises and protects the right to justice and a fair trial. Article 15 of the said covenant prohibits prosecutions under ex post facto law and the imposition of retrospective criminal penalties and requires the imposition of the lesser penalty where criminal sentences have changed between the offence and conviction. Given that the said human rights essentially mirror those protected under the ECHR, it cannot be ruled out that equivalent protection will be guaranteed.

Mechanisms of control and legal remedies. The mechanisms of control and the legal remedies provided for in the EPPO regulation should be briefly mentioned in connection with the procedural safeguards that suspects and accused persons may invoke in criminal proceedings. According to its art. 42(1), procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties are subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to any failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this regulation. Due to the importance of legal review for safeguarding the rule of law in criminal proceedings, its various modalities will be examined more closely herein in a dedicated chapter.

Legal review

Respect for the rule of law, one of the values on which the EU is founded (as stated in art. 2 of the TEU) requires that the acts adopted by the EPPO be subject to legal review. Article 47 of the Charter and art. 19 of the TEU guarantee, *inter alia*, the right to an effective legal remedy and the right to an independent and impartial tribunal previously established by law, as regards the protection of the rights and freedoms guaranteed by EU law[11]. The exclusion of such a review would therefore be not only a direct attack on the rule of law but would challenge the obligation of the EU to uphold fundamental rights, as enshrined in the ECHR and the Charter. It is worth recalling in this context that the EU still benefits from the so-called Bosphorus presumption, developed in the case law of the ECtHR[12], whereby when a member state implements its obligations arising from its membership in the EU, the member state is presumed acting in compliance with the ECHR, provided that the protection of fundamental rights in the EU is equivalent to that provided by the ECHR. In that respect, art. 52(3) of the Charter specifies that in so far as the Charter contains rights which correspond to the rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by the ECHR. EU law may nevertheless provide more extensive protection. When it comes to providing a legal review of the acts adopted by the EPPO, the question of jurisdiction is particularly sensitive and complicated due to its hybrid nature. Reference has already been made to art. 42(1) of the EPPO regulation that confers on national courts the power to exercise judicial review of those procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties. In other words, although established as a supranational EU body, for purposes of judicial review, the EPPO acts as a national body. As a result, the role of the national judge in guaranteeing effective legal protection in the areas of operation of the EPPO is crucial [10, p. 374].

An aspect that must be examined more closely is the jurisdiction assigned to the CJUE, given the fact that the EPPO is an "indivisible EU body", according to art. 8(1) of this regulation, after all, and, consequently, subject to its jurisdiction unless otherwise regulated by EU law. It should be recalled in this context that, pursuant to art. 19(1) of the TEU, the CJEU "shall ensure that in the interpretation and application of the treaties, the law is observed". These competencies are laid down in paras 2–8 of art. 42 of the regulation and require further scrutiny. Before going into details, it is safe to affirm that the role of the supranational judge remains residual. In any case, the supranational judge appears to play a less prominent part than the one assigned to his national counterpart when it comes to legal review. The EPPO regulation provides that the CJEU has jurisdiction, under art. 267 of the TFEU, to give preliminary rulings concerning the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a member state directly based on EU law. Furthermore, the CJEU has the competence to interpret the validity of the provisions of EU law, including the EPPO regulation, and the interpretation of art. 22 and art. 25 of this regulation in the context of any conflict of competence between the EPPO and the competent national authorities. Moreover, the decisions of the EPPO to dismiss a case, in so far as they are contested directly based on EU law, are subject to judicial review before the CJEU, in accordance with art. 263(4) of the TFEU. The CJEU is also competent for compensation for damage caused by the EPPO, for arbitration based on clauses contained in contracts concluded by the EPPO, and for disputes concerning staff-related matters. Its jurisdiction encompasses the dismissal of the European Chief Prosecutor or European prosecutors as well. Last not least, the judicial review of the CJEU covers decisions related to data protection, the right of public access

[11]See: CJEU judgment of 16 February 2022 in case C-156/21, Hungary v Parliament and Council, EU: C:2022:97. Para 157.
[12]See: ECtHR judgment of 30 June 2005, Bosphorus Airways v Ireland, application No. 45036/98.

to documents, decisions dismissing EDPs or any other administrative decisions.

The first case pending before the CJEU concerning the interpretation of the EPPO regulation is a reference for the preliminary ruling lodged on 25 April 2022 in case C-281/22, GK and others, by which the Oberlandesgericht Wien (Vienna Higher Regional Court in Austria) seeks clarification as to the extent of judicial review if it comes to cross-border investigations within the EPPO regime. In the case at issue, the Austrian court has to decide on appeals by natural and legal persons who were subject to searches in Austria. Investigations were conducted by the EDP in Munich, Germany (handling EDP), which sought assistance from his colleague in Austria (assisting EDP). The appellants contested the coercive measures in Austria as being inadmissible due to the lack of suspicion and proportionality and due to the infringement of fundamental rights. According to the referring national court, art. 31(3) and art. 32 of the EPPO regulation are unclear as to which extent Austrian courts can verify the measure under their national law. On the one hand, it could be argued that the courts in the assisting member state (in the case at hand, Austria) are not limited to a formal review, but must also verify the substantive provisions of this member state. On the other hand, this would mean, according to the referring court, that cross-border investigations carried out under the EPPO regulation might be more cumbersome than approving a measure in accordance with the EU's instruments on mutual recognition, notably the European investigation order. The referring national court also poses the question as to the extent to which decisions taken by the courts in the member state of the EDP handling the case (in the case at hand, Germany) must be recognised. The appellants, the Austrian EDP, the governments of Austria, France, Germany, the Netherlands and Romania as well as the Commission have submitted written observations. The hearing in this case took place on 27 February 2023. The legal opinion of Advocate General Ćapeta is expected to be published on 22 June 2023.

This pending case raises interesting legal questions as regards the scope of judicial review and the extent to which the principle of mutual recognition of judicial decisions applies in the area of freedom, security and justice [12, p. 449]. For the sake of completeness, it should be pointed out that whilst there have already been a few cases before the General Court (GC) involving the EPPO, these cases only concerned the legality of the appointment of certain European prosecutors and EDPs. More specifically, the candidates applying for these positions saw their applications rejected and therefore either requested interim measures against the decisions appointing the more successful competitors or the annulment of these decisions by the GC[13]. However, to this date, none of these actions has been successful, and an appeal filed before the CJEU has even been withdrawn. Given that these cases are not particularly interesting from a legal point of view, as they rather concern questions of procedure, it is advisable to await the Advocate General's opinion and the CJEU's judgment in the aforementioned Austrian case to gain insight into how this jurisdiction assesses the legal nature of the EPPO.

Issues arising from the interaction with national law

Rather than being a supranational body that relies exclusively on EU law, the EPPO comes across as a hybrid entity that uses national law extensively to achieve its objectives. Indeed, whilst the PIF directive (as transposed in national law) determines the criminal offences to be prosecuted and the EPPO regulation lays down the competencies and duties of this EU body, matters of criminal procedure are mainly determined by national law. Indeed, art. 5(3) of the EPPO regulation specifies that, as far as investigations and prosecutions on behalf of the EPPO are concerned, national law shall apply "to the extent that a matter is not regulated by this regulation". In addition, the actual power of the EPPO lies in the coordination that takes place within the permanent chambers, while the frontline powers rest with the EDPs who remain deeply embedded in their national criminal justice systems. Against this background, it is safe to claim that the drafters of the EPPO regulation have envisaged keeping interference in the procedural autonomy of the member states to a minimum.

The EU legislator's choice in favour of an intergovernmental model. This choice is particularly obvious in the decentralised structure that includes a college consisting of the European Chief Prosecutor and European prosecutors from each participating member state, as already mentioned. The model initially conceived in the Commission's proposal[14] envisaged a more centralised, vertical and hierarchical setup with a European Public Prosecutor at the top and the EDPs based in the member states. Under the Commission's proposal, the EDPs would be in charge of the investigations and prosecutions under the direction and supervision of the European Public Prosecutor. The legislative history leading to the adoption of the EPPO regulation shows that the member states opposed this model fearing that it may constitute an alleged breach of the principle of

[13]GC order of 23 February 2022 in case T-603/21 R, WO/EPPO (not published) EU: T:2022:92 ; GC order of 13 June 2022 in case T-334/21, Mendes de Almeida/Council, EU: T:2022:375.

[14]Proposal for a Council regulation on the establishment of the European Public Prosecutor's Office, COM (2013) 534 final (17 July 2013).

subsidiarity. For that reason, despite the Commission's insistence on keeping the model on the table, the proposal was modified in favour of the current one that has a clear intergovernmental setup [13, p. 8]. Indeed, the EPPO regulation confers real power not on the European Chief Prosecutor but on the college. Likewise, it should be recalled that the permanent chambers in charge of taking case-related decisions are dominated by prosecutors appointed as representatives of their member states. Whilst the European Chief Prosecutor can be outvoted in the college, it can still exercise some influence, provided that it has the necessary support of the other members [14, p. 270].

