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HUNGARY

The European Public Prosecutor's Office and Hungary

Challenge or Missed Opportunity?

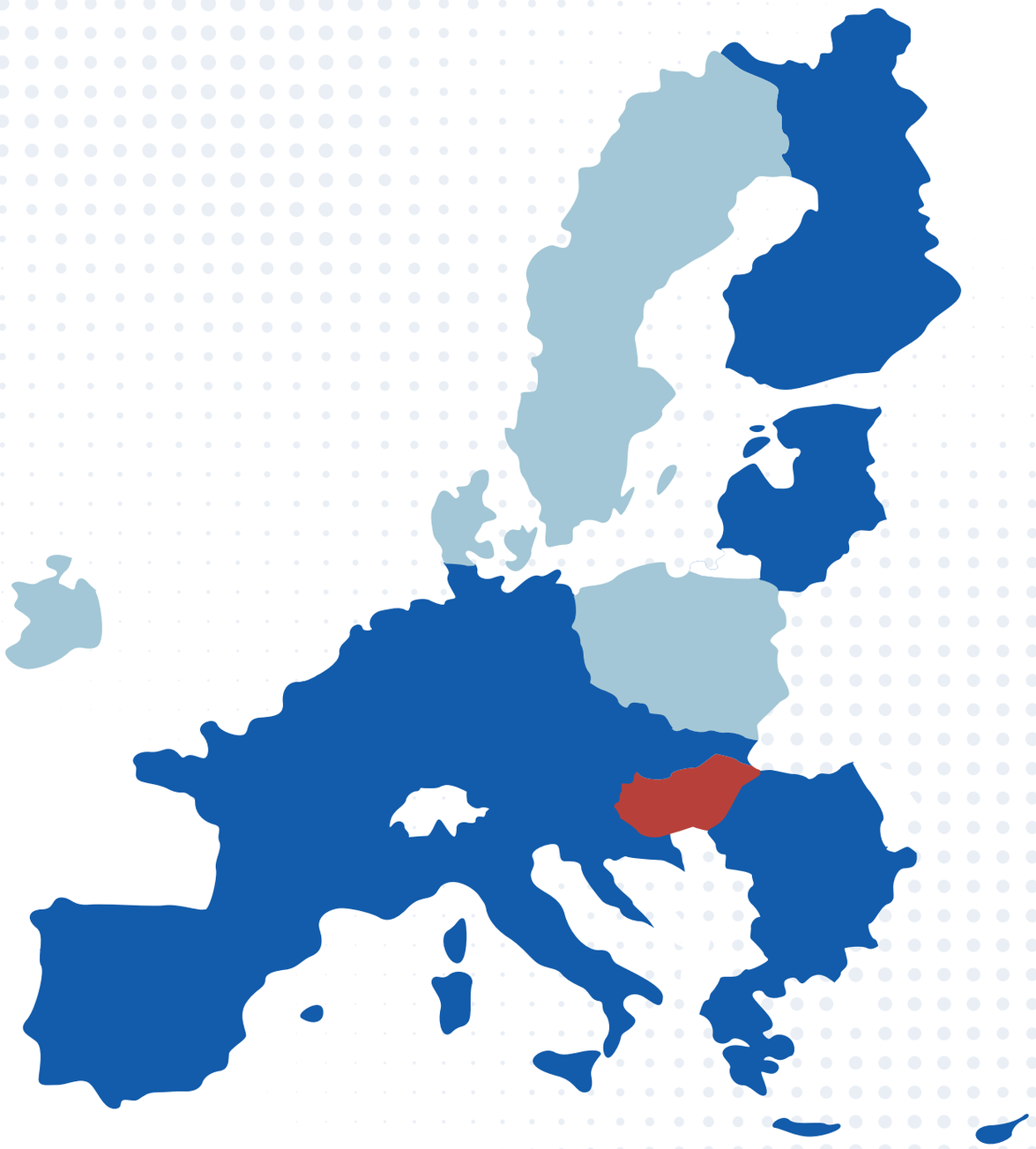

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Table of contents

Executive summary

For the 2014–2020 programming period, Hungary receives financial support amounting to approximately EUR 25 billion (almost HUF 9 thousand billion at September 2020 exchange rates) from the European Structural and Investment Funds. The amount is expected to be at least the same during the 2021–2027 budget cycle, together with the money to be received from the recovery plan. This represents 4 percent of the Hungarian GDP on average annually. In the 2014–2020 programming period, Hungary ranks fifth among the Member States of the European Union in terms of per capita EU funding. Transparency International Hungary Foundation (hereinafter referred to as "TI-Hungary") has called attention to the corruption risks surrounding the use of these extremely large funds on numerous occasions. In 2015, TI-Hungary was the first in Hungary to pinpoint one of the key systemic corruption risks associated with the use of EU funds, namely the absorption pressure resulting in overpricing. The government declared on several occasions that its primary objective was to use as much EU funds as quickly as possible.[1] The practical implementation of this objective is one of the major sources of institutionalised abuses.

The Member States and the European Commission share the responsibility for overseeing the use of EU funds, however, the primary responsibility lies with the Member States. In other words, first and foremost Member States, more specifically the judicial authorities of Member States are tasked with combating fraud affecting the financial interests of the European Union. In Hungary, in addition to the various auditing and investigating authorities, the prosecution service plays a key role in protecting the EU's financial interests, as it has the sole responsibility for bringing perpetrators to justice. For many years, however, the prosecution service has let the perpetrators off the hook in cases embarrassing to the government. This no longer applies in every case: examples include Roland Mengyi, a former ruling party MP, who was sentenced to time in prison for budget fraud as well as György Simonka and István Boldog, current Fidesz MPs, both prosecuted for the suspected misappropriation of EU funds.[2]

[1] https://www.kormany.hu/hu/innovacios-es-technologiai-miniszterium/europai-unios-fejlesztesekert-felelos-allamtitkar/hirek/magyarorszag-toronymagasan-vezet-a-regioban-az-unios-forrasok-felhasznalasa-teren

[2] The sources related to the three aforementioned government party politicians are quoted in TI-Hungary's report titled *Corruption, Economic Performance and Rule of Law in Hungary – The Results of the Corruption Perception Index in 2019:* https://transparency.hu/wp-content/uploads/2020/02/Korrupci%C3%B3-gazdas%C3%A1gi-teljes%C3%ADtm%C3%A9ny-%C3%A9s-jog%C3%A1llamis%C3%A1g-Magyarorsz%C3%A1gon-CPI-2019-EN-1.pdf

In other cases that are particularly delicate for the government, the perpetrators and beneficiaries of corruption can safely rely on the benevolent inaction of the prosecution service. This is how the stakeholders in the Elios case, including the son-in-law of Prime Minister Viktor Orbán, have evaded prosecution even though according to OLAF, the European Union's Anti-Fraud Office, they embezzled approximately HUF 13 billion (EUR 43 million) public funds with mafia methods.[3] The perpetrators of the irregularities surrounding the "Bridge to the World of Work" project associated with the National Roma Self-Government, previously headed by pro-government MP Flórián Farkas and resulting in billions in refunds have also evaded prosecution until now.[4]

It is obvious that Hungary is not the only country where concerns are raised about the regularity of the use of EU funds and it is presumable that the national authorities of other Member States will also look the other way occasionally when it comes to corruption against the joint Brussels budget. However, TI-Hungary is primarily concerned by the situation in Hungary as we believe that the efficiency of the fight against corruption, including against EU fraud, is inadequate. We are aware that the European Public Prosecutor's Office (hereinafter referred to as "EPPO") is not going to work miracles in itself and even if Hungary were to join (as we urge it to do) we could not hope to see a significant decline in corruption in the short term. At the same time, we are also convinced that EU-wide action going beyond a narrow and false interpretation of national interest would certainly be effective in combating corruption and fraud.

