The European Public Prosecutor's Office – More Effective, Equivalent, and Independent Criminal Prosecution against Fraud?

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ABSTRACT

The adoption of the regulation establishing the European Public Prosecutor's Office is a decisive step in the completion of the institutional settings for the protection of the EU's financial interests. This article looks back at the origins of the project and recalls its underlying rationale. It further critically analyses the legislative procedure, studies the contents of the compromise reached, and provides insight into the requirements for efficient operation of the EPPO in cooperation with its partners. By way of concluding remarks, three perspectives are outlined that require further analysis and closer scrutiny, i.e.:
- Efforts in common training schemes;
- Need for criminal investigation and enforcement support;
- Reflections on the merger of the EPPO and Eurojust

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Introductory Remarks

Twenty years after the presentation of a study entitled "corpus iuris,"[1] and after four years of negotiations, an agreement has been found to set up the European Public Prosecutor' Office (EPPO) by means of enhanced cooperation.[2]

A joint statement by the institutions on its financing was adopted at the meeting of the budgetary trilogue on October 18, 2017,[3] paving the way for implementation. It will take at least another three years, however, before the EPPO is fully set up and operational.[4] The adoption of the regulation is a decisive step in the completion of the institutional settings for the protection of the EU's financial interests. It is therefore worth looking back at the origins of the project and recalling its underlying rationale (I), critically analyzing the legislative procedure (II.), studying the contents of the compromise reached (III.), and provide insight into the requirements for efficient operation of the EPPO in cooperation with its partners (IV.), before suggesting some concluding remarks and perspectives for future reform (V.).

I. The Rationale of the Project – Motives and Challenges

The EU has no complete criminal justice system of its own. It relies largely on Member State action to protect the EU's interests against prejudice caused by criminal conduct.

1. The need for action

Since the outset, the absence of EU-criminal judicial competences has been a source of potential disparities in enforcement efforts and of an internal fragmentation of the EU-territorial scope of action, due to the limited competence of each of the national authorities intervening in the fight against EU fraud. Experience has shown that cooperation and mutual assistance are frequently slow and often ineffective, leading in practice to the restriction of prosecutorial efforts to those select and isolated aspects of the often EU-wide offences, which may be investigated and proved by evidence, which has to be collected on the national territory of the prosecuting Member State only.

Until now, the European Anti-Fraud Office (OLAF) was the only dedicated operational service at the EU level to complement and orchestrate Member States' anti-fraud investigations, conducting own investigations[5] and coordinating Member State authorities' protective action. But its own investigation means are limited to the conduct of administrative inquiries, and the final reports have no binding effect.[6] Statistics drawn up by OLAF on action taken by national judicial authorities, following recommendations issued to accompany its final case reports, show continued disparities in the speed of action taken by the Member States' criminal investigation and law enforcement services and in the rate of indictment decisions taken by national prosecutors. On average, only half of OLAF's judicial recommendations lead to indictments.[7]

In 2016, fraudulent irregularities were reported by Member States in about 1400 cases. They involved the amount of nearly 400 million euros.[8] Reporting of fraudulent irregularities by Member States to the Commission remains very unequal, however, and presumably not all Member States report fraud cases systematically and in a timely manner. The OLAF case practice illustrates that the average speed of investigation and prosecution of fraud offenses remains slow. A considerable percentage of OLAF cases transmitted to national judicial authorities with criminal suspicions are even never indicted.

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A solution is therefore needed to remedy this situation. The expectations for improvement also extend to a more just and equivalent quality of criminal law action. The protection of EU values, such as effective implementation of procedural safeguards, fundamental rights, and judicial guarantees should also be promoted by an EU prosecution office, applying a common set of rules in accordance with EU-wide judicial standards.

2. The "European prosecutor" project

Against this background, the "corpus iuris" study in 1997[9] launched the idea of a new approach: While criminal justice and the trial phase of the procedure should, as a matter of principle, remain within the competence of the national judiciary, a EU prosecutor for the protection of the EU's financial interests (vested with criminal investigation and indictment powers) should –in the area of anti-fraud and anti-corruption – offer a genuine European response to the problems of fragmentation and heterogeneity of the EU-judicial and prosecutorial area. Based on a common set of EU offenses and procedural powers, the EU prosecutor was designed to exert criminal law action in the entire EU territory in a decentralized but streamlined, united office framework. The specialized nature of its competences would achieve a higher level of professional skills and prosecutorial know-how, tailored to the specific needs of transnational financial crime. This is considered particularly necessary for the protection of the EU's financial interests, an area where the EU's administrative legal context of the committed offences pre-determines – and strongly impacts on – the challenges and chances of a successful prosecutorial criminal law implementation.

