

# The Establishment of the European Public Prosecutor's Office

The Road from Vision to Reality



**euclid**

European Law Forum: Prevention • Investigation • Prosecution

## Article

**Peter Csonka, Adam Juszcak, Elisa Sason**

### ABSTRACT

The establishment of a European prosecution office with the competence to fight crimes against the financial interests of the EU has been the subject of discussion for many years. Twenty years after the Corpus Juris experts recommended setting up a European Public Prosecutor's Office (EPPO) and four years after the Commission tabled its proposal, the Regulation establishing the EPPO received the European Parliament's consent on 5 October 2017 and was finally adopted by the Justice and Home Affairs (JHA) Council on 12 October 2017 under enhanced cooperation with 20 Member States. The Regulation was published in the Official Journal on 31 October 2017 and entered into force on 20 November 2017.

The EPPO will be an independent European prosecution office competent for investigating and prosecuting the crimes.

This article sets out the main elements of the Regulation, outlines the expected advantages of the EPPO, illustrates the next steps to be taken in the establishment of the Office and gives an outlook on its future activities.

### AUTHORS

#### **Peter Csonka**

Director (acting), Justice Policies  
European Commission

#### **Adam Juszcak**

European Commission

#### **Elisa Sason**

Policy Coordinator  
European Commission

### CITATION SUGGESTION

P. Csonka, A. Juszcak, E. Sason, "The Establishment of the European Public Prosecutor's Office", 2017, Vol. 12(3), euclid, pp125–135. DOI: <https://doi.org/10.30709/euclid-2017-012>

Published in

2017, Vol. 12(3) euclid pp 125 – 135

ISSN: 1862-6947

<https://euclid.eu>



# I. Introduction

The establishment of a European prosecution office with the competence to fight crimes against the financial interests of the EU has been the subject of discussion for many years<sup>1</sup>. Twenty years after the *Corpus Juris* experts recommended setting up a European Public Prosecutor's Office<sup>2</sup> (EPPO) and four years after the Commission tabled its proposal<sup>3</sup>, the Regulation establishing the EPPO received the European Parliament's consent on 5 October 2017<sup>4</sup> and was finally adopted by the Justice and Home Affairs (JHA) Council on 12 October 2017 under enhanced cooperation with 20 Member States<sup>5</sup>. The Regulation was published in the Official Journal on 31 October 2017<sup>6</sup> and entered into force on 20 November 2017.

The EPPO will be an independent European prosecution office competent for investigating and prosecuting the crimes defined in the recently adopted Directive on the fight against fraud to the Union's financial interests by means of criminal law (the "PIF Directive")<sup>7</sup>.

Truth be told, reaching an agreement on the EPPO has not been easy. Shortly after the adoption of the Commission proposal<sup>8</sup> in July 2013, 14 chambers of national Parliaments in 11 Member States<sup>9</sup>, issued reasoned opinions pursuant to Protocol No 2 on the application of the principles of subsidiarity and proportionality, forcing the Commission to review its proposal. It was only the second time that the threshold of at least one third of the votes allocated to the national Parliaments<sup>10</sup> was reached and the mechanism triggered<sup>11</sup>. After careful review of the reasoned opinions, the Commission concluded that the proposal for the EPPO Regulation complied with the principle of subsidiarity and decided to maintain the proposal<sup>12</sup> while committing to take due account of the reasoned opinions received.

It took another four years of intense, complex and at times difficult negotiations until the Regulation could be adopted<sup>13</sup>. The Regulation was adopted on the basis of Art. 86 of the Treaty on the Functioning of the European Union (TFEU), which foresees a special legislative procedure and requires unanimity in the Council after obtaining the consent by the Parliament<sup>14</sup>, yet also provides for the possibility for enhanced cooperation, in case unanimity cannot be reached. The legislator had to make use of this possibility<sup>15</sup>, for Hungary, Malta, the Netherlands, Poland, and Sweden decided not to join the EPPO at this stage. In the case of Denmark, Ireland and the UK Protocols No 21 and No 22, respectively, apply, meaning that the Regulation is either not applicable or that these Member States could decide not to opt in.

The text of the Regulation evolved greatly in the course of the negotiations and certain elements of the EPPO, in particular concerning its structure and competences, have undergone significant changes.

This article sets out the main elements of the Regulation, outlines the expected advantages of the EPPO, illustrates the next steps to be taken in the establishment of the Office and gives an outlook on its future activities. Other important aspects of the Regulation, such as the detailed provisions on appointment and dismissal of the European Chief Prosecutor, the Deputies, European Prosecutors, and the European Delegated Prosecutors, the comprehensive set of rules on data protection, the budgetary and staffing provisions, and the chapter on general provisions will not be discussed in detail in this article.

## II. The Main Elements of the Regulation

This section presents the key aspects of the EPPO which will ensure its effective functioning as a single Office throughout all the participating Member States. In the following the EPPO's general principles (1.) will

be discussed along with its structure (2.), competence (3.), the investigations and prosecutions (4.), the procedural rights of the suspects in EPPO investigations (5.), judicial control (6.) and the Office's relations with partners (7.–9.).

## 1. General principles of the EPPO

The EPPO will not only be a new actor in the Union's judicial landscape, it will also adopt an entirely novel approach in fighting crimes at EU level. Whereas the EU Anti-Fraud Office (OLAF) has the powers to conduct administrative investigations<sup>16</sup> and the EU's Judicial Cooperation Unit (Eurojust) fulfils the task of facilitating the coordination of the investigations and prosecutions carried out by the competent authorities in the Member States<sup>17</sup>, the EPPO is the first Union body that will carry out its own criminal investigations and prosecutions concerning criminal offences against the Union's financial interests (Art. 4).

Art. 5 sets out the basic principles which underpin the tasks of the EPPO. Art. 5(1) and (2) state that the EPPO will be bound by the Charter of Fundamental Rights of the European Union (CFR) and the principles of rule of law and proportionality in all its activities – this will be the foundation upon which the EPPO is going to operate as a Union body, including all of its acts of procedure. The basis for the investigations and prosecutions of the EPPO will obviously be the Regulation. Art. 5(3), however, clarifies that, for want of – in particular – a harmonised EU criminal procedure code, national law shall also apply to the extent that a matter is not regulated by the Regulation, with the latter prevailing, should a matter be governed by both. In addition, the Office is obliged to conduct its investigations in an impartial manner and seek all relevant evidence – both, inculpatory or exculpatory (Art. 5(4)). This makes the EPPO somewhat similar to an investigating judge, whose impartiality is a corollary requirement to independence.

