

Strengthening the Future of the EPPO

Notes on a conference at Villa Vigoni, Lake Como, Italy, 31 March – 2 April 2025



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European Law Forum: Prevention • Investigation • Prosecution

Report

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From 31 March to 2 April 2025, Villa Vigoni, part of the German-Italian Centre for European Dialogue, was the setting for a high-calibre exchange on the state and future of the European Public Prosecutor's Office (EPPO) and its underlying legal framework. Experts from the EPPO, scholars, and representatives from national governments and the European Commission convened to discuss the implementation and impact of the EPPO Regulation, the effectiveness and efficiency of the Office, and its working practices. This conference report summarises the presentations held by legal experts as well as the exchange of ideas and discussions, which were inspired by the beautiful setting of Villa Vigoni at Lake Como.

I. Conference Opening

The conference was opened by the hosts of the conference, Prof. Dr. *Dominik Brodowski*, LL.M. (UPenn) (Professor for Europeanization, Internationalization and Digital Transformation of Criminal Law and Criminal Procedure at Saarland University, Germany) and Dr. *Sebastian Trautmann* (European Delegated Prosecutor from Cologne, Germany).

In her keynote speech, **Laura Codruța Kövesi**, the European Chief Prosecutor (ECP), emphasised three strategic priorities, which are essential for the effective operation of the European Public Prosecutor's Office (EPPO): its independence, the scope of its competence, and the relationship between the ECP and the College and Administrative Director of the EPPO. She stressed that the Office is a judicial body and must be recognised and treated as such, particularly regarding budgetary matters and appointment procedures for prosecutors. *Kövesi* expressed concern about potential threats to the EPPO's independence, highlighting risks associated with national government influence in the appointment process of European Prosecutors and European Delegated Prosecutors (EDPs). She also noted cooperation difficulties with national authorities supporting the EDPs' work, which could further compromise the EPPO's independence. In her conclusions, *Kövesi* advocated for an extension of the EPPO's competence to encompass criminal offences for the violation/circumvention of EU restrictive measures and called for greater clarity regarding the Office's competence in corruption-related crimes and "inextricably linked offences".

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II. Acquisition and Use of Evidence

The first panel focused on the acquisition and use of evidence. It was opened by **Dr. Hans-Holger Herrinfeld** (Retired Senior Federal Prosecutor (Germany); former Head of Division at the German Federal Ministry of Justice) who gave an analysis of Art. 31 of the EPPO Regulation. He proposed concrete amendments to this provision aligned with the recent ruling by the European Court of Justice (ECJ) in case C-281/22 (*G.K. and Others [parquet européen]*). He noted, however, that the ruling left several questions unresolved. The ensuing discussion primarily revolved around judicial review mechanisms in cross-border investigations, namely whether or not it is more desirable to establish a “single authorisation system”. The participants also debated whether harmonisation of *ex ante* judicial review should apply solely to cross-border cases or extend also to domestic procedures, such as searches and seizures, where divergence exists in the laws across the EU. Some participants argued for assigning the competence for *ex ante* judicial authorisation to the ECJ or to the EPPO’s Permanent Chamber, with both proposals facing criticism.

Prof. Dr. Michele Caianello (Professor at the University of Bologna, Italy) and **Isadora Neroni Rezende** (PhD Candidate at the University of Bologna, Italy) dealt with the flow of evidence across borders and described Art. 37 of the EPPO Regulation (the provision on the admissibility of evidence) as being outdated and not sufficiently proactive. They recommended amending the provision to include flexible exclusionary rules addressing violations likely to compromise evidence integrity, such as breaches of the right of access to a lawyer. The discussants generally favoured strengthening rules around investigative measures, including judicial authorisation and defence rights, rather than focusing on rules regarding evidence admissibility. *Caianello* and *Rezende* emphasised that rules governing *ex ante* judicial authorisation, defence rights, and admissibility of evidence each serve distinct purposes and suggested the necessity to address all three aspects comprehensively.

