

Yvonne Farrugia, European Prosecutor

**ECBA – Autumn Conference 15 October 2022:**

**The Protection of Financial Interests of the EU and the Role of EPPO**

**(Focusing on multiple jurisdiction cases)**

Brief note for the discussion

Part I

1. Introduction

*The EPPO is responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union, which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of. - Article 4*

The EPPO is a supranational investigating body. Its investigations are conducted in accordance with the applicable national law, up to the extent that a matter is not regulated by the Regulation. Unless otherwise specified in the Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and the Regulation, the latter shall prevail.

2. How does it work in practice?

The role of the EPPO is to investigate and prosecute fraud involving EU funds of over ten thousand (€10,000) euro and cross-border VAT fraud involving damage above ten million (€10,000,000) euro. Including misappropriation, corruption related the said offences, money laundering and other inextricably linked offences. The EPPO is competent for offences committed, in whole or

in part, in a participating Member State and for those offences committed anywhere by a national of a participating Member State, or by an official of the European Union.

The EPPO is embedded in the national judiciaries of 22 Member States of the European Union, operating from different territories under one single office. The decentralized offices are functionally independent from national authorities and their work is supervised from the Central EPPO office in Luxembourg.

Article 26 and 27 lays down that when there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State (having jurisdiction over the case), shall initiate or evoke an investigation. Otherwise, the Permanent Chambers randomly assigned by the Case Management System, to monitor and direct the case, shall instruct the European Delegated Prosecutor to initiate or to evoke an investigation, if there are enough reasons for doing so.

The handling European Delegated Prosecutor organizes and manages the case file according to the Internal Rules of Procedure for the proper functioning of the EPPO as a single office. In the exercise of their duties, EPPO investigations should, as a rule lead the prosecution in the competent national courts in cases where there is sufficient evidence, and no legal ground bars prosecution or where no simplified prosecution has been applied. – Recital 81

Hence, while conducting the investigation, the handling European Delegated Prosecutor shall draw up and maintain a progress report, which shall contain an indicative investigative work plan as well as any significant developments of the investigation. The progress report shall be maintained in the Case Management System, which is accessible to the Supervising European Prosecutor and to the competent Permanent Chambers. – Article 44 of the IRP

The EPPO shall conduct its investigations in an impartial manner and shall seek all relevant evidence whether inculpatory or exculpatory. In fact, the Regulation requires the EPPO to

respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in the Charter. Additionally it protects the right not to be tried or punished twice in criminal proceedings for the same offence (ne bis in idem principle), as it ensures that there will be no double jeopardy as a result of the prosecution brought by the EPPO. To consolidate this argument, the Regulation also extends the basic competence of PIF offences to other offences inextricably linked, understood in the sense that a set of concrete circumstances are linked together in time and space.

The monitoring and directing of investigations by the Permanent Chambers is one of the guarantees of independence of the EPPO investigations, since none of the members of the Permanent Chambers comes from the country where the report came from. They monitor the actions taken throughout the investigation and decide on all the important steps, including whether to prosecute, to dismiss or to apply a simplified procedure.

## Part II

### Practical issues related to multiple jurisdictions

#### 3. Assisting Measures

Article 31 of the EPPO Regulation creates a self-standing, sui generis, legal basis for the EPPO cross-border investigations. It intends to go beyond the mutual legal assistance or mutual recognition between EU Member States as the EPPO operates under the concept of a single office. Against this concept, in January this year the College adopted guidelines on the application of Article 31. The main aim of these guidelines is to ensure an internal uniform practice within the EPPO, which created a new mechanism for the EPPO cross-border investigations.

The Guidelines express the position of the College on the interpretation of certain unclear provisions of Article 31, and are without prejudice to the judicial independence of the courts of the Member States, the rights of the parties as enshrined in the Charter of Fundamental Rights of the European Union, or to any interpretation that will be given in the future by the Court of Justice of the European Union.

According to Article 42(2), the European Court of Justice is the institution competent for preliminary ruling concerning any question of validity of the procedural acts of the EPPO, raised before any court of a Member State, directly on the basis of Union law and for the interpretation or the validity of the Regulation.

The first case concerning the interpretation of Regulation 2017/1939 on the establishment of the EPPO was registered at the European Court of Justice earlier this year. In a reference for preliminary ruling on the interpretation of Article 31(3) of the Regulation has been lodged. The case is pending and seeks clarification as to the extent of judicial review if it comes to cross-border investigations within the EPPO regime.

#### 4. Allocation and reallocation of cases to the handling European Delegated Prosecutor

As a rule, a case shall be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is.

If several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed.

A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation, where a deviation from the rule is duly justified, particularly focusing on these criteria, in order of priority:

- i. The place of the suspect's or accused person's habitual residence;
- ii. The nationality of the suspect or accused person;
- iii. The place where the main financial damage has occurred. – Article 26.4

In EPPO proceedings with ramification of jurisdiction of more than one Member State, until a decision to prosecute is taken, and after consulting the Supervising European Prosecutor and/or the European Delegated Prosecutor concerned, the competent Permanent Chambers may decide to reallocate the case to a European Delegated Prosecutor in another Member State.

These are decisions that should reflect primarily the general interest of justice. Though it is clear from the Regulation that the criteria for the choice of the handling European Delegated Prosecutor is envisaged in Article 26.4. The latter article obliges the EPPO to concentrate the case in the Member State where the bulk of the offenses have been committed. Any other choice is only possible where it is duly justified to deviate from this principle rule.