Law Review • vol. X, issue 2, July-Decembre 2019, pp. 82-97

European Public Prosecutor's Office - A New Beginning ?

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Abstract

The adoption of the Council Regulation 2017/1939 (entered into force on 20 November 2017) implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office' (the EPPO) is a turning point in the development of the European Union as an Area of Freedom, Security and Justice, by setting - up of the first european investigating and prosecuting authority.

The structure and functioning of the new authority, together with the limited scope of its competence make the EPPO as an authority whose legal environment largely builds on the national legal systems.

The founding of the new investigative body is far from fully eradicating in itself the various difficulties of judicial cooperation in criminal matters.

Its implementation strongly is putting into evidence the crucial necesity to foster mutual legal understanding and mutual trust that the experience showed is not achieved yet among the member states.

Keywords: *European Public Prosecutior Office, criminal investigations, European Union financial interests, fraud*

Introduction

The European Public Prosecutor's Office is an independent European prosecution service responsible for investigating, prosecuting and bringing to justice the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the European Union..

The EPPO is guided by the principles of rule of law and proportionality in all its activities.

National legislation is enforced to the extent of a matter not regulated by the Regulation.

If nothing else is not stipulated in the Regulation, the applicable national law shall be the law of the member state whose european delegated prosecutor is handling the case.

Where a matter is governed by both national law and the regulation, european legislation is stronger.

The competent national authorities have the obligation to assist and support the investigations and prosecutions of the EPPO. Every action, policy or procedure must be guided by the principle of sincere cooperation.

1. General Aspects

The question of whether or not the EU truly wants the EPPO to warranty more advantageous safety of its financial interests cannot be dealt with in depth in this contribution; however, two points want to be made. First, the numbers., The Commission argues that a huge quantity of EU money is yearly misplaced or diverted because of fraud.

Article 86 TFEU requires that the Regulation on the EPPO is adopted with a different legislative technique in which the Council acts unanimously after obtaining the consent of the European Parliament. As in all the occasions where the consent of the latter is critical for an act to be adopted, the "two establishments perpetually negotiate to agree a common text"; in the case of the EPPO, the Parliament has issued three resolutions in order to direct the negotiations of the Council, calling on it to put into effect some adjustments of the text. Always conceived as a physique aimed at the protection of the EU budget, the EPPO will be ready with regard to "criminal offences affecting the monetary pastimes of the Union". However, some argued and nevertheless argue that the Office need to be given different competences beyond the restricted sphere of PIF offences. [1]

Article 86(4) TFEU states that the cloth competence of the EPPO may want to be broadened to consist of different types of "serious crime having a cross-border dimension", however this requires the unanimous choice of the European Council.

However, the boundaries of the cloth competence of the EPPO will be set out by means of country wide laws. The draft Regulation does no longer outline PIF offences however refers to a Directive to be adopted via the Council and the European Parliament, the so-called 'PIF Directive'. The Commission tabled the thought in July 2012 and eventually, after extra than 4 years of negotiations, an settlement has been found.[2]

Moreover, it has been lengthy discussed whether or not VAT frauds be protected in the textual content of the Directive and, therefore, whether or not they need to fall inside the competence of the EPPO. The compromise located in the Council is that the most serious forms of such fraud have to be included in

[1] See F. Giuffrida., *The European Public Prosecuror s Office : King Without kinfdom ?* CEPS Research Report nr2017 /03"s : p 8.

[2] See F. Giuffrida, Op Cit., p 9.

the Directive, particularly VAT frauds which are linked with the territory of two or more member states and contain complete damages of at least 10 million Euro.

Moreover, the Office shall also be equipped for the offence of taking part in a criminal organisation, when the focus of such a crook organisation is to commit any of the crimes affecting the financial pursuits of the EU provided in the aforementioned Directive. However, no longer only the concept of the 'focus' of the criminal pastime is quite difficult to grasp. The Regulation also states that the participation in a criminal corporation has to be understood "as defined in Framework Decision 2008/841/JHA, as applied in countrywide law". This Framework Decision used to be meant to limit the diversity of country wide legislation on organised crime, however it failed in accomplishing this goal; its have an impact on on national regulation has been certainly very limited, as acknowledged through the Commission in its current Report on the implementation of the Framework Decision. [3]

2. EPPO in European Union documents

The text of Article 86 TFEU in its ambiguity and relying on the interpretation carried out appears to allow the development of "different" EU criminal models. It seems to have been this (hybrid) perception of the criminal model that has been expressed on the EPPO Proposal.