This study discusses the main issues associated with the EPPO. The protection in general of the European Union's financial interests and the anti-fraud measures are not the subject of our research and the study does not cover the human rights guarantees[5] relating to the operation of the EPPO either. TI-Hungary is interested in whether the EPPO will be able to achieve a breakthrough in the fight against corruption. Accordingly, in the study we primarily examine whether the operating environment and the regulations pertaining to the organisation and scope of the EPPO foreseeably enable it to fulfil its mandate. Secondly, we will also consider how the operation of the EPPO will impact Hungary. As a non-participating country, can and should we expect the EPPO to be able to influence the efficiency of the fight against corrupt practices in Hungary? Will any specific risks stem from Hungary's non-participation in the EPPO?

The EPPO extends EU integration into a thus far unaffected territory of criminal justice. Therefore, there is a lot at stake as the operation of the EPPO must also answer the question to what degree can the EU create new capabilities in the field of law enforcement. The protection of the

[3] See the official communication of the prosecution service: http://ugyeszseg.hu/reagalas-javor-benedek-ugyeszseggel-kapcsolatosmai-valotlan-allitasaira/

[4] Of the extensive press coverage on the topic, see the article by József Spirk: *Itt az OLAF-jelentés a Farkas Flórián regnálása alatt elherdált 1,6 milliárdról [Here is the OLAF report about the HUF 1.6 billion wasted during the reign of Flórián Farkas]:* https://24.hu/belfold/2019/06/21/itt-az-olaf-jelentes-a-farkas-florian-regnalasa-alatt-elherdalt-16-milliardrol/?_ga=2.11183028.1841777718.1561028343-1797508791.1537555946

[5] See for example Ruggeri (2018).

European Union's financial interests, however, will definitely become more effective as there is reason to believe that the EPPO will launch the necessary procedures and will conduct the investigations contrary to the inactivity or reluctance of Member States' prosecution services.

Non-participating countries, probably loudest among them Hungary, claim that the establishment of the EPPO violates their sovereignty. This argumentation is not unprecedented in the history of EU integration, it was used against the establishment of OLAF and most recently in relation to the Eurojust reform, too. These arguments, however, are false. The EPPO is founded on the legal basis provided for in the primary law of the European Union (Article 86 of the Treaty on the Functioning of the European Union), therefore, the legal objections against the establishment thereof are in fact meaningless. The Hungarian Government's constitutional argument against the EPPO is based on Article 29(1) of the Fundamental Law of Hungary. It provides that in Hungary, the prosecution service shall exclusively exercise the State's power to punish, i.e., it holds the monopoly to prosecute criminal offences.[6] This claim is unfounded as even these minor concerns could be easily allayed by the amendment of the relevant Article of the Fundamental Law. This also shows that sovereignty is not an argument but rather a political slogan in the domestic discourse surrounding the EPPO. As regards the Hungarian Government's argument for protecting sovereignty, it should be noted that by the 2007 ratification of the Lisbon Treaty resulting in the Treaty on the Functioning of the European Union, Hungary expressly accepted the possibility of the establishment of the EPPO.[7]

Out of the 27 Member States of the European Union, 22 participate in the enhanced cooperation on the establishment of the EPPO, which in itself confirms that there is a genuine need behind the idea of the EPPO. The example of Member States joining later shows that change can only be brought about by a transformation in the national political landscape rather than in the professional discretion. In other words, participation in the EPPO primarily appears as a political rather than a professional issue in Member States.

The establishment of the EPPO is determined by compromises, the most important of which is probably that its operation does not fall within the exclusive remit of the European Union due to the choice of legal basis. Instead, it belongs to the scope of the area of freedom, security and justice, which, as a Union policy, falls within the sphere of shared competence of the Member States and the Union. This in practice means that an unanimous decision by the Member States

[6] TI-Hungary is of the opinion that the monopoly of Hungary's prosecution service to prosecute criminal offences is not intended to serve as a counterargument against the EPPO, but it serves rather to prevent the future authorisation of state organs other than the prosecution service to bring criminal cases before justice as private prosecutors. See also Hungary's Act on Criminal Procedure, which prohibits state organs to bring private prosecution.

[7] The original idea was to establish the EPPO pursuant to Article 86 TFEU, see the Commission's Proposal for a Council Regulation on the establishment of the EPPO, COM(2013)534 final – 2013/0255(APP), however, this proposal was rejected by several Member States, including Hungary. Thereafter, certain Member States decided to announce an enhanced cooperation aimed at the establishment of the EPPO.

was required for adopting the regulation on the establishment of the EPPO. From this perspective, the fact that the EPPO was established in the form of enhanced cooperation was significant because the requirement of unanimity was to be met only in respect of Member States involved in the enhanced cooperation. Another major political compromise is the absence of an open tender procedure in the selection of European Prosecutors. European Prosecutors are proposed by the Member States, which is a clear sign of political influence. The compromise in this case could be that the Member States retain control over the selection of European Prosecutors while they cannot influence the operation of the EPPO. However, the consequences following from the fact that the establishment of the EPPO was politically determined will later on be dampened by the "legalising nature" of EU integration. These compromises, in themselves of a political nature, reached in topics *ab ovo* saturated with political overtones and dominated by Member State interests, are in practice implemented in a legal framework. In other words, the EPPO will work as an unpoliticized professional organisation that, through its operation, can prove that it is indeed capable of performing its law enforcement role independently from Member State interests.

The EPPO may be capable of more effectively prosecuting crimes against the European Union's financial interests, in particular in the case of cross-border crimes. In this regard, the EPPO promotes better adaptation to changes in criminality. However, the success of the EPPO in cases where Member State prosecutors are currently idle will be dependent upon its ability to enforce its interests in the Member States, and the EPPO should also be prepared for obstruction of its work by the Member State authorities.

The EPPO will work within the framework of enhanced cooperation which means it will not be able to proceed in each Member State. As matters currently stand, only Hungary and Poland are certain to not participate in the enhanced cooperation aimed at the establishment of the EPPO, since the non-participating Member States of Denmark and Ireland are *ab ovo* not involved in EU cooperation in the area of justice and home affairs (i.e., in the EU policy of an area of freedom, security and justice), while Sweden, who formerly refused to participate in the EPPO, changed its mind and indicated its intention to participate. As a non-participating Member State, Hungary will not have a say in the development processes of the EPPO, as it will exclude itself from the work aimed at the amendment of the legislation related to the EPPO. This poses a problem because in the long run hopefully all Member States will participate in the EPPO and being left to observe the developments from the sideline will restrict Hungary's scope of action at the time of joining. It was precisely out of this consideration that the Netherlands decided to change its formerly negative position, since as a result of joining the EPPO, it can participate in the development process and the shaping of the relevant regulation.