The "corpus iuris" and the comparative law analysis, which was subsequently launched to complement and revise it,[10] led to an intense debate structured by a public consultation organized by the European Commission on the basis of its Green paper in 2001.[11] At first, the Nice inter-governmental conference still ignored the new project, inserting a provision about the EU-judicial coordination unit Eurojust into the Treaty instead of the Commission contribution, proposing a Treaty provision to set up a European Prosecutor.[12] But in 2002, the topic reappeared on the institutional agenda at the Convention for an EU Constitution. Following a very controversial debate in the justice working group of the Convention, the EU-prosecutor project was carried, vigorously supported by members from the EU Parliament and the Commission. The drafting of the provision on the EPPO in the Constitution, however, reflects several compromises, which ultimately found their way into the relevant Lisbon Treaty provisions.

This entailed a strong impact on the subsequent political and legislative process. At first, the relevant provisions of the Lisbon Treaty do not directly set up the European (Public) Prosecutor. Its creation was instead left to the secondary legislator who may set up the prosecutor's office "from Eurojust." (Art- 86(1) TFEU) Furthermore, the initial denomination "European Prosecutor" was abandoned for seeming to overly empower one person (monocratic) and replaced by "European Public Prosecutor's *Office*" (EPPO). The legal basis limits the EPPO's original scope of competences to offences against the EU's financial interests.[13] More problematically, the Lisbon Treaty article does not foresee the ordinary legislation procedure but a special legislative procedure, subject to unanimity in the Council and requiring mere approval of the result of negotiations by the European Parliament.[14] Considering that unanimity between all Member States might be difficult to achieve, the Lisbon Treaty finally added the relevant article provisions on enhanced cooperation.[15]

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II. The Legislative Procedure – A Good Example of Clear Legislation and Strong EU-Democratic Legitimacy?

After the entry into force of the Lisbon Treaty on 1 December 2009, it took nearly four years for the Commission to come up with a proposal. Soon after the Treaty reform, the controversy on the necessity of an EPPO resurfaced. The Stockholm programme gave priority to an assessment of the implementation of the reform of Eurojust.[16] The European Public Prosecutor project was presented as a remote option.

But the Commission remained committed to the EPPO project. In 2009, the Spanish Presidency organised an expert workshop and presented a concept paper.[17] A further study was commissioned to prepare an in-depth reflection on the procedural framework required for EPPO investigation measures and criminal indictment.[18] Stakeholder consultations included all interested communities, the ministries of justice, the prosecutors general as well as European defense lawyers and other interested associations. The fear, however, that a proposal might be rejected by an overwhelming majority of Member States remained until 2012.[19] Finally, at a Berlin stakeholder conference in autumn 2012, conclusions expressing support for the project were backed by the justice ministries of some previously non-supportive bigger Member States.

1. The Commission's proposal

Ultimately, the "Barroso II"-Commission presented the proposal for a regulation to set up the EPPO in July 2013.[20] The proposal was prepared by a group of Commission services, including DG JUST, OLAF, and the Legal service. The preparatory impact assessment[21] developed different options, ranging from a slightly reinforced coordination function of Eurojust to a centralized European prosecution office that would be completely disconnected from the national judicial systems. The rationale of the preferred "middle-ground" option is based on a cost-benefit analysis and relies on an intervention logic, which comprises the following three key aspects:

First, the 2013 Commission proposal aimed at swifter and at equivalent prosecutorial action in the fight against fraud throughout the EU, in accordance with high quality standards. It gives preference to a decentralized and integrated but clearly streamlined European office, in which a balance is kept between the decentralized structures of the office, with double-hatted delegated European prosecutors vested with operational powers and very light central structures. The delegated prosecutors are embedded in the Member States' judicial systems. A slim, centralized, hierarchical head office, with the European prosecutor at its head, offers short lines of communication combined with the power to give instructions in individual cases.