In article 86 (1) TFEU, it is provided the opportunity of the Council to set up the EPPO. In paragraph 2 of this Article, it is "determined" the scope of competences of the EPPO, "offences towards the Union's monetary interests, as decided by the legislation supplied for in paragraph 1". The nucleus of the EPPO's competences remains confined to the offences in opposition to the Union's monetary interests. In addition, as accredited in the text of the Constitutional Treaty, in accordance with article 86 (4) TFEU. [4]

The Treaty offers two areas of material scope of competence of the EPPO. The first is bearing on to the "offences towards the Union's economic interests" (paragraphs 1 and 2 of article 86 TFEU). The second is related to "serious crime having a cross-border dimension" (paragraph four of article 86 TFEU). The closing textual content of article 86 TFEU comprised, in a way, the two areas of crime, synthesizing the two current understandings of "added value" of EPPO. These two understandings are reflected, in a positive way, on the reasoned opinion submitted, inside the framework of Protocol No 2 on the software of the concepts of subsidiarity and proportionality, by using the countrywide

[3] See F. Giuffrida, Op Cit., p 10.

[4] See M. Santos *The definition of the comoetence rationae materiae of the European Public Prosecuror Office and the substantive legality principle – The way forward,* Portuguese Law Review, Nr. 1/ 2016, p 65.

Parliaments and interviewees of countrywide and supranational practitioners, as well as in literature.

But if the material scope of the EPPO`s would be defined with the aid of reference to the directive and its country wide imposing legislation, this would suggest that the EPPO would be provided with specific definitions of criminal sorts of crime inside its competence, in accordance to the range of Member States participating in this European body. cases".

Secondly, it is important to realize that the expression "crimes affecting the economic pastimes of the union" is "an self sufficient notion of EU regulation that as to be interpreted independently and uniformly at some stage **in** the EU. [5]

Besides, in accordance to the different widespread of procedural safeguards and judicial review among the Member States, "EU residents and economic operators have a imperative proper following from the proper to a truthful trial to recognize which prosecuting authority (national or European) is in cost of the case", which requires that "the applicable law be foreseeable" In spite of the ambiguity of the textual content of article 86 TFEU, "(...) we can now not conclude that the legislator has deliberately excluded considerable harmonization from the phrasing under Article 86". It is essential to have a set of offenses and sanctions, which are prescribed via a regulation, which correspond to "the autonomous definition of PIF in EU law", and "[t]his law should be part of one of the regulations based totally on Article 86 TFEU". Only with this viewpoint, it is viable to reach a set of offenses and sanctions which will respect the major legality principle and to that extent with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.[6] The thought of a European Public Prosecutor has been part of educational and policy discussions on developing the European system of justice. Although there are no genuine figures about how a lot money is misplaced thru crime in opposition to the EU budget, it has been argued that the current device of the protection of the economic interests of the EU does not make certain the sufficient detection and investigation of these offences. Against this background, after nearly 15 years of scholarly and policy reflection, in July 2013, the EU Commission its notion to set up the European Public Prosecutor's Office.

The perception that the economic resources of the European Communities are no longer covered properly commenced to emerge in the Nineteen Eighties at European level.

The gradual enlargement of supranational competences and the increasing value of the EEC (EU) price range both in revenue and expenditure contributed

[5] See M. Santos Portuguese Law Review, Op Cit., p 76.

[6] See M. Santos Portuguese Law Review, Op Cit., p 77.

to such grasp and known as for attention at the political level to the protection of the Community's financial pursuits specially towards fraud.[7]

Even in lack of reliable facts and massive discrepancies in the more than a few estimates, the above-mentioned numbers virtually point out that there is an "enforcement gap" in the protection of the financial activity of the EU. Although Member States have not denied the existence of the problem, they traditionally have disagreed as to the solution that should be adopted; i.e. "how" must this "enforcement gap" be crammed and "who" have to do it.

