

Opportunities and Challenges in Cases Involving Proceeds of Crime

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Article

ABSTRACT

The European Public Prosecutor's Office should ensure that crime does not pay.

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The Union has set itself the objective of establishing an area of freedom, security and justice. To achieve this goal and strengthen the trust of citizens in our institutions, the protection of the Union's financial interests is an absolute necessity and of utmost importance. Every year, the Member States indeed lose billions of euros in revenue, *inter alia* value added tax (VAT), due to cross-border carousel fraud depriving the European Union of a substantial amount of its budget. In addition, hundreds of millions of European structural funds are misappropriated or misused for wrongful purposes each year.

Until now, the offenses affecting the financial interests of the European Union (PIF offenses) have not been sufficiently investigated and prosecuted at the national level. In addition, the proceeds generated were usually not sufficiently identified and recovered as a priority, thus causing a definitive loss to the Union budget. In the context of this specific financial criminality, the expression "crime does not pay" makes full sense. The most effective measure is to deprive the perpetrators of any advantage in connection with the offense.

During its operation, the recovery of proceeds generated by PIF offenses shall thus be a top priority of the European Public Prosecutor's Office (EPPO). In order to achieve this objective, the EPPO will adopt an entirely new approach and devote all its resources to enhancing the fight against cross-border VAT fraud, corruption harming the Union's interests, and the laundering of the proceeds of PIF crimes by criminal organisations.

As the EPPO will operate across the territories of 22 participating Member States and have access to a wide range of information, including that provided by the European Union, it will be able to promptly detect cases of fraud and initiate investigations, so that the necessary preservation measures can be taken. In all cases generating proceeds of crime, the EPPO shall develop and proactively promote (parallel) financial investigations at the very outset of its operation and initiate money-laundering cases to facilitate the recovery of misappropriated funds, where appropriate. The identification, tracing, seizure, and confiscation of proceeds of crime shall be pursued by the EPPO as a priority in all its cases. Furthermore, the use of multi-disciplinary task forces specialised in financial or asset recovery investigations shall be endeavoured at the national level in order to enable a swift exchange of information and knowledge.

The "follow the money" approach will become even more important during the ongoing COVID-19 pandemic crisis: the European Union is willing to spend money more flexibly through the EU Next Generation Programme to support the economies and health services, but flexible spending also opens up new and different opportunities for fraudsters to misappropriate Union funds.

The challenge is huge, as the EPPO will have to coordinate its specific actions in a harmonised and consistent way through the participating Member States as well as across their borders when concrete links appear. Yet, the judicial systems and traditions vary significantly from one country to another, e.g., in relation to the level of cooperation and exchange of information between competent authorities, in relation to access to relevant databases, and, last but not least, in relation to the analytical, technical, and human capabilities available at the national level in order to perform appropriate financial analyses.

The EPPO will have to circumvent these differences and set up common standards applicable to the investigation and prosecution of PIF offenses all across Europe. In order to add benefit to its operations, the EPPO will also need to develop an adequate operational capacity at the central level in order to assist and complement the complex financial investigations carried out by the European Delegated Prosecutors at the national level. The aim is to identify existing links in a specific case within the territories of other countries, thus affording the Permanent Chambers a unique overview of ongoing cross-border criminality and the possibility to take immediate action. Ultimately, the EPPO should also perform strategic reviews of ongoing criminality related to PIF offenses in order to identify recurrent typologies as well as new trends, risks, and

vulnerabilities, with the aim of sharing the valuable experiences gathered during its operations and raising awareness of cross border crime in the public and private sectors.

In the end, the overall protection of the Union's financial interests can only be achieved if all levels within the EPPO work together closely. There is also a need for the EPPO to work hand in hand with the national competent authorities, rely on the support of Eurojust, Europol and OLAF as well as of a network of practitioners as the Camden Asset Recovery Inter-Agency Network in order to increase the efforts to deprive criminals of their illicit profits.

Cooperation with other institutions, bodies, offices, and agencies of the Union will also be essential for the EPPO from an administrative recovery perspective, of course – always taking into account, however, the proper conduct and confidentiality of its investigations.

I am convinced that, by doing so, the EPPO will ultimately fill the existing gaps in convictions and, as a result, achieve a higher level of repatriation of misappropriated Union funds.

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