Second, the Commission proposal aimed at a better governance and a more systematic and timely control of all relevant information about suspicions of criminal conduct against the EU's financial interests. The material scope of the EPPO's competences for financial offenses affecting EU interests is exclusive,[22] with access to all relevant information. The proposal also drew up an EU legal framework for the procedural measures of the EPPO, equipping it with a catalogue of investigative powers, whose essential conditions of proportionality, ex-ante judicial authorization, and further individual guarantees, such as judicial review remedies, apply equally in all Member States. They were spelled out in the draft regulation, reference being made to the national legislator only for more detailed procedural formalities.[23]

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Third, the Commission proposal offered a solution to the need to overcome the fragmentation of the EU's judicial space. The proposed EPPO design facilitates criminal investigation and prosecutorial action in transnational cases without the need to use mutual legal assistance instruments. The decentralized prosecutor initially entrusted with the investigation in a Member State is also foreseen as being competent for conducting investigations elsewhere in the EU, as the case may be in close liaison with his decentralised EU prosecution partners in the other Member State. The Commission proposal consequently developed the single judicial area concept and provided for EU-wide investigative powers on the part of each prosecuting member of the European office, thus abandoning the need for assistance requests and judicial decisions for execution addressed to "partner" prosecutors in the offices of another Member State.[24] The anticipated efficiency gains would enable a higher indictment rate and faster criminal procedures.

2. The negotiations

Whereas the Commission proposal therefore concentrated on a clear rationale of operational added value, the negotiations in the Council were conducted by a strong majority of Member States with the aim to keep the EPPO's functions under their close control and retain guiding influence of their respective national judiciaries.[25] This tendency further accelerated as a result of the subsidiarity consultations before the national parliaments. In their motivated opinions under Treaty protocol No. 2, a relevant number of national parliaments expressed subsidiarity reservations and observations, requesting the Commission to reexamine its proposal.[26] The preservation of the status quo of their national judiciaries appears as an ever-present concern. Many Member States have identified a collegiate structure of the EPPO – one in which each Member State retains its own prosecutor – as being less intrusive for their judicial systems, compared with the hierarchical EPPO structure proposed by the Commission. Less priority is given to the question of the operational added value of the EPPO proposal and the justification for setting it up.

It is probably justified to say that – from the onset – these reasoned "subsidiarity" opinions have put a strong political strain on the Council negotiations. Successive Presidency drafts have indeed radically modified most of the key elements in the Commission proposal. The negotiations centered on the condition of the defense and preservation of the national judicial systems. This has exposed them to the risk of undermining the question of the EPPO's practical added value. One should not underestimate the influence this will have on the operational benefits of the EPPO.

In its turn, the European Parliament adopted several resolutions for better synergies with Eurojust, a high standard of protection of procedural guarantees in criminal investigations conducted by the EPPO, and the effective configuration of its competences.[27] However, the ultimate influence of the EP's resolutions on the content of the compromise may be considered limited. This is partly due to the shift in internal organization of the debate in the European Parliament. The civil liberties lead committee did not emphasize to the same extent the budgetary control committee's priorities which originally caused the European Parliament to strongly support the EPPO project as an instrument to efficiently protect the EU's financial interests against fraud.[28] The limited legislative impact of the European Parliament is, however, mainly due to the extraordinary procedure in setting up the EPPO, which – as mentioned above – does not allow the European Parliament to formulate legislative amendments but only to ultimately approve the Presidency draft submitted by the Council.[29]

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III. The Content of the Regulation – Main Features and Drawbacks of the Compromise

The EPPO is set up to conduct criminal investigations and prosecute PFI offences. Its function is to bring charges in the Member States, based on an EU-wide investigation mandate. Looking at the end result, the impression may be gained, however, that the primary orientation of the adopted compromise is built along the lines of the same territorial divisions previously established by national substantive and procedural law, which are responsible for the national desk structures of Eurojust, to exercise judicial coordination functions. The relevant question is whether and under what conditions the regulatory framework grants to the new body effective, EU-wide admissible criminal investigation, enforcement and prosecutorial decision powers.

A lot of creativity and sense of initiative will be needed to get this office not only up and running but also effectively working and well recognized by stakeholders at the national and European levels for its operational added value. This challenge raises three issues: (1) Will the EPPO lead to swifter and independent judicial investigation and prosecution of cases of fraud and corruption detrimental to the EU's financial interests? (2) Will it have a decisive added value for cases of transnational fraud? (3) Will it ultimately help to achieve better control of information on suspicions of fraud in the Union?