The Treaty lays down obligations in relation to the protection and the enforcement of the EU budget. Accordingly, art. 325 TFEU – as properly as its predecessor art. 280 TEC – prescribes that the EU and its Member States "shall" take deterrent and fantastic measures to counter fraud and different illegal things to do affecting the EU's economic interests, the Member States "shall" coordinate their movements to protect the equal interests,8 the EU legislature "shall" adopt the critical legislative measures for each preventing and warfare such misconduct and the Commission "shall" periodically document both to the Council and the European Parliament on the state of their implementation.[8]

In distinction to the language of art. 325 TFEU, art. 86 TFEU stipulates a tentative prison basis. The Council "may" adopt a regulation setting up the EPPO according to a special legislative procedure. This optionally available criminal basis is the end result of the compromise between the supporting, the hesitating and the opposing Member States and shows the lack of a frequent understanding on the need and the core aspects of the EPPO. In fact, by rendering art. 86 TFEU optional, the drafters of the Treaty delegated the assessment of the want for an EPPO to the Member States and made it challenge to eventual future political momentum.

3. Structure of the Office

The EPPO is organised into central and decentralised levels. The central Office is composed of the College, the Permanent Chambers, the European Chief Prosecutor, his(her) deputies, the European Prosecutors (EP), and the Administrative Director, whereas the European Delegated Prosecutors (EDPs) operate at the decentralised level. [9]

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[7] K. Ligeti, A Marleta, *The European Public Prosecutor's Office: what role for OLAF in the future? In: Đurđević Z, Ivičevic Karas E (eds) European criminal procedure law in service of protection of European Union financial interests: state of play and challenges. Croatian Association of European Criminal Law*, Zagreb., p 54.

[8] K. Ligeti, A Marleta, Op Cit., p 55.

[9] See F. Giuffrida, Op Cit., p 12.

The EDPs are country wide prosecutors who are simultaneously members of the EPPO. As a consequence, when they are no longer dealing with crimes inside the competence of the EPPO, they proceed to lift out their ordinary tasks: this extraordinary reputation is commonly referred to as 'double hat', which means that when EDPs wear the countrywide hat they continue to be national prosecutors for all intents and purposes, whereas when they put on the European hat they have to observe instructions from the central Office.

The EDPs play a central function in the EPPO: they carry out the investigations under the path of the central Office and put in practice in their member country the decisions taken at the EU level via the Permanent Chambers.

At the other give up of the spectrum, the College is the management body of the Office and is composed of the European Chief Prosecutor and one European Prosecutor per member state.

It has no operational powers in character cases and it offers solely with strategic things and regular issues.

It adopts the price range of the Office and units up the Permanent Chambers. [10]

The Permanent Chambers shall have three members, the chair and two everlasting members.

The inner guidelines of procedure, to be adopted by way of the College, will specify how many Chambers have to be established. The same internal guidelines "shall make certain an equal distribution of workload on the groundwork of a machine of random allocation of instances and shall, in terrific cases, provide for approaches allowing…for deviations from the precept of random allocation upon selection with the aid of the European Chief Prosecutor". The Chambers are concept to be the beating heart of the EPPO, on the grounds that they undertake the most relevant operational choices of the Office, which need to be because of this enacted through the European Delegated Prosecutors.

However, the Regulation adds some other layer between the Chambers and the EDPs, namely the supervising European Prosecutor, who supervises the activities of the EDPs and can supply instructions to them in a precise case. He is one of the European Prosecutors of the College, and extra precisely the one from the same member nation of the supervised European Delegated Prosecutor. Reasons of effectivity therefore underpin the unusual function of the supervising European Prosecutors "as liaisons and channels of statistics between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States of origin": the criminal structures of member states "still vary to a tremendous degree, and it is clear that only a prosecutor with his heritage in a given felony system will be able to recognize exactly what movements are most suitable and efficient in that given state".

[10] See F. Giuffrida, Op Cit., p 13.