The increase in fraud and corruption against EU funds is also a significant risk. If we expect the EPPO to uncover a higher ratio of such criminal offences, then the risk of offending is higher in countries that are "invisible" to the EPPO. This may be regarded as a manifestation of forum

shopping as there is reason to believe that the perpetrators of serious and typically premeditated corruption will choose a country for the commission of the offence where the EPPO is unable to proceed. This may also imply a more active role by OLAF as there is ground to presume that the Commission will focus on Member States that do not participate in the EPPO. Accordingly, as a non-participating country, Hungary also runs the risk of becoming a safe haven for white collar criminals and this certainly cannot be regarded as a national interest justified by the protection of sovereignty.

Furthermore, Hungary will not be able to fully dissociate itself from the operation of the EPPO, even as a non-participating country. On the one hand, the EPPO will have the right to prosecute Hungarian citizens who commit an offence that falls within its competence, provided that such offence is committed in the territory of a Member State that participates in the EPPO. On the other hand, the EPPO will also be able to proceed if a citizen of a participating Member State commits an offence in Hungary that falls within the competence of the EPPO. At the same time, Hungarian authorities will also be able to act in the aforementioned cases, therefore, conflicts of jurisdiction may arise between Hungary and the EPPO. If an offence falls within the competence of both the EPPO and a non-participating Member State, such as Hungary, a race for precedence may ensue. Its destructive effect may manifest itself in a final decision adopted in the Member State, such as a dismissal or acquittal, which may prevent the EPPO from conducting a subsequent procedure due to the right not to be tried twice for the same offence (the *ne bis in idem* effect). In Hungary, outrageously, whether or not law enforcement can perform its duties is influenced by political considerations and, therefore, the possibility that a biased decision is made as a result of an unfair procedure in order to render the work of the EPPO impossible provides cause for concern. This would also entail the expansion of impunity of corruption in the entirety of the European Union.

The condoning of corrupt practices by a Member State not participating in the EPPO is an indication that the judiciary is not independent in the given Member State. Moreover, such Member State also directly violates the laws of the European Union, as the effective prosecution of offences against the European Union's financial interests is an obligation of all Member States. In other words, while joining or not joining the EPPO is up to each Member State, the protection of the Union's financial interests is a first-hand obligation, and failure to meet this obligation violates EU law and results in the impunity of the perpetrator. These negative effects could only be fully eliminated if all Member States joined the EPPO.

In this study, TI-Hungary argues that one of the keys to effective action to contain corruption and other offences against public funds (and the one of the many requiring the least effort) would be for Hungary to join the EPPO.

Transparency International
Hungary Foundation

1. Enhanced cooperation on the European Public Prosecutor's Office

The idea of a European Public Prosecutor's Office[8] was born during a project on jurisprudence funded by the Commission and titled Corpus Juris Europae[9] in 1997. The response to the project was strong and, owing to the professional discourse, the idea became a point of discussion within Europe.[10] As a result, it was already included in the draft of the Treaty of Nice (2001), however, it was removed from the agenda during the negotiations and eventually deleted from the text. Thereafter, both the academic and the professional discourse were essentially halted, as many regarded the deletion of the idea from the Treaty of Nice as a failure that put the idea of the EPPO to an end. However, the EPPO as a potential solution was not entirely forgotten. The progress made in the integration of criminal law (the increased value of the principle of mutual recognition, the deepening of legal harmonization in the field of substantive and procedural law), the codification by means of the Treaty of Lisbon in Article 86 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU"), and the painful lack of effective protection of the EU's financial interests all suggested that it was necessary to establish the EPPO, preferably with the involvement of all Member States.[11]

The Commission proposed a regulation in 2013,[12] which, however, was not adopted following the so-called yellow card procedure.[13] Thereafter, having regard to the main objections of national parliaments, such as that the range of offences against the financial interests is not duly regulated, serious professional and political discourse took place, one of the key outcomes of

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[8] Several research papers have been published about the EPPO since the idea was first raised; the academic discourse has been more or less uninterrupted in the last 20 years. For this study, we have used a selection of the literature on the concept to be implemented and the analysis of the currently known rules.

[9] Delmas-Marty (2000).

[10] Green Paper on Criminal-Law Protection of the Financial Interests of the Community and the Establishment of a European Prosecutor /* COM/2001/0715 final */

[11] For instance, it was a thematic priority in 2010 during the Spanish presidency.

[12] Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, COM/2013/0534 final - 2013/0255 (APP); Commission staff working document impact assessment (2013) accompanying the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, SWD (2013) 274 final: https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation_en

[13] According to Article 6 of Protocol (No. 2) on the application of the principles of subsidiarity and proportionality attached to the TFEU, the Treaty on the European Union and the Treaty establishing the European Atomic Energy Community, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. In this procedure, the national parliaments of 11 Member States (including the Hungarian Parliament) argued that the draft regulation violated the principle of subsidiarity.

which was the adoption of the directive on the fight against fraud to the Union's financial interests by means of criminal law.[14] It later became clear that although there was consensus between Member States on the protection of the European Union's financial interests by means of criminal law, not all Member States were ready to unite and jointly exercise their power to punish (i.e., to join the EPPO). Not even in 2014 when, during the Greek presidency, the concept of the EPPO was fundamentally transformed compared to its previous versions, and the idea of a centralised single office with exclusive powers was replaced by the model of a more decentralised collegiate type of organisation based on the division of labour.

However, these changes and developments paved the way to the announcement by 16 Member States[15] of the European Union of establishing enhanced cooperation on the establishment of the EPPO on 3 April 2017. The same Member States launched a legislative procedure on 8 June 2017 and the Council adopted the regulation on the EPPO on 12 October 2017.[16] By then, another four countries (Austria, Estonia, Italy, Latvia) joined the enhanced cooperation. The Netherlands and Malta joined the enhanced cooperation most recently, increasing the number of participating Member States to a total of 22. Of the 27 EU Member States, Denmark and Ireland tend to follow their own path in the field of justice and home affairs (within the framework of the so-called "opt-in" and "opt-out" options), a reason why one may conclude that only three Member States, namely Hungary, Sweden and Poland did in effect not join the enhanced cooperation. As Sweden in April 2019 expressed its intent to join, only Hungary and Poland may be regarded as actual non-participating Member States.

[14] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the Fight against Fraud to the Union's Financial Interests by means of Criminal Law, OJ L 198, 28.7.2017, 29–42. Hereinafter referred to as "Directive".

[15] Belgium, Bulgaria, Chechia, Croatia, Cyprus, Germany, Greece, Finland, France, Lithuania, Luxemburg, Portugal, Romania, Slovakia, Slovenia, and Spain.

[16] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, 1–71. Hereinafter referred to as "Regulation".

2. The structure and competence of the EPPO

Enhanced cooperation is an important and innovative legal instrument of EU integration. Originally it was created through the amendment of the Treaty of Amsterdam in order to offer a legal framework for the closer cooperation between certain Member States aimed at the implementation of the Union's objectives. It allows Member States committed to a certain EU goal to make headway even if their consensus does not suffice for a majority decision. The rules of an enhanced cooperation and the fact that the TFEU offers this solution in cases where the majority decision-making mechanism within the area of freedom, security and justice is stalled highlights that the deepening of integration and the faster attainment of EU goals is more important than the current (typically political) interests of a single Member State.[17]

The task of the EPPO is to investigate and prosecute the perpetrators of offences against the Union's financial interests and offences which are inextricably linked to such offences. In addition, a similarly important task is to bring the perpetrators to court in the Member States. In that respect the EPPO undertakes investigations, carries out acts of prosecution and exercises the functions of prosecutor before the competent courts of the Member States, until the case has been finally disposed of (Article 4 of the Regulation).