1. Will the EPPO contribute to the swift and independent exercise of prosecution?

The Commission proposal intended to build the EPPO on simple structures with short lines of command. That is to say, the central EPPO structure should have been slim. The four-layer model of the adopted regulation (College, chambers, European prosecutors, delegated prosecutors), however, gives rise to challenges on how to achieve the desired swiftness and improved efficiency of criminal procedures run by the EPPO.[30] The hierarchical EPPO structure of the Commission proposal has now been transformed into a top-heavy college of prosecutors, now twenty members strong, reflecting the number of Member States participating in enhanced cooperation. At the operational level, the EPPO's central structures provide collegial bodies called permanent chambers, in which the Member State involved in an investigation is always represented by "his" European Prosecutor.[31] But it remains to be seen to what extent the chambers will ultimately reveal themselves as suitable for fast decision-making and supervision. Even when supervised by chambers, it is likely that, in the central office, the national European Prosecutor will play the key role of liaison with the delegated European prosecutor of "his" Member State operating on the ground. Because of the need for investigation action to be based on national law,[32] specific knowledge and experience of this legal system is required. A national chain of command seems a predictable dominant feature. The investigations are to be run in the respective Member States under the operational responsibility of the respective delegated prosecutors. Any instructions of the chamber to the delegated prosecutor need to go through the supervising national European Prosecutor.[33]

2. Can the EPPO investigate without borders?

As an independent European prosecution office, the EPPO is supposed to be able to operate across the national borders of its participating members. The EPPO was conceived in order to do away with mutual legal assistance. However, is the agreed framework fit to achieve this aim? The regulation limits itself by referring to a common, minimum set of investigation measures (search of premises, freezing of assets, interception of communications), which need to be made available to the prosecutor's office for significant offences in all participating Member States.[34] The EPPO regulation assigns this objective of mutual criminal

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procedural law provisions to the national legislator. The question, however, remains as to whether a mere reference to investigation measures under national law is sufficient to satisfy the need for an EU-wide admissibility of measures decided. The fear exists that the measures will be legally provided under the various systems of national procedural law, without automatic European admissibility of the judicial decisions and measures taken.[35] This potentially reproduces a degree of fragmentation within the structure and the functioning of the EPPO, which needs to be brought into harmony with its objectives and its status as "an indivisible Union body operating as one single Office."[36]

As a consequence, the challenge remains as to how to achieve a systematic European admissibility and EU-wide legal effect of the investigation acts to be performed by the EPPO, so that they are of such a nature as to achieve more efficient investigation and prosecution in transnational cases. The function of the European Chief Prosecutor, which could potentially have achieved a unicity of the EPPO's actions, has been deprived of operational responsibilities. Like the President of Eurojust, he mainly vests a representative function[37] and has no supreme supervisory powers or prerogatives to give operational instructions.

All investigation measures are based in the Member States' law.[38] In transnational cases, the "handling" delegated prosecutors need to assign their "assisting" counterparts in the respective Member State with the relevant investigation measures in accordance with the requirements for judicial authorization as foreseen in the latter prosecutor's national procedural law.[39] This procedure is reminiscent of mutual legal assistance requests, and the EPPO must prove that it can achieve more effective means of investigation and prosecution in transnational cases than what is provided under the Directive on the European investigation order in criminal matters.[40]

3. Does the EPPO's competence ensure comprehensive control of information about fraud?

The EPPO's material competence is defined with respect to the offences included in the "PFI Directive".[41] Harmonized offences include non-procurement and procurement fraud, customs revenue fraud, and VAT revenue fraud, as well as active and passive corruption, and money laundering of the relevant proceeds. At a closer look, however, the material competence of the EPPO is defined in rather complicated terms. The scope of the criminal law directive adopted in 2017 serves as reference frame with its harmonized financial criminal offences.[42] It "Lisbonises" the former Convention on the protection of financial interests of the Communities and its (additional) protocols. But the EPPO does not have a full competence as illustrated by the following three limitations.

First, as a result of the negotiations, the EPPO will have no exclusive competence, but a right of evocation.[43] *De minimis* threshold provisions have been included,[44] which are likely to give rise to interpretation and speculation about the financial impact of the suspicions under investigation at the outset of a criminal procedure. VAT offences are only covered if they are transnational and beyond a prejudice threshold of ten million euros.[45] It will be difficult to determine the damage in this order of magnitude.

Second, the provisions concerning offences that are "inextricably linked" with offences contained in the PFI Directive are fairly ambivalent. The requirement that the EU-financial prejudice needs to exceed the damage caused, or is likely to be caused to another victim,[46] has fortunately been narrowed down and does not extend to expenditure-fraud offences in the PFI Directive.[47] But what does this mean if there exist inextricably linked non-directive offences? This restriction of the EPPO's competence applies, however, for revenue-fraud offences other than transnational VAT-fraud above €10 million damage. It deprives the EPPO of the material

competence for the vast majority of customs fraud cases, affecting products for which VAT and excise duties are also evaded.