From an analytical point of view, it is legitimate to ask whether the college structure that underlies the current model is, to some extent, a relic from pre-Lisbon times, when cooperation in criminal matters would follow an intergovernmental approach [15, p. 40]. The creation of a more centralised and hierarchical structure, with the European Chief Prosecutor (or the European Public Prosecutor, according to the terminology used in the proposal) may have been more in line with the changes that the EU treaties have undergone in the past decade. On the other hand, it could be argued that the creation of a college composed of the public prosecutors of every member state, each of them being familiar with the legal and factual situation in their respective member states, has the advantage of guaranteeing, firstly, a sense of ownership over the investigations and, secondly, the necessary accountability for the results obtained in those investigations. Indeed, it is hard to imagine how a rather small, centralised unit based in Luxembourg could have possibly steered investigations in the whole territory of the EU. Against that background, the approach followed by the EU legislator appears sensible.

The institutional anchoring of the European delegated prosecutors in the national judicial systems. Whilst the fact that EDPs are anchored in the judicial system of their member states may have some advantages for the performance of their tasks – such as proximity to the place in which the criminal offences have been committed, or knowledge of the procedural possibilities a prosecutor – certain aspects give rise to criticism nonetheless. One is the "dual hat" that EDPs are obliged to wear, according to art. 13(3) of the EPPO regulation. This provision states that the EDPs may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this regulation. It could be argued that it might be difficult in practice for an EDP to exercise his functions as a "part-time EU public prosecutor" and that an EDP's duties towards the EPPO risk being neglected. This might be the reason why some member states have already decided against this option.

The aforementioned provision addresses this issue by specifying that the EDPs shall inform the supervising European Prosecutor of such functions. If an EDP at any given moment is unable to fulfil his functions as an EDP because of the exercise of such functions as a national prosecutor, he shall notify the supervising European Prosecutor, who shall consult the competent national prosecution authorities to determine whether priority should be given to their functions under this regulation. The European Prosecutor may propose to the permanent chamber to reallocate the case to another EDP in the same member state or that he conduct the investigations himself in accordance with art. 28(3) and art. 28(4) of the EPPO regulation. It remains to be seen how these provisions will be applied in practice and whether they are adequate to ensure that the "double responsibility" borne by the EDPs does not compromise their efficiency.

Incomplete harmonisation of substantive criminal law. As already mentioned, the material competence of the EPPO is defined with reference to the PIF directive, which aims at harmonising substantive criminal law of the member states in a specific area. This entails, by definition, a certain margin of flexibility for the member states as to how they implement the PIF directive. In addition, it is worth drawing attention to the fact that art. 1 of this directive states that it "establishes minimum rules concerning the definition of criminal offences and sanctions with relevance to combatting fraud and other illegal activities affecting the EU's financial interests", which means that the member states may adopt stricter rules to protect the said interests. The EU criminal justice system is far from being harmonised and therefore it strongly depends on its interaction with the national legal systems [16, p. 191]. The diversity of definitions that may arise from this significant leeway granted to national legislatures might prove incompatible with the principle nullum crimen sine lege, enshrined in art. 49(1) of the Charter, according to which "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed". This provision, corresponding to art. 7 of the ECHR, is an expression of the rule of law and, as such, is of paramount importance in the area of criminal law.

Against this background, it cannot be ruled out that this legal issue might be raised in the framework of criminal proceedings. Whilst the harmonisation of substantive criminal law might still be an issue for some member states concerned about potential loss of sovereignty, such an approach should nevertheless be contemplated in the future to prevent a possible scenario in which the compatibility of the EPPO regulation with primary law might be questioned before the CJEU, for example in the framework of a preliminary ruling procedure, under art. 267 of the TFEU. In this context, it should not be forgotten that, according to art. 5(1) of this regulation, the EPPO shall ensure that its activities respect the rights enshrined in the Charter. Given that the issue of compliance with

fundamental rights has the potential to undermine the legitimacy of the EPPO and, ultimately, to hamper its functioning, it should be addressed as a priority.

Diversity of national procedural rules. In its investigations and prosecutions, the EPPO relies on provisions of national law, in so far as a matter is not regulated by the EPPO regulation. Still, differences in national procedural rules might make the investigation and the prosecution of crimes less predictable. Those differences might affect various aspects of the procedure, such as the admissibility of evidence and the availability of legal remedies, with consequences for safeguarding the rights of the defendants. Indeed, the lack of clarity might prove detrimental to this objective, as suspects have a right to know the applicable rules. Moreover, the potential existence of more favourable procedural rules in some member states is likely to increase the risk of "forum shopping" in favour of the EPPO. To prevent an arbitrary choice of forum, the EPPO regulation sets outs certain rules. Article 5(3) stipulates that, unless otherwise specified, the applicable law is the law of the member state of the EDP handling the case. Article 26(4) states that, as a principle, a case shall be initiated and handled by the EDP from the member state where the focus of the criminal activity is or, in case of connected offences, by the EDP from the member state where the bulk of the offences was committed. A deviation from this rule is allowed, however only under strict conditions. More concretely, it should be duly justified taking into account the criteria listed in order of priority, i. e. the residence and nationality of the suspect or accused and the place where the main financial damage occurred.

Article 37 of the EPPO regulation states that the 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. This provision promotes the principle of free movement of evidence across the EU, based on mutual recognition of evidence, fully consistent with the overarching concept of area of freedom, security and justice, as foreseen in the EU treaties. However, it is worth noting in this context that recital 80 introduces an important caveat by stating that the said principle applies the following: "…provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter". Furthermore, it should be pointed out that the same recital specifies that "respecting the different legal systems and traditions of the member states as provided for in art. 67(1) TFEU, nothing in this regulation may be interpreted as prohibiting the courts from applying the fundamental principles of national law on the fairness of the procedure that they apply in their national systems". It follows from this clarification regarding the interpretation to be given to the EPPO regulation that the powers of the prosecutors are again limited by national law in so far as the EPPO is obliged to verify that the applicable rules on procedure do not prevent the admission of evidence. The possibility that there might be important differences in that respect among the member states is liable to affect the efficiency of the EPPO's prosecution in cross-border cases. A possible solution to this issue would be for the EU legislator to adopt directives aimed at harmonising the national rules on the admission of evidence.

Use of autonomous concepts for addressing the reality of national law. Where the EPPO regulation does not specifically refer to national rules[15], declaring them applicable, but rather using autonomous concepts of EU law, the EPPO faces the challenge of having to "translate" those concepts into the terminology of national law. Even though the EPPO regulation is directly applicable in the legal systems of all member states according to art. 288 of the TFEU, the EU legislator appears to have opted for framing several concepts in sufficiently open and general terms to allow the EPPO and its aides at the decentralised level to identify the equivalent concepts in national law. This approach – often used in EU legislation – is a response to the diversity of the legal systems and the impossibility of harmonising the entirety of the national rules through directives[16]. As such, it can be used to refer to public authorities, procedures[17], specific legal statuses and other concepts of criminal procedure likely to exist in one way or another in all (or at least in most) member states. It is also a way to ensure that the provisions of the EPPO regulation be applied effectively notwithstanding this legislative diversity. Logically, the use of autonomous concepts of EU law requires a uniform interpretation, a task that would primarily fall within the responsibility of the EPPO as the authority in charge of applying the EPPO regulation, obviously under the control of the CJEU as the supreme interpreter of EU law. In addition, it seems necessary from a practical point of view to adopt implementing rules at the national level to specify those autonomous

[15]In para 81 of the CJEU judgment of 22 June 2021 in case C-439/19, Latvijas Republikas Saeima (Points de pénalité), EU: C:2021:504 the case law is reproduced, whereby terms of a provision of EU law which makes no express reference to the law of the member states to determine its meaning and scope must normally be given an autonomous and uniform interpretation throughout the EU.

[16]CJEU judgment of 24 November 2020 in case C-510/19, Openbaar Ministerie (Faux en écritures), EU: C:2020:953 regards the concept of executing judicial authority within the meaning of Council Framework decision 2002/584/JHA on the European arrest warrant.

[17]An example is the recourse to "simplified prosecution procedures" under art. 40 of the EPPO regulation if the applicable national law provides for such a procedure aiming at the final disposal of a case on the terms agreed with the suspect. The EPPO regulation refers to the criteria that the permanent chamber has to take into account when deciding to apply such a simplified procedure (seriousness of the offence, willingness of the suspected offender to repair the damage caused) and allows the college to adopt guidelines on the application of these criteria.

concepts, or at least to develop certain administrative guidelines explaining what the equivalent concepts of national law would be, hereby allowing national authorities to better understand the provisions of the EPPO regulation. Such an approach would be consistent with EU law, as it would not undermine its primacy and direct effect.

Sentencing and sanctions. Whilst the EPPO is in charge of the prosecution of crimes, sentencing and sanctions remain the exclusive competence of national courts, which will decide in each case based on national law. Article 325(1) and art. 325(2) of the TFEU, a directly applicable provision, merely lays down general requirements by obliging the member states "to counter illegal activities affecting the financial interests of the EU through effective and deterrent measures, and to take the same measures to counter fraud affecting the financial interests of the EU as they take to combat fraud affecting their financial interests"[18], hereby essentially declaring the principles of effectiveness and equivalence applicable in the area of criminal justice. These principles certainly set limits to the procedural and institutional autonomy of the member states in the interest of more effective enforcement of EU law at the national level[19].