Article 86 TFEU does not provide for the organisational framework, the specific powers and the procedural rules of the EPPO, so in this regard the Member States participating in the enhanced cooperation had to make a choice between the models developed by academia and had to strike a compromise for the common goal.

In addition to the compromises, the following basic principles determine the competences, powers and procedures of the EPPO:

- shared "jurisdiction" in respect of criminal offences falling under the material competence of the EPPO, giving priority to the EPPO,
- the framework is defined by the common rules of procedure, while the specific operative (investigative) measures and other judicial acts are defined by the relevant regulations in the given Member State,

[17] Even though in the case of the EPPO, a special legislative procedure as per Article 86 TFEU was applied, which required unanimity.

- during the investigations of the EPPO there is no need for mutual legal assistance, a European Investigation Order or a joint investigation team,
- there is direct and immediate exchange of information within the organisation of the EPPO, as well as between the EPPO, the national law enforcement authorities, and the EU bodies,
- the EPPO closely cooperates with Eurojust, Europol (in particular in the field of criminal analysis), and OLAF.[18]

2.1. Material competence of the EPPO

Criminal offences affecting the financial interests of the Union, such as fraud, corruption, misappropriation and money laundering involving property derived from these are provided for in the Directive. Furthermore, the Directive provides for the punishable forms of attempt and of the act completed as well as of the complicity and the minimum level of criminal sanctions.

The other group falling within the material competence of the EPPO encompasses the criminal offences inextricably linked to the above. Article 86 TFEU mentions crimes affecting the financial interests of the Union that are defined by the Directive, whereas the basis for this competence is provided for in the Regulation. The definition to be applied is an autonomous concept of European Union law formulated by the Court of Justice of the European Union[19] (hereinafter referred to as "ECJ"). At the same time, these other criminal offences (may) affect the financial interests indirectly (being inextricably linked), thus their inclusion ultimately does not prejudice Article 86 TFEU. Furthermore, the right to a fair trial and procedural economy also justify the establishment of this ancillary competence. Besides, the Regulation provides that the EPPO shall also be competent for offences regarding participation in a criminal organisation, irrespective of the dogmatic classification of criminal organisation in Member States. The Regulation sets out in Article 22(1) the priority of material factors when it provides that the EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union, irrespective of whether the very criminal conduct could be classified as another type of offence under national law.[20] Article 25 of the Regulation restricts the material competences of the EPPO set out in Article 22.

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[18] The activities of OLAF will continue to be necessary as its tasks and competences are different, although it may prepare the investigations of the EPPO. OLAF may continue to monitor all Member States and EU institutions, including the EPPO.

[19] Preliminary rulings relating to Article 54 of the Convention implementing the Schengen Agreement concluded this notion, namely that the existence of a set of concrete circumstances which are inextricably linked together shall serve as the basis of identity of the material acts. See for example: Tóth (2018).

[20] In September 2018, the Commission proposed that the European Council should extend the competence of the EPPO to cross-border terrorist crimes pursuant to Article 86(4) TFEU. This first requires an amendment of the Treaty, thus it has been discussed at a number of EU summits but no decision has been made yet. A further extension of the EPPO's competence has also been considered to include the counterfeiting of the euro and cross-border corruption and money laundering not affecting the EU's financial interests. This was first brought up by the European Parliament in 2016. See Békés–Gépész (2019), 39–49; Communication from the Commission to the European Parliament and the European Council: A Europe that protects: an initiative to extend the competences of the EPPO to cross-border terrorist crimes. Brussels, 12.9. 2018 COM(2018) 641 final.

The EPPO's material competences and its restrictions

Competence	Definition (constituent elements)
Fraud affecting the European Union's financial interests	Directive, Article 3
• first restriction	Regulation, Article 25(2) / less than EUR 10,000
• second restriction	Regulation, Article 22(1) / in the case of fraud committed in value added tax (VAT)
• third restriction	Regulation, Article 22(4) / national direct taxes
• case allowing for discretion	Regulation, Article 27(8) / less than EUR 100,000
corruption	Directive, Article 4(2)
misappropriation	Directive, Article 4(3)
money laundering	Directive, Article 4(1); Directive 2015/849, Article 1(3) (not Directive 2018/1673)
broadening the definition of "public official"	Directive, Article 4(4)
criminal organisation	Directive, Article 8; Regulation, Article 22(2); Framework Decision 2008/841/JHA
inextricably linked other criminal offences	Regulation, Article 22(3)
• restriction	Regulation, Article 25(3) / refrain from exercising its competence

Source: the Author

2.2. Territorial and personal competence of the EPPO

The provisions of Article 23 of the Regulation describe the distinction between the national and supranational levels. The EPPO performs its investigation and prosecution tasks by virtue of the principle of European territoriality,[21] i.e., its competence essentially covers the territory of the participating Member States, thus the procedural rules of the EPPO are similar to the provisions of internal procedural law. The latter function is of paramount importance, as the Regulation – once it enters into force – forms part of the national corpus of criminal procedure norms, it is directly applicable and has direct effect and, as a general rule, it prevails over national provisions.

[21] At the core of the principle is the notion of integration, namely that the judicial systems of the various Member States should be regarded as if they were not independently functioning judicial systems of different states but rather as comprising a single judicial area. This means that the relations and division of tasks between the various units of the system would be governed not by a jurisdiction-based approach but rather purely competence/powers-based regulations. In the common European legal and judicial space, cooperation does not take place with the authority of a foreign state but rather with another competent judicial organ. In this space, nothing prevents the use of evidence collected by such other judicial organ, and there is also no obstacle to carrying out procedural actions in the geographical territory of the other Member State. The fundamental feature of this principle is that, if implemented, conflicts of jurisdiction become conceptually obsolete and the procedural resources may and shall be allocated along the geographical (competence) and jurisdictional rules in criminal cases. Naturally, this also implies that the Member States' power to punish is "dissolved in the common pool", i.e., that Member States accept that they do not articulate and represent their power to punish independently. The principle has not yet been enacted in law, however, it is reflected to some extent in the operation of the EPPO. See Karsai (2015), 94–97.

According to Article 23(a) of the Regulation, the EPPO may act in respect of offences within its competence where such offences are committed in whole or in part within the territory of one or several (participating) Member States. Conversely, in the case of VAT fraud, the restriction on the exercise of competence is that the EPPO may only proceed in cases of significance, provided that the offence involves the territory of at least two participating Member States, causes a total of minimum EUR 10 million damage (pecuniary loss), and otherwise the offence may be better prosecuted at Union level (subsidiarity).

However, the EPPO may also prosecute [Regulation, Article 23(b)] if the given offence is committed by a citizen of a (participating) Member State – and the previous rule is not applicable –, provided that a participating Member State has jurisdiction for such offences (also) when committed outside its territory. According to the wording of the Regulation, the extra-territorial jurisdiction rule of any participating Member State suffices for the application of Article 23(b): this rule allows for the extra-territorial exercise of competences (enforcement of "jurisdiction") in respect of offences committed by the citizens of participating Member States, provided that the criminal law of any participating Member State applies the principle of personality as grounds for jurisdiction (this is typically the case, although some Member States only apply the principle of personality above a certain gravity[22]). This means in practice that the EPPO may prosecute a criminal offence falling within its competence, committed by a citizen of a participating Member State even if such criminal offence was not committed in the territory of a participating Member State.