Art. 5(5) provides for an important principle: the EPPO will have to open and conduct investigations without undue delay. This means that the EPPO is, in principle, obliged to initiate a criminal investigation where there are sufficient grounds (Art. 26) and there is no discretion to initiate investigations dependent on e.g. policy considerations, the annual management plan, or the availability of resources, such as in OLAF's case<sup>18</sup>. This is a distinct difference between the EPPO and OLAF which at the same time highlights the different nature of the mandates of these two EU bodies.

Art. 5(6) is an emanation of Art. 4(3) TEU and underlines that the relationship between the EPPO and the national authorities will be governed by the principle of sincere cooperation, meaning that the competent national authorities actively assist and support the investigations and prosecutions of the EPPO. In practice this means that the EPPO and the national authorities shall support and inform each other with respect to relevant cases affecting the EU budget. Of particular importance in this context is the obligation for competent national authorities to report without undue delay any criminal conduct in respect of which the EPPO could exercise its competence (Art. 24). Similarly, EU institutions, bodies, offices and agencies need to report in the same way to the EPPO (Art. 24).

Art. 6 governs another fundamental principle of the EPPO: independence and accountability. The EPPO will be an independent European prosecution office and can neither seek nor take instructions from any person external to the Office, any Member State or EU institutions, bodies, offices or agencies – the latter shall also refrain from seeking to influence the EPPO in the exercising of its tasks. It should be stressed that the independence of the European Chief Prosecutor will also be guaranteed by the selection and appointment procedure. The European Chief Prosecutor will be selected based on an open call for candidates and appointed by the European Parliament and the Council for a non-renewable term of seven years. In addition, the selection of the other key EPPO staff also follows a number of rules safeguarding their independence (Artt.

16 and 17). With regard to the European Delegated Prosecutors, they will enjoy a functionally and legally independent status, which is different from any status under national law (Art. 13(1) and recital 32).

Art. 6(2) states that the EPPO will be accountable to the European Parliament, the Council and the Commission for its general activities. Pursuant to Artt. 6(2) and 7, the EPPO will issue annual reports on its general activities to the European Parliament and to the national parliaments, as well as to the Council and the Commission. Moreover, the European Chief Prosecutor will appear once a year before the European Parliament and the Council to give account of the EPPO's general activities. The European Chief Prosecutor will also appear before national parliaments at their request (Artt. 6 and 7).

## 2. Structure

Whereas the Commission proposal provided for a lean central structure with one European Public Prosecutor assisted by four Deputies<sup>19</sup>, the Regulation adopted by the Council opts for a collegiate structure at central level. This fundamental change, although much debated and criticised, was considered necessary by most governments to politically support the EPPO's establishment. As a result the central office of the EPPO, which will have its seat in Luxembourg (Art. 106), will consist of the European Chief Prosecutor<sup>20</sup> and 20 European Prosecutors<sup>21</sup>, one from each participating Member State, who together will form the EPPO College<sup>22</sup>, and will also include support staff. For administrative and budgetary purposes, the EPPO will be managed by an Administrative Director<sup>23</sup>.

The Regulation, however, has maintained the decentralised structure of the EPPO: besides a central office there will also be European Delegated Prosecutors<sup>24</sup> at decentralised, i.e. Member State, level, as foreseen in the Commission proposal. This will allow the EPPO to be at the proximity of the crimes committed and to work hand in hand with the national law enforcement authorities, in particular police, customs and financial authorities, when carrying out investigations and prosecutions.

Unlike the College of Eurojust, which has substantive operational powers<sup>25</sup>, the EPPO College will only be responsible for the general oversight of the EPPO and cannot take any operational decisions in individual cases<sup>26</sup>. The EPPO College shall nonetheless take decisions on strategic matters and on general issues arising from individual cases, so as to ensure coherence, efficiency and consistency, as well as on other matters specified in the Regulation. The latter include important decisions, such as the establishment of the Permanent Chambers (Art. 9(3)), the adoption of the Internal Rules of Procedure (Art. 9(4)), the appointment of the European Delegated Prosecutors (Art. 17(1)), or the approval of the budget of the EPPO (Art. 90(1))<sup>27</sup>.

As regards the investigatory and prosecutorial work of the EPPO, the Regulation has found a balanced approach in safeguarding the necessary knowledge about the legal system and the language skills relevant in an individual case on the one hand and preserving the European character of the EPPO investigations on the other.

The responsibility for investigations, prosecutions and bringing cases to judgment lies with the European Delegated Prosecutors<sup>28</sup>, as foreseen in Art. 13<sup>29</sup>. Thereby, as a rule, a case shall be initiated and handled by the European Delegated Prosecutor who is from the Member State where the focus of the criminal activity lies or in which the bulk of the offences has been committed<sup>30</sup>.

Although the European Delegated Prosecutors will enjoy a wide range of autonomy, they shall follow the directions and instructions of the Permanent Chamber in charge of a case, as well as the instructions from the supervising European Prosecutor who is from the same Member State as the European Delegated Prosecutor (Artt. 13(1), 12, and 10). In particular the latter point, the supervision of the investigation and

prosecution by a European Prosecutor at central level, who is from the same Member State as the European Delegated Prosecutor handling the case (Art. 12(1)) – commonly referred to as the "national link" – was, together with the question of the EPPO's competence, by far the most controversial topic in the negotiations.

The benefits of the "national link" seem obvious. European Prosecutors, who are experienced in the legal system where the case is being investigated, prosecuted and tried, are handling the case without facing any language barriers. To balance this "national way" of handling cases and to make sure that no bottlenecks arise if the supervisory role is entrusted to one European Prosecutor only, the Regulation foresees that it is the Permanent Chambers that monitor and direct the investigations and prosecutions (Art. 10(2)). Art. 12(1) accordingly clarifies that the European Prosecutors supervise the investigations and prosecutions conducted by the European Delegated Prosecutors on behalf of the Permanent Chambers and in compliance with any instructions the Permanent Chambers have given in accordance with Art. 10(3-5).