However, their main disadvantage is that compliance can often only be verified retrospectively and on a case-by-case basis in the framework of the court proceedings. They cannot be considered an appropriate substitute for the non-existing precise requirements in EU legislation, despite the groundwork laid with the adoption of the PIF directive establishing minimum rules concerning sanctions. In consequence, some offences could be sanctioned more severely or leniently in some member states than in others. For example, an offence might be sanctioned by imprisonment in one member state and by a simple administrative fine in another one. Although legally possible given the great diversity of legal traditions and ethical views throughout the EU and in the absence of more advanced harmonisation in this area, this divergent judicial practice would still be hard to justify from a perspective of material justice.

For that reason, it cannot be ruled out that the EPPO might, in the long term, attempt to influence the sanctions and sentencing by requesting sentences of a specific severity or through plea-bargaining, where it is permitted. The EPPO might as well request from the national court to apply a specific sanction foreseen in guidelines reflecting the judicial practice of certain member states and the CJEU case law in fraud cases [3, p. 224]. One can assume the EPPO might strive to achieve a certain degree of coherence to underline the gravity of the prosecuted offences and create the necessary deterrent effect. This development will certainly depend on the EPPO's ability to implement a prosecution strategy across the EU. The necessary guidelines referred to in the present article should ideally be established by an advisory council, constituted by the EPPO and representatives of the national prosecutor offices, with the aim to foster an atmosphere of cooperation. Inspiration could be drawn from other areas of EU law, in which this approach is applied, such as data protection and those characterised by a high degree of technicity.

Cooperation

Cooperation with other EU bodies. The EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the EU consistent with their respective objectives in so far as necessary for the performance of its tasks. Cooperation expressly includes the exchange of information. There are practical reasons for foreseeing such cooperation, namely the possibility of taking advantage of specialised knowledge and resources available to other EU bodies. Mutual assistance is very common among EU agencies, to the point that it is often explicitly envisaged in the EU treaties or the founding regulations. Where this is not the case, the principle of sincere cooperation, enshrined in art. 4(3) of the TEU, may be invoked. The EU bodies operating in the area of home affairs, in particular those involved in the fight against criminality, are most likely to become "privileged partners". Whilst the EPPO regulation itself envisages such cooperation and contains specific provisions to that effect, details are set out in working arrangements of a technical and (or) operational nature to be agreed between the EPPO and the counterpart, as is the case of many EU agencies. Article 99(3) of the EPPO regulation contains a caveat, specifying that the working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the EU or its member states.

It should be stressed that cooperation with the EPPO is also essential for the EU bodies operating in this area, as they do not have the autonomous power to initiate an investigation. The mission of the latter is essentially limited to supporting and coordinating. In turn, competent national prosecutors and national police forces investigating and prosecuting serious crimes can only act upon a request, and thus they necessarily rely on the EPPO's power to launch its investigations and prosecutions. To some extent, with its investigative and prosecuting powers the EPPO fills a sensitive gap at the EU level in the fight against cross-border crime. Notwithstanding this positive aspect, it is worth noting that the EPPO and the EU bodies operating in the area of home

[18]CJEU judgment of 5 December 2017 in case C-42/17, M.A.S. und M.B., EU: C:2017:936. Para 30.
[19]CJEU judgment of 17 January 2019 in case C-310/16, Dzivev a.o., EU: C:2019:30. Para 30.

affairs share a common trait that could be regarded as a gap intentionally created by the EU legislator to preserve national sovereignty, which is the lack of coercive powers. Instead, recital 69 of the EPPO regulation stipulates that this EU body should rely on national authorities, including police authorities, hereby reproducing what is already laid down in primary law, namely, the exclusive responsibility of the competent national authorities as regards the application of coercive measures.

Eurojust. It is an EU agency operating in accordance with art. 85 of the TFEU and Regulation (EU) 2018/1727 of the European Parliament and the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation, replacing and repealing Council decision 2002/187/JHA (Eurojust regulation). It works with national authorities to combat a wide range of serious and complex cross-border crimes involving two or more countries. The cases brought to Eurojust concern crimes such as terrorism, cybercrime, trafficking in human beings, drug trafficking, crimes against the financial interests of the EU, migrant smuggling, environmental crime, money laundering, swindling and fraud. Eurojust offers operational support throughout the different stages of cross-border criminal investigations, providing prompt responses, an on-call coordination service that is permanently operational and assistance with the preparation of judicial cooperation requests, including official translations. Furthermore, Eurojust can accommodate complex forms of assistance and coordination mechanisms, which may be combined as required to support major operations. Eurojust can coordinate parallel investigations, organise coordination meetings involving the judicial authorities and law enforcement concerned, and set up and (or) fund joint investigation teams in which judicial authorities and law enforcement work together on transnational criminal investigations based on a legal agreement between two or more countries and plan joint action days, steered in real time via coordination centres held at Eurojust, during which national authorities may arrest perpetrators, dismantle organised crime groups and seize assets.

Eurojust is undoubtedly a privileged partner for the EPPO. Their relations are explicitly addressed in art. 100 of the EPPO regulation. Specific provisions regarding their cooperation are laid down in the Eurojust regulation as well. In operational matters, the EPPO may associate Eurojust with its activities concerning cross-border cases, including by sharing information, such as personal data, on its investigations. The EPPO may invite Eurojust or its competent national member(s) to provide support in the transmission of its decisions or requests for mutual legal assistance to, and execution in, member states of the EU that are members of Eurojust but do not take part in the establishment of the EPPO, as well as third countries. Furthermore, it is foreseen that the EPPO shall have indirect access to information in Eurojust's case management system. Eurojust has its headquarters in the Hague, a circumstance that had urged some voices to call for the seat of the EPPO to be placed in the same city. It remains to be seen whether the geographical distance will pose obstacles to cooperation.

As already indicated in the introduction, Eurojust shares a similarity with the EPPO in that the EU treaties presuppose their existence. Interestingly, art. 86 of the TFEU stipulates that "the Council, by means of regulations adopted under a special legislative procedure, may establish an EPPO from Eurojust". The last part of the sentence raises questions as regards the feasibility of such an approach, given the fact that both are EU entities independent from one another [17, p. 87]. Given the sensitivity involving the creation of the EPPO and the length of the process involved, it cannot be ruled out that at the time of the drafting of the Treaty of Lisbon, it was not fully clear how exactly this task would be achieved. In any case, recital 10 of the EPPO regulation provides some clarifications in the sense that, in the EU legislator's view, "this implies that this regulation should establish a close relationship between them based on mutual cooperation". To ensure such cooperation, the European Chief Prosecutor and the President of Eurojust are required to meet regularly to discuss issues of common concern. The details specifying the extent to which the EPPO may rely on the support and resources of the administration of Eurojust have been laid out in a working arrangement concluded in February 2021.

Several provisions of the Eurojust regulation hint at the risk of possible overlaps in the competencies of both EU agencies, which is the reason why art. 100(1) of the EPPO regulation specifies that cooperation shall take place "within their respective mandates". In general, as can be inferred from recital 8 of the Eurojust regulation, this EU agency appears to exercise rather a subsidiary competence, for instance, where crimes involve the member states that participate in the enhanced cooperation on the establishment of the EPPO and NPMS (at the request of the EPPO or the NPMS). Whenever the EPPO is not competent or where, although the EPPO is competent, it does not exercise its competence. For obvious reasons, the NPMS may continue to request Eurojust's support in all cases regarding offences affecting the financial interests of the EU.

OLAF. The European Anti-Fraud Office (OLAF) is a directorate-general of the Commission that combats fraud, corruption and other similar illicit activities in the EU. It is responsible for monitoring the affairs of the EU institutions and investigating any possible instances of fraud, corruption and financial misconduct within the EU institutions to protect the financial interests of the EU. OLAF conducts its investigations in close cooperation with the relevant agencies of the member states.

According to its recently amended legal framework[20], OLAF investigates the following matters: all areas of EU expenditure (the main spending categories are structural funds, agricultural and rural development funds, direct expenditure, and external aid); EU revenue, in particular customs and illicit trade in tobacco products and counterfeit goods; suspicions of serious misconduct by EU staff and members of the EU institutions. The investigations carried out by OLAF aim at enabling financial recoveries, disciplinary and administrative action, prosecutions and indictments. It must be pointed out that OLAF has no law enforcement powers, nor does it have any power to bring a prosecution. Instead, OLAF may make recommendations to jurisdictions that a prosecution should be brought [18, p. 280]. The EPPO, on the contrary, has those prosecuting powers, which makes it a precious ally for bringing criminal offences to justice.

The relationship between the EPPO and OLAF is based on mutual cooperation within their respective mandates and information exchange. OLAF tends to give priority to investigations carried out by public prosecutors. As a rule, where the EPPO conducts a criminal investigation, OLAF shall not open any parallel administrative investigation into the same facts. In the course of an investigation by the EPPO, the EPPO may request OLAF, under OLAF's mandate, to support or complement the EPPO's activity in particular by providing information, analyses (including forensic analyses), expertise and operational support [19, p. 245]. Where the EPPO does not conduct any investigations, it may provide information to OLAF to conduct administrative investigations, enabling the latter to consider taking adequate administrative measures. Due to its power to carry out administrative investigations with the EU institutions, agencies and bodies (but also in countries with which the EU has a special relationship), OLAF constitutes a sort of "administrative arm" on which the EPPO can rely. Details of this cooperation are laid down in a working arrangement concluded on 5 July 2021.