The third rule extends the jurisdiction over EU officials. It provides that the EPPO shall be competent for offences committed outside the territories of the participating Member States by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence,[23] provided that a participating Member State has jurisdiction for such offence when committed outside its territory [Article 23(c)]. It is obvious that even the internal laws of a single Member State suffice for the application of extra-territorial jurisdiction for the offences committed by such persons, i.e., if there is at least one Member State that has extended its criminal law to offences committed by EU officials.

This rule clearly shows the current status of the criminal law protection of supranational interests that are distinct from Member State interests. Such interests exist (e.g., an EU official commits corruption as a result of which grants in third countries are paid without justification), however, the supranational jurisdiction must be conveyed by the regulations of at least one Member State.

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[22] For more details, see Sinn (2012).

[23] Regulation (EEC, Euratom, ECSC) No. 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, OJ L 56, 3.2.1968, 1.

The application of the principle of territoriality will give rise to interpretation issues in the case of criminal offences (e.g., offences committed by the third country nationals and/or in the territory of third countries in relation to customs, duties or aid to developing countries) that adversely affect the EU's financial interests, while the commission of the offence itself does not fall within the aforementioned criteria.

2.3. Organisation of the EPPO

The backbone of the organisational structure of the EPPO are the so-called European Delegated Prosecutors. They are Member State prosecutors selected and nominated to the position by the Member State pursuant to its own internal rules of procedure. These prosecutors do not cease to act as national prosecutors, instead, they have double legal status ("double hat").

The EPPO is a single and indivisible Union body organised at a central level and at a decentralised level. The central level consists of:

- the European Chief Prosecutor,
- the College of European Prosecutors,
- the Permanent Chambers, and
- the individual European Prosecutors.

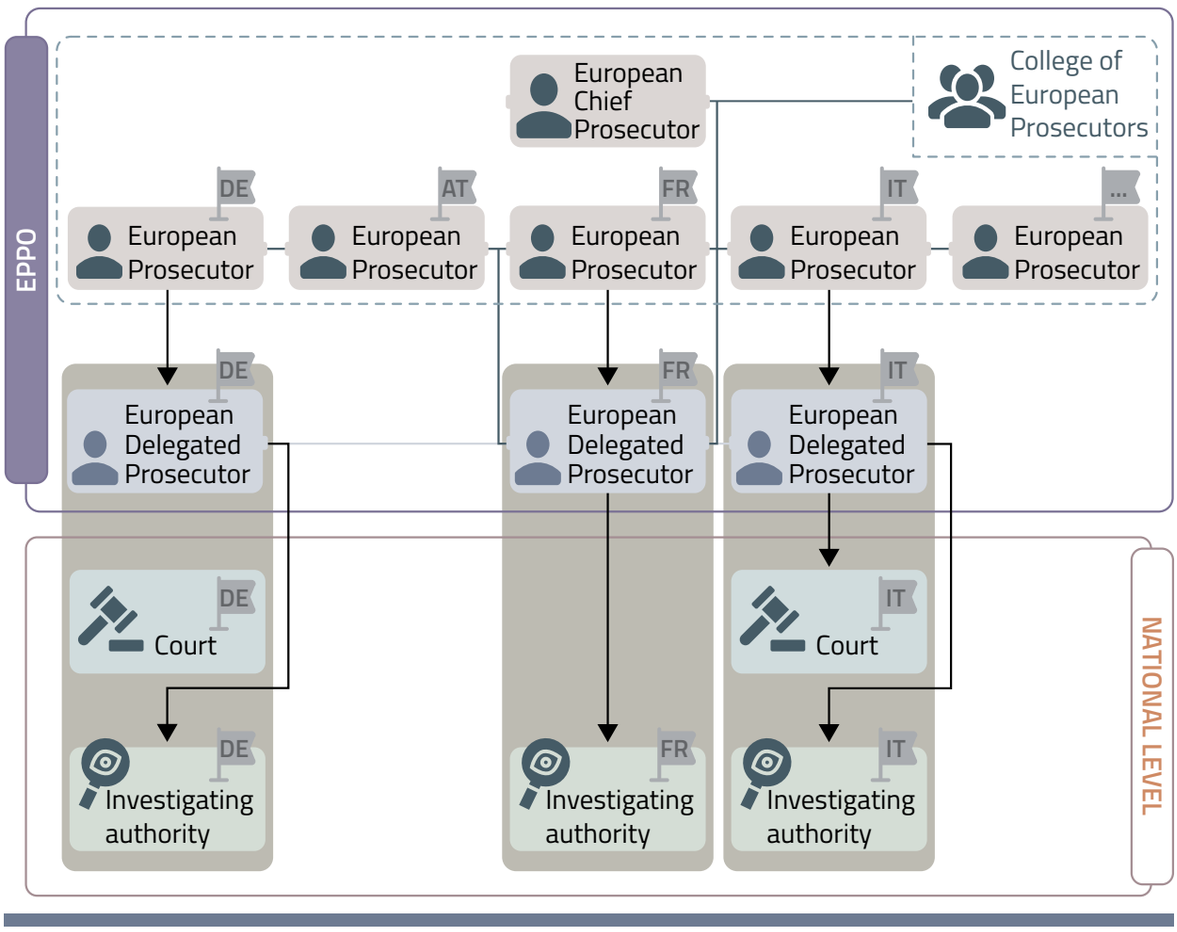
The European Chief Prosecutor is appointed for a non-renewable term of seven years. The candidate shall possess the qualifications required for appointment to the highest prosecutorial or judicial offices under the laws of his/her respective Member State, and his/her independence shall be beyond doubt. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor from among the candidates selected from the applicants. The College of European Prosecutors shall appoint two European Prosecutors to serve as Deputy European Chief Prosecutors.

Each participating Member State shall appoint one European Prosecutor pursuant to its own internal rules of procedure. The European Prosecutors are members of the so-called Permanent Chambers. They supervise and monitor the investigations and transparency activities that are conducted by the so-called European Delegated Prosecutors in their respective Member States.

The European Delegated Prosecutors conduct the specific procedures in the Member State and belong to the EPPO's decentralised level. The following figure describes this two-level organisational structure and indicates the links to the police (investigating authorities) and the courts.

Figure 1

THE ORGANISATIONAL STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE I.



Source: The Author's compilation based on the figure used in a presentation by Hans-Holger Herrnfeld at the Academy of European Law on 7 February 2020.