Moreover, in the final version of the draft Regulation a in addition electricity has been attributed to the supervising European Prosecutor: where the national law gives that an act of a prosecutor can be reviewed within the structure of the public prosecutor's office, the evaluate of an act of an EDP shall be reviewed through the supervising European Prosecutor.

The complex internal hierarchy of the EPPO is coupled with the exterior independence of the Office.[11]

As a consequence, the participants of the EPPO ought to no longer take instructions from people external to the Office itself, from EU our bodies or from member states. The EPPO shall be responsible to the Council, the Commission and the European Parliament, which have therefore the strength to follow to the Court of Justice with a view to the elimination of the European Chief Prosecutor and of the European Prosecutors under sure circumstances. The EPPO shall additionally transmit to each of these institutions, as well as to the national parliaments, an annual report. The experience of Eurojust suggests that such a report is an instrument with very restrained practical relevance, when you consider that "the work and overall performance of Eurojust solely formally reaches the political degrees of the Council and important contrast or political debate on this topic is no longer held". In addition, the European Chief Prosecutor shall appear once a year earlier than the European Parliament and earlier than the Council, and before national parliaments at their request, to give an account of the standard things to do of the EPPO. [12]

Therefore, notwithstanding the applicable embedding of the EPPO in national systems, its accountability has been lifted at the European level. Such a decision, as well as that on the independence of the Office, has raised worries in these international locations where the prosecution authorities are hierarchically subordinate to the Ministry of Justice, which is in turn in charge for their activities (such as in the Netherlands).

Investigations are carried out through the EDP who is competent on the foundation of the above-mentioned rules, below the course of the Permanent Chamber and the supervision of the capable European Prosecutor. However, there are two exceptions to this rule (the case can be allotted to another European Delegated Prosecutor in the identical member state, if the equipped EDP can't function the investigations or does no longer comply with the directions of the Chamber or of the European Prosecutor, and in the most serious cases, the supervising European Prosecutor can decide to behavior the investigations himself.[13]

[11] See F. Giuffrida, Op Cit., p 16.
[12] See F. Giuffrida, Op Cit., p 16.
[13] See F. Giuffrida, Op Cit., p 18.

The EDP can order the investigative measures which are accessible to prosecutors beneath country wide law in comparable national cases. In addition, member states shall make sure that the EDPs can request some investigative measures expressly listed in article 25(1) of the draft Regulation (such as looking premises or intercepting digital communications), at least in cases where the offence below investigation is punishablby a most penalty of at least four years of imprisonment. The strategies and the modalities for taking the measures shall be ruled by using countrywide law, however the draft Regulation introduces similarly requirements, when you consider that all the measures may be ordered solely the place "there are practical grounds to accept as true with that the particular measure in question would possibly supply information or proof beneficial to the investigation, and the place there is no less intrusive measure handy which ought to gain the equal objective".

In any case, the costs of the measures to be adopted have to be paid with the aid of country wide authorities, except an fairly highly-priced investigative measure is necessary. In similarâ circumstances, the European Delegated Prosecutors may also consult the Permanent Chamber on whether the fee of the investigative measure could partly be met by way of the EPPO.[14]

4. Procedural aspects

Cross-border investigations. In cross-border cases, the usual rule is that the EDP coping with the case assigns the execution of an investigative measure to the EDP of the member state in which the measure needs to be achieved (the 'assisting EDP'). In some circumstances (such as when the mission is incomplete or when the requested measure does now not exist underneath national law), the supporting EDP has to inform his supervising European prosecutor and the EDP handling the case in order to resolve the hassle bilaterally. If they can't agree, the Permanent Chamber is referred to as in to determine whether or not and by means of when the assigned or every other measure shall be undertaken by the helping EDP.[15]

4. Pre-trial arrest. If the EDP has to arrest anyone in his(her) member state, (s)he applies national law. If the individual is placed in any other member state, the EDP shall trouble a European Arrest Warrant (EAW).

When the EDP investigating the case considers the investigations complete, he submits a document to the supervising European Prosecutor. The report consists of each a precis of the case and a draft choice on what is deemed to be suitable (dismiss a case or convey it to prosecution, etc.). Next, the supervising

[14] See F. Giuffrida, Op Cit., p 18.
[15] See F. Giuffrida, Op Cit., p 19.

