

# The EPPO Implementation: A Perspective from Spain

**David Vilas Álvarez**

## ABSTRACT

Spain has been especially supportive of the creation of the EPPO after its mention in the Treaty of Lisbon – and even before that. Notwithstanding, Spain negotiated the implementation of the EPPO knowing that this would necessitate – partly fundamental – structural changes of its national system of criminal procedure. This system is currently characterised by giving an investigative judge the leading role in criminal investigations; prosecutors are actually one of several parties in the criminal proceedings. In contrast, the EPPO Regulation is based on the more conventional system common all around Europe, consisting in giving the said leading role to prosecutors. After outlining the main structure of the Spanish system of criminal investigation, the article deals with the major challenges that Spain has to meet in order to align its national system to the model imposed by the Regulation regarding cases in which the European Public Prosecutor will assume the investigation. Spain may opt for a total or partial renewal of the investigative structure. The article further explains which other pending issues must be solved in terms of legislation and practice in order to make the EPPO operational in Spain.

## AUTHOR

**David Vilas Álvarez**

Spanish State Attorney, Justice  
Counsellor-Coordinator  
Spanish Permanent Representation  
before the EU

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# I. Implementation Problems in View of the Spanish Structure of Criminal Procedure<sup>1</sup>

## 1. Structural axioms

Spain was one of the countries that supported the establishment of the European Public Prosecutor's Office (EPPO) at an early stage, for a long time, and with great enthusiasm. Mere weeks after the Treaty of Lisbon, in January 2008, the Spanish General Prosecutor's Office hosted a seminar about the future EPPO. The will for the establishment of this new EU body was one of the clear messages constantly sent by Spain during the negotiations within the Council, particularly when unanimity for adoption of the Regulation was out of reach. In December 2016 and afterwards, during the launch of the enhanced cooperation process, France and Spain spearheaded the final rush to have this new institution.

The result constitutes a big challenge from a European perspective. Perhaps not because of the powers conferred to this new European Office, but because of the simple fact of having a European body so inextricably linked to national criminal jurisdiction.<sup>2</sup> Combining this new European body with national criminal systems could turn out difficult.

Therefore, from a national perspective, the implementation of the EPPO remains a big challenge – in particular, for those Member States that do not give full investigative competences to their prosecutors. Here, an investigative judge plays the central role at the pre-trial stage of the criminal proceedings. This includes beside Spain, Slovenia and partially also Belgium and France.

In order to determine how difficult this task of implementing the EPPO Regulation can be, a brief explanation of the Spanish legal system of criminal procedure is necessary, particularly taking into account the parties that may appear during the proceedings.

In Spain, the **investigative judge** leads the investigation.<sup>3</sup> He opens the judicial proceedings and adopts all necessary investigative measures, such as the questioning of the suspect whose rights he takes care of.<sup>4</sup>

Some of the evidence obtained by the investigative judge can be used directly during the trial, in particular if it is not possible to repeat or present the evidence before the Court, i.e., the investigative judge's role allows for some pieces of information with evidentiary value to be presented during the trial phase. In addition, the investigative judge adopts personal and so-called "patrimonial precautionary measures" affecting the suspect (such as ordering pre-trial detention or seizing assets, respectively).<sup>5</sup> He/she also decides whether there is enough evidence to prosecute the case by means of the indictment presented by the accusatory parties (see below). Lastly, the investigative judge may accept or reject the demands or suggestions of all parties, including solving remedies or legal challenges, (unless another superior instance is competent for)<sup>6</sup>.

What is the role of the Spanish prosecutor? According to statutory law,<sup>7</sup> on the one hand, **prosecutors** can open pre-judicial investigations in order to obtain, if possible, enough evidence to open a judicial case. During this "preliminary investigation," they can execute or order any investigative measure that the Spanish Criminal Procedural Code allows them to, with the exception of personal and patrimonial precautionary measures or other measures affecting fundamental rights: as a result, they cannot, for instance, order pre-trial detention, searches, wiretapping, or compulsory measures to obtain communication records. During the judicial investigation, however, they are involved in the criminal proceedings by demanding the adoption of

precautionary or investigative measures to be taken by the judge, always with the respective goal of ensuring the effects or determining the facts and the criminal conduct that would form the subject of the trial.