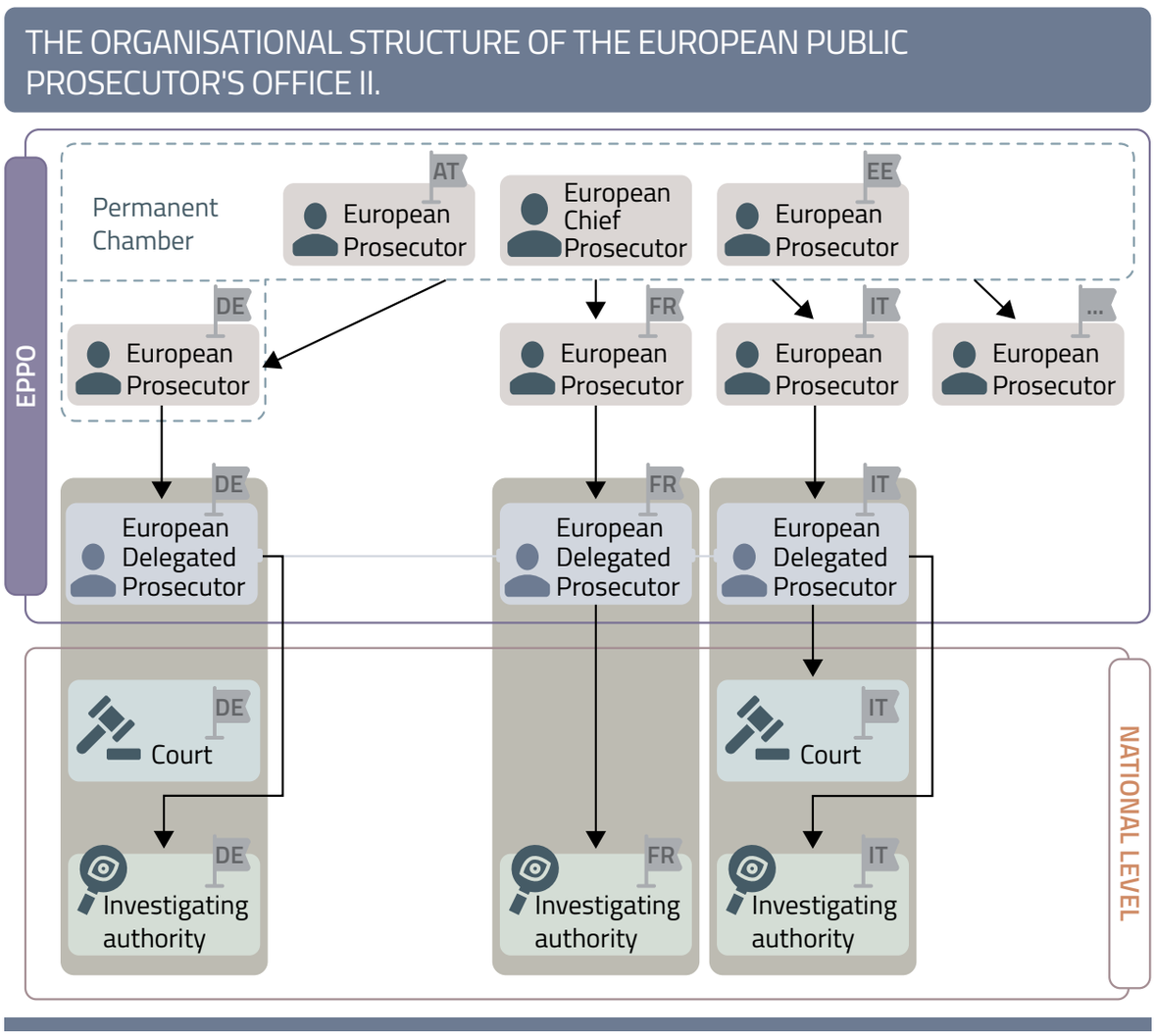
The College of European Prosecutors consists of all European Prosecutors (i.e., the European Chief Prosecutor and one European Prosecutor per Member State). The College shall meet regularly and shall be responsible for the general oversight of the activities of the EPPO. It shall take decisions on strategic matters, and on general issues arising from individual cases, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States. The College shall not take operational decisions in individual cases (Regulation, Article 9).

The most important organisational unit of the EPPO is the system of Permanent Chambers. Permanent Chambers should be chaired by the European Chief Prosecutor, one of the deputy European Chief Prosecutors or a European Prosecutor, in accordance with the principles laid down in the internal rules of procedure of the EPPO. In addition to the Chair, the Permanent

Chambers shall have two permanent Members. The number of Permanent Chambers, and their composition, as well as the division of competences between the Chambers, shall take due account of the functional needs of the EPPO and be determined in accordance with the internal rules of procedure of the EPPO (Regulation, Article 10).

The Permanent Chambers shall direct and monitor the investigations and are responsible for the uniformity of the procedures, thus the Permanent Chambers are the backbone of the EPPO. *Figure 2* reflects the system and organisational links of the Permanent Chambers.

Figure 2



Source: The Author's compilation based on the figure used in a presentation by Hans-Holger Herrnfeld at the Academy of European Law on 7 February 2020.

Each participating Member State shall nominate three candidates for the position of European Prosecutor. The Council, after having consulted the selection panel, shall appoint one of the three candidates. European Prosecutors are appointed by simple majority for a non-renewable term of 6 years, which may be extended for a maximum of three years. European Prosecutors act as liaisons for their own Member State of origin, i.e., they serve as the communications channel between the Permanent Chambers and the European Delegated Prosecutors. In close cooperation with the European Delegated Prosecutors, they supervise the performance of the tasks of the EPPO in their own Member State. In addition, they make sure that all relevant information received from the Central Office is delivered to the European Delegated Prosecutors and vice versa. In exceptional cases, they may also conduct investigations themselves: according to the Regulation, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, where this appears to be indispensable in the interest of the efficient investigation or prosecution by one or more reasons defined in Article 28(4) of the Regulation. In such exceptional circumstances, Member States shall ensure that the European Prosecutor is entitled to order or request investigative and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor.

Apart from these exceptional cases, the operative work is performed by the European Delegated Prosecutors working in the Member States. The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions, and bringing cases to judgment. The European Delegated Prosecutors shall be responsible for those investigations and prosecutions that they have initiated, that have been allocated to them, or that they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber as well as the instructions from the supervising European Prosecutor.

The European Delegated Prosecutors are subject to the so-called “double hat”, i.e., they are an integral part of the EPPO, and therefore they exclusively act in the name and on behalf of the EPPO in all investigations and prosecutions conducted by them. Their legal status in this regard is independent, and it differs from the legal status of Member State prosecutors. According to the Regulation, however, they should, during their term of office, also remain members of the prosecution service of their Member State and should enjoy the same powers as Member State prosecutors. The European Delegated Prosecutors may also exercise functions as Member State prosecutors, to the extent that this does not prevent them from fulfilling their obligations as European Delegated Prosecutors. In the event that a European Delegated Prosecutor is unable to fulfil his/her functions as a European Delegated Prosecutor because of the exercise of functions as a Member State prosecutor, he/she shall notify the supervising European Prosecutor, who shall consult the competent national prosecution authorities in order to determine whether priority should be given to the exercise of the functions as European Delegated Prosecutor.

The Chief European Prosecutor had already been appointed, and the majority of participating Member States had also proposed European Prosecutors, however, the Council had not accepted the list until the finalisation of this study on 30 November 2020. No EU law provides for special requirements in relation to the European Delegated Prosecutors, however, it is in the interest of each Member State to nominate candidates who speak several foreign languages, are experienced in international cooperation and have a spotless professional track record.

The absence of an open tender in the selection of European Prosecutors may be brought up as a deficiency, as nomination by the Member States may be viewed as a clear sign of political influence. The lack of transparency is also obvious, however, it is beyond doubt that in this case a political compromise had to be found in order to continue the project. As part of the package, Member States, who will have no influence over the operation of the EPPO, retained a certain level of control at least in the selection process of European Prosecutors. Despite the foregoing, it is possible that, after a few years of operation, the selection process will be changed to a tender system as part of the inevitable reforms.