European Prosecutor has to ahead these files to the in a position Permanent Chamber, if integral accompanied by means of hispersonal assessment. In principle, the Chamber is no longer sure both by using the draft choice of the EDP or through the evaluation of the supervising European Prosecutor, on the grounds that it can undertake its personal review of the case before taking a ultimate selection or giving in addition instructions to the EDP.[16]

In principle, the ready member kingdom is that of the EDP coping with the case. However, the Permanent Chamber can decide that it is extra fantastic for the prosecution to be launched in another member state, on the groundwork of the equal criteria to be taken into account when figuring out the EDP capable to lift out the investigations. The issue of the preference of forum is one of the most debated, due to the fact at the EU degree there are no binding guidelines on conflicts of jurisdiction. However, the Regulation solely states that the ready forum is chosen by using the Permanent Chamber, without any structure of judicial control at the EU level, however the strong criticism of many authors and experts.[17]

The choice of the Permanent Chamber may want to also lead to the dismissal of the case, specifically in instances of: demise or madness of the suspect or accused person, amnesty or immunity granted to him, winding up of the suspect or accused criminal person, expiry of the country wide statutory predicament to prosecute, ne bis in idem, and lack of applicable evidence. The Regulation makes clear that such a selection of the Chamber has to be adopted when the prosecution has come to be impossible "pursuant to the law of the Member State" of the EDP dealing with the case. This implies that all the grounds for refusal have to be interpreted according to country wide law. When the death or the madness of the suspect or accused individual is introduced to the fore, as well as the winding up of the suspect or accused felony person, it is apparent that the prosecution becomes not possible and that the Permanent Chamber has to disregard the case; the differences amongst legal systems should no longer be relevant.[18]

As some distance as the rights of the defendant are concerned.

Article 35 of the Regulation presents three extraordinary ranges of protection. First, suspects and accused individuals shall have the procedural rights available to them below the relevant countrywide law, inclusive of the opportunity to existing evidence, to request the appointment of specialists or expert examination and listening to of witnesses, and to request the EPPO to obtain such measures on behalf of the defence. [19]

[16] See F. Giuffrida, Op Cit., p 25.
[17] See F. Giuffrida, Op Cit., p 26.
[18] See F. Giuffrida, Op Cit., p 26.
[19] See F. Giuffrida, Op Cit., p 30.

In order to mood comparable consequences, the Regulation affords formore levels of safety .

First, the things to do of the Office shall be carried out "in full compliance with the rights of suspects and accused folks enshrined in the Charter of Fundamental Rights of the European Union, which include the proper to a honest trial and the rights of defence". Among others, the proper to ne bis in idem deserves precise attention, considering the establishment of the EPPO may want to pose dangers of double prosecution each at the countrywide and at the supranational level.

Therefore, the Regulation provides that if the EPPO "decides to exercising its competence, the competent countrywide authorities shall now not exercising their personal competence in recognize of the equal crook conduct". Likewise, the Regulation also prohibits OLAF to "open any parallel administrative investigation into the same facts" the place the EPPO decides to open a case. [20]

The trouble of the rights of the suspects and accused persons is strictly interlinked with that of the judicial overview of the acts of the EPPO. In that regard, the Commission's idea presents that, for the functions of judicial review, the EPPO has to be regarded a countrywide authority, with the end result that only national courts would be competent to rule on its acts. This provision ignited a lively debate, due to the fact many authors, specialists and politicians argued that a European body need to have been submitted to the control of the European Court of Justice.[21]

The modern Regulation, such as the Commission's proposal, gives that choices of the EPPO having felony consequences vis-à-vis third parties shall be situation to the overview of equipped country wide courts. The same applies to the failure of the EPPO to adopt a procedural act, having the identical impact vis-à-vis of third parties, which the EPPO is required to adopt on the foundation of the Regulation.

