

**European Criminal Bar Association (ECBA)
EPPO Working Group**

**Proposal to the College of the European Public Prosecutor's Office (EPPO) on
best practice for promoting the right to interpretation and translation in
criminal proceedings conducted by the EPPO**

The ECBA

The European Criminal Bar Association ('ECBA') was founded in 1997 and is an association of independent specialist defence lawyers across Europe, representing the views of defence lawyers and promoting the administration of justice and human rights under the rule of law in Europe and among the peoples of the world. The ECBA is one of the main interlocutors of the European institutions on issues of criminal justice and the protection of the right of defence and fundamental rights, representing thousands of legal practitioners all around Europe through their direct affiliation to the Association as individual members, or through the Collective members that participate to the life of the Association.

The development of the legislation on the Protection of Financial Interests of the European Union and the European Public Prosecutor's Office ('EPPO') and its consistency with the principles of the rule of law and the rights recognised and guaranteed by the Charter of Fundamental Rights of the EU (the 'Charter') have been one of the main fields of action of the ECBA over the years.

When the EPPO became operational, as of June 2021, the ECBA continued its work in the field by forming a working group to reflect on defence issues and procedural rights in EPPO proceedings. Creating a new criminal procedure for a new institution is a complex matter, in which defence rights should be fully acknowledged and protected.

The working group ('WG') has been focusing on the lack of specific regulations of defence and procedural rights, the impact on the rights of the suspects at the national level and problems relating to access to the case file. Since June 2022, the WG organises monthly online meetings to discuss practical issues and experiences regarding EPPO cases from different countries. Using the knowledge from the ground gained through the activities of the WG, the ECBA furthermore interacts with the EPPO and other institutional stakeholders to convey the views of practitioners and help to build a practice that is in conformity with the highest standards of a fair trial and the rights of individuals. These exchanges take place in the context of the main institutional objectives of the ECBA: the dialogue with judicial institutions and the dissemination of a culture of strengthening the protection of fundamental rights and procedural safeguards.

With this aim, back in October 2023, the WG prepared a proposal on on best practice for promoting the right to interpretation and translation in criminal proceedings conducted by the EPPO.

We now wish to bring it to the public and look forward to receiving any comments via our institutional e-mail secretariat@ecba.org.

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Introduction

This submission is intended to contribute to establishing best practice in proceedings conducted by the EPPO. We are pleased to note in Article 21 of the internal rules that importance is attached to the maintenance of “*coherence, efficiency and consistency of the prosecution policy of the EPPO*”.

In our submission this objective is not only desirable, but essential, if the *sui generis* prosecution system being established by the EPPO is to gain credibility and public confidence - including the confidence of criminal defence practitioners. This novel prosecution model provides an opportunity to set new and higher standards in this field than have applied before now in individual national systems. The EPPO can choose to set high standards for itself on an administrative basis and within its legal competence

Articles 2 & 3

The specific challenges of language and translation have been addressed in Articles 2 and 3 of the internal rules. However, we believe that both Articles are insufficient in two principle respects:

Firstly, neither defence practitioners nor victim’s lawyers are identified as key stakeholders in the process. This should be remedied to underline that citizens can rely on lawyers to access their rights and lawyers in turn can rely, not only on documents that they can understand, but on the informed instructions of clients whose language requirements arise for consideration.

Secondly we have significant misgivings in leaving the important issue of translation and interpretation to be applied purely in accordance with the applicable national rules of criminal procedure. Our collective experience has been that the manner in which member states are implementing Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings is unsatisfactory.

Individual member states have in the past failed to adequately resource the services available, and in particular, have failed to ensure that the quality of interpretation and translation in fact meets the quality required under Article 2 (8) and Article 3 (9) of the Directive. The practical application of the Directive is inconsistent with individual member states taking a different approach to the selection of documents for translation.

There is, we believe, a perfect opportunity for unsatisfactory and inconsistent national standards to be bypassed by the voluntary conduct of the office of the European Public Prosecutor. No change in the law is required and it is simply a matter that the EPPO, in establishing best practice, would take control of the translation (in the first instance) of the written materials in the case.

This responsibility is effectively acknowledged in Article 3 of the internal rules and all that is required is identification of the documents that are essential. This test of course is informed by the acknowledged likely complexity falling within the remit of EPPO.