There are no European Union rules in place to protect European Prosecutors and European Delegated Prosecutors from dismissal, i.e., they may be dismissed from the respective Member State's prosecution service pursuant to the rules of the Member State, which gives further reason for concern. Similarly, there are a number of open issues in cases where prosecutors wearing a "double hat" are subjected to disciplinary action or accused of a crime in their respective Member States, whether or not such action is justified.

2.4. The procedural baseline of the EPPO

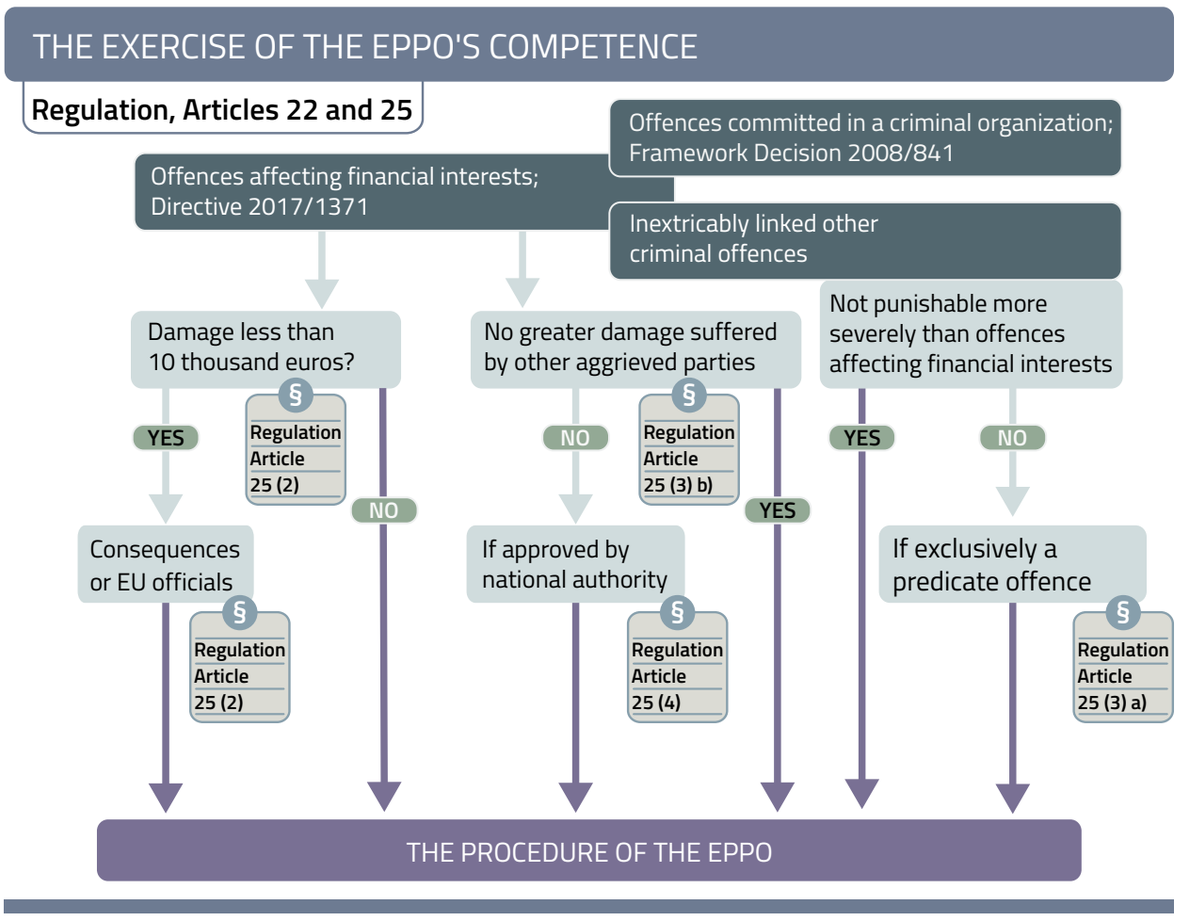
The task of the EPPO is to investigate and prosecute the perpetrators of offences against the Union's financial interests and offences which are inextricably linked to such offences, as well as to bring the perpetrators to court in the Member States. In that respect the EPPO undertakes investigations, carries out acts of prosecution and exercises the functions of a prosecutor before the competent courts of the Member States, until the case has been finally disposed of (Article 4 of the Regulation). Where a suspicion of an offence within its competence is identified, the EPPO shall open the investigation or, where the national authority has already initiated proceedings, the EPPO shall evoke the case within five days (Article 27 of the Regulation).

The EPPO's competence is primary but not exclusive. It has the right of evocation but refrains from exercising its competence in specific cases. This amounts to the recognition of the principle of opportunity,[24] although if the EPPO does not exercise the right to conduct the procedure,

[24] The institution of criminal proceedings may be generally mandatory if the investigating or judicial authority becomes aware of a criminal offence or a suspicion thereof (this is the so-called "principle of procedural legality") or, according to the other model, the institution of criminal proceedings depends on a discretionary decision of the investigating or judicial authority.

the Member State can still take action pursuant to its own rules. Beside the provisions on material competence set forth in Article 22 of the Regulation, Article 25 of the Regulation defines special conditions of exercising the EPPO's competence. Accordingly, the EPPO prosecutes criminal offences within its competence with regards to the existence of further legal or historical facts, such as the maximum punishment for the inextricably linked other offence, the damage caused, the aggrieved party, or the instrumental nature of the inextricably linked other offence (predicate offence). Whether or not the EPPO prosecutes can be determined through the combined application of Articles 22 and 25 of the Regulation, as illustrated by *Figure 3* below.

Figure 3



Source: the Author

Article 25(6) of the Regulation provides that in the case of disagreement between the EPPO and the national prosecution authorities over whose competence the criminal conduct falls into, the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide to whose competence the investigation of the case belongs. It will be exciting to see the reasoning of these decisions as, in theory, the national authority will be required to settle the dispute between the EPPO and the Member State prosecution service pursuant to the EU's legal criteria, while Member States will in practice have

rather great influence over the EPPO's "room for manoeuvre". The EPPO's actions may be blocked if the national authorities competent to resolve conflicts of competence will regularly rule in favour of the Member State prosecution service.

If the procedure is conducted by the EPPO, it is a crucial question which European Delegated Prosecutor will be the one to open or take over the investigation, and in which Member State. From this respect, the determination of the Member State in which the criminal conduct concerned was identified is the first important step. If there are reasonable grounds to suppose that a criminal offence falling within the EPPO's competence is or was committed, the European Delegated Prosecutor of the Member State with jurisdiction over the criminal offence pursuant to the national law will open an investigation. If this does not happen, then the Permanent Chamber to which the case is allocated will instruct one of the European Delegated Prosecutors to open an investigation.

Article 26 of the Regulation lays down an important case allocation rule and precludes parallel investigations by stating that a case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, 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 above rule is duly justified, taking into account the following criteria, in order of priority: (a) the place of the suspect's or accused person's habitual residence; (b) the nationality of the suspect or accused person; (c) the place where the main financial damage has occurred.

In the event that more than one Member State has jurisdiction for a case, the competent Permanent Chamber may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to: (a) reallocate the case to a European Delegated Prosecutor in another Member State; (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it.