The capacity of the Court of Justice to assessment the selections to dismiss a case is regular with the current envisaged shape of the EPPO: such a decision is taken at the EU level by the Permanent Chambers, so that it is realistic to make it problem to the control of the Court of Luxembourg. For the very same reason, however, one ought to wonder why the different selections taken by way of the Permanent Chambers can't be reviewed at the EU level. A politicalanswer on the unique consideration paid to the dismissal selections ought to be linked with the mission of the EPPO: due to the fact the EPPO is supposed to bridge over the contemporary deficiencies of the combat towards crimes affecting EU monetary interests, the preference no longer to launch the prosecution has to be revised at

[20] See F. Giuffrida, Op Cit., p 30.

[21] See F. Giuffrida, Op Cit., p 32.

the EU degree in order to keep away from that instances are unreasonably dropped.[22]

In addition to the instances mentioned in the text, the Court of Justice is also able in any dispute concerning compensation for harm prompted by the EPPO, arbitration clauses contained in contracts concluded with the aid of the EPPO and staff-related matters. The Court of Justice has jurisdiction on the dismissal of the European Chief Prosecutor and of European Prosecutors, too. Finally, pursuant to the fourth paragraph of article 263 TFEU, the Court is competent to evaluation the selections of the EPPO which are not procedural acts, such as these pushing aside the EDPs or concerning data protection.

In conclusion, it is clear that the EU legislator is called on to strike a very delicate stability in the matter at stake. On the one hand, the need to warranty a uniform utility of the EU regulations concerning the European investigations would call for the scrutiny of the Court.[23]

Specifically, the EPPO is required to establish and keep a close relationship with Europol, Eurojust and OLAF, even although the privileged partner of EPPO should be Eurojust. In an admittedly obscure way, article 86 TFEU offers that the EPPO has to be set up "from Eurojust".[24]

The relations with third international locations and with non-participating member states pose a common problem, if EPPO could be viewed as a equipped authority for the functions of implementation of the measures regarding judicial cooperation. In other words, need to the EPPO be allowed to trouble and receive requests for mutual prison help or extradition. With regard to family members with third countries, the Commission's concept answered in the affirmative and brought an duty for the member states either to "recognise the European Public Prosecutor's Office as a equipped authority for the reason of the implementation of their international agreements on felony help in crook things and extradition, or, the place necessary, to alter these global agreements to make certain that the European Public Prosecutor's Office can exercising its functions on the basis of such agreements…". The contemporary draft Regulation is more complicated and presents special scenarios.

First, with regard to third countries, any possibility for the EPPO to intervene in the subject of extradition has been removed from the text. It is now provided that "[w]here it is vital to request the extradition of a person the European Delegated Prosecutor handling the case might also request the competent authority of his/her member state to trouble an extradition request in accordance with relevant treaties and country wide law". Once more, the negotiations have watered down the authentic provisions and the drawing close

[22] See F. Giuffrida, Op Cit., p 33.
[23] See F. Giuffrida, Op Cit., p 34.
[24] See F. Giuffrida, Op Cit., p 34.

EPPO will not be attributed any additional or new energy in the field. Quite curiously, this provision mirrors the new law of the pre-trial arrest at some stage in the investigations of the EPPO. However, apart from extradition, the EPPO can be recognized as the in a position authority in all the other matters of prison help with regard to third countries, in accordance to the targeted guidelines to be observed in the Regulation. [25]

Second, as a ways as the non-participating member states are concerned, at some stage in the negotiations it was once suggested that the member states setting up the EPPO may want to have recognized the Office as the equipped authority for the purposes of implementation of the relevant Union acts on judicial cooperation in their members of the family with non-participating member states. However, the closing version of the modern draft Regulation does now not characteristic this provision, even although some states had cautioned reintroducing it. Finally, the draft Regulation envisages a crucial role for Eurojust in the coordination of the investigations of the EPPO when non-participating member states are involved: Eurojust can be invited to supply aid in the transmission of the EPPO's selections or requests for mutual felony help to, and execution in, those member states.

In conclusion, the cutting-edge Regulation has paid more attention to the family members of the EPPO with the partners than the Commission's proposal.[26]

In fact, it is already clear that, the EPPO subsequently be created, some member states will now not take part in it, at least at the preliminary stage. Enhanced cooperation is consequently the most sensible way to set up the Office.