Case file and Evidence

We believe that the full case file in what concerns any documents in respect of any acts undertaken by the EPPO or other authorities, or information gathered thereby, should be provided in translated form to the accused and their lawyers.

In particular, all evidential materials upon which the prosecution propose to rely need to be provided in translated form to the accused and their lawyers.

More generally, any materials which must also provide in translated form any materials:

- a) Challenge the prosecution case;
- b) Assist the development of a defence case, or;
- c) Indicate other information which may go to either of these outcomes.

If the provision of the materials for translation is controlled centrally, as we propose, it also has the welcome effect of ensuring consistency in terms of disclosure on the part of each European Delegated Prosecutor and goes a very considerable distance towards removing any temptation to *forum shop*.

This would also require slightly amending para 2.(b) to state "*All essential documents referred to above must be provided*".

Translation modalities

In terms of identifying how best the service might be provided, we are happy to contribute our views by participating in any working group that may be established on the issue of Translation Modalities. As it is to be anticipated that much of the material ultimately to be translated will in the first instance have been created by EPPO personnel, there is potential for creating documents with translation very much in mind. For instance, automated translations are now widely in use and their reliability is steadily improving. However, we believe that human oversight by a properly trained and qualified translator will be essential.

Oral interpretation

It is more problematic to arrange interpretation on a centralised basis as court hearings and interviews with suspects are likely to be held in the member state conducting the prosecution.

One significant safeguard that we propose is that in all cases of oral interpretation, the entire proceedings are audio, or ideally, audio-visually recorded so there is a verifiable record in the event of any misunderstanding or subsequent dispute. Regrettably serious cases of misinterpretation are common in our experience, yet some member states do not record proceedings despite the ease and cost effectiveness of available technology.

Directive 2010/64/EU

Using *Directive 2010/64/EU* as a template we propose as follows.

- a. Language selection: Where an accused person is made aware that they are to be subject of a prosecution being overseen by the European Public Prosecutor's office, the accused and his advisers can nominate the languages in which they require case materials to be provided to them. This would be by way of administrative action by the prosecutor rather than under the supervision of a court.

In the event of any dispute the prosecutor should have an internal mechanism whereby the fact of entitlement and its scope can be dealt with internally with an independent review within the prosecutor's office.

This would be entirely without prejudice to the right of the accused to seek the protection of the court of trial in the ordinary way.

- b. Essential documents: All essential documents from the case file must be provided, together with the disclosure materials referenced above. There should be a similar dispute mechanism in the event of there being non-agreement on the scope of materials to be provided.

Again this is entirely without prejudice to the right to seek the protection of the court for trial.

- c. Costs: The costs of interpretation/translation should be borne by the office of the European Public Prosecutor.
- d. Legal aid: Separately a scheme of legal aid should be maintained to facilitate the defence in seeking translation/interpretation for their own purposes of documents not forming part of the prosecution case or within the possession of the prosecution, including in particular expert evidence reports.
- e. Quality standards: The quality of interpretation and translation should be maintained at a high professional standard with providers supervised by independent review, with the participation of acknowledged experts such as EULITA

For translated materials, the EPPO should establish a mechanism where concerns about the quality of the translation can be raised directly.

- f. Interpretation at trial: Difficulties in interpretation that arise at trial should be dealt with by the national court, but on the understanding that the EPPO will not stand in the way of the defence when they raise concerns about the quality of the interpretation, but rather will conduct an independent review.
- g. EPPO should source an adequate number of professional translators to ensure that the necessary materials are translated in a timely fashion.

Conclusion

It is our collective aim that future EPPO proceedings involve the highest level of legal standards which should not only be exemplarily compliant with the standards of the Charter of Fundamental Rights of the EU (CFREU) (cf. Art 41 par 1 of the EPPO Regulation (EU/2017/1939) and the jurisprudence of the Court of Justice of the European Union (CJEU) including the jurisprudence on the minimum standards according to the Directives on procedural rights (cf. Art. 41 par 2), but also with the minimum standards of the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR).

We urge the EPPO to establish clear steps on this topic by adopting our proposals in order to ensure, to the extent possible, a consistent approach to this issue in all co-operating member states which the EPPO can achieve at the stroke of a pen by adopting these suggested procedures as their own.

October 2023

The ECBA EPPO Working Group

The ECBA thanks the Members of the CCBE Criminal Law Committee for their input into the preparation of this paper.