The role of the prosecutors is clarified in a decision of the Spanish Supreme Court of 11 January 2017. It called the Spanish investigative system “*heterodox*,” i.e. something that is different from an acknowledged standard.<sup>8</sup> The main issue of the case was the evidentiary power of the investigative measures adopted by prosecutors before the initiation of the criminal proceedings. The Supreme Court concludes that they cannot acquire evidentiary value before the trial court, because this value legally and ordinarily relies on their jurisdictional origin in the Spanish system. However, as an exception, the investigative measures adopted by the prosecutor can become “full evidence” if they can be repeated during the trial.

Spanish criminal proceedings also know **other accusatory parties**. First, victims can lodge civil claims in criminal proceedings. This so-called and quite common “*acusación particular*” (particular accusation) is designed to do full justice to the victim. It is worth mentioning that this accusation can even be initiated by a lawyer on behalf of a public administration damaged by the alleged crime. It applies in particular in tax or funding-related crimes, and is therefore relevant in PIF cases if (also) a national administration suffered the damage. Second, yet another party to the proceedings can be any citizen or legal entity, even one not having been offended or having suffered any damage by virtue of the alleged crime, by means of the “*acusación popular*” (popular accusation).<sup>9</sup> It stems from the Spanish Constitution, whose Art. 125 recognises this right for all citizens.<sup>10</sup> This institution does not exist in similar European systems, allows participation in the proceedings from the very beginning, and is not subject to many limitations.<sup>11</sup>

## 2. Challenges for the implementation of the EPPO Regulation in Spain

This short description indicates the reasons why the implementation of the EPPO Regulation in Spain calls for a structural change of the legal system.

Art. 13 of Regulation (EU) 2017/1939 states that “the European Delegated Prosecutors ... shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment...” Along the same lines, Art. 30(4) adds: “The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases...”

Thus, the EPPO Regulation is based on the idea of prosecutors who have (full) investigative powers in an extended prosecutorial model that can be found in most countries of the EU. They should not be limited to being a subordinated party to the decisions of an investigative judge; they should be allowed to reject what the prosecutor asks for, not only with regard to the defence of rights of other parties, but also as regards how to orientate the whole investigation. Therefore, the outlined “heterodox” system in Spain does not correspond to this level of activity and responsibility.

However, the function of the Spanish Delegated Prosecutor cannot be brought to the same level as an investigative judge (acting as such). Spanish judges cannot receive instructions because of the full independence of their functions.<sup>12</sup> This does not correspond to the EPPO Regulation, which actually indicates that European (Delegated) Prosecutors may indeed receive instructions.<sup>13</sup>

As a result, the Spanish choice to support the establishment of the EPPO is delicate. During the negotiations, the Spanish government always knew that the EPPO would imply structural changes. However, it is not possible to deny that this support is closely connected to the longstanding aim of some practitioners and

stakeholders interested in modifying the criminal procedural system, i.e. to bring the criminal investigation to the Spanish prosecutors – a discussion that is also portrayed in the following section.

### 3. Possible Solutions Ahead

There are two ways to solve the problems posed for the implementation of the EPPO in view of the structural problems mentioned above.

#### a) Structural change of Spanish criminal investigation procedure

One – radical – solution would be a total change in the investigative system in Spain. This would mean providing to prosecutors, under the control of a judge, full investigative powers. This would also mean that the provision of guarantees in order to defend the rights of the suspect must be provided for. These guarantees should at least consist in previous judicial authorisations to execute investigative measures affecting fundamental rights and put all necessary remedies at the disposal of the suspects when they consider their rights to have been disrespected. If this solution were to be followed, the pending procedural issues not resolved by the Regulation<sup>14</sup> would be reduced. If the provision of the investigative role to prosecutors were to become a reality, Spain would start from a position quite similar to the majority of its European partners.

In fact, this potential, global change has been the subject of discussion for years in Spain. The current Criminal Procedural Code dates back to 1882.<sup>15</sup> Several proposals for amendments mentioned the aim to replace the investigative judge and equip the Spanish prosecutors with full investigative powers. Even the original text, in 1882, mentions in its preamble a “certain regret” for the impossibility of achieving the desired, initial and not satisfied goal of providing the investigation to prosecutors, because that would be too far reaching.