Prof. Dr. Katalin Ligeti (Professor of European and international criminal law at the University of Luxembourg) and **Dr. Sebastian Trautmann** analysed Art. 42 of the EPPO Regulation – the provision on judicial review. *Ligeti* highlighted that Art. 42 grants significant discretion to Member States in shaping judicial review of EPPO procedural acts, leading to a variable geometry across the Member States’ rules. She recommended revising the article to establish common standards for the extent of judicial review and procedural acts, but she also acknowledged the challenges involved in harmonising specific modalities of judicial review. *Trautmann* emphasised the challenges arising from the specific nature of the EPPO, notably its cross-border investigations and the absence of direct judicial review of internal decision-making processes at the central level; he questioned whether the existing provisions sufficiently guarantee effective judicial protection or not. He was cautious about extensive harmonisation, expressing concern about potential discrepancies between EPPO cases and domestic criminal cases. In the subsequent discussion, several proposals were also made with regard to enhancing the efficiency of judicial review, such as the expansion of the ECJ’s power to review EPPO procedural acts and EPPO’s competence to directly refer preliminary questions to the Court – an idea that representatives from the EPPO welcomed.

In the final talks of the first panel, **Prof Dr. Liane Wörner, LL.M. (UW-Madison)** (Professor for Criminal Law, Criminal Procedural Law, Comparative Law, Medical Criminal Law and Legal Theory at the University of Konstanz, Germany) and **Luis Jakobi** (Research assistant at the chair of Prof. Wörner) provided an input on the provision on defence rights in the EPPO Regulation (Art. 41). In her presentation, *Wörner* emphasised the difficulties defendants face, due to the inherently transnational nature of EPPO investigations and the lack of uniform standards and dedicated rights for cross-border investigations. She argued that the ECJ ruling in case C-281/22 introduced complexities detrimental to defendants; she advocated for stronger protection for defendants and recommended enhancing the ECJ’s judicial review powers over EPPO procedural acts to

promote greater uniformity within the context of EPPO's investigations. Further discussions explored issues regarding defendants' access to case files, digital evidence, and evidence gathered by EPPO staff.

III. Competences and the Exercise of Competences – Conflicts, Clarifications, and Extensions?

In the second panel, legal experts debated questions on the EPPO's competences and their exercise. **Dr. Anneke Petzsche, M.Sc. (Oxford)** (Research assistant at the Humboldt University Berlin, Germany) reflected on the most important criteria for the expansion of the EPPO's competences in certain areas. According to *Petzsche*, violations of EU restrictive measures (recently enacted on occasion of Russia's war of aggression against Ukraine) are a particular concern, and there are doubts regarding offences of terrorism. In any case, the EU must focus on genuine European legal interests. Other areas could be regulated according to the complementary principle, so that the EPPO only intervenes if a Member State is unwilling or unable to prosecute.

Cécile Soriano (European Delegated Prosecutor from France) contributed that, in her view, there are three areas with political momentum in favour of an extension: environmental crimes, violations of restrictive measures, and corruption crimes. In the discussion, it emerged that Art. 22(4) of the EPPO Regulation represents an area of conflict with regard to the competence of the EPPO (criminal offences in respect of national direct taxes, including inextricably linked offences). The territorial competence provided in Art. 23(a) of the Regulation in its current version is also not sufficiently precise, e.g., in cases in which non-participating Member States and third countries are involved or if the offence is against the budget of the Union itself. In general, the discussion revealed that an extension of competences is primarily a political issue, as such a fundamental reform of the legal framework also entails risks to the current state of the EPPO Regulation and would require additional resources and staff for the Office.