Europol. It is the EU's law enforcement agency, its remit is to help make Europe safer by assisting law enforcement authorities in the member states. Based in the Hague, Europol operates under the provisions laid down in Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) (Europol regulation). The objectives of this EU agency are to support law enforcement authorities by facilitating exchanges of information, providing criminal analyses, as well as helping and coordinating cross-border operations; to become the EU's criminal information hub by identifying common information gaps and investigation priorities; to develop further as an EU centre for law enforcement expertise by pioneering new techniques, as well as facilitating knowledge sharing and quality training in specialist areas like terrorism, drugs and euro counterfeiting.

The EPPO shall establish and maintain a close relationship with Europol as well. To that end, both entities have concluded a working arrangement in January 2021 setting out the modalities of their cooperation within the limits of their respective legal frameworks and mandates. Where necessary for its investigations, the EPPO shall be able to obtain, at its request, any relevant information held by Europol concerning any offence within its competence, and may also ask Europol to provide analytical support to a specific investigation conducted by the EPPO. The cooperation may, in addition to this exchange of information, in particular, include the exchange of specialist knowledge, general situation reports, information on criminal investigation procedures, information on crime prevention methods, the participation in training activities as well as providing advice and support, including through analysis, in individual criminal investigations.

Cooperation with non-participating member states. As already explained, the creation of the EPPO took place as an enhanced cooperation congruent with art. 86(1) of the TFEU, which implies that some member states do not participate in this project. Nonetheless, this fact alone is not a valid reason for preventing cooperation, in particular in an important area such as fighting crime. Furthermore, it must be borne in mind that, irrespective of the specific distribution of competencies within any legal order, the protection of the financial interests of the EU is a concern shared by all the member states. Consequently, art. 105 of the EPPO regulation lays down provisions regulating the EPPO's relations with NPMS that merit a more detailed explanation here. As follows from these provisions, non-participation does not preclude cooperation: art. 105 of the EPPO regulation expressly states that the EPPO may conclude working arrangements with those member states, which may in particular concern the exchange of strategic information and the secondment of liaison officers to the EPPO. Moreover, it is stipulated that the EPPO may designate, in agreement with the competent authorities concerned, contact points in NPMS to facilitate cooperation in line with the EPPO's needs.

It is another question whether an NPMS is legally obliged to cooperate with the EPPO if the EPPO were to seek judicial cooperation with them in any given case. What seems problematic in this regard is the provision of art. 20(4) of the TEU which states that "acts adopted in the framework of enhanced cooperation shall bind only participating member states". In principle, it could be invoked as an argument against cooperation. To that,

[20]Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No. 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations.

one may respond that, firstly, art. 105(3) of the EPPO regulation appears to contain an implicit assumption that judicial cooperation between the EPPO and the NPMS will require the adoption of a separate legal instrument, a solution liable to provide for some legal certainty. However, setting out the details of cooperation in separate legal instruments with the ensuing diversity of rules might make the relations with the authorities of the NPMS more difficult, unless the EPPO opts for using a sort of "template" or "model agreement" aimed at reducing the heterogeneity of applicable rules. Secondly, it should be noted that this provision obliges the member states that take part in the enhanced cooperation to notify the NPMS that the EPPO will act as a competent authority in criminal matters falling under the competence of the EPPO. By so doing, they guarantee that the NPMS is aware of the fact that the EPPO has henceforth assumed the role formerly exercised by a national authority and, consequently, acts as a sort of "legal successor" as far as the prosecution of a certain category of crimes is concerned. This provision is useful, as it might not always be obvious which authority is in charge, in particular at the beginning of the EPPO's operations.

The question that still remains open concerns the legal effect of such a unilateral notification. In the author's view, the principle of sincere cooperation is enshrined in art. 4(3) of the TEU and speaks in favour of a legal obligation upon the NPMS to cooperate with the EPPO[21]. The purpose of the notification is to indicate the authorities in charge and consequently to ensure the proper functioning of the system under which the financial interests of the EU are meant to be protected. The same applies to the conclusion of the agreement in question, without which any cooperation would not be possible. Since, according to the principle of sincere cooperation, "the member states shall facilitate the achievement of the EU's tasks and refrain from any measure, which could jeopardise the attainment of the EU's objectives", it is logical to assume that member states must actively cooperate with the EPPO whenever their involvement is required. More importantly, they must refrain from placing obstacles for the EPPO's activities.

In this context, it is noteworthy that recital 110 of the EPPO regulation requires the Commission to play an active role in fostering sincere cooperation through "proposals", to ensure effective judicial cooperation in criminal matters between the EPPO and the NPMS. Given the lack of clarity as to how to attain these objectives, it cannot be ruled out that it will be for the Commission to develop the necessary mechanisms. This task could entail the provision of technical support in the drafting of the legal instrument referred to above that shall lay down the rules governing the cooperation. The role of the CJEU could be to specify the scope of this principle by way of an interpretation of art. 4(3) of the TEU [20, p. 294]. More concretely, the CJEU could guide us as to what the member states must do to ensure that the EPPO can exercise its functions effectively. In general, the Commission, as "guardian of the EU treaties", is destined to assume a central role in enforcing compliance through infringement proceedings, by invoking art. 258 of the TFEU, against those member states that might be reluctant to act in a spirit of sincere cooperation, whether they are NPMS or not. The Commission is the instance that intervenes on behalf of the EPPO if a member state does not respond to requests for information [21].

The EPPO's role as the "legal successor" of national prosecuting authorities in investigation cases might pose practical difficulties when it comes to exchanging information and other ways of mutual support. Because the EPPO shall be the competent authority in respect of cases falling within its jurisdiction, it would logical to assume that the EPPO will be the contact point for any requests for assistance. Difficulties might arise if evidence from a specific member state is requested by an NPMS for an investigation when the EPPO does not have that evidence at the central level. The submission of that evidence would necessarily involve the decentralised level and would require a high degree of cooperation, as the EPPO would be entirely dependent on the national authorities.

Another issue that the EPPO is likely to encounter is the risk of parallel proceedings at supranational and national levels if an NPMS happens to investigate the same or a related matter. This might potentially lead to conflicts of jurisdiction. To avoid unnecessary duplication of efforts and a waste of resources, it might be advisable to relinquish jurisdiction in favour of either the EPPO or the national authority of the NPMS. Since the protection of the financial interests of the EU remains a common interest of all member states, there is no objective reason for keeping criminal proceedings running in parallel. However, it is worth noting in that respect that whilst art. 26(1) of the EPPO regulation obliges an EDP to initiate an investigation where there are reasonable grounds to believe that an offence is being or has been committed in a member state (so-called principle of legality), there is no provision allowing the closure of a case because the same case is being or has been investigated by the authorities of an NPMS. This situation might prove inconsistent with the *ne bis in idem* principle enshrined in art. 50 of the Charter. Therefore, the EPPO and the respective NPMS will necessarily have to coordinate their course of action in the interest of an efficient prosecution and the safeguarding of fundamental rights.

In addition to the above considerations, it is important to stress that other mechanisms of judicial coope-

[21]Opinion of Advocate General Pikamäe in case C-404/21, INPS and Repubblica Italiana, EU: C:2022:542 regards the role of the principle of sincere cooperation and the possibility to invoke this principle to overcome regulatory gaps.

ration in criminal matters, such as the European arrest warrant and the European investigation order, continue to apply to most of the NPMS. The same is the case for the Convention on mutual assistance in criminal matters between the member states of the European Union, its aim is to encourage and facilitate mutual assistance between judicial, police and customs authorities on criminal matters and to improve the speed and efficiency of judicial cooperation. Therefore, the EPPO could rely on these mechanisms in criminal proceedings through the intermediary of an EDP acting under the provisions of his national legal system. This is one of many examples in which the EDP's double function as a national and European prosecutor might prove beneficial for the fulfilment of the EPPO's tasks.

Cooperation with third countries. It is an area that plays an important role, in particular bearing in mind the many projects financed by the EU in those countries, which are generally subject to the scrutiny of the Court of Auditors given the proper allocation of resources. The protection of the financial interests of the EU cannot stop at its external borders. Having said that, it is not difficult to imagine how much more challenging must be the investigations concerning fraud, corruption and any other illegal activity affecting those financial interests if these crimes are committed in third countries, in which the influence of the EU and its member states is limited, as it touches upon the sovereignty of those third countries. The same applies to the recovery of ill-spent EU money. For that reason, cooperation with the competent judicial authorities of third countries is crucial. To mention a practical example, it is known that the United Kingdom will continue to receive funds from the EU even though it is no longer a member state. To fight against irregularities, fraud and other criminal offences affecting the financial interest of the EU, the Trade and cooperation agreement (TCA) concluded with the United Kingdom contains specific provisions that confer certain powers of investigation to both the Commission and OLAF in the territory of what is now a third country (art. UNPRO 4.2(1) of the TCA). Interestingly, the TCA does not mention the EPPO at all, which is not surprising because of the United Kingdom's initial opposition to this integration project. However, it cannot be ruled out that the EPPO might nevertheless intervene indirectly in certain cases that involve funding under EU programmes (art. UNPO 4.2(12) of the TCA), namely through the intermediary of its EDPs acting within their respective national judicial systems. The following explanations will shed light on how this might happen in practice.