In 2011, during the late phase of the President Zapatero's government, a proposal for a new Criminal Procedural Code presented a comprehensive text providing investigative functions to the prosecutors. In fact, this has already been the solution for criminal proceedings involving children since 2000.<sup>16</sup> Negotiations on the legislative proposal did not start, however, because the legislative term was almost finished. The publication of the text, nevertheless, maintained discussions, and a reform in this direction was an ongoing concern of future governments. Since 2012, the two consecutive Ministers of Justice in President Rajoy's government have also expressed their will to shift the powers in the criminal investigations from the judges to the prosecutors. The new government of President Sánchez recently also advocated the same approach,<sup>17</sup> with the aim of modifying the Criminal Procedural Code before the end of his parliamentary term in 2020.

#### b) Tailor-made procedure for PIF investigations

The second possible path would consist in regulating a especially devoted procedure for PIF cases as far as the competence of the EPPO is opened. Tentatively, a new Title VIII in the Second Book of Spain's Criminal Procedural Code could address the concerns. In theory, this set of rules would entail a tailor-made solution only for PIF crimes, maintaining the existing system for all other crimes outside PIF. Therefore, the law should generally express that a European Delegated Prosecutor may exercise all powers conferred to an investigative judge for PIF crimes, with the exception of those powers linked to the suspect's protection of fundamental rights, a judge continues to be responsible for. It could provide a solution for remedies or appeals at the same time (establishing a system similar to the current one, admitting legal challenges against any judicial decision or limiting this possibility for some decisions or some procedural steps). If this

specific approach were to be set up, it would offer a good opportunity to clarify some activities on the part of the prosecutors not fully determined by the Regulation. The following section III will analyse, for example, how to address in practice the transferral of files (Art. 34 of the EPPO Regulation) or the issue of a discrepancy or conflict of competence (Art. 25(6) of the EPPO Regulation).

Aside from any modification of the Spanish Criminal Procedural Act, a tailor-made solution would necessitate amendments to the *“Ley Orgánica del Poder Judicial”* (law on judiciary power). This modification should provide to a court the competence to control the prosecutorial activity, by authorising some of the measures, in particular those affecting fundamental rights (such as house searches, e-evidence measures, etc.), and by addressing the appeals presented against such decisions. At the same time, this modification could introduce some provisions in order to accommodate the possibility of a judge becoming European (Delegated) Prosecutor.

In addition, a change on the statutory law for prosecutors should also be put in place. This change should regulate how to transition from the status of national prosecutor to the status of European Prosecutor and European Delegated Prosecutor or how to accommodate a double-hat exercise of competences (even if this opportunity is not feasible in Spain if there is no full change to its legal system).<sup>18</sup>

## II. Individual Pending Legislative Issues

Beyond the compatibility between the EPPO framework and the Spanish criminal investigative system, there are other possible interferences between the Regulation and the national systems. These issues necessitate a thorough reflection about the relationship with Spanish national law and their implementation. The issues particularly emerges from Chapter V of Regulation 2017/1939, which is devoted to rules of proceedings, investigation measures, and bringing the case before a court (Arts. 26 and following). The following can only briefly outline some of pending issues and the possible way forward for the Spanish legislator:

### 1. Conflicts of competence

According to Art. 25(6) of the EPPO Regulation the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation of the case if there is disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Art. 22(2), or (3) or Art. 25(2) or (3). Therefore, Member States must specify the national authority that will decide on the attribution of competence. In Spain, the superior courts decide on any conflicts of competence between investigative judges. This may be the provincial court if the investigative judges belong to the same province or the Supreme Court if they belong to different provinces. If the EPPO shares its investigative powers with investigative judges, depending on the different crimes at issue, the mentioned rule – decision by superior court – could be applied in an analogous way. As a result, the Spanish Supreme Court would decide in such cases. Notwithstanding, specific rules for solving conflicts of competences between the EPPO and the investigative Spanish judges should be provided for by law.