Third, the reference to the equal or superior level of maximum sanctions for a non-directive offence inextricably linked with a harmonized offence is an exclusion criterion, "unless the (linked) offence has been instrumental to commit the (harmonized) offence." [48] This will give rise to considerable interpretation. Hopefully, that will not lead to loopholes in the substantive law competence of the EPPO.

Finally, one cannot ignore that all the above-mentioned uncertainties on the scope of action will have an impact on the extent to which information about criminal suspicions of fraud are equivalently and effectively transmitted to the EPPO by the participating Member States. Hope remains that the EPPO will not need to invest most of its resources to wage battles of competence during a long period of consolidation. Numerous potential conflicts of competence could be clarified by guidelines, to be adopted by the College.

Otherwise, the consequence might be a limited added value of the new EPPO. It needs to be shown that the original objectives behind the setting up of the EPPO are fully achievable now, based on the complicated compromise text agreed. This puts the complex burden of implementing the results of the negotiations on those who will act on the ground. The compromise unanimously reached between participating Member States has left numerous questions unanswered. One should also be aware of the fact that the adoption of the EPPO regulation under procedures of enhanced cooperation raises challenges for the equivalent protection of the EU's financial interests against fraud. If states like Poland and Hungary do not participate in the future, the EPPO cannot fulfill its fundamental role of protecting the EU and its financial solidarity interests in an efficient and comparable way within the EU territory.

IV. The Challenges Ahead for Implementation – Efficiency Gains and Increased Synergies of the EPPO with its Investigation Partners

Effective prosecution depends on the successful collection of information and criminal investigation. The EPPO is intended to steer this function. But it is not able to act alone. The effectiveness of the EPPO will greatly depend on the availability of relevant information and on the efficient work of its investigation partners. The EPPO and OLAF will both be responsible for the protection of the EU's financial interests and investigations against fraud. Their specialized material scope of activities is similar. Both services are vested with a mission to fight EU fraud. But there is a need to specify the complementarities between the EPPO and the OLAF functions (1), and it is even more important to determine the synergies between both bodies (2).

1. Complementarities

The scope of the investigation mandate of OLAF extends beyond the mandate for criminal prosecution by the EPPO, and its administrative investigations refer to a different level of suspicion.

The EPPO will not fully substitute OLAF. OLAF is further needed, as there may be numerous scenarios in which the EPPO cannot investigate (see above), does not wish to investigate, cannot yet investigate, or no longer investigates. As a matter of principle, OLAF's mandate retains its full justification. As a Commission service acting under Art. 325 TFEU, OLAF needs to preserve a specific responsibility. Its anti-fraud mandate contributes to the proper execution of the European budget, exchanging information in close cooperation with the managing and authorizing authorities. Preventive measures to protect the EU's financial interests and ensure recovery of illegally obtained financial benefits will further need to be taken in the future,

irrespective of the perspectives of an EPPO procedure to establish criminal liability.[49] OLAF's mandate goes far beyond the specific matters for which the EPPO will have material competence, because it also includes internal investigation cases not involving the EU's financial interests and minor financial fraud cases (in which the amount at stake is under the €10,000 threshold) as well as potentially VAT-fraud cases below a prejudice of €10 million. It also includes investigations in Member States such as the Netherlands, Malta, Poland, and Hungary, which currently have not yet voiced their readiness to participate in the EPPO and to recognize its competence on their respective territory.

The detection and control of a case that may prejudice public EU finances largely requires – before clear-cut criminal suspicions may be established – upfront action by administrative investigation services. These services need to detect and collect relevant information about possible fraud cases, often far before a criminal investigation based on sufficient suspicion can begin. Administrative investigation services obviously include competent managing and audit services, but more specifically anti-fraud services like OLAF.

OLAF is currently undergoing an evaluation of its legal framework. The idea is to build a close relationship with the EPPO because of the need to work closely together. Accordingly, the evaluation report of the Commission points out the need to clarify and complete OLAF's administrative investigation powers.[50] In the future, their exercise will require the exchange of information and cooperation with the EPPO at various stages. OLAF and the EPPO will share their sources of incoming information, including information from databases. OLAF's operational (case) activity needs to be coordinated regarding any issues for which the EPPO might be competent on the prosecution side. Hence, the functions of OLAF need to be adapted to the presence of the EPPO. Double jeopardy of both administrative and criminal investigations undertaken in parallel needs to be avoided. The OLAF evaluation report proposes defining complementarities at the different operational stages of OLAF's work.[51] First, OLAF will be responsible for administrative investigations, whereas the EPPO should steer criminal investigations. For sake of coherence, OLAF may need to communicate and cooperate with the EPPO *before* opening its own administrative investigation, in order to avoid interference with criminal cases in case of sufficient criminal suspicions and the loss of time and resources due to uncoordinated parallel investigations. Second, it may also need to relay to the EPPO any suspicion of criminal offences that come to its knowledge *during* the administrative investigation as well as share relevant information. Third, in such situations, OLAF may regularly need to cooperate with the EPPO within and *after* its own (administrative) investigation in order to follow up its results and recommendations.

