

European Public Prosecutor's Office Implementing Law Approved in Portugal



Report

Vânia Costa Ramos

On 10 September 2019, Portugal published its Law no. 112/2019^[1] that implements Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

The law mainly deals with the procedures for the nomination and the status of the Portuguese European Public Prosecutor and Portuguese European Delegated Prosecutors. Other than determining the competent court for taking measures during the investigation, establishing rules on access to information, and setting the status of criminal police agencies in EPPO investigations, the law does not implement or coordinate the provisions of the Regulation with domestic criminal procedural laws. The following provides an outline of the main features of Law no. 112/2019.^[2]

The Law establishes the Investigative Courts (*juízo de instrução criminal*) in Lisbon and Porto as competent courts for decisions during the investigation stage, depending on where the offences under investigation have allegedly been committed.^[3] This implies that the Courts of Appeal of Lisbon and Porto will be competent to hear any appeals from the investigative courts' decisions.

The Portuguese General Prosecutor will be competent to decide on conflicts of jurisdiction in cases of disagreement between the EPPO and the Portuguese Prosecution Office pursuant to Arts. 22(2) and (3) and 25 of the Regulation.^[4] This rule apparently fulfils the obligation established in Art. 25(6) of the Regulation.

The Portuguese Public Prosecution Office is competent for the following:^[5]

- Receiving the information/relevant evidence from the EPPO in relation to criminal offences for which the latter has no jurisdiction (Art. 24(8) of the Regulation);
- Issuing views on the fulfilment of the jurisdictional criteria set out in Art. 25(2) and (3) of the Regulation and on the referral of cases by the EPPO to the Portuguese authorities under Art. 25(3) of the Regulation;
- Giving consent in accordance with Art. 25(4) for the prosecution by the EPPO of offences that would otherwise be excluded under Art. 25(3)(b) of the Regulation (criterion of the likelihood of a higher damage to victims other than the Union).

The Prosecutor-General's Office will set out the specific departments within the Portuguese Public Prosecution Office for these purposes.^[6] As regards the mere reception and forwarding of information on the commission of crimes to the competent Public Prosecution Office according to the Portuguese Code of Criminal Procedure and the Statute of the Portuguese Public Prosecution Office, we accept that it might be a

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bureaucratic matter that could fit the jurisdiction of the Portuguese General Prosecutor to determine in his/her discretion which department is competent for the task. However, in matters concerning jurisdiction, we believe that the decision to determine which department within the Portuguese Public Prosecution Office is competent for the acts mentioned above in 2) and 3) is not merely administrative and should follow the legally established criteria.

In general, all national authorities must cooperate with the EPPO under the same terms as with the national Portuguese Public Prosecution Office, including by making available all information necessary for the EPPO to discharge its duties.^[7] The Portuguese European Delegated Prosecutor^[8] will have the same access to databanks on criminal investigations as domestic prosecutors.^[9] Criminal police agencies will act in investigations by the Portuguese European Delegated Prosecutor under the direction of and in functional dependence on the European Public Prosecutor's Office, without prejudice to their hierarchical structure.^[10]

How are the European Public Prosecutor and the European Delegated Prosecutors nominated? Law no. 112/2019 establishes that the High Councils of the Judiciary and of the Public Prosecution Office will each select three candidates among the respective magistrates^[11] (i.e. 3 judges and 3 prosecutors) for the role of European Public Prosecutor to be suggested to the Minister of Justice.^[12] These six candidates shall be heard in the Portuguese Parliament, and ultimately a list of three candidates will be drafted. This means that a judge can also become European Public Prosecutor, although, in Portugal, only public prosecutors are responsible for criminal investigations. Beyond the criteria established in the Regulation, the Portuguese implementing law requires *inter alia* that magistrates (i.e. judges or prosecutors) have at least 20 years of experience in office as well as relevant experience in the investigation of financial crimes and international cooperation in criminal matters.^[13]

European Delegated Prosecutors will be recommended to the EPPO College by the Minister of Justice; they are selected from a list (compiled by the High Council of the Portuguese Public Prosecution Office) of two candidates for each post.^[14] Although they should preferably work exclusively as European Delegated Prosecutors, the Portuguese European Delegated Prosecutors may not work exclusively in this role, which means that they would continue exercising the role of domestic Public Prosecutor, albeit with a proportional reduction in service.^[15] They will work in Porto and Lisbon and their mandate will last five years with the possibility of renewal.^[16]

Ultimately, the Portuguese law ensures the independence of Portuguese European Public Prosecutors and European Delegated Prosecutors. They will not be subject to disciplinary proceedings or inquiries by the respective High Council in relation to facts committed during and in relation to their office.^[17] European Delegated Prosecutors may be subject to disciplinary actions by the High Council for facts unrelated to their role as European Delegated Prosecutors, but information must be given beforehand to the European Chief Prosecutor.^[18]

[1] Available at <https://data.dre.pt/eli/lei/112/2019/09/10/p/dre>.

[2] References to Articles in the endnotes refer to Law no. 112/2019, unless stated otherwise.

[3] Article 6.

[4] Article 7.

[5] Article 8(1).

[6] Art. 8(2).

[7] Arts. 10 and 11.

[8] The law does not specify that it regulates the *Portuguese* European Delegated Prosecutors.

[9] Law no. 34/2009 of 14 July 2009, in its current wording, will apply. European Delegated Prosecutors are considered domestic public prosecutors for this purpose.

[10] This is the same type of relationship as established with the Portuguese Public Prosecution Office in domestic investigations.

[11] In Portugal both public prosecutors and judges are considered magistrates. They are two separate bodies, each one having its High Council. Both are bodies that are independent for the executive power. The structure of the Public Prosecution Office is a hierarchical one, but the hierarchical power is limited to evoking the case or re-distributing it to a different public prosecutor, and to ordering the continuation or the re-opening of an investigation that has been closed.

[12] Art. 13.

[13] Art. 14(1). Art. 14 (2) establishes further preferential criteria.

[14] Art. 15.

[15] Arts. 17(4) and 18(3).

[16] Art. 18(4) and (5).

[17] Arts. 16(6) and 17(5).

[18] Art. 18(5). See also Art. 17(4) of the Regulation.

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