Given the fact that dealing with a supranational body might be an unfamiliar situation for some third countries, it is necessary to ensure that the EPPO will be accepted as an equal partner and that its role will not be undermined, for example by addressing the judicial authorities of the member states instead. Whereas the principle of sincere cooperation, enshrined in art. 4(3) of the TEU, may be interpreted as imposing a legal obligation upon any NPMS to cooperate with the EPPO in its quality as the "legal successor" of national authorities of participating member states as regards the prosecution of specific criminal offences, nothing equivalent applies to the external relations with third countries. Therefore, unless otherwise prescribed, nothing prevents third countries from resuming their cooperation with the EU member states and ignoring the EPPO's existence. To offset these disadvantages, the EU legislator has developed several mechanisms that will be explained in detail below.

As a general rule, the EPPO can exercise its competence when offences against the financial interests of the EU falling within the material scope of the EPPO regulation have been committed in the territory of one or several member states. This follows from the principle of territoriality in criminal law (territorial theory), adapted to take into account the conferral of competencies to a supranational body with the adoption of the EPPO regulation. The extent of the EPPO's exterritorial jurisdiction is defined in art. 23(b) and art. 23(c) of the EPPO regulation. According to these provisions, the EPPO shall be competent where the offences were committed by a national of a member state, provided that the member state in question has jurisdiction for such offence when committed outside of its territory, or outside the territories of one or several of the member states by a person who was subject to the Staff regulations or the Conditions of employment, at the time of the offence, provided that a member state has jurisdiction for such offences when committed outside its territory. This essentially implies that the EPPO has competence in this situation where EU citizens and EU officials are involved. It is an adaptation to a supranational environment of the well-known principle of criminal law, whereby a state has jurisdiction over its national wherever it may be and hence can hold it accountable for its criminal misdeed wherever committed (personal theory). As a result, locally employed staff, contractors, interims, seconded national experts and trainees who are not EU citizens and who are not subject to the Staff regulations or Conditions of employment in principle do not fall under the EPPO's competence [22, p. 171].

Whilst the mandate of the EPPO concerning criminal offences linked to third countries is set out in art. 23 of the EPPO regulation, it should be reminded that the EPPO will have to exercise its extraterritorial jurisdiction in compliance with international law and, in particular, within the legal framework of bilateral agreements with those third countries, aimed at making the necessary judicial cooperation possible. Cooperation in criminal matters, often articulated in the form of mutual legal assistance, might potentially take place within the existing agreements concluded in the framework of the Council of Europe and the United Nations. However, given the special nature of the EPPO as a supranatio-

nal body in the service of the EU (and the participating member states), it is obvious that the EU had to resort to varied techniques to enable the EPPO to assume its external role as its representative in criminal matters. In other words, a legal solution had to be developed to ensure that the EPPO would be recognised as a partner in this judicial cooperation. This was of particular importance, as cooperation within the meaning of the EPPO regulation implies several activities, such as the exchange of strategic information, the designation of contact points in third countries and the secondment of liaison officers. With art. 104 of the EPPO regulation, the EU legislator has come up with three creative solutions that still have to stand the test of practice.

The first solution envisaged by art. 104(3) of the EPPO regulation is the conclusion of specific international agreements, which is the traditional way in international relations to establish judicial cooperation. This provision states that international agreements with one or more third countries concluded by the EU or to which the EU has acceded under art. 218 of the TFEU in areas that fall under the competence of the EPPO, such as international agreements concerning cooperation in criminal matters between the EPPO and those third countries, shall be binding on the EPPO. This EU body honours the commitments entered into by this supranational organisation in its relations with third countries, as far as its area of responsibility is concerned.

However, there might be situations in which an agreement enabling the EPPO to act on behalf of the EU and its member states might not yet exist. Because the EPPO was established not long ago, this might be the most common scenario at this point. Article 104(4) of the EPPO regulation covers these situations, specifying that the member states shall, if permitted under the relevant multilateral international agreement and subject to the third country's acceptance, recognise and, where applicable, notify the EPPO as a competent authority for the implementation of multilateral international agreements on legal assistance in criminal matters concluded by them, including, where necessary and possible, by way of an amendment to those agreements. This provision takes into account the fact that the designation of the EPPO as the counterpart of a third country's authorities will generally be subject to the latter's acceptance, as otherwise such a course of action would run counter to the principle pacta tertiis nec nocent nec prosunt in public international law, laid down in art. 34 of the Vienna convention on the law of the treaties, according to which a treaty does not create obligations or rights for a third state without its consent[22] [23].

The aforementioned provision of the EPPO regulation must be interpreted in light of recital 109 which calls upon the member states to act in the spirit of sincere cooperation by facilitating the exercise by the EPPO of its functions, pending the conclusion of new international agreements by the EU or the accession by the EU to multilateral agreements already concluded by the member states, on legal assistance in criminal matters. It is important to note in this context that the EU legislator seems to have been perfectly aware of the fact that the objective to allow the recognition of the EPPO as the authority in charge on the EU's side might face factual or legal obstacles, in certain cases even requiring the amendment of agreements already in force. The second solution is laid down in art. 104(4) of the EPPO regulation and rests on the idea that the EPPO is the legal successor of the national authorities, a concept that has already been discussed in this paper in connection with the relations between the EPPO and the NPMS. In any case, it appears that for this concept to be successfully implemented in the area of external relations of the EU, it should be necessary to allow the EPPO to exhort the Commission and the Council to conclude agreements with several third countries of interest.

Having said this, it would be perhaps naive to assume that third countries would unconditionally accede to the EU's demands to recognise the EPPO as their counterpart when it comes to the investigation and prosecution of criminal offences. The EU legislator seems to have taken this issue into account by including a third solution in art. 104(5) of the EPPO regulation. According to this provision, in the absence of an agreement referred to in para 3 or a recognition referred to in para 4, the handling EDP may have recourse to the powers of a national prosecutor of his or her member state to request legal assistance in criminal matters from authorities of third countries, consistent with art. 13(1) of the mentioned regulation, and based on international agreements concluded by that member state or applicable national law and, where required, through the competent national authorities. In that case, the EDP shall inform and where appropriate shall endeavour to obtain consent from the authorities of third countries that the evidence collected on that basis will be used by the EPPO for the purposes of this regulation. In any case, the third country shall be duly informed that the final recipient of the reply to the request is the EPPO.

This approach is based on the idea that EDPs have a double function, as they exercise simultaneously the competencies of a national prosecutor and those of a prosecutor subject to the instructions of the EPPO, acting in defence of the financial interests of the EU. In their capacity as active members of the public prosecution service or judiciary of the member states, EDPs may be "borrowed" by the EPPO in so far as they are required to exercise their prerogatives foreseen in national law to attain the EPPO's missions. This includes resorting to all legal possibilities set out in the international agreements to which his respective member state is a party.

[22]CJEU judgment of 25 February 2010 in case C-386/08, Brita, EU: C:2010:91. Para 44 ; CJEU judment of 21 December 2016 in case C-104/16 P, Council v Front Polisario, EU: C:2016:973. Para 100.

It is possible to infer from the manner in which all three avenues are listed that, firstly, there is a hierarchy between them and, secondly, the "borrowing" of an EDP for the benefit of the EPPO constitutes an ad hoc solution that only applies under the condition that the other two avenues are barred. Furthermore, it is necessary to point out that the EU legislator has stressed that this approach requires the EDP to act in full transparency to both the suspect and the authorities of the third country. Indeed, mutual trust between the EPPO and the latter can only be fostered if consent to this course of action is granted. As ingenious as this third approach might appear, it is obvious that, in the interest of legal certainty, mutual trust should lead in the long term to the conclusion of an agreement setting out the terms of the cooperation and specifically foreseeing the intervention of the EPPO.

It should be stressed that in the meaning of art. 104 of the EPPO regulation, cooperation implies the possibility to provide information or evidence in the possession of either the EPPO or the third country. However, this provision expressly does not cover the extradition of persons suspected of having committed a criminal offence, as the EU legislator was of the opinion that such a faculty should be left to the member states, not just because the EPPO will not have its own detention facilities or police officers, but because extradition has traditionally been regarded as a sensitive area where national authorities prefer to be in charge of the decision-making themselves due to the implications on their bilateral relations with third countries. Furthermore, it should be recalled that some member states are barred from extraditing their nationals by their constitutional law[23], just to mention a few considerations in support of allowing the member states to keep this faculty despite the EPPO being in charge of an investigation. The third avenue of cooperation with third countries is laid down in art. 104(5) of the EPPO regulation and described above, and might prove useful in the future, as the EPPO would be able to rely on the EDPs embedded in their national judicial system as well as on other national resources (infrastructure, staff, equipment, etc) to request extradition. Indeed, art. 104(7) of this regulation states that where it is necessary to request the extradition of a person, the handling EDP may request the competent authority of its member state to issue an extradition request under applicable treaties and (or) national law.