The functioning of the EPPO will be characterised with the aid of a excessive degree of interaction between EU regulation and national law.

Instead, the Commission's Proposal prescribed a mixed machine consisting of a minimal of European regulations to be extended through country wide crook procedural laws.

The Commission Proposal listed 21 types of investigative measures reachable to the EPPO, distinguishing between measures for which a prior judicial authorisation would be required and measures for which the judicial authorization would be wished only if the national law of the concerned Member States had prescribed it. The conditions for the authorization and the execution of the a number investigative measures, however, had been actually left to the national regulation of the Member State concerned. Although, the section of the Commission's Proposal pertaining to to evidence gathering was once modestly bold compared to the provisions on the institutional design, additionally this

[25] See F. Giuffrida, Op Cit., p 36.
[26] See, F. Giuffrida Op Cit., p 38.

section has been appreciably amended for the duration of the Council negotiations. The most vital modifications are the following: The quantity of investigative measures that must be available for the EPPOis reduce down from 21 to 5 and their availability is now conditional to a penalti threshold requirement of at least four years of imprisonment. Second, in case of cross-border investigations and go border investigative measures, a system of cooperation between the European Delegated Prosecutors of the a number of Member States has been introduced. [27]

It is a distinction between the European Delegated Prosecutor dealing with the case and the assisting European Delegated Prosecutor in the Member

State the place the measure is carried out. This terminology is simply reminiscent of the gadget of mutual felony assistance and seems to be relatively alien to the notion of a single office.

Several points of the Presidency's Proposal – such as the session method in case the law of the Member State where the measure is to be carried out, does no longer provide for the required measure or the possibility for the helping European Delegate Prosecutor to think about an alternative and much less intrusive measure than the one required – seem to be transplants of concepts from the European Investigation Order. Differently, however, from the European Investigation Order, the Presidency's Proposal is now not primarily based on mutual recognition.46 Instead it depends on a complex multi-level institutional structure which raises serious doubts on its workability and on the opportunity for the EPPO to efficiently perform its job.

In fact, there are many motives for that. The first cause is that it is a new supranational organization in the subject of criminal regulation enforcement. Unlike Europol and Eurojust it would additionally be entrusted with independent operational investigative and prosecutorial powers. This capability that Member States worry that their sovereign powers will be transferred to the supranational EU level.[28]

The second purpose is that this transfer of sovereignty is in truth a be counted of 'shared sovereignty', or of what the Germans name 'Vergemeinschaftlichung'. This ability that at the country wide level, in this case the pre-trial investigation and prosecution, the European dimension is increasing. National authorities are increasingly bestowed with European functions. Transfer of sovereignty and shared sovereignty looks to be contradictory, but that is only the case at first sight. In many areas of European regulation, and increasingly more also with regard to European enforcement, European agencies, our bodies and establishments have been created. However,

[27] K. Ligeti, A Marleta, Op Cit., p 57.

[28] See J. Vervaele, Shifting Perspectives on the European Public Prosecutor's Office., T.M.C. Asser Press, The Hagup 2018, p 12.

they execute their powers in sturdy interaction with the countrywide level, be it because they practice additionally countrywide law or be it that they are acting in close cooperation with the country wide institutions. Verticalisation does no longer robotically suggest that these powers are no longer embedded in the national criminal orders. Mostly they are. This is for occasion the case in the place of competence of the EU competition authority, the EU Central Bank (ECB) and the European financial regulatory and enforcement agencies, as for instance the European Securities and Markets Authority (ESMA). This would suggest in our field that country wide prosecutors would look at and prosecute offences below the route and preparation of the EPPO. Both transfer of powers and Europeanisation of domestic criminal justice at the operational degree is for most Member States an uneasy situation in the region of crook justice. Member States are afraid that the EPPO will open the door for transferring powers to the EU level, but that this will also come returned as a boomerang, harmonizing countrywide procedures.