The Permanent Chambers will, thus, play a crucial role in the investigations and prosecutions. Composed of the European Chief Prosecutor (or one of the Deputies) and two European Prosecutors, the Permanent Chambers will possess wide-ranging decision-making powers during the investigations and prosecutions. These include bringing a case to judgment, dismissing a case, applying a simplified procedure, referring a case to the national authorities or re-opening investigations (Art. 10(3)). The Permanent Chambers may also instruct the European Delegated Prosecutors to initiate an investigation or exercise the right of evocation as well as take various decisions in the management of the individual cases (Art. 10(4)).

Although the supervising European Prosecutor does not necessarily need to be a permanent member of the Permanent Chamber responsible for the case, he will be the central link between the Permanent Chamber and the handling European Delegated Prosecutor, functioning as a liaison and information channel, giving the Chamber's instructions to the European Delegated Prosecutors and monitoring their implementation (cf. Artt. 10(5), 12(3) and 12(5)). Moreover, pursuant to Art. 10(9), the supervising European Prosecutor shall in any case participate in the deliberations of the Permanent Chamber and have a voting right as regards certain decisions<sup>31</sup>. Other European Prosecutors and European Delegated Prosecutors involved in the case may be invited to attend the deliberations, but shall have no voting rights. Decisions by the Permanent Chambers are taken by simple majority, with the chair having a casting vote (Art. 10(6)), including the possibility to take decisions by means of a written procedure (Art. 10(8)).

To allow for more flexibility, in certain cases, depending on the degree of seriousness of the offence or the complexity of the proceedings in the individual case and involving a damage of less than € 100,000, the Permanent Chambers can delegate some of their decision-making powers to the European Prosecutor supervising the case (Art. 10(7)). Similarly, a too rigid "national link" has been avoided in the Regulation by allowing for the possibility to assign the supervision of investigations and prosecutions to a European Prosecutor, who is not from the same Member State as the European Delegated Prosecutor<sup>32</sup>.

In addition to his operational role as a member of the Permanent Chambers, the European Chief Prosecutor will direct the activities of the EPPO and represent it externally, and will, e.g., appear before the European Parliament and the national Parliaments (Art. 7). The European Chief Prosecutor will also take various decisions, e.g., on the deviation from the "national link" in Art. 12(2), he will approve the number of European Delegated Prosecutors as well as the functional and territorial division of competences among them in line with Art. 13(2), decide on the prolongation of the time limit to exercise the right of evocation pursuant to Art. 27(1), make a request for the lifting of privileges or immunities pursuant to Art. 29, or prepare the decisions on the establishment of the budget pursuant to Art. 90(1).

### 3. Competence

By contrast to the Commission proposal, according to which the EPPO had exclusive competence for criminal offences affecting the Union's budget (PIF offences), the Regulation foresees that the EPPO has shared competence over these crimes (cf. recital 30).

Pursuant to Art. 22 the EPPO will be competent in respect of criminal offences affecting the financial interests of the Union as provided in the recently adopted PIF Directive. Moreover, Art. 22(2) states that the EPPO will also be competent for offences relating to the participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, if the focus of the criminal activity of such a criminal organisation lies on the commission of PIF offences. The EPPO's material scope of competence will also be extended to any other criminal offence that is inextricably linked to a PIF offence (Art. 22(3)).

The Regulation, however, sets limits to the EPPO exercising its material competence. Art. 22(1) sentence 2 already stipulates that criminal offences as defined in point (d) of Art. 3(2) of the PIF Directive, i.e. the important VAT fraud cases, fall within the EPPO's material scope of competence only if they are connected with the territory of two or more Member States and involve a total damage of € 10 million.

Art. 25(1) further sets out the notion of shared competence between the EPPO and the national authorities stating that the EPPO exercises its competence by either initiating an investigation under Art. 26 or by deciding to use its right of evocation under Art. 27, and that in such event, the national authorities will not exercise their own competences in respect of the same criminal conduct.

Following paragraph 2 of Art. 25, the EPPO may, accordingly, only exercise its material competence if the criminal offence involves a damage to the financial interests of the Union of € 10,000 or more, unless the case has "repercussions"<sup>33</sup> at Union level or involves EU officials.

In the same vein, Art. 25(3) – a provision that is as crucial as it is complex – stipulates that the EPPO refrains from exercising its competence over PIF offences, which are inextricably linked to other offences, under certain conditions connected to two non-cumulative distinct criteria: sanctions and the damage caused. Thus, if the maximum sanction provided for by national law for the PIF offence is equal or less severe than the maximum sanction for the linked offence, then the EPPO shall not exercise its competence – unless the linked offence has been "instrumental"<sup>34</sup> to commit the PIF offence.

Secondly, if the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim (e.g. a Member State in a co-funded case), then, in the same way, the EPPO will not exercise its competence. This damage criterion does, however, not apply to the offences referred to in Art. 3(a), (b), and (d) of the PIF Directive, i.e. in particular not to VAT fraud cases. Another exception to the rule on the damage criterion can be found in Art. 25(4), which, by way of a voluntary transfer of cases, allows the EPPO to exercise its competence even if the damage to the Union is lower than the damage to another victim, provided the competent national authorities give their consent and the EPPO appears to be better placed<sup>35</sup> to investigate or prosecute.

In order for the EPPO to establish whether it is competent and hence can initiate investigations or make use of its right of evocation, Art. 24 provides for comprehensive reporting obligations imposed upon the national authorities and the EU institutions, bodies, offices and agencies.

Sound communication and cooperation between the EPPO and the national authorities will be fundamental in order to ensure a smooth division of labour. The circumstance that the EPPO will have an integrated, decentralised structure with European Delegated Prosecutors across the participating Member States is in



this respect a decisive advantage. Nonetheless, in the event of disagreement between the EPPO and the national authorities over the question of material competence, Art. 25(6) foresees that the national authorities, who usually decide cases of disagreement over the competences of prosecution offices at national level, shall decide whether the EPPO or the national authorities is competent. The Court of Justice of the European Union (CJEU) may, pursuant to Art. 42(2)(c), review how the important provision on conflicts of competences will be applied.