Because of the continued need for an OLAF administrative investigation function and the non-exclusive mandate of the EPPO to investigate and prosecute fraud, the assessment of its staffing needs was recently adapted in the legislative financial statement of the Commission, limiting the transfer of posts from OLAF to the EPPO to 45, as compared with 118 in the initial calculation.[52]

2. Synergies

Beyond the complementarity of administrative OLAF and criminal EPPO investigations, the crucial issue remains as to how to develop optimal synergies in open EPPO investigations. Only if this is achieved, can an operational added value benefiting from the potential of both offices emerge. Therefore, the more critical challenge for cooperation between the EPPO and OLAF arises when the EPPO itself actually opens the investigation of a case. As a matter of principle, OLAF then should not investigate independently. It is bound to cooperate with the EPPO during the criminal investigation. The EPPO may call on OLAF's support during its investigation.[53] In a cooperation with national prosecution services, this support currently includes OLAF's technical and operational assistance in criminal investigations. Such assistance will obviously encompass

information exchange and the submission of documents, for instance information comprised in OLAF final case reports. It may sometimes also require OLAF to conduct administrative investigations.

In an open EPPO investigation, however, the question of course arises as to which extent – in case of need, based on a request, and in accordance with the instructions of the EPPO – OLAF should be able to do more. This includes continuing the collection of evidence, also using specific investigation measures available only within criminal investigation procedures. It is to be expected that at least in some cases effective and swift prosecution will depend on an efficient investigation partner at the EU level during the criminal procedure run by the EPPO. In respect of criminal enforcement powers, however, the EPPO regulation remains nearly exclusively based on traditional competences. Irrespective of the administrative preparatory detection and investigation carried out by OLAF, the EPPO will systematically need to liase with the national criminal investigation partners in the Member States.[54] If the enforcement authorities are acting only under national law to prepare prosecution, this will likely reproduce the shortcomings of the current system. A European prosecution relying exclusively on national criminal investigation and enforcement will not fully overcome territorial fragmentation. The national enforcement services can and must already intervene in the fight against fraud. However, they do so with territorial restrictions and the great disparity of results that the EPPO is supposed to overcome.

A great challenge for EPPO efficiency therefore results from the criminal investigation and enforcement function of OLAF (at the request and at the service of the EPPO), in addition to and distinct from OLAF's administrative investigation function. This function should be entrusted to a specific and distinct unit in OLAF. It should be based on separate regulatory provisions under Art. 325 TFEU. Consideration should therefore be given to the possibility of including these "auxiliary" criminal functions in a specific chapter of the OLAF regulation (or in a separate regulation). It should also be subject to specific instructions and legal control by the EPPO, and in accordance with a specific set of rules that require compliance with criminal judicial standards and guarantees.

V. Conclusions and Perspectives

Not only the latter aspect shows: a lot of work lies ahead. The adoption of Regulation 2017/1939 is just the beginning. During the startup phase of the EPPO, the Commission will be responsible, designating the interim Administrative Director and offering the secondment of a limited number of officials.[55] Setting up the EPPO will take several years. Once the EPPO has been set up, the Chief Prosecutor needs to propose internal rules of procedure to be adopted by the College[56] and propose a date to the Commission for assuming the investigation and prosecutorial tasks conferred on it.[57] Implementation will be a tough challenge, at least as difficult as the negotiations themselves have been.

Looking further ahead, the adoption of the EPPO Regulation is probably not the ultimate achievement of justice instruments in the European Union. A reflection on the future of the European Union has already been launched by the Commission.[58] Different scenarios are conceivable for the ultimate development of the European prosecution function. Based on the current compromise, at least three perspectives require further analysis and closer scrutiny:

First, a considerable effort will need to be made to invest in common training schemes for all EPPO prosecutors, whether centralized or decentralized. To this end, a specific academic and professional framework needs to be put in charge with the planning and development of courses in accordance with a joint curriculum based on EU principles and case law on matters of justice and criminal law.[59] On this basis, a mutual tradition, doctrine, and guidance could emerge, as a precondition of the EPPO as a single authority.