### 2. Right of evocation

A close relationship between the EPPO and national authorities comes to the fore if the EPPO exercises its right of evocation (Art. 27). The Regulation provides for a certain time frame (regularly 5 days) within which the EPPO must inform the national authorities whether it assumes a case or not. Art. 27 further specifies some obligations for both the EPPO and the national authorities as to the consultation procedure, the

possibility of taking urgent and provisional measures, submission of files, the continuation of the case, etc. It would be positive, from the perspective of the involved national authorities, that some rules are provided for in order to determine how to act in the context of the exercise of the right of evocation by EPPO.

### 3. Investigative measures

Art. 30 of the EPPO Regulation ensures that each European Delegated Prosecutor has at his/her disposal a set of investigative measures, “at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment.” Although Spanish criminal procedure law has at its disposal all of the listed investigative tools, a limitation can occur in view of “tracking and tracing an object by technical means, including controlled deliveries of goods” (Art. 30(1) lit. f)). Spanish law foresees the investigative measure of controlled deliveries of goods only for certain specific crimes, i.e. crimes that imply the delivery of goods, including smuggling. Therefore, Spanish law may not cover all PIF crimes as defined in the PIF Directive (EU) 2017/1371. As a consequence, this investigative measures is not at the European Prosecutor’s disposal for certain crimes that the Office must prosecute, e.g. forgery of documents or corruption. Nevertheless, the Spanish legal situation is in line with the Regulation since Art. 30(3) allows Member States to subject the investigation measures set out in points (c), (e) and (f) of paragraph 1 of this Article to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. Spain must notify, however, such limitation to the EPPO, if it maintains the current legal situation (Art. 30(3) in conjunction with Art. 117 of the EPPO Regulation<sup>4</sup>. Cross-border investigations.

The EPPO Regulation intended to introduce a new system of cross-border cooperation, since the new body enjoys the status of a single office with competences in all participating EU Member States. The underlying – rather complex – provision of Art. 31 of the EPPO Regulation differentiates between the “handling European Delegated Prosecutor” and the “assisting European Delegated Prosecutor”.<sup>19</sup> In the context of this section, it is sufficient to mention that, according to this article, a system should be avoided in which two judicial authorisations would be necessary to execute an investigative measure. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State. However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor does, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

In practice, it is therefore possible that a Spanish Delegated Prosecutor wishing to execute a measure and its execution abroad (according the system described) may need judicial authorisation from a Spanish judge – not from a judge where the measure will be executed. In these cases, it will be necessary to give to the Spanish judge clear jurisdiction to adopt this decision, even if it is to be executed out of the territory of Spain.

## 4. Dismissal of a case

Art. 39 of the EPPO Regulation lists certain reasons that allow the EPPO to dismiss a case. Spanish law differs from this approach since it provides for a general clause for the dismissal of a criminal case. Arts. 637 and 641 of the Spanish Criminal Procedural Code differentiate between definitive dismissals and provisional ones. The first alternative for dismissal applies if there is no rational ground for considering the criminal facts to have been executed, if the facts do not establish a crime, or if the suspect is exempt from criminal responsibility. The second alternative for dismissal applies if it is not duly justified the execution of the criminal conduct or there are no grounds to accuse one or several persons. Against this background,

amendments in Spanish law are provoked in order to align it to the European provisions, because the specific ground for closing a case according to the EPPO Regulation does not match with a system that is not based on a list of possible grounds as our current one.

## 5. Other accusatory parties

As mentioned under I., one of the characteristics of the Spanish legal system is the admittance of public administrations as a party to the criminal proceedings since public bodies can be considered a victim of the crime, in particular in case of funding-related offences. The Spanish State structure including autonomous regions and local communities entails that various public administrations can be considered a potential accusatory party. Another peculiarity of this scheme is that the public entities have own specialised lawyers who represent them in the course of the criminal proceedings. They have manifold powers that do not essentially distinguish them from prosecutors. They are able, for instance, to ask for specific measures; disagree on the prosecutor's position (e.g. regarding the facts, the indictment, the penalty requested, etc.); challenge the investigative judge's decisions; disagree on any agreement with the suspect; be present at the criminal trial. Against this background, Spain has to enact standards on how the public entities and their lawyers can intervene during the investigative phase of EPPO proceedings and which position can be recognised.