As for the cooperation with third countries taking place on a contractual basis, it should be observed that the EPPO regulation distinguishes between international agreements and working arrangements as the two possible legal instruments. Those falling within the first category are legally binding instruments concluded by the EU as a whole pursuant to art. 218 of the TFEU that set out the terms of the cooperation, whereas the instruments referred to in art. 104(1) in conjunction with art. 99(3) of the EPPO regulation merely deals with technical and (or) operational matters that aim to facilitate cooperation and the exchange of information between the parties, as already explained in this paper. To date, the EPPO has concluded working arrangements with the judicial authorities of a number of third countries, such as the USA, Moldova, Ukraine, Albania, Georgia and North Macedonia. The EPPO has prioritised the conclusion of working arrangements with the authorities of those third countries that it considers particularly relevant for the fulfilment of its mission. The conclusion of those working arrangements is possibly due to the fact that the EPPO has been given legal personality according to art. 3(2) of the EPPO regulation, which allows this EU body to enter into legal commitments in its own name instead of relying on the EU's legal personality. In that respect, the EPPO is similar to other EU agencies and bodies that, as part of the wider phenomenon of agencification in EU public administration, carry out various tasks, even beyond the EU's external borders [1, p. 44]. By spelling out the subject matter of the working arrangements that may be concluded, the EU legislator has apparently aimed at preventing the risk that EPPO might overstep its competencies.

General aspects concerning the functioning of the EPPO

Working languages. Like many other EU institutions, agencies and bodies, the EPPO has established its working language by the decision of 30 September 2020 on internal language arrangements, adopted on the basis of art. 107(2) of the EPPO regulation that requires a two-thirds majority of the college members. According to this decision, the working language for the operational and administrative activities of the EPPO shall be English. Having said this, the decision in question takes into account the fact that French is currently the working language of the CJEU by stipulating that the said language shall be used along with English in its relations with this judicial institution.

Legal personality and capacity. Further to the legal personality referred to above, the EPPO has in each of the member states the legal capacity accorded to legal persons under national law according to art. 106(1) of the EPPO regulation, which allows it, for example, to conclude contracts for the acquisition of goods and services in the framework of tender procedures. This is necessary in order to be able to operate as an EU body in the member state but particularly in Luxembourg, where it has its headquarters. In this context, it should be mentioned that art. 106(2) of

[23]See: CJEU judgment of 2 April 2020 in case C-897/19 PPU, Ruska Federacija, EU: C:2020:262. Para 13.

the EPPO regulation refers to an important requirement for any EU institution, agency and body, namely the conclusion of a headquarters agreement with the host member state. It follows from this provision that the necessary arrangements concerning the accommodation provided for the EPPO and the facilities made available by Luxembourg, as well as the specific rules applicable in that member state to the members of the college, the administrative director and the staff of the EPPO, and members of their families shall be laid down in the said headquarters agreement. The agreement in question has been concluded on 27 November 2020.

Luxembourg as the "judicial capital" of Europe. Pursuant to art. 341 of the TFEU, the seat of the institutions of the EU shall be determined by the common accord of the governments of the member states. Although this provision refers exclusively to the "institutions" within the meaning of art. 13 of the TEU, the member states appear to have interpreted it as encompassing agencies and bodies as well. However, the CJEU has recently made clear that the competence to determine the location of the seat of a body, office or agency of the EU "lies not with the member states but with the EU legislature, which must act to that end in accordance with the procedures laid down by the substantively relevant provisions of the EU treaties"[24]. This makes perfect sense, as the power to adopt the founding act of any of the entities referred to above logically implies the competence to take a decision on its geographical location. Founding acts usually expressly specify the seat of the entity in question, as is the case in art. 106 of the EPPO regulation. In this context, it should be pointed out that the question as to which legal bases are applicable in connection with the establishment of EU bodies, offices of agencies has already been extensively discussed elsewhere by the author so readers are kindly invited to consult this source [1, p. 44]. The question regarding the specific legal basis for the establishment of the EPPO has been explained in the introduction to this paper.

The (political) choice of Luxembourg as the host city of a future EPPO was taken at the European Council on 12 and 13 December 2003, simultaneously with the selection of the Hague as the host city of Eurojust, even though the wording of art. 86 of the TFEU ("establish a European Public Prosecutor's Office from Eurojust") could suggest that both entities would have to be based in the same city. On the other hand, this phrase could be interpreted as referring to the structure and powers of the new EU body and not necessarily to its headquarters. However, as already explained in this paper, the Council opted for making the EPPO not just a department or internal service of Eurojust but rather an autonomous EU body with which it maintains close ties. Consequently, the decision taken by the Council has cleared any remaining ambiguity concerning the legal nature of the EPPO. As far as the location of the headquarters is concerned, it is worth noting that the aforementioned decision of December 2003 refers to an earlier decision of the representatives of the Governments of the member states, adopted in 1967, in which it is explicitly stated that "shall be located in Luxembourg the judicial and quasi-judicial bodies"[25]. Against this background, it is safe to conclude that this earlier decision paved the way for the subsequent selection of the headquarters of the EPPO throughout the process that led to its establishment [24, p. 52]. This interpretation is confirmed by recital 121 of the EPPO regulation, which refers explicitly to both decisions. With the establishment of the EPPO in Luxembourg City, besides the CJEU, the EFTA Court, the Court of Justice of Benelux[26] and, more recently, the Court of Appeal of the Unified Patent Court[27], this city deserves henceforth being denominated the judicial capital of Europe (for a comparative study of the procedural rules applied by various international courts, see: [25]).

Transparency and public access to documents. The EPPO must comply with the entirety of rules related to good administration enshrined in art. 41 of the Charter, in particular with those concerning transparency and public access to documents, in addition to the rules related to the EPPO's operational activities in the framework of criminal investigations and prosecutions. Article 109(1) of the EPPO regulation, therefore, provides that the Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall apply to documents other than case files, including electronic images of those files, that are kept by the EPPO in accordance with art. 45 of the EPPO regulation. Furthermore, as has already been mentioned in this paper, this EU body will have to abide by the rules on the protection of personal data, a subject particularly sensitive in the area of criminal investigations and prosecutions, and to cooperate with the EDPS, whose participation is explicitly foreseen in several provisions of the EPPO regulation.

Staff rules. The rights and obligations of EPPO staff are governed by art. 96–98 of the EPPO regulation. Ac-

[24]CJEU judgment of 14 July 2022 in case 743/19, Parliament v Council, EU: C:2022:569. Points 73, 74.

[25]Decision (67/446/EEC) (67/30/Euratom) of the representatives of the governments of the member states of 8 April 1965 on the provisional location of certain Institutions and departments of the communities.

[26]The Treaty of 31 March 1965, relating to the institution and statute of a Benelux Court of Justice entered into force on 1 January 1974. The permanent seat of the court is in Luxembourg, where it holds hearings. The court is an international court which essential role is to promote uniformity in the application of the legal rules which are common to the Benelux countries in a wide variety of fields such as intellectual property law (trademarks and service marks, designs and models), civil liability insurance for motor vehicles, penalty payments, visas, collection of tax debts, protection of birds and equal tax treatment.

[27]See: Agreement on a Unified Patent Court.

cording to its art. 96(1), the Staff regulations and the Conditions of employment of other servants of the EU (CEOS), and the rules adopted by agreement between the institutions of the EU for giving effect to those Staff regulations and the CEOS shall apply to the European Chief Prosecutor and the European prosecutors, the EDPs, the administrative director and the staff unless otherwise provided in the EPPO regulation. Article 96(4) requires the college of the EPPO to adopt implementing rules to the aforementioned legal acts. This has occurred with the college decision of 28 April 2021. In this context, it is worth noting that the European Chief Prosecutor and its deputies, as well as the European prosecutors, are engaged as "temporary agents" in accordance with art. 2 of the CEOS, whereas EDPs are engaged as special advisers in accordance with art. 5, 123, 124 of the CEOS. A special adviser is a person who, by reason of his or her special qualifications and notwithstanding gainful employment in some other capacity, is engaged to assist one of the institutions of the EU either regularly or for a specified period and who is paid from the total appropriations for the purpose under the section of the budget relating to the institution which he or she serves. Furthermore, according to art. 98 of the EPPO regulation, the EPPO may make use, in addition to its own staff, of "seconded national experts" or other persons put at its disposal but not employed by it. The "seconded national experts" shall be subject to the authority of the European Chief Prosecutor in the exercise of tasks related to the functions of the EPPO. By the college decision of 22 September 2021, the EPPO has adopted rules governing the engagement of this type of staff. Finally, it should be mentioned that Protocol No. 7 on the privileges and immunities of the EU applies to the EPPO and its staff.

The recruitment of suitable staff encountered some difficulties at the beginning, related mainly to the insufficient funding of this EU body[28] and the high cost of living in Luxembourg, both factors that affected the attractiveness of the EPPO as an employer. Whilst it was initially assumed that some staff members of the Commission and Eurojust would voluntarily seek assignment at the EPPO, this scenario has so far failed to materialise. In general, recruitment of suitable staff in Luxembourg appears to meet some difficulty, and this situation let several actors – such as the Court of Auditors and trade unions representing EU staff – to demand tangible solutions, including a corrector coefficient for Luxembourg, distinct from the one currently applicable to Brussels. Another difficulty that the EPPO had to face was the delay in the appointment of EDPs by some member states, in particular, Slovenia [26, p. 209], a situation which had to be addressed through political intervention at various levels. At this point in time, the process of appointment can be considered complete.