As regards the EPPO's personal and territorial competence, recital 64 sets the guiding idea by stating that the EPPO should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the participating Member States. Accordingly, Art. 23 mentions the principle of territoriality and the (active) personality principle, but recital 64 makes it clear that this needs to be understood in a broad manner, i.e. it is not excluded that the EPPO investigates and prosecutes cases even if they were committed outside the territory of the participating Member States, i.e. in the territory of non-participating Member States or Third States, if a genuine link can be established to the financial interests of the Union.

## 4. Investigations and prosecutions

How will the EPPO conduct its investigations and prosecutions? In accordance with Art. 28(1), the European Delegated Prosecutor handling the case may either undertake investigation measures himself or instruct the competent national authorities to do so. An EPPO investigation will be based on the procedures provided both in the Regulation and, where applicable, national law. For the execution of investigation measures, the EPPO will rely to a large extent on the national authorities, including police, tax and custom authorities. These authorities have the obligation to actively support the EPPO throughout all its activities, that is from the moment a suspected offence is reported until the moment the EPPO decides to prosecute or otherwise dispose of the case.<sup>36</sup> Unless urgent measures are required during the investigation (Art. 28(2) and recital 58), the national authorities have to directly follow instructions given by the European Delegated Prosecutor. Under certain conditions, the Regulation allows for the reallocation of a case to another European Delegated Prosecutor<sup>37</sup> and, in exceptional cases, even to the supervising European Prosecutor<sup>38</sup>.

In order to gather inculpatory as well as exculpatory evidence, the EPPO will be able to use a comprehensive set of investigation measures. The EPPO will have six investigation measures at its disposal common to all participating Member States, i.e.: (a) to search any premises, (b) to obtain production of any relevant object or document, (c) to obtain production of stored computer data, (d) to freeze instrumentalities or proceeds of crimes, (e) to intercept electronic communications and (f) to track and trace an object by technical means (Art. 30(1)). These measures are available with regard to offences falling within the EPPO's mandate, where they are punishable by a maximum penalty of at least four years of imprisonment and may be subject to conditions in accordance with national law (Art. 30(1-3) and recital 70). Member States may in particular limit the application of measures (e) and (f) to specific serious offences. In such event, the Member State shall notify the EPPO of the relevant list of such specific serious offences (Art. 30(3) and Art. 117). In addition to the above-mentioned investigation measures, the European Delegated Prosecutors will also be entitled to order any other measure available under national law in similar national cases (Art. 30(4) and recital 71).

As regards cross-border cooperation between European Delegated Prosecutors, the EPPO introduces a novel approach deviating from standard mutual legal assistance instruments. The European Delegated Prosecutors will operate on the basis of a *sui generis* regime for cross-border cooperation, which foresees an obligation for the European Delegated Prosecutors to execute investigation measures assigned to them (Art. 31(1)). In this context, the Regulation differentiates between the "handling European Delegated Prosecutor",

who is responsible for the investigations and prosecutions which he has initiated, and the "assisting European Delegated Prosecutor", who is located in the Member State where an investigation or other measure assigned to him should be carried out.

As a general rule, the judicial authorisation and adoption of an investigation measure assigned by the handling European Delegated Prosecutor to the assisting European Delegated Prosecutor, shall be governed by the national law of the Member State of the handling European Delegated Prosecutor (Art. 31(2)). However, if the law of the Member State of the assisting European Delegated Prosecutor requires a judicial authorisation, the assisting European Delegated Prosecutor needs to obtain such authorisation in accordance with his national law. If the authorisation for this measure is refused, the handling European Delegated Prosecutor is bound to withdraw the assignment (Art. 31(3) subpara 2 and recital 72)<sup>39</sup>. Vice versa, in the situation where the law of the Member State of the assisting European Delegated Prosecutor would not require a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor does, the Regulation stipulates that the authorisation shall be obtained by the latter European Delegated Prosecutor, in line with the main rule (Art. 31(3) subpara 3). In this way, the Regulation avoids the requirement of having a double judicial authorisation for an investigation measure to be carried out in cross-border setting.

Furthermore, the Regulation has a built-in consultation mechanism to deal with situations, in which the assisting European Delegated Prosecutor considers that (a) an assignment is incomplete or contains a manifest relevant error, (b) the assignment cannot be undertaken within the set time-limit, (c) an alternative but less intrusive measure would achieve the same result or (d) the assigned measure does not exist or would not be available in a similar case under the law of his Member State (Art. 31(5)). As a first step, the assisting European Delegated Prosecutor should inform the supervising European Prosecutor and consult with the handling European Delegated Prosecutor to resolve the issue bilaterally, i.e. amongst the handling and the assisting European Delegated Prosecutor. In the situation described under (d), the European Delegated Prosecutors may, in agreement with the supervising European Prosecutor, have recourse to legal instruments on mutual recognition or cross-border cooperation<sup>40</sup>. Should it prove impossible to resolve this issue between the handling and respectively the assisting European Delegated Prosecutor within seven working days, the matter is to be referred to the Permanent Chamber, which is required to make a final decision in this regard (Art. 31(7-8)).

Following the assignment of an investigation measure, the assisting European Delegated Prosecutor should ensure the enforcement of this measure in accordance with the Regulation and the law of his Member State<sup>41</sup>. The Regulation moreover ensures that the handling European Delegated Prosecutor can order the arrest or pre-trial detention of a suspect or accused person (Art. 34(1)) and is entitled to issue or request European Arrest Warrants within the area of competence of the EPPO<sup>42</sup>.

During an investigation conducted by the EPPO, it could become evident that the facts subject to the investigation do not constitute a criminal offence falling within the EPPO's competence or that the conditions of Art. 25(2) and (3) are no longer met. In this situation, the Permanent Chamber should refer the case to the competent national authorities for further follow-up (Art. 34(1-2)). The Regulation also provides for the possibility for the Permanent Chambers to refer a case to the competent national authorities if the damage caused to the financial interests of the Union is less than € 100,000 on the basis of the general guidelines to be issued by the College<sup>43</sup>. If, for any reason, the national authorities do not accept to take over the case within a timeframe of maximum 30 days, the EPPO shall remain competent to prosecute or dismiss the case (Art. 34(5)).