## III. Organisational Issues

Beyond the mentioned general structural and legislative challenges posed by the EPPO Regulation for Spain, yet another challenge derives from an organisational point of view. The question is on how to implement the work of the European Delegated Prosecutors of Spain into our system. The Regulation sets out the main cornerstones in Art. 13(2) and (3), and 96:

- There should be a minimum of two European Delegated Prosecutors (EDPs) in each participating Member State;
- The exact number of EDPs is to be decided by the Chief Prosecutor after consultation and agreement with national authorities;
- A European Prosecutor may act exclusively as such or may combine his/her function with that of a national prosecutor, so he/she could work on the basis of a full-time or part-time contract;
- The competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under the Regulation; they must ensure that they are fully integrated into their national prosecution services;

These parameters imply room for organising the Office at the national level. In particular, in large Member States such as Spain, reflections must be made on the design and status of EDPs. I consider two possible solutions:

First, a decentralised solution where the EDPs are installed in different places in Spain. A similar model is currently followed with certain specialized prosecutions services, such as the Spanish anti-corruption prosecution services. This would imply that around fifteen European Delegated Prosecutors would be established in different regions of Spain. In turn, different judges of different provinces should be competent to control the activity of the EDPs, e.g. to authorise certain investigative measures.

Second, a centralised solution, in which only one central office with few EDPs is established. These EDPs – on the basis of current statistical estimates<sup>20</sup> between two and four – would handle all cases in Spain. They



would be complemented by one judge controlling their investigations. and few court chambers where the trial takes place. All might be centered around the “*Audiencia Nacional*,” which already has a central competence for some complex or spread crimes in Spain.

This centralised approach has several advantages. The Spanish EDPs could be appointed with a single hat and they would exercise only one function. A swifter and more specialized management of cases and cross-border cooperation can be expected. A disadvantage can be that evidentiary material must be gathered across the country and be brought to the center, e.g. Madrid, where the final trial will take place.

## IV. Outlook

This article has shown that Spain must overcome numerous challenges in order to make the EPPO operational in its country. Accordingly, Spain’s Ministry of Justice is working on a number of different avenues to address all these concerns. However, the political situation – a government with limited support in the parliament – does not help facilitate in-depth legislative changes.

Notwithstanding, the Ministry of Justice of Spain is currently working on the following:

- National rules for the appointment of the European Prosecutors and European Delegated Prosecutors in the attempt to provide, in a transparent way, the most highly qualified candidates to the panel of the EPPO;
- Possible amendments to the statutory law concerning prosecutors, in particular to facilitate the transition from their previous status to the new one as members of a European body and to facilitate their return;
- In-depth study on the implication of the EPPO for the Spanish criminal law system, mandating a general commission of codification as an advisory body of the Ministry of Justice;
- Preparation of a text for a new Criminal Procedure Code or, alternatively, a tailor-made solution along the lines described above.

It is envisaged that all the pending implementation issues are solved before the initiation of the EPPO’s activity foreseen in 2020.

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1. \* This article is based on an author’s presentation held at the conference organised by the Fondazione Basso in Rome on 27 May 2018. The presentation style was maintained. The article further develops and updates the presented issues and possible solutions that the implementation of the EPPO challenges in Spain.↩
  2. For a comprehensive analysis of the finally adopted EPPO Regulation and the tasks to be addressed for its implementation, see L. Bachmaier Winter (ed.), *The European Public Prosecutor’s Office – The Challenges Ahead*, Springer, Cham 2018; also in Spanish, *La Fiscalía Europea*, Marcial Pons, Madrid-Barcelona 2018.↩
  3. Art. 87 of the Spanish Organic Law on the Judiciary Power (*Ley Orgánica 6/1985, de 1 de Julio, del Poder Judicial*) and Art. 306 of the Spanish Criminal Procedural Act (*Ley de Enjuiciamiento Criminal*). For an overview of the Spanish criminal justice system, see L. Bachmaier Winter and A. del Moral García, *Criminal Law in Spain*, Wolters Kluwer, Alphen aan den Rijn, 2012.↩
  4. The constitutional role of judges imposes their activity as defending the rights of any suspect. In this context, Art. 24(1) of Spanish Constitution states that “Every person has the right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended”; Art. 117 adds the following in paragraphs 3 and 4 “the exercise of judicial authority in any kind of action, both in passing judgment and having judgments executed, lies exclusively within the competence of the Courts and Tribunals established by the law, in accordance with the rules of jurisdiction and procedure which may be established therein.” Out of these functions (which do not include investigating crimes), judges, courts, and tribunals are able to exercise other functions when the law so decides, with the goal of providing guarantees of some rights: “the Courts and Tribunals shall exercise only the powers indicated in the foregoing clause and those which are expressly allocated to them by law as a guarantee of some right”.↩
  5. Precautionary measures (or provisional measures) are those measures adopted in order to ensure the final result of a proceeding. Patrimonial measures adopted by an investigative judge come from two sources: first, the final decision in Spanish criminal proceedings determines both the result from a criminal law perspective of the facts (e.g. number of years of imprisonment) and the result from a civil law perspective of the conviction. Therefore, the civil liability linked to the damages suffered by the victim of the crime is also established. In this case, the role of