Second, in order to effectively order criminal investigation and prosecution measures across the EU, the EPPO needs criminal investigation and enforcement support. Some provisions to address this need have already been enshrined in the Regulation.[60] The exercise of criminal investigation measures, however, lies mainly with the national enforcement services. This might be close to the status quo and be insufficient. Investigation measures undertaken by the supervising European prosecutor will mostly be the exception and will also need to be activated under national law.[61] Operational added value and a genuine change would therefore come from OLAF having an EU criminal investigation function. OLAF's current legal framework should be completed with appropriate provisions, specifying modalities and conditions for the exercise of criminal investigation measures, on behalf and upon request by the EPPO.[62]

Third, looking at the result currently achieved by the adoption of the EPPO Regulation, it might come as a surprise to see a second EU judicial body set up with functional prerogatives similar to those of Eurojust.[63] The question is therefore justified: should the EPPO and Eurojust, two judicial bodies with similar responsibilities and support functions for prosecution services, ultimately be joined together? After a successful pilot phase, it is worth reflecting on whether the EPPO should absorb and reinforce Eurojust. It might indeed yield efficiency gains if both bodies were to merge and share experience as well as administrative, technical, and operational resources.

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1. Corpus iuris on criminal law provisions for the protection of the financial interests of the European Union, external study by M. Delmas-Marty, 1997.↩
2. Council Regulation (EU) 17/1939, *O.J.* L 283, 31.10.2017, p. 1 (in the following referred to as the "EPPO Regulation"). See further also the article of Csonka, Juszczak and Sason in this issue as well as the summary of T. Wahl in the news section of this issue.↩
3. Joint Statement of Parliament, Council and Commission, Council Document 13380/17, 19.10.2017; it confirms that the financing of the EPPO is ensured up to the agreed expenditure ceiling of relevant heading 3 of the multiannual 2014-2020 financial framework; the annual EU contribution to the EPPO budget for 2019 and 2020 will be decided within the framework of the annual budgetary procedure.↩
4. See Art. 120 (2) sub-paragraph 3 of the EPPO Regulation.↩
5. Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF), *O.J.* L 248, 18.9.2013, p. 1.↩
6. Regulation (EU) 2013/883.↩
7. The OLAF Report 2016, point 4.2 and figure 12, p. 33.↩
8. See Commission Report on the protection of the financial interests of the European Union, Fight against fraud, Annual report 2016, 20.7.2017, COM (2017) 383, point 2.3.1. pp. 15 et seq.↩
9. See endnote 1 *supra*.↩
10. M. Delmas-Marty/ J.A.E. Vervaele, *The implementation of the corpus iuris in the Member States*, 2000, referred to as the revised Florence version of corpus iuris.↩
11. Green paper on criminal law protection of the Communities' financial interests and the setting up of a European Prosecutor, COM (2001) 715, 11.12.2001.↩
12. Commission contribution to the Intergovernmental Conference on institutional reform: Criminal law protection of the Communities' financial interests, COM (2000) 608, 29.9.2000.↩
13. An extension to include serious crime having a cross-border dimension is foreseen in Article 86 (4) TFEU, but subject to unanimous decision by the European Council. For the aspect on the extension of EPPO's mandate see the contributions of F. Giuffrida and C. Di Francesco Maesa, in this issue↩
14. Article 86 (1), sub-paragraph 1, second sentence TFEU.↩
15. Article 86 (1), sub-paragraphs 2 and 3 TFEU, with reference to Art. 20 TEU and Art. 329 TFEU.↩
16. *O.J.* C 115, 4.5.2010, 1; see, in particular, point 3.1.1., p.13: "On the basis of an assessment of the implementation of (Council Decision 2009/426 on the strengthening of Eurojust), new possibilities could be considered in accordance with the relevant provisions of the Treaty, including giving further powers to the Eurojust national members, reinforcement of the powers of the College of Eurojust *or the setting-up of a European Public Prosecutor*."↩
17. European Public Prosecutor Working Group, conclusions, Madrid, 29.6. – 1.7.2009.↩
18. K. Ligeti, *Draft EU model rules of criminal procedure*, University of Luxemburg, March 2012.↩
19. For an overview of the consultations undertaken, see the explanatory memorandum to the Commission proposal, COM (2013) 534.↩
20. Proposal for a Regulation of the Council setting up the European Public Prosecutor's Office, COM(2013) 534, 17.7.2013.↩
21. SWD (2013) 274.↩
22. Article 11 (4) of the proposal, COM(2013) 534.↩
23. Article 26 (1) – (6) of the proposal.↩
24. Article 25 of the proposal.↩