An EPPO investigation could be closed in various ways; by way of prosecution (Art. 36), dismissal (Art. 39) or by applying a simplified prosecution procedure (Art. 40). In all these situations, the handling European Delegated Prosecutor shall submit a report to the supervising European Prosecutor, including a summary of the case and a draft decision, and subsequently the competent Permanent Chamber should take a decision on the case (Art. 35(1)). It should be noted, however, that the Permanent Chamber cannot decide to dismiss a case if the handling European Delegated Prosecutor proposes to bring a case to judgment (Art. 36(1)). Under certain conditions the Permanent Chamber can also decide to bring a case to judgment in a Member State different from the Member State of the handling European Delegated Prosecutor (Art. 36(3)) or to join several cases (Art. 36(4)). The procedure for lodging an appeal is also covered by the Regulation (Art. 36(7)).

Where prosecution has become impossible pursuant to the national law of the handling European Delegated Prosecutor, the Permanent Chamber should decide to dismiss the case on the basis of an exhaustive list of grounds laid down in the Regulation<sup>44</sup>. In certain cases the EPPO can only dismiss a case after having consulted with the competent national authorities (Art. 39(3)). Following the dismissal of the case, it is up to the EPPO to officially notify the competent national authorities and inform the relevant EU institutions, bodies, offices and agencies, as well as the suspects and accused persons and the crime victims of such dismissal (Art. 39(4)). The EPPO may also refer dismissed cases to OLAF (cf. Art. 101(4)) or to the competent national administrative or judicial authorities for recovery or other administrative follow-up (Art. 39(4)).

Another way of finally disposing of a case concerns the simplified prosecution procedure, i.e. if the applicable national law indeed provides for such a procedure. Such procedure is to be applied in accordance with the conditions provided for in national law (Art. 40(1)).

Throughout the investigations and prosecutions carried out by the EPPO, the principle of free admissibility of evidence applies as an overarching element (Art. 37). Evidence presented by EPPO prosecutors against the defendant to a national court cannot be denied admission on the ground that it was collected in another Member State. However, the trial court is allowed to examine the admissibility of evidence so as to ensure that admission is not incompatible with Member States' obligations to respect the fairness of the procedure, the rights of defence, or other rights of the defendants, as enshrined in the CFR, in accordance with Art. 6 TEU (recital 80).

## 5. Procedural safeguards

Art. 41 stipulates that the EPPO's investigations and prosecutions should be carried out in full compliance with the fundamental rights of the suspects and accused persons in EPPO proceedings.

Accordingly and as a starting point, suspects and accused persons can rely, at a minimum, on the existing or new EU *acquis*. This includes Directives concerning the rights of suspects and accused persons in criminal investigations ranging from the right to interpretation and translation in criminal proceedings<sup>45</sup> over the right to information and access to the case file<sup>46</sup>, the right of access to a lawyer<sup>47</sup>, the right to remain silent and the right to be presumed innocent<sup>48</sup> to the right to legal aid<sup>49</sup>.

In addition, suspects and accused persons as well as other persons involved in EPPO proceedings, may seek recourse to all procedural rights available under the national law. The Regulation particularly mentions the possibility to present evidence, appoint experts, hear witnesses, or request the EPPO to obtain such measures on behalf of the defence. The latter part constitutes a *sui generis* right for the defence, stemming directly from the Regulation, in the event that these measures are unavailable under national law.

## 6. Judicial control

The EPPO will base its activities on the rights enshrined in the CFR and on the principles of rule of law and proportionality. The Regulation accordingly foresees a set of rules providing for a comprehensive judicial review of the EPPO's procedural acts.

But in the absence of a European Criminal Court, it begs the question, which court should be entrusted with reviewing the procedural acts of the EPPO as a Union body (Art. 3(1)).

According to Art. 19 TEU and in line with the jurisdiction of the CJEU it would follow that the Court of Justice should in principle be competent to assess the legality of Union acts – and this includes acts by the EPPO as a Union body<sup>50</sup>. Art. 86(2) TFEU, however, clarifies that the EPPO exercises the functions of the prosecutor before the competent courts of the Member States, and thus, embeds the EPPO in the Member States' national legal systems.

Moreover, Art. 86(3) TFEU clarifies that the Regulation governs not only general rules applicable to the EPPO but also specific rules, in particular rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions.

Indeed the EPPO will apply both, the Regulation and national law and procedure, and as regards the latter, the CJEU in principle lacks jurisdiction<sup>51</sup>.

Art. 42(1) accordingly foresees that the judicial review of procedural acts of the EPPO (as well as the failure to act) that have legal effects vis-à-vis third parties is entrusted to the competent national courts in accordance with the requirements and procedures laid down by national law. The CJEU will also play an important role, not only by way of preliminary rulings pursuant to Art. 267 TFEU in questions such as the choice of jurisdiction or conflicts over competences (Art. 42(2)), but also on the basis of Art. 263(4) TFEU insofar as it concerns the dismissal of a case based directly on Union law (Art. 42(3)). Besides, the CJEU retains jurisdiction concerning issues such as compensation for damage, arbitration clauses, staff-related matters, dismissal of the European Chief Prosecutor and the European Prosecutors, and in relation to data protection (Art. 42(4-8)).

## 7. The EPPO's relations with OLAF and Eurojust

The EPPO's future relations with other EU institutions, bodies, offices and agencies are of significant importance for its functioning. It must be ensured that there is no duplication in mandates and that the law is clear on who is doing what. This particularly applies to OLAF and Eurojust, although the mandates of the EPPO, OLAF and Eurojust differ significantly, both, in terms of scope and nature.

The Regulation foresees that the EPPO is able to work efficiently with other EU actors, such as Eurojust (Art. 100), OLAF (Art. 101), Europol (Art. 102) as well as other institutions, bodies and agencies of the Union (Art. 103).

On that basis, for clarity reasons, it is desirable to align the legal instruments of OLAF and Eurojust so as to reflect their future relationship with the EPPO. The draft Eurojust Regulation, on which negotiations are expected to be finalised this year, should adequately reflect the relationship between the EPPO and Eurojust. Similarly, the future relationship between OLAF and the EPPO needs to be properly reflected in the OLAF Regulation, which is currently under revision<sup>52</sup>. However, the EPPO Regulation sufficiently governs the relationship amongst these EU bodies.