Case management system and other IT tools. Having a case management system is of utmost importance for prosecutors. In particular, such a system must take into account the special nature of the EPPO, allowing the sharing of information between the central and decentralised levels. Given the fact that the work of the EPPO is carried out in electronic form, a major focus in the year 2021 was precisely on developing the case management system and making it ready for the operational start. It is described as a complex set of tools and applications that allows the European prosecutors, EDPs and designated EPPO staff to work in compliance with the EPPO regulation and the internal rules of procedure. It enables the transfer of cases to and from national authorities, the reception and processing of information from other sources (including private parties), automated translation and all of the case-related workflows. The case management system allows the EPPO to operate as a single office, making the case files administered by EDPs available to the central level for the exercise of its decision-making, monitoring, directional, and supervisory tasks. In addition to the case management system, the EPPO developed and rolled out several IT tools to facilitate and support operations: a platform for the secure transfer of information (EPPO box), crime report forms for the automated import of information, an information exchange tool with other judicial organisations such as Eurojust, Europol and OLAF and an e-translation system for the automatic translation of the registered cases.

The future of criminal justice

Possible extension of the EPPO's mandate to other serious crimes. One of the major advantages of establishing the EPPO lies in the fact that a supranational body vested with powers of investigation and prosecution will potentially manage to overcome the barriers typically posed by differences in terms of the legal system, language and culture. Driven by the interest in protecting the common good, the EPPO will pursue its mission with the support of the EU member states. Furthermore, assigning those powers to a specialised EU body could expect an increase in efficiency. Based on the premise that these expectations are realistic, one cannot resist the impression that the EU legislator has fallen short in exploiting the EPPO's full potential. Whilst the EU's financial interests are certainly a matter of general concern that can be affected by criminal acts that transgress national boundaries, there are other not less important interests that deserve equivalent protection. In this context, it is worth referring to art. 83(1) of the TFEU, a provision that allows the EU to establish "minimum rules concerning the definition of criminal offences and sanctions" in connection with

[28] EU Commission blocking the hiring of staff, says EPPO // Luxemb. Times. 22 Sept. 2021.

serious crimes having a cross-border dimension, such as terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

It is therefore surprising that the EPPO has seen a clear limitation of its mandate from the very moment of its inception. On the other hand, it should be pointed out that art. 86(4) of the TFEU contains a clause in principle allowing for an extension of its powers to include serious crimes having a cross-border dimension by means of a simplified amendment of the EU treaties [27]. This aspect is a legislative novelty and marks a major breakthrough with regard to previous projects mentioned in this paper that were restricted to the protection of the EU's financial interests [28]. This raises the question as to whether an extension of the EPPO's powers would be feasible to include the fight against environmental crime [29], organised crime and terrorism. The answer to this question depends on legal and political factors. Although there are currently no indications that there is a political will among the EU member states to make use of this faculty, recourse to art. 86(4) of the TFEU remains a legal option [30, p. 192]. According to this provision, a decision of the European Council is necessary, adopted unanimously after obtaining the consent of the Parliament and after consulting the Commission. The decision to be taken would have as effect to amend art. 86(1) of the TFEU which merely mentions the fight against the EU's financial interests as the EPPO's mission.

Considering that the EPPO has been established on the basis of enhanced cooperation, this would lead to the question as to what is to be understood by a "unanimous" vote, more concretely, whether the consent of all EU member states would be required or only those participating member states would be entitled to decide in support of such an extension of powers. Although art. 86 of the TFEU is a lex specialis in respect of the rules of title III of part VI concerning enhanced cooperation, this provision explicitly states that the rules on enhanced cooperation apply. As a consequence, the general rules apply as far as they do not conflict with the specific provisions laid down in art. 86 of the TFEU. Since neither para 1 nor para 4 contains any guidance, it is necessary to resort to the general provision of art. 330 of the TFEU, which clearly stipulates that "unanimity shall be constituted by the votes of the representatives of the participating member states only". Further guidance can be found in the interpretation of the provisions on enhanced cooperation given by the CJEU in the case concerning the creation of the Unitary patent, where it declared that "when the conditions laid down in Article 20 TEU and in Articles 326 TFEU to 334 TFEU have been satisfied <…> provided that the Council has not decided to act by a qualified majority, it is the votes of only those member states taking part that constitute unanimity"[29]. In other words, it could be argued that a unanimous vote by the member states participating in enhanced cooperation would be sufficient to extend the competence of the EPPO to other serious crimes having a cross-border dimension such as those referred to above, while the other member states would have to abstain from voting [27]. Once the competencies of the EPPO would have been extended, it would not be possible to have a "variable geometry" approach within the EPPO in a way that the member states would participate in different parts of its competence. In the same way, non-participating member states that might later join the EPPO would have to participate in it as a whole.

Such an approach would obviously require a legislative amendment of the EPPO regulation itself, with a view to specifying the crimes falling within the EPPO's jurisdiction. Whilst the EU legislature foresees minimum rules concerning the definition of criminal offences and sanctions, the principle nullum crimen sine lege, already mentioned in this paper, requires crimes, for which a sanction is foreseen, to be defined beforehand. Article 2 of the EPPO regulation would have to be amended in order to include a precise definition of cross-border terrorism and to provide the necessary terminological clarifications related to prosecutions in that area. In particular, art. 4 and art. 22 of the EPPO regulation, which set out the EPPO's tasks and material competence, would have to be amended, whereas the provisions pertaining to institutional and organisational aspects could remain untouched. An extension of the EPPO's mandate would also require adjustments in terms of budget and recruitment policy, as specialised staff would have to be hired. Having said this, these considerations remain strictly theoretical as long as there is no political will among the participating member states to embark on that path [31, p. 832]. However, it should be mentioned that the Commission has submitted in September 2018 a communication to the European Parliament and the European Council containing an initiative to extend the competencies of the EPPO to cross-border terrorist crimes[30], in which a number of proposals are made, including some of the amendments mentioned above. Although this communication does not legally qualify as a legislative proposal in the strict sense, the institutional history of the EU teaches us that the relevance of this type of initiative should not be underestimated. In any case, it would be wise to carry out a

[29]CJEU judgment of 16 April 2013 in joined cases C-274/11 and C-295/11, Spain and Italy v Council, EU: C:2013:240. Para 35.

[30]A Europe that protects: an initiative to extend the competencies of the European Public Prosecutor's Office to cross-border terrorist crimes : communication of the Europ. Comission to the Europ. Parliament and the Europ. Council of 12 Sept. 2018, COM(2018) 641 final.

preliminary assessment of such a need before eyeing an extension of the EPPO's mandate [32, p.118].

European Criminal Court and European criminal defence. The establishment of the EPPO has already led to further demands in academic circles for the creation of a European Criminal Court and an institutionalised European criminal defence [10, p. 386; 33, p. 183]. The idea of a European Criminal Court is explained by the concern for sufficient safeguards to control Eurojust, Europol, the European judicial network, OLAF and, in particular, the EPPO in the future. This concern is reflected in the Treaty of Lisbon, more concretely in lit c of art. 12 of the TEU and para 1 second sentence of art. 263 and para 5 of art. 263 of the TFEU. The idea of an institutionalised European criminal defence is explained by the concern to maintain a certain balance in procedural terms (so-called equality of arms) in cross-border criminal proceedings. The importance of the rights of defence was emphasised by the legally binding nature of the judicial rights of the Charter, in particular in art. 47 of the Charter. The preparation and gradual implementation of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings[31] also takes the importance of the rights of defence into account. As has already been explained in detail in this paper, art. 41 of the EPPO regulation refers to the rights of suspects and accused persons that apply at the EU and national levels. Although there is currently no legal basis for a European Criminal Court or an institutionalised European criminal defence system in the EU treaties, the concerns referred to above should be taken into consideration as far as possible in the further development of the EPPO and the rights of suspects and accused persons in criminal proceedings.

Looking back at the first year of operation

On 24 March 2022, the EPPO published its first annual report[32], which gives an account of the office's operational activities from 1 June to 31 December 2021. The report provides an overview and statistical data on the operational activities of the central office in Luxembourg and all 22 participating member states. It also outlines typologies identified in EPPO cases and recovery actions regarding the proceeds of criminal activity. In the first seven months of operation, the EPPO processed 2,832 crime reports. 576 investigations were opened, and 515 investigations were active by the end of the year. The estimated damage to the EU's budget was around 5.4 bln euro, whereby 147 mln euro were seized upon request by the EPPO. 95 European delegated prosecutors have been appointed, who work in 35 EPPO offices in the 22 participating member states. Nevertheless, it should be borne in mind that these numbers are updated on a regular basis by the EPPO in order to better reflect the current state of affairs.

The EPPO's success can be best measured by the number of convictions to which the prosecutions have so far led in Croatia, Bulgaria, Latvia and Germany, often involving criminal activity in other member states as well, such as Czechia and Romania. The convictions are essentially related to subsidy fraud in connection with the allocation of funds from the European Agricultural Fund for Rural Development, procurement fraud and VAT carousel fraud [34]. The sanctions imposed on the perpetrators of these criminal offences include several years of imprisonment as well as fines. These cases are reported by the EPPO in official press releases and very often echoed by the general press, contributing to an increased visibility of the EPPO's activities in the public sphere.