Luca De Matteis (Head of Legal Service, EPPO) probed the logic behind Art. 25 of the EPPO Regulation and particularly its paragraph 3, one of the most challenging provisions in his opinion. In a necessary revision, clear criteria must be defined as to when multiple offences must be dealt with together in one procedure (inextricably linked offences). In the case of a unitary prosecution, it should be foreseeable, based on well-defined and clear criteria in paragraph 3, whether the EPPO or national authorities are competent. In a decision on competence, the rights of the accused must also be taken into account, especially as to whether or not they should have the right to challenge the decision on competence. In relation to Art. 27 of the EPPO Regulation (right to evocation), past practice shows that the deadline for evocation is not feasible. Ultimately, an effective implementation of the shared competence model between the EPPO and national authorities is required. In the exchange of opinions that followed, the problems with interpretation of Art. 25(3) of the EPPO Regulation were confirmed, with participants explaining that the provision reflects a compromise made with reluctant Member States, especially since not all current problems had been foreseeable at the time of drafting. It was also emphasised that Art. 27 of the EPPO Regulation is a "soft provision", due to its lack of clarity, and therefore leads to ambiguities in practice.

Prof. Dr. Luca Pressacco (Assistant professor of Criminal Procedure at the University of Trento, Italy) addressed the matter of conflicts with national competences. He asserted that Art. 25(6) of the EPPO Regulation represents a problematic starting point, as it leaves decisions on Union law up to the Member States. Two possible views were discussed in this regard: first, the provision reflects the Member States' unwillingness to give up competences; second, it simply confirms the hybrid structure of the EPPO itself. However, Art. 25(6) of the EPPO Regulation has also raised many questions regarding its substance; practice shows that, in particular, procedures involving special investigation bodies and political influence lead to problems with conflicts of competence. It was stressed that these issues require a solution. The discussion underscored that granting national authorities the competence to solve conflicts of competence between the

EPPO and national authorities was a kind of trade-off to convince Member States to accept the broader competences provided in Art. 22 of the EPPO Regulation. Likewise, the question of whether and to what extent the defendant should have a possibility to challenge a decision taken under Art. 25(6) of the EPPO Regulation, e.g., by way of a preliminary ruling, was discussed in depth.

In her contribution, **Georgia Theodorakakou** (PhD Candidate, University of Luxembourg, Luxembourg) addressed the extension of the investigation measures and other measures under Art. 30 of the EPPO Regulation. She highlighted several challenges in the current framework, particularly regarding the freezing of assets and the interception of telecommunications. These issues stem from a lack of harmonisation across Member States and the unavailability of certain measures in Member States in which they require the initiation of a judicial investigation by an investigating judge. She concluded that merely extending the list of measures under Art. 30 would be insufficient. Instead, existing problems must first be resolved. For instance, the role of the investigating judge needs clarification, and the procedures governing certain investigative measures should be harmonised – either beyond the EPPO's investigations or only within them. A key issue raised in the discussion was the risk of double standards arising between domestic cases and EPPO cases if investigative measures are harmonised, along with the broader implications this might entail particularly for the position of the defendant and the principle of non-discrimination between EPPO and purely national proceedings.

IV. Institutional Independence and Sustainability

The third and last panel focused on questions of institutional independence and sustainability. **Lorenzo Salazar** (Senior Advisor on International Cooperation in Criminal Matters; Deputy Prosecutor General to the Court of Appeal of Naples (retired)) put forth that institutional independence within the EPPO is concretised through different mechanisms, such as the appointments of the European Chief Prosecutor, European Prosecutors and European Delegated Prosecutors (EDPs), the EPPO's budget, and the status of EDPs. He suggested various measures to reinforce independence within the EPPO, such as applying the budgetary procedures used for EU institutions to the EPPO, revising status of EDPs, and enhancing cooperation with the staff supporting EDPs at the national level. The following discussion highlighted issues related to EDPs' career progress, with proposals for establishing permanent EDP positions receiving mixed reactions. Some participants expressed concern about the risk of creating an overly independent EPPO, while others pointed to existing mechanisms (such as accountability, judicial review and dismissal procedures) that serve to balance and control the EPPO's independence.