As regards the EPPO's relations with OLAF, Art. 101 lays down the key aspects for the cooperation between the two bodies. The EPPO will establish and maintain a close relationship with OLAF based on mutual co-operation within their respective mandates. Their relation should in particular aim at ensuring that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO. To avoid any duplication of work, the Regulation further provides that where the EPPO conducts a criminal investigation, OLAF cannot open any parallel administrative investigation into the same facts.

## 8. Relations with non-participating Member States

Since not all Member States wish to join the EPPO, the Regulation provides in Art. 105 that the EPPO may conclude working arrangements with non-participating Member States concerning the exchange of strategic information and the secondment of liaison officers to the EPPO. In addition, the EPPO may designate, in agreement with the competent national authorities, contact points in the non-participating Member States in order to facilitate cooperation in line with the EPPO's needs.

A controversial point in the negotiations concerned paragraph 3 of Art. 105 which stipulates that in the absence of a legal instrument relating to the cooperation in criminal matters and the surrender procedures between the EPPO and the competent authorities of non-participating Member States, the participating Member States notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO.

It remains to be seen if having recourse to the Union *acquis* on judicial cooperation, i.e. the various mutual recognition instruments such as the European Arrest Warrant, will be a sufficient legal basis and if this framework for the cooperation between the EPPO and non-participating Member States is legally clear and will be politically accepted by all Member States. The duty of loyal cooperation (Art. 4 TEU) would support this theoretical approach but judicial practice may require a more elaborate solution.

## 9. Relations with third countries

As regards third countries, the Regulation provides, as mentioned above, that the EPPO should exercise its competence as broadly as possible so that, under certain circumstances, its investigations and prosecutions may extend to offences committed outside the territory of the Member States. This means that the EPPO could investigate a case of fraud concerning EU funds in a third country, if the suspect is an EU official, an EU citizen, or if there is any other genuine link which can be established.

Pursuant to Art. 104, the EPPO will have various cascading ways to work with the authorities of third countries. Firstly, the EPPO may conclude working arrangements with the authorities of third countries in order to facilitate the cooperation, the exchange of information and the secondment of liaison officers to the EPPO. Secondly, international agreements concluded by the EU or to which the EU has acceded in areas that fall under the competence of the EPPO, shall be binding on the EPPO in relation to third countries. . In the absence of such multilateral agreements, an EU Member State shall – if permitted under the relevant multilateral international agreement and subject to the acceptance of the third country – recognise and notify the EPPO as a competent authority. As a fallback option, the European Delegated Prosecutors, who are “double hatted”, i.e. continue their functions as national prosecutors at the same time, may seek recourse to their powers as a national prosecutor and request legal assistance in criminal matters from the authorities of third countries. This may happen on the basis of international agreements concluded by that Member State

or based on the applicable national law. Finally, the EPPO can request legal assistance in criminal matters from third countries in a particular case on an *ad hoc* basis.

### III. Outlook

Art. 120 foresees that the EPPO assumes its investigative and prosecutorial tasks on a date to be determined by a decision of the Commission on a proposal of the European Chief Prosecutor once the EPPO is set up. As this date cannot be earlier than three years after the entry into force of the Regulation, the EPPO cannot take up its functions before the end of 2020. This timeframe allows Member States to adapt their national systems to the EPPO and to insert the EPPO into the existing judicial landscape and to transpose the PIF Directive into their national law.

During the build-up phase of the EPPO<sup>53</sup>, a number of important steps shall be taken. This includes the selection and appointment of EPPO senior staff, such as the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors, and the Administrative Director. Furthermore, this phase comprises the drafting and adoption of the Internal Rules of Procedure, as well as the development of a tailor-made EPPO Case Management System. This is a prerequisite for the EPPO to be able to take up its functions from day one. The build-up phase will be accompanied by training activities, not only of incoming EPPO staff but also of practitioners in the Member States, such as judges, police and other law enforcement agencies.

Given the need and the high expectations for the EPPO to take up its functions without delay, it is essential that the stakeholders at EU and Member States level make all necessary efforts to achieve this goal.

### IV. Conclusions

With the advent of the EPPO, a new star will rise on the EU's horizon in the area of freedom, security and justice.

Being one of the Commission's key priorities in the area of criminal justice and part of the comprehensive strategy to combat crimes affecting the financial interests of the Union, the EPPO will be the first EU body empowered to carry out criminal investigations and prosecutions into crimes affecting the Union budget, including fraud, corruption, money laundering and serious VAT carousels. Given the vast amount of EU funds lost due to these crimes, it cannot be early enough to have the EPPO in place.

The EPPO will bring more consistency and coherence into the fight against crimes affecting the EU budget, thereby leading to a greater number of prosecutions and convictions, and as a result thereof to a higher level of recovery of fraudulently lost Union funds.

As a new EU body, the EPPO will without doubt face challenges. It will need to find its place in the existing judicial landscape of the EU and smoothly adapt and apply the Regulation to fulfil its mandate.

The EPPO will undoubtedly be the key actor in the fight against crimes affecting the Union budget. But corruption, money laundering or serious VAT carousels are often linked to other serious crimes with a cross-border dimension, such as organised crime, trafficking offences and even terrorism. These crimes pose serious threats to the security of the EU and its citizens and therefore Art. 86(4) TFEU allows for the extension of the EPPO's competences beyond PIF crimes.

In this perspective, the EPPO, one day, could become a cornerstone in the overall security strategy of the Union in the future.