Conclusions

The establishment of the EPPO constitutes without any doubt a milestone in the institutional history of the EU. A supranational body has been set up, endowed with the powers to prosecute criminal offences that affect the financial interests of the EU. An important gap in the institutional framework has been filled in so far as the EPPO will complement the activities carried out by other EU entities with investigative powers such as OLAF, Europol and, most importantly, Eurojust. The expected synergy effects resulting from the cooperation between these entities will contribute to a more efficient fight against crime across national borders. The statistics related to the number of prosecutions as well as the amount of money seized by the EPPO and the supporting national authorities within such a short period of time give reasons for optimism. The good results obtained by the EPPO to this date will hopefully convince the member states that its creation was a good investment and that cooperation truly pays off. As any newly created body, the EPPO must find its place in the complex institutional framework of the EU and demand to be recognised as a valuable partner by all member states, in a spirit of sincere cooperation. Both the Commission and the CJEU are likely to play a crucial role in the pursuit of this objective.

The EPPO's success will hopefully motivate the EU legislature to embark on more ambitious projects such as the extension of this EU body's mandate to include the

[31] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings.

[32] EPPO annual repost [Electronic resource]. URL: https://www.eppo.europa.eu/sites/default/files/2022-03/EPPO_Annual_Report_2021.pdf (date of access: 20.12.2022).

fight against other criminal offences having cross-border relevance, for example, organised crime, terrorism and environmental crime. For this purpose, a preliminary assessment of such a need should be carried out. Furthermore, it would be worthwhile envisaging tackling issues likely to hamper the EPPO's functioning, such as the current fragmentation of the rules on procedural and substantive criminal law. A decisive approach should be undertaken with a view to creating a uniform set of rules governing the criminal procedure, going beyond what is already set out in the EPPO regulation. Furthermore, an effort should be made to further harmonise the typification of criminal offences in the interest of legal certainty, thereby preventing the risk that criminal proceedings be considered in breach of the nullum crimen sine lege principle. Moreover, it would be advisable for the EPPO to develop a sort of guidance for national courts on how severely criminal offences should be sanctioned, so as to foster a coherent judicial practice throughout the EU, eventually preventing the risk of forum shopping. All these measures would be beneficial to the area of freedom, security and justice in so far as they would strengthen the trust of EU citizens in the institutions administering justice. It is necessary to stress in this context that the creation of the EPPO represents a contribution to increased accountability of the EU towards its citizens and must therefore be considered a profoundly democratic act.

According to recent public statements made by the European Chief Prosecutor, the objective of the EPPO for the next year is to consolidate the achievements made so far. Whilst these achievements are indeed remarkable, as the statistics show, the present paper has presented a number of issues that the EPPO should raise with the EU institutions involved in the legislative process with a view to improving its effectiveness.

References

1. Kühn WM. The phenomenon of "agencification" in the administration of the European Union. *Ukrainian Journal of Constitutional Law*. 2020;2:44–73.
2. Mitsilegas V. *EU criminal law*. Oxford: Oxford University press; 2022. 776 p. DOI: 10.5040/9781474203401.
3. Elholm T. EPPO and a common sense of justice. *Maastricht Journal of European and Comparative Law*. 2021;28(2):212–228.
4. Kühn WM. Aspectos jurídicos y perspectivas políticas de una posible retirada de la Unión Europea por parte del Reino Unido. *Revista de la Secretaría del Tribunal Permanente de Revisión del Mercosur*. 2016;4:64–93.
5. Petrasch M. Europäische Staatsanwaltschaft ante portas. *Corporate Compliance Zeitschrift*. 2021;3:126–132.
6. Kühn WM. The reform of the EEA rules on public procurement. *Upphandlingsrättslig Tidskrift.* 2015;2:150–179.
7. Martin-Vignerte E. Procedural safeguards in EPPO cross-border investigations. *ERA Forum*. 2020;3:501–513.
8. Kühn WM. Problemas jurídicos de la Decisión Marco relativa a la Orden de detención europea y a los procedimientos de entrega entre los Estados Miembros de la Unión Europea [Internet; cited 2022 December 20]. Available from: https://revistas.uva.es/index.php/ree/article/view/7394.
9. Kühn WM. Responsabilidad extracontractual de la Unión Europea violación por parte de su Tribunal de Justicia del derecho fundamental a una duración razonable del proceso. *Revista de la Secretaría del Tribunal Permanente de Revisión del Mercosur*. 2018;6:169–199.
10. Christodoulou H. *Le parquet européen: prémices d'une autorité judiciaire de l'Union européenne*. Paris: Dalloz; 2021. 518 p.
11. De Hert P, Papakonstantinou V. Data protection and the EPPO. *New Journal of European Criminal Law*. 2019;10(1):34–43.
12. Kühn WM. The principle of mutual recognition of judicial decisions in EU law in the light of the full faith and credit clause of the US Constitution. *Boletín mexicano de derecho comparado*. 2014;140:449–484.
13. Weyembergh A, Briere C. *Towards a European Public Prosecutor's Office (EPPO)*. Brussels: Directorate-General for Internal Policies; 2016. 58 p.
14. Wade M. The EPPO and the pitfalls of actuarial justice. *Maastricht Journal of European and Comparative Law*. 2021; 28(2):265–280. DOI: 10.1177/1023263X211006516.
15. Ligeti K. The structure of the EPPO: features and challenges. *Hrvatski ljetopis za kaznene znanosti i praksu*. 2020;27(1): 33–53.
16. Lažetić G. A short overview of some challenging issues regarding the successful functioning of the EPPO. *Hrvatski ljetopis za kaznene znanosti i praksu*. 2020;27(1):187–208.
17. Espina Ramos J. The relationship between Eurojust and the European Public Prosecutor's Office. In: Bachmaier Winter L, editor. *The European Public Prosecutor's Office: the challenges ahead*. Madrid: Springer; 2018. p. 87–101.
18. Niblock R. Cooperation with EU agencies and bodies under the EU – UK Trade and cooperation agreement: Eurojust, OLAF and the EPPO. *New Journal of European Criminal Law*. 2021;12(2):277–282.
19. Landwehr O. External relations of the EPPO: cooperation with OLAF. *Hrvatski ljetopis za kaznene znanosti i praksu*. 2020;27(1):245–246.
20. Franssen N. The future judicial cooperation between the EPPO and non-participating member states. *New Journal of European Criminal Law*. 2018;9(3):291–299.
21. Codruta Kövesi L. Wir holen das Geld zurück, das den EU – Finanzministern durch die Lappen geht. *Die Presse*. 2022 September 2.
22. Franssen N. The future judicial cooperation between the EPPO and third countries. *New Journal of European Criminal Law*. 2019;10(2):168–185.
23. Fitzmaurice M. Third parties and the Law of treaties. *Max Planck Yearbook of United Nations Law*. 2002;6:37–138.
24. Andreone F. L'institution du Parquet européen. *Revue de l'Union européenne*. 2018;61:43–59.
25. Kühn WM. The draft protocol on the creation of the Court of Justice of Mercosur – a new milestone in the judicialisation of regional integration law. *Journal of the Belarusian State University. International Relations*. 2017;2:55–71.

26. Wahl T. EPPO appointed EDPs from Slovenia. *Eucrim*. 2021;4:199–235.
27. Suhr O. *EUV/AEUV Kommentar.* Munich: C. H. Beck; 2022. 3044 S.
28. Martín Pascual E. Últimos avances en la cooperación judicial penal: la cooperación reforzada permite la creación de la Fiscalía Europea a partir del Reglamento (UE) 2017/1939. *European Papers*. 2018;3(2):933–946.
29. Kirilowits N. Cécile Soriano: "Défendre les intérêts financiers de l'Union européenne n'est rien d'autre qu'un acte démocratique!" [Internet; cited 2022 December 20]. Available from: https://www.actu-juridique.fr/international/international-etrangers/droits-europeen-ue/cecile-soriano-defendre-les-interets-financiers-de-lunion-europeenne-nest-rien-dautre-quun-acte-democratique/#:~:text=Imprimer-,C%C3%A9cile%20Soriano%20%3A%20%C2%AB%20D%C3%A9fendre%20les%20int%C3%A9r%C3%AAts%20financiers%20de%20l'Union,qu'un%20acte%20d%C3%A9mocratique%20%C2%BB%20!&text=Un%20peu%20plus%20d'un,par%20les%20acteurs%20institutionnels%20europ%C3%A9ens.
30. Di Francesco Maesa C. EPPO and environmental crime: may the EPPO ensure a more effective protection of the environment in the EU? *New Journal of European Criminal Law*. 2018;9(2):191–215.
31. Schnichels D, Seyderhelm J. Die Reform des europäischen Umweltstrafrechts. *Europäische Zeitschrift für Wirtschaftsrecht*. 2020;19:829–832.
32. Munivrana Vajda M. Questioning the jurisdiction of the European Public Prosecutor's Office. *Hrvatski ljetopis za kaznene znanosti i praksu*. 2020;27(1):117–122.
33. Magnus D. Europäische Staatsanwaltschaft – Vorzüge und Schwächen des aktuellen EU-Verordnungsvorschlag. *Zeitschrift für Rechtspolitik*. 2015;6:181–184.
34. Wahl T. EPPO cases: April – July [Internet; cited 2022 December 20]. Available from: https://eucrim.eu/news/convictions-in-eppo-cases-april-july-2022/.

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