The fourth motive why a future EPPO is controversial, in my opinion, is related to the major competence (ratione materiae) of the EPPO. PIF-offences6 seem to be distinctly an awful lot as a specialised and small area, however that is now not definitely the case. [29]

They are associated to corruption, organized crime, money laundering, tax offences, custom offences, etc. That could be a cause why the Member States are hostile to consist of VAT offences in the competence of the EPPO, even though VAT carousel fraud is tremendous and very transnational in nature. In addition to that, many Member States are involved that the class of PIF-offences will very soon be broadened to other offences. These should be offences that are related to the EU interests, such as counterfeiting of the Euro, or tendering-fraud. Additionally, euro-offences ought to be added, as defined in beneath Article 83(1), inclusive of terrorism, trafficking in human beings, etc., and annex-offences harmonized below article 83(2), such as PIF (French acronym: Protection des Intérêts Financiers (de l'Union européenne). market abuse, serious violations of the environment, or VAT crimes.

Member States are afraid now not to be capable to lock the door, once it is opened.

The fifth reason, though no longer such a robust one, truely is relevant as it is associated to the institutional design of the EPPO as such. The EPPO that has been proposed is now not equal to the public prosecutor's offices in the Member States. In many countries prosecutors do no longer investigate, they only prosecute, and the real investigation is in the arms of the police, or administrative bodies, with full or high-quality autonomy. However, the EPPO that has been

[29] See J. Vervaele, Op Cit., p 13.

proposed will do both, investigate possible crimes and prosecute suspects, which for many Member States is a new model.[30]

The trouble of criminal regulation safety of the EU price range and associated corruption and money laundering offences is discussed now for over 30 years. Despite the magnitude of the cases and the giant amount of money involved, few cases are prosecuted and very little money is gathered (in case of income-fraud, like VAT) or recovered (in case of EU subsidy-fraud). [31]

Three fields of motion are doubtlessly of pastime for the EPPO: VAT, customs and smuggling, and fraud and corruption within the EU institutions.

European Court of Auditors (ECA) posted in 2015 a special report on 'Tackling intra-community VAT fraud —more motion needed'. Despite the technicalities, this document is very readable and deserves to be consulted. Rather astonishingly, the document demonstrates that even for the European Court of Auditors it seems to be tough to paint a clear picture of EU fraud. What is on the other hand clear to the Court is that the major players, who are the Member States, have no clue of the dimension and nature of the problem. Even if they have data, the facts are no longer shared, not even at the country wide level, between judicial authorities and tax authorities. For certain, records on VAT fraud is now not shared horizontally between Member States. Reasons for now not doing so are both of a felony and realistic nature.. Still, Member States are declaring that they can deal with it at the country wide level. [32]

But let us not neglect that VAT is an intra-community system. Even if most of the VAT income goes to the country wide budget, the device as such is very a lot transnational, as it is linked to the single area. Companies of all kind can run round with items and services in the EU, deliberately heading off VAT payments, and Member States do find out it in very few instances and prosecute solely a handful of these offences.

In the discipline of customs we do have a totally unified EU customs code.

However, the customs enforcement is totally national. At the national level, there is a very specific set of authorities from one Member State to another. The division of labour between administrative and judicial authorities is additionally very special from one Member State to another. The cooperation inside the states and the transnational horizontal cooperation stays fragmented too. The end result is a harmonized EU customs code that is applied through a patchwork of countrywide authorities with exclusive powers. Moreover, the EU customs code did no longer harmonise the enforcement dimension, no longer even the administrative enforcement and administrative sanctioning.

[30] See J. Vervaele, Op Cit., p 14.
[31] See J. Vervaele, Op Cit., p 14.
[32] See J. Vervaele, Op Cit., p 14.

Conclusion

In the next period, the EPPO must demonstrate its value by solving conflicts of jurisdiction, increasing prosecution rates and obtaining strong results.

This is very difficult in the field of criminal law where national jurisdictions have set the guiding lines for a long period. An important element for the success of the EPPO is represented by the support and informations from the member states who must prove they are serious about protecting the financial interests of the European Union.

The EPPO has the chance to put into value the precious services provided by Eurojust, much more than considering it as a simple source of information, and taking advantage of the Eurojust capacities in many other situations, including cross border crimes.

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