1. For the historical background on the EPPO cf. Katalin Ligeti and Michele Simonato, "The European Public Prosecutor's Office: Towards a truly European Prosecution Service?", *New Journal of European Criminal Law*, (2013) 4, Issue 1–2. Cf. also F. Zeder, "Der Vorschlag zur Errichtung einer Europäischen Staatsanwaltschaft: Große – kleine – keine Lösung?", *Österreichisches Anwaltsblatt* 2014, p. 212-220 with further references. Already in 1976 the European Commission submitted to the Council a draft text amending the Treaties establishing the European Communities so as to permit the adoption of common rules on the protection under criminal law of the financial interests of the Communities and the prosecution of infringements of the provisions of those Treaties, cf. O.J. C 222, 22.9.1976, p. 2–17.↵
2. M. Delmas-Marty and J.A.E. Vervaele (eds.), *The implementation of the Corpus Juris in the Member States*, volumes 1–4, Intersentia, 2000; see also U. Sieber, Euro-fraud: Organised Fraud Against the Financial Interests of the European Union, in: *Crime, Law and Social Change*, (1998) 30, p. 1 et seq.↵
3. COM (2013) 534 of 17 July 2013.↵
4. P8\_TA-PROV(2017)0384 - European Parliament legislative resolution of 5 October 2017 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)).↵
5. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. The Member States participating in the enhanced cooperation are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, and Spain.↵
6. O.J. L 283, 31.10.2017, 1.↵
7. Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive). Cf. on the PIF Directive A. Juszczak and E. Sason, (2017) *eucrim*, 80.↵
8. COM(2013) 534 of 17 July 2013.↵
9. Cyprus (Vouli ton Antiprosopon), the Czech Republic (Senát), France (Sénat), Ireland (Dáil and Seanad), Hungary (Országgyűlés), Malta (Kamra Tad-Deputati), Netherlands (Eerste Kamer and Tweede Kamer), Romania (Camera Deputaţilor), Slovenia (Državni Zbor), Sweden (Riksdag) and the UK (House of Commons and House of Lords).↵
10. Cf. Art. 7 of Protocol No 2.↵
11. The first time the threshold was reached in May 2012 concerning the proposed Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM(2012) 130 dated 21 March 2012. The Commission reviewed its proposal but did not find it in breach of the principle of subsidiarity. However, the Commission considered the views expressed and the discussions among the co-legislators, the European Parliament and the Council, and recognised that its proposal was unlikely to gather the necessary political support for its adoption. The Commission therefore decided to withdraw the proposal.↵
12. The Commission gave reasons for its decision in Communication COM(2013) 851 on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2, dated 27 November 2013.↵
13. The negotiations took place under 9 Presidencies of the Council of the EU (Lithuania, Greece, Italy, Latvia, Luxembourg, the Netherlands, Slovakia, Malta, and Estonia), and required around 90 Council Working Group meetings (COPEN), 12 high-level official meetings (CATS), and 16 JHA Council meetings.↵
14. The European Parliament gave its consent on 5 October 2017 pursuant to Art. 86 TFEU. The Parliament adopted three resolutions on the EPPO Regulation: resolution of 12 March 2014 with Interim Report by Rapporteur Salvatore Iacolino, EPP/IT (A7-0141/2014), resolution of 29 April 2015 with Interim Report by Rapporteur Monica Macovei, EPP/RO (A8-0055/2015), and resolution of 5 October 2016 under Rapporteur Barbara Matera, EPP/IT (B8-1054/2016).↵
15. On 7 February 2017, the Council registered the absence of unanimity on the draft Regulation. In accordance with the second subparagraph of Art. 86(1) TFEU, a group of 17 Member States requested, by a letter dated 14 February 2017 that the draft Regulation be referred to the European Council. The draft Regulation was discussed by the European Council on 9 March 2017 and noted a disagreement in accordance with the third subparagraph of Art. 86(1) TFEU. On 3 April 2017, 16 Member States (Belgium, Bulgaria, the Czech Republic, Cyprus, Germany, Greece, Spain, Finland, France, Croatia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Slovakia) notified the European Parliament, the Council and the Commission of their wish to establish the EPPO under enhanced cooperation. By letters dated 19 April 2017, 1 June 2017, 9 June 2017 and 22 June 2017, respectively, Latvia, Estonia, Austria and Italy indicated their wish to participate in the establishment of the enhanced cooperation.↵
16. Cf. Regulation No 883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) for the comprehensive mandate of OLAF.↵
17. Cf. Council Decision on the strengthening of Eurojust and amending Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.↵
18. Cf. Art. 5(1) of Regulation 883/2013.↵
19. Cf. Art. 6(1) of the Commission proposal.↵
20. Appointed by the Council and the European Parliament for a non-renewable term of seven years, Art. 14(1).↵
21. Appointed by the Council for a non-renewable term of 6 years with the possibility to extend the mandate for a maximum of 3 years at the end of the 6-year period, Art. 16(3).↵
22. Cf. Art. 9(1). Two Deputies will be appointed from amongst the European Prosecutors pursuant to Art. 11(2).↵
23. Art. 19. Note also the role of the Administrative Director in the context of exceptionally costly investigative measures pursuant to Art. 91(6).↵
24. Appointed by the College for a renewable term of five years, Art. 17(1). There shall be two or more European Delegated Prosecutors per Member State, under the conditions set out in Art. 13(2).↵
25. Cf. Art. 7 of Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as amended.↵
26. Cf. Art. 9(2).↵

