

EPPO: A Challenging, Balance-Striking Exercise in the National and EU Judicial Environment

Dimitrios Zimianitis



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Article

ABSTRACT

The EPPO will possibly have to handle procedural rights issues against the background of a national relatively variable geometry.

AUTHOR

Dimitrios Zimianitis

European Prosecutor (Greece)
European Public Prosecutor's Office

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The European Public Prosecutor's Office (EPPO) is expected to tackle corruption and severe cross-border criminality against the EU's financial interests via a more coherent and efficient strategy compared to that applied up to now by the national judicial authorities. The Office has to demonstrate the need to invest in such an innovative judicial body at the EU level by providing new means to support a comprehensive Union strategy in the area of freedom, security and justice.¹ In thus significantly promoting the intensification of European integration, it will also face a number of challenges.

Some challenging issues stem from the EPPO [Regulation](#) itself and are partly attributed to the reluctance of the EU legislator to provide clear, uncontested solutions. These issues will soon have to be addressed in practice, as they are linked with the core performance of the EPPO.

One example is that the EPPO is expected to actively intervene in all relevant stages, since a *new landscape seems to be emerging in the field of national criminal proceedings*. This will inevitably necessitate a rearrangement of the balance between the parties to the criminal proceedings (prosecutorial and other competent judicial national authorities, victims, suspects, and defendants) in light of the specific provisions of the EPPO Regulation (Chapter VI), as complemented by the EPPO's [Internal Rules of Procedure](#), by the EU procedural rights *acquis*, and by the ECtHR jurisprudence. It should be reiterated that, in the area of procedural rights, no common rules were foreseen, even in the Corpus Juris, while, at the EU level, the EU procedural rights directives simply articulate a list of minimum relevant guarantees and leave it to the Member States to choose the means by which to implement safeguards. Furthermore, the EPPO Regulation leaves it to the national courts to rule on possible ambiguous areas, while no direct recourse to the European Court of Justice (CJEU) is foreseen. Although the CJEU's jurisprudence is therefore limited to preliminary rulings, it will undoubtedly trigger the need to revisit the current regulatory framework.

Against the background of such an emerging, variable procedural geometry, the way in which the EPPO will handle possible procedural rights issues is important. Ultimately, they should not be perceived as a source of risk that might endanger the EPPO's tasks but rather as an opportunity to act proactively. As existing differences among national legislations may affect cross-border cooperation,² the EPPO will have to play a key role in reconciling differences between national criminal procedures and find a way to overcome them.

Another challenging field concerns the *developing relationship between the EPPO and OLAF*. The EPPO will profit not only from OLAF's expertise but will also need to preserve the institutional balance between the two bodies, which is crucial for achieving their goals, all of which are based on complementarity and mutual co-operation.

The *mission of European Prosecutors* also appears to be complex, yet essential. Notwithstanding them being formally separate from the national judiciary, they will have to essentially contribute to the sound organisation of the decentralised EPPO level, to perform in-depth oversight of investigations, and to focus on critical, national areas in which the EPPO must dedicate special efforts towards establishing its added value, in particular during the initial operational phase. Therefore, apart from accomplishing the preparatory work, which is currently being realised at the central level, in order to enable the swift launching of the operational work of the EPPO, the intervention of the European Prosecutors at this stage is essential in many ways.

The European Prosecutors will have to encourage the double-hatted European Delegated Prosecutors (EDPs) to perceive themselves as a real supranational judicial body divested from their national identities. They will also have to ensure that the bidirectional flow of information between the EPPO levels (centralised and decentralised levels) and, ultimately, the handling of cases is accomplished in the best interest of justice. In addition, it is up to the European Prosecutors to detect the areas in their respective Member States in which the EPPO has a guiding role to play under the current EU political agenda.³

Given that the urge to create the EPPO has been dictated by the reduced capability of Member States to combat severe financial crime against the EU budget, the EPPO will be expected to address these gaps. The EDPs, with the guidance of the European Prosecutors, will be the designated tool to not only close the gaps but also to achieve tangible results that had been unattainable up to now.

Furthermore, when the EPPO's operational activity starts, the European Prosecutors' coordination activity will need to take into account the EPPO's priorities at the national level. Such first-stage actions may include, for instance, charting the fields where the EPPO can offer drastic solutions and ensure progress in tackling crimes falling within its remit. They may also take into consideration developments stemming from national commitment to align with stakeholders' recommendations⁴ or to follow international obligations,⁵ in order to better achieve the EPPO's goals, develop its crime fighting strategy, and demonstrate its added value.

Ultimately, both due coordination of the EDPs' tasks and ensuring that the instructions issued by the EPPO's central level are respected, entails full awareness of possible weaknesses of national judicial structures and proceedings. This, again, is an area where European Prosecutors have a key role to play.

Responding successfully to all of the above challenges engages the EPPO both at the central level (College, European Prosecutors, Permanent Chambers) and at the decentralised level (European Delegated Prosecutors and other national authorities in the participating Member States). It is crucial for all actors involved to find their respective position in the rather complex EPPO structure, to cooperate productively, and to overcome shortcomings inherent to this new judicial experiment, so that the functionality and effectiveness of the new supranational prosecutorial body is ensured.

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1. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy on the EU Security Union Strategy, COM(2020) 605 final, p. 22.↵
 2. See E. Sellier and A. Weyembergh, *Criminal procedural laws across the European Union*, Study requested by the European Parliament LIBE Committee, 2018, available at: <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU\(2018\)604977_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU(2018)604977_EN.pdf)>, reported at *eucrim* 2/2018, 100.↵
 3. See *OLAF's 2019 Report*, p. 25, where reference is made to the EU political agenda focusing on the growing threat of environmental fraud. See also the Commission's *31st Annual Report on the protection of the European Union's financial interests – Fight against fraud – 2019*, COM(2020) 363 final, para. 4.3.2.3 and Transparency International's *Corruption Perceptions Index (CPI) 2020 Report* of 28 January 2021 on the corruption risks in wake of the COVID-19 crisis.↵
 4. See GRECO's *2nd Compliance Report on Greece*, 24 September 2020, paras. 41, 43. See also the progress made in Greece as regards the Corruption Perceptions Index, Transparency International, op. cit. (n. 3).↵
 5. I.e., as regards Greece, the recent unification of the Prosecutor's Office against Financial Crime and the Prosecutor's Office on anti-corruption in a single body by means of Law 4745 of 6 November 2020 could bring about a more effective fight against corruption and financial crime, including EPPO cases.↵
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