With regard to the EPPO's accountability, **Marius Bulancea** (Head of Operations and College support Unit, EPPO) explained that the EPPO Regulation lacks clarity on how this is operationalised and questioned whether the current oversight mechanisms allow for a meaningful assessment of the EPPO's activities. He underscored that the EPPO's judicial nature necessitates distinct accountability mechanisms compared to other EU agencies, cautioning against performance metrics that overlook broader considerations. The subsequent discussion explored methods to accurately measure the EPPO's effectiveness and enhance accountability mechanisms.

In the next contribution, **Dr. Garonne Bezjak** (Head of Unit "European Public Prosecutor's Office; European Criminal Law policy", Federal Ministry of Justice and Consumer Protection, Germany) pointed out pressing concerns regarding the selection, status, and number of EDPs and support staff from the perspective of the Member States. For example, the Member States may be reluctant to agree to a much-needed increase in the number of EDPs because they may have to let their best prosecutors go, especially given the limited number of qualified applicants. Further complications for the EDPs' career progression arise from the double hat system, under which the EDPs serve as special advisors (Art. 96(6) of the EPPO Regulation). In addition, Bez-

jak stressed the need to address the current, unequal distribution of resources and staffing available to the EDPs, both within and between Member States. She concluded that many of these problems stem from the hybrid structure of the EPPO. In the ensuing discussion, it became clear that the double hat system poses several problems, yet some participants acknowledged its practical necessity. Several proposals were also discussed to reduce the disparities among EDPs, whether by strengthening the centralised, institutional level of the EPPO or the decentralised level in the Member States, and who should be responsible for the strengthening (particularly financially).

With his final input, **Prof. Dr. Dominik Brodowski** focused on the EPPO's independence from and through legal review. One key question is the extent to which the defence should have access to the decisions of the Permanent Chambers – in the interest of transparency – and to what extent these decisions should be subject to judicial review. Further questions arise in relation to Art. 113(4) of the EPPO Regulation regarding the responsibility for compensation for lawful yet unwarranted acts, whereby the protection of the EDPs from this responsibility is necessary in the interest of independence. In terms of independence through judicial review, *Brodowski* stated that it would be in the EPPO's interest to have more cases brought before the ECJ. However, the EPPO currently lacks the competence to submit preliminary questions to the ECJ. In the discussion, it was pointed out, on the one hand, that the decisions of the Permanent Chambers are published in accordance with Art. 10(8) of the EPPO Regulation; but the lack of public hearings, direct appeals, and the timing of access to these decisions were identified as problematic. On the other hand, it was acknowledged that a kind of non-public, internal deliberation within a prosecution office is not uncommon across legal systems and may be indeed necessary. It became clear that the role of the Permanent Chambers and, consequently, the general significance of their decisions need further clarification. Moreover, several questions were raised with regard to the involvement of the ECJ and its potential role in judicial review of the EPPO's procedural acts.

V. Summary

The conference revealed that the functioning of the EPPO has exposed several shortcomings in the current text of the EPPO Regulation. These can be broadly categorised into three – albeit interrelated – areas:

- Certain provisions require clarification to ensure legal certainty; notable examples include the role of the investigating judge and the mechanisms for judicial review in cross-border investigations.
- Some provisions are dysfunctional and hinder the EPPO's operational efficiency and independence, thereby necessitating urgent amendments; this applies in particular to rules governing the status of European Delegated Prosecutors, the appointment procedure for European Prosecutors, the exercise of the EPPO's competences, and the resolution of competence conflicts with national authorities.
- There is a need to reinforce the protective dimension of EPPO investigations by enhancing procedural safeguards for individuals involved in its proceedings and by ensuring effective judicial review of the EPPO's procedural acts.

Against this background, the forthcoming edited volume on the conference will surely be a contribution rich in ideas and inspiration for the upcoming course of review of the EPPO Regulation 2017/1939, which is scheduled to begin in the second half of 2026.

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