25. On the history of the negotiations, see: L. Kuhl and R. Panait, "Les négociations pour un Parquet européen: un organe d'enquête et de poursuite européen pour la lutte antifraude dans l'Union européenne, ou un deuxième acteur de coordination judiciaire", (2017) *Revue de science criminelle et de droit pénal comparé*, 41.↩
26. See, in response, the Communication of the Commission to the European Parliament, the Council and the national parliaments, COM(2013) 851, 27.11.2013.↩
27. See also the study by A. Weyembergh and C. Briere, *Towards a European Public Prosecutor's Office (EPPO)*, mandated by the thematic department of civil liberties and constitutional matters of the European Parliament, November 2016 (Internet publication).↩
28. The funds for the corpus iuris study were included in a specific budgetary line for the 1996 budget, inserted at the initiative of the European Parliament.↩
29. European Parliament legislative resolution on the draft Council regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO") (09941/2017 – C8-0229/2017 – 2013/0255 (APP)), rapporteur Barbara Matera.↩
30. For the structure of the EPPO, see also the article of A. Met-Domestici, in this issue.↩
31. Art. 10 (9) of the EPPO Regulation.↩
32. See Art. 28.↩
33. Art. 10 (5).↩
34. See Art. 30.↩
35. See also Commission declaration, Council Document 9476/17, 7.6.2017, with reference to Recital 70 EPPO Regulation. In the Commission's view, it lacks clarity on relevant limitations that may apply according to national law.↩
36. See Art. 8(1).↩
37. See Art. 11 (3).↩
38. See Art. 30.↩
39. See Art. 31.↩
40. Directive 2014/41/EU, 3.4.2014, O.J. L 130, p. 1,in particular Art. 9.↩
41. Directive (EU) 2017/1371 of the European Parliament and the Council on the fight against fraud to the Union's financial interests by means of criminal law, 5.7.2017, *O.J.* L 198, p. 29; see, in particular, Art. 3 (fraud) and Art. 4 (corruption). See for the Directive, A. Juszczak and E. Sason, "The Directive on the Fight against Fraud to the Union's Financial Interests by Means of Criminal Law (PFI Directive)", (2017) *eucrim*, 80.↩
42. See Art. 22 EPPO Regulation.↩
43. See Art. 25 and 27.↩
44. See Art. 25 (2).↩
45. Art. 22 (1).↩
46. See Art. 25 (3) sub-paragraph 1, lit. (b).↩
47. See Art. 25(3), second sub-paragraph: "Point (b) of the first subparagraph of this paragraph shall not apply to offences referred to in Article 3 (2) (a), (b) and (d) of Directive 2017/1371."↩
48. Article 25 (3) sub-paragraph 1, lit. (a).↩
49. See, currently, Art. 7 (6) of Regulation 883/2013 concerning investigations conducted by OLAF.↩
50. Report of the Commission on the Evaluation of the application of Regulation 883/2013, COM (2017) 589, 2.10.2017 and accompanying services document SWD (2017) 332.↩
51. COM(2017) 589, point 4.↩
52. Commission Document SI(2017) 403, 14.9.2017; for the previous calculation, see the legislative financial statement accompanying the Commission proposal for a Regulation setting up the European Public Prosecutor's Office, COM(2013) 543, 17.7.2013, p. 62.↩
53. Art. 101 (3) of the EPPO Regulation.↩
54. See Art. 28 (1).↩
55. See Art. 20.↩
56. See Art. 21.↩
57. See Art. 120.↩
58. European Commission, 1.3.2017, White Paper on the Future of Europe, Reflections and Scenarios for the EU27 by 2025, p. 20.↩
59. See, on this subject matter, the study: Preparing the environment for the EPPO: Fostering mutual trust by improving existing common legal heritage and enhancing common legal understanding. Proposal for a preliminary study and guidelines for a model 'framework curriculum' for legal training of practitioners in the PIF sector" – (EUPenTRAIN) R. Sicurella, Centro di Diritto Penale Europeo, Catania, 2017 (to be published soon).↩
60. Art. 28.↩
61. See Art. 28 (4).↩
62. See also: Report of the Commission on Evaluation of the application of Regulation 883/2013, COM(2017) 589, 2.10.2017, in particular point 4, p. 6: "strong synergies need to be created between the EPPO and OLAF" "to provide for the necessary mechanisms for OLAF to perform its role of operational support".↩
63. See Art. 100 of the EPPO Regulation on the "close relationship" between the EPPO and Eurojust.↩

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