27. For more examples cf. e.g. Art. 15(1) on the appointment of the Deputies, Art. 16(7) on the designation of a substitute European Delegated Prosecutor, Art. 77(1) on the designation of the Data Protection Officer, Art. 78(5) on the adoption of implementing rules concerning the Data Protection Officer. On the voting procedure in the EPPO College cf. Art. 9(5).↵
28. Cf. however Art. 28(4), which allows in exceptional cases and with the approval of the competent Permanent Chamber that the supervising European Prosecutor conducts the investigations under the conditions mentioned in the provision.↵
29. Art. 13 also allows the European Delegated Prosecutors to be "double hatted", meaning that they will be "European", i.e. acting at European level, when investigating and prosecuting cases falling within the competence of the EPPO, but they may also prosecute national cases in their function as national Public Prosecutors at the same time.↵
30. Cf. Art. 26(4) and the exceptions mentioned in the provision.↵
31. But he cannot vote in respect of the delegation of decision-making powers of the Permanent Chamber (Art. 10(7)), allocation or reallocation under Art. 26(3-5) and 27(6), and on bringing a case to judgment in accordance with Art. 36(3) where more than one Member State has jurisdiction for a case, as well as the situations described in Art. 31(8).↵
32. Cf. Art. 12(2) subject to the conditions laid out in that provision.↵
33. Cf. recital 59 which sheds light on the meaning of "repercussions" stating that "a particular case should be considered to have repercussions at Union level, inter alia, where a criminal offence has a transnational nature and scale, where such an offence involves a criminal organisation, or where the specific type of offence could pose a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence."↵
34. Cf. recital 56 on the notion of "instrumental" which states that "[t]he EPPO should also have the right to exercise competence in the case of inextricably linked offences where the offence affecting the financial interests of the Union is not preponderant in terms of sanctions levels, but where the inextricably linked other offence is deemed to be ancillary in nature because it is merely instrumental to the offence affecting the financial interests of the Union, in particular where such other offence has been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as an offence strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or to ensure the profit or product thereof."↵
35. Cf. also recital 60 which states that "[w]here the EPPO cannot exercise its competence in a particular case because there is reason to assume that the damage caused, or likely to be caused, to the Union's financial interests does not exceed the damage caused, or likely to be caused, to another victim, the EPPO should nevertheless be able to exercise its competence provided that it would be better placed to investigate or prosecute than the authorities of the respective Member State(s). The EPPO could appear to be better placed, inter alia, where it would be more effective to let the EPPO investigate and prosecute the respective criminal offence due to its transnational nature and scale, where the offence involves a criminal organisation, or where a specific type of offence could be a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence. In such a case the EPPO should be able to exercise its competence with the consent given by the competent national authorities of the Member State(s) where the damage to such other victim(s) occurred."↵
36. Cf. Art. 28(1) and recital 69. "The EPPO should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of sincere cooperation, all national authorities and the relevant bodies of the Union, including Eurojust, Europol and OLAF, should actively support the investigations and prosecutions of the EPPO, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case."↵
37. Cf. Art. 28(3). On proposal of the supervising European Prosecutor, the Permanent Chamber "can decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor: a) cannot perform the investigation or prosecution; or b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor."↵
38. Cf. Art. 28(4). This procedure requires the approval of the competent Permanent Chamber and allows the supervising European Prosecutor to either undertake the investigation himself or to instruct the competent authorities. By reference to the efficiency of investigation or prosecution, the Regulation provides for three alternative criteria to apply to this procedure: "a) the seriousness of the offence, in particular in view of its possible repercussions at the Union level; b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union; c) in the event of failure of the reallocation mechanism provided for" in Art. 28(3).↵
39. Cf. Art. 31(3) and recital 72.↵
40. Cf. Art. 31(6). Recital 73 stipulates in this regard that this possibility "should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with the national law implementing the relevant instrument, when conducting the investigation or prosecution."↵
41. Cf. Art. 32. This Article further provides that "formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor."↵
42. Cf. Art. 33(2). Recital 75 notes in this context that the provisions of the EPPO Regulation "relating to pre-trial arrest and cross-border surrender should be without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect or accused person."↵
43. Cf. Art. 34(3). This paragraph ensures that "[w]here, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Art. 9(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities."↵
44. Art. 39(1) lists the following grounds: "(a) the death of the suspect or accused person or winding up of a suspect or accused legal person; (b) the insanity of the suspect or accused person; (c) amnesty granted to the suspect or accused person; (d) immunity granted to the suspect or accused person, unless it has been lifted; (e) expiry of the national statutory limitation to prosecute; (f) the suspect's or accused person's case has already been finally disposed of in relation to the same acts; (g) the lack of relevant evidence."↵
45. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).↵



46. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).↵
47. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).↵
48. Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).↵
49. Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).↵
50. See, e.g., judgment of the ECJ (Grand Chamber) of 3 October 2013, case C-583/11 P, *Inuit*, paras. 91 and 92, and Opinion 1/09 of the ECJ (Full Court) of 8 March 2011, paras. 65 to 70.↵
51. This follows from Art. 19. The Court has, however, jurisdiction in specific cases where the national law refers to the content of a provision of Union law (see e.g., the judgment of the ECJ of 17 July 1997, case C-28/95, *Leur-Bloem*, paras. 25 and 27) or where the Court must provide all points of interpretation necessary for the national court to assess the compatibility with fundamental rights of national law implementing Union law (see Art. 51 of the EUCFR as interpreted by the ECJ in the judgment (Grand Chamber) of 26 February 2013, case C-617/10, *Åkerberg Fransson*, para. 19. See also the interpretation by the Court of "implementing Union law" in the judgment of 10 July 2014, case C-198/13, *Julian Hernández and Others*).↵
52. On 3 October 2017, the Commission report on the Evaluation of the application of Regulation 883/2013 (COM(2017) 589) and the Staff Working Document on the evaluation of Regulation 883/2013 accompanying the Commission report (SWD(2017) 332) were transmitted to the European Parliament and Council.↵
53. Art. 20 entrusts this function to the European Commission.↵

## COPYRIGHT/DISCLAIMER

© 2018 The Author(s). Published by the Max Planck Institute for the Study of Crime, Security and Law. This is an open access article published under the terms of the Creative Commons Attribution-NoDerivatives 4.0 International (CC BY-ND 4.0) licence. This permits users to share (copy and redistribute) the material in any medium or format for any purpose, even commercially, provided that appropriate credit is given, a link to the license is provided, and changes are indicated. If users remix, transform, or build upon the material, they may not distribute the modified material. For details, see <https://creativecommons.org/licenses/by-nd/4.0/>.

Views and opinions expressed in the material contained in eucrim are those of the author(s) only and do not necessarily reflect those of the editors, the editorial board, the publisher, the European Union, the European Commission, or other contributors. Sole responsibility lies with the author of the contribution. The publisher and the European Commission are not responsible for any use that may be made of the information contained therein.

## About eucrim

eucrim is the leading journal serving as a European forum for insight and debate on criminal and "criministrative" law. For over 20 years, it has brought together practitioners, academics, and policymakers to exchange ideas and shape the future of European justice. From its inception, eucrim has placed focus on the protection of the EU's financial interests – a key driver of European integration in "criministrative" justice policy.

Editorially reviewed articles published in English, French, or German, are complemented by timely news and analysis of legal and policy developments across Europe.

All content is freely accessible at <https://eucrim.eu>, with four online and print issues published annually.

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by  
the European Union**