



ECBA Autumn Conference 2020

The European Public Prosecutor and the role of the Defence

Legal remedies and state of play on the setting up of the EPPO

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Overview

1) Structure

2) Legal remedies

3) State of play – College's decisions to be taken

1) Structure

Central office:
Luxembourg

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

STRATEGY



European Chief Prosecutor (supported by 2 Deputies)

- > Heading the EPPO, organising the work.
- > Contacts EU, EU countries and third parties.



College of Prosecutors

(one European Prosecutor per participating country)

- > Decision-making on strategic matters to ensure coherence, consistency and efficiency within and between cases.
- > Adoption of internal rules of procedure.

OPERATIONS



Permanent Chambers

(3 members: 2 European Prosecutors and chaired by the Chief Prosecutor, one of the Deputies, or another European Prosecutor)

- > Monitor and direct the investigations and prosecutions by the European Delegated Prosecutors (EDPs).
- > Operational decisions: bringing a case to judgment, dismissing a case, applying simplified procedure, refer case to national authorities, instruct EDPs to initiate investigation or exercise right of evocation.
- > European Prosecutor from the EU countries concerned supervises the EDP on behalf of the Permanent Chamber.



European Delegated Prosecutors (EDPs) (at least two prosecutors per participating country)

- > Responsible for investigating, prosecuting and bringing to judgment cases falling within EPPO's competence.

Decentralised office:
22 Member States

2) Legal remedies (Article 42) - 1

- 1. Procedural acts of the EPPO that are intended to produce **legal effects vis-à-vis third parties** shall be subject to review by the **competent national courts** in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation. [...]
- 3. By way of **derogation from paragraph 1** of this Article, the decisions of the EPPO to **dismiss a case**, in so far as they are contested directly on the basis of Union law, shall be subject to review before the **Court of Justice** in accordance with the fourth paragraph of Article 263 TFEU.

2) Legal remedies (Article 42) - 2

Dismissal of the case (Article 39):

Where prosecution has become impossible, pursuant to the law of the MS of the handling EDP, the **PC shall**, based on a report provided by the EDP handling the case ..., decide to **dismiss the case** against a person on account of any of the following grounds:

- (a) death of the suspect / winding up of a suspected legal person;
- (b) the insanity of the suspect or accused person;
- (c) amnesty granted to the suspect;
- (d) immunity granted to the suspect, unless it has been lifted;
- (e) expiry of the national statutory limitation to prosecute;
- (f) *ne bis in idem*;
- (g) the lack of relevant evidence.

2) Legal remedies (Article 42) - 3

- Article 42(2): Preliminary rulings

The **Court of Justice** shall have jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings concerning:

(a) the **validity of procedural acts of the EPPO**, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law;

(b) the **interpretation or the validity of provisions of Union law**, including the EPPO Regulation;

(c) the interpretation of Articles 22 and 25 of the EPPO Regulation in relation to any **conflict of competence** between the EPPO and the competent national authorities.

- Article 42(4)–(8): compensation for damage caused by the EPPO, arbitration clauses contained in contracts concluded by the EPPO, staff-related matters, dismissal of the ECP or EPs, data subjects' rights and access to documents

2) Legal remedies (Article 42) - 4

Choice of forum:

- Criteria (Article 26(4)):
 1. **the MS where the focus of the criminal activity is** or, if several connected offences have been committed, the MS where the **bulk of the offences** has been committed. A EDP of a different Member State may only initiate where a deviation is duly justified, taking into account the following criteria, in order of priority:
 2. the place of the suspect's or accused person's **habitual residence**;
 3. the **nationality** of the suspect or accused person;
 4. the place where the **main financial damage** has occurred.
- Procedural acts that relate to the **choice of the MS** whose courts will be competent to **hear the prosecution**, which is to be determined on the basis of the **criteria laid down in this Regulation ... should therefore be subject to judicial review by national courts**, at the latest at the trial stage (R. 87)



3) College's decisions to be taken

- Council Implementing Decision appointing the **22 European Prosecutors** entered into force on **29 July 2020**.
- The College should now take some key decisions to ensure the functioning of the EPPO, such as:
 - ✓ **Appointment of the EDPs** nominated by the Member States
 - ✓ Internal **rules of procedure** (e.g. number of P. Chambers)
 - ✓ Appointment of Deputy European Chief Prosecutors, Administrative Director, and Data Protection Officer
 - ✓ Rules on the **conditions of employment** of the EDPs
 - ✓ General guidelines allowing the EDPs to decide not to evoke the case and the Permanent Chambers to refer a case to national authorities (when the damage is less than EUR 100.000)
 - ✓ Guidelines on the application of the grounds for the allocation of jurisdiction
 - ✓ Financial rules



**Thank you very much for your
attention!**

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