- patrimonial measures is preventive and exactly the same as of those measures adopted during a civil proceeding. Second, patrimonial measures may also be adopted in order to ensure the availability of the suspect during the trial and avoid and replace personal measures as pre-trial detention. In any case, it is for the judge to adopt them.↵
6. As a general rule, every decision of an investigative judge can be remedied, either by a remedy to be solved by himself/ herself (*recurso de reforma*), or by a remedy to be solved by the superior court (*recurso de apelación*).↵
  7. Art. 5 of the Organic Statute of the Prosecution Service (*Estatuto Orgánico del Ministerio Fiscal*). Art. 773 of the Spanish Criminal Procedural Code (*Ley de Enjuiciamiento Criminal*) also states something similar about the opening of the summary judicial proceedings, which is the most common court action in practice.↵
  8. This description does not deny the existence of a solid basis for such a system. Suffice to say that, in any investigation, the investigative judge is provided with particular grounds of independence that a simple prosecutorial system could put at stake. For a regular case, it is probably not necessary to provide such an additional safeguard for the independence and impartiality of the investigating authority. In sensitive cases, however, this can help to find the truth and the justice objective of a democratic society.↵
  9. By instance, in a PIF crime in Spain, In this context, we can imagine, for instance, a PIF crime case where, beyond the public prosecutor, the lawyer of a municipality who partially funded a work affected by the crime may constitute himself as "*acusación particular*". It can even happen that a different political party to the party of one of the politician suspect of having committed the crime could be interested in appearing in the same proceeding as "*acusación popular*". The future European Delegated Prosecutor must deal with these additional accusatory parties and it is therefore necessary to provide the Spanish EDP with the adequate rules in order to exercise this new role.↵
  10. Article 125. Citizens may engage in popular action and participate in the administration of justice through the institution of the jury, in the manner of and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts.↵
  11. It can, however, be subject to a fee.↵
  12. Although, a Spanish investigative judge is eligible for appointment as Spanish Delegated Prosecutor, in such a case, his career as a judge will be suspended for the time being. In contrast, an investigative judge who retains his status cannot exercise the competence of a Spanish Delegated Prosecutor: he would have sufficient powers, but his independence as a judge would be compromised.↵
  13. Cf. Arts. 6, 10(5), 12(3), and also Art. 96(7) of Regulation 2017/1939.↵
  14. Particularly taking into account that "national law shall apply to the extent that a matter is not regulated by [the Regulation]", cf. Art. 5(3). See further section III.↵
  15. It was amended 67 times, 44 of the amendments after the establishment of the Constitution in 1978.↵
  16. Organic Law 5/2000 of 12 July 2000.↵
  17. Minister *Gallardón* and current Minister *Delgado* are prosecutors.↵
  18. If there were no general change in their activities, it would indeed be difficult to reconcile the different ranges of powers in the same person: that of national prosecutor (with the currently existing and limited powers) and that of a European Prosecutor with a proper investigative role.↵
  19. For further details, see P. Csonka/A. Juszcak/E. Sason, "The Establishment of the European Public Prosecutor's Office", (2018) eucrim, 125, 129.↵
  20. <https://www.fiscal.es/memorias/memoria2018/Inicio.html> (last accessed: 9/10/2018).↵

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