

Guest Editorial eucrim 1-2024

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Editorial

ABSTRACT

Despite countless challenges and obstacles, the European Public Prosecutor's Office (EPPO) is working. This is no small feat. By the end of 2023, we had over 1900 active criminal investigations with an overall estimated damage of more than €19 billion. More importantly, in less than three years of operational activity, the EPPO brought to light a whole new continent of crime, as 60% of the estimated damage under our investigation relates to cross-border VAT fraud.

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Dear Readers,

Despite countless challenges and obstacles, the European Public Prosecutor's Office (EPPO) is working. This is no small feat. By the end of 2023, we had over 1900 active criminal investigations with an overall estimated damage of more than €19 billion. More importantly, in less than three years of operational activity, the EPPO brought to light a whole new continent of crime, as 60% of the estimated damage under our investigation relates to cross-border VAT fraud.

Incidentally, I am sure that what applies to VAT and customs fraud is also valid for the circumvention of EU restrictive measures. I am convinced that we will only start grasping the full extent of this criminal phenomenon once the EPPO's competence has been extended accordingly.

Our work has shown that VAT fraud is no longer a niche criminal activity. It has become one of the most lucrative criminal enterprises in the EU, characterised by low detection rates, minimal risks, and high rewards. Several organised crime groups (OCGs) have scaled their operations in this field to an industrial level. Instead of encountering OCGs occasionally (as initially assumed), we quickly found ourselves pitted against dangerous criminals who do not shy away from extreme violence.

Our main challenges in this regard are:

First, the level of detection remains unsatisfactory, as we still receive relatively few reports of VAT and customs fraud from countries with major seaports and airports.

Secondly, the OCGs on our radar started to understand EPPO's uniquely disruptive potential and adapt. The enlargement of the EPPO zone to Poland and Sweden will contribute to restricting these groups' ability to relocate their activities outside of our jurisdiction. However, the possibility for criminal forum shopping remains, given the differences in the criminal laws and criminal procedures in the EPPO zone.

Thirdly, not enough is being done to cripple the financial capacity of OCGs. Not as a side effect of damage recovery but primarily to disrupt their operational capacity. According to Europol estimates, judicial authorities in the EU seize less than 2% of proceeds of organised crime annually.

To do this, as the first transnational prosecution office, we need dedicated and specialized investigators and corresponding cross-border analytical capacities. We also need a much stronger international standing when we exercise our competence in relation to non-EU countries.

The European Court of Justice has already started to clarify key aspects of the EPPO Regulation. We will continue to systematically encourage national judicial authorities to refer pertinent questions to the Court. However, we cannot rely on the Court alone. The EPPO Regulation must be revised in light of the considerable, practical experience gathered in the first three years of operations.

Some suggestions: The national authority competent to decide on conflicts of competence should be able to make a preliminary ruling reference to the CJEU. Provisions on the exercise of the EPPO's competence must be clearer and simpler, especially when it comes to the notion of "inextricably linked offences", so that the EPPO's jurisdiction in sensitive cases cannot be undermined. The EPPO should also exercise competence for all serious crimes committed by EU officials in the exercise of their functions. The unnecessarily cumbersome "Article 31" cross-border cooperation mechanism needs to be improved.

To fight transnational crime more efficiently, we need to be more consistent. It has become abundantly clear that a proposal for a revision of the EPPO Regulation is due. The most pressing issues are on the table. It is now merely a question of political will.

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