The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30 (essentially, this refers to measures provided for in the law of the Member State of the handling European Delegated Prosecutor). The justification and adoption of such measures shall be governed by the law of the Member State of the handling European Delegated Prosecutor. Where the handling European

Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State. If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment. However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment. The assisting European Delegated Prosecutor shall undertake the assigned measure or instruct the competent national authority to do so (Article 31 of the Regulation).

We briefly need to discuss the discretionary powers referred to in Article 27(8) of the Regulation. It provides that if the criminal offence causes damage of less than EUR 100,000, the EPPO may decide not to evoke the case, in accordance with the general guidelines. In specific cases, this imparts discretionary powers to the European Delegated Prosecutor to decide, independently and without undue delay, not to evoke the case. The EPPO shall outline, in the general guidelines to be issued in the future, the cases where the above discretionary powers may be exercised without the College of European Prosecutors, however, the Regulation makes this conditional on the nature of the offence, the urgency of the situation and the (future) commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.

If the EPPO finds during its proceedings that the investigation of the given offence does not fall within its competence, it shall refer the case to the competent national authorities. In the absence thereof, the investigation is followed either by an indictment or by a dismissal (to be decided by the Permanent Chamber on recommendation of the European Delegated Prosecutor). The indictment shall take place in the Member State whose European Delegated Prosecutor conducted the investigation. Where more than one Member State has jurisdiction over the case, the Permanent Chamber shall in principle decide to bring the case to prosecution in the Member State of the handling European Delegated Prosecutor. However, the Permanent Chamber may decide to bring the case to prosecution in a different Member State, if there are sufficiently justified grounds to do so. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law. The Permanent Chamber shall approve the draft decision; however, it may not decide to dismiss the case if a draft decision proposes to bring the case to judgment. The Permanent Chamber shall take a decision on the draft within 21 days. In the absence of a decision, the handling European Delegated Prosecutor shall proceed as proposed by him/her (indictment or dismissal).

Where, following a judgment of the first instance court, the EPPO has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Permanent Chamber and wait for the instructions. Should the deadline set by national law elapse before such instructions are received, the European Delegated Prosecutor shall be entitled to lodge the appeal without prior instructions from the Permanent Chamber, and shall subsequently submit the report to the Permanent Chamber without delay. The Permanent Chamber shall then instruct the European Delegated Prosecutor either to sustain or withdraw the appeal. The same procedure shall apply when, in the course of the court proceedings and in accordance with applicable national law, the handling European Delegated Prosecutor would take a position that would lead to the dismissal of the case (Article 36 of the Regulation).

In the event that the EPPO dismisses the case, this decision shall be subject to review before the ECJ (and not before a Member State court) pursuant to Article 42(3) of the Regulation. 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 ECJ.[25] This may occur if the reasons for dismissal are not properly applied by the EPPO (the Permanent Chamber). However, there is great uncertainty around the precise meaning of the rules applicable to judicial review. The aggrieved party may bring an action on the basis thereof, however, it is unclear whether it is possible to bring an action under the Regulation in cases where there is no personally identifiable aggrieved party but rather the Member State representing the financial interests or the European Union qualify as the aggrieved party, or in such cases only an action for annulment may be brought pursuant to the general rules.[26] Similarly, it is also unclear what happens if the ECJ overrules the dismissal of the case. The reasons for dismissal, with one exception, are based on facts (e.g., time-bar, parole, etc.), which practically means that the decision by the ECJ to overrule the dismissal of the case would amount to establishing that the EPPO falsely dismissed the case. In such cases it is obvious that prosecution by the EPPO must be continued after the ECJ's decision. The only exception is where dismissal is based on the absence of relevant evidence. In such cases, the criminal proceedings will presumably continue after the preliminary assessment of evidence by the ECJ. In view of the foregoing, the current legal structure gives cause for concern.

If the case is dismissed in accordance with the law of the Member State of the European Delegated Prosecutor (pursuant to the decision of the Permanent Chamber), the Permanent Chamber may decide to later reopen the investigation. Final disposal based on an agreement is also an option. The Regulation uses the term "simplified prosecution procedures" for procedures that are aimed at the final disposal of the case on the basis of terms agreed with the suspect. This may be initiated in the national procedures by the European Delegated Prosecutor based on the decision of the Permanent Chamber.

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[25] We do not intend to present a full analysis here, however, the potential violation of the *ne bis in idem* principle as laid down in the Charter of Fundamental Rights may give rise to a review by the ECJ. Pursuant to Article 42 of the Regulation, the ECJ shall have jurisdiction in any dispute relating to compensation for damages caused by the EPPO, in any dispute concerning arbitration clauses contained in contracts concluded by the EPPO, in any dispute concerning staff-related matters and on the dismissal of the European Chief Prosecutor or that of European Prosecutors.

[26] The European Parliament, the Member State, the Council, or the Commission may do so pursuant to Article 263(2) TFEU.

In summary of the above, investigations conducted by the EPPO have four possible outcomes:

1. Simplified prosecution procedure; Article 40 of the Regulation (final decision).
2. Termination of the investigation, prosecution before a national court; Article 35 and 36(1)–(4) of the Regulation.
3. Referral to a Member State; Article 34(1)–(3), (6) of the Regulation.
4. Dismissal of the case; Article 39(1) of the Regulation.

2.5. The significance of the EPPO

The EPPO is a great step forward in the deepening of EU integration, even if it is currently an organisation within the framework of enhanced cooperation. Its operation will bring to light serious practical difficulties and will underline the differences between the national criminal justice systems and the hindrances following thereof, which will necessitate continuous consultations and further compromises. It is clear that, in its current form, decision-making within the EPPO is of a purely law enforcement / judicial nature, i.e., it entirely prevents the possibility of political influence. This is an essential condition of the rule of law and democracy in any segment of the criminal justice system.

This also sheds light on the "legalising nature" of EU integration, i.e., the fact that the (sometimes political) compromises achieved on topics originally saturated with political overtones or, dominated by Member State interests are implemented in a legal framework by lawyers, and this process follows its own internal logic. This is particularly the case in criminal justice integration.

The initial caseload of the organisation is still an open question. In the beginning, it will probably be well-advised not to initiate own investigations in too many cases (due to the shortage of capacities and the novelty of the procedural rules), however, it is questionable whether Member States should be allowed to prosecute cases that fall within the EPPO's competence if such an organisation already exists. At the same time, it is also true that the undisputable symbolic significance of the EPPO can be substantiated by a mere handful of cases.

Three main expectations can be identified in relation to the future functioning of the EPPO: (a) the more effective prosecution of criminal offences against the EU's financial interests; (b) a greater number of convictions and asset recoveries; (c) the protection of EU funds against criminal behaviour, hence a reduction in the risk of fraud, corruption and money laundering. It is also apparent that the EPPO, as an EU-wide project, extends deeper integration to a so far uncharted area and, accordingly, the extent to which the EU is able to build new capabilities in law enforcement is also at stake.

3. Arguments for and against the EPPO

In the following, we summarise the arguments in favour and against the EPPO, and the key issues surrounding the current regulations. We shall not discuss the need for professional discourse regarding certain specific rules here and now, however, it is expected to be very intense, since in fact each and every provision of the Regulation could be challenged on the basis of a Member State's legal system. This is precisely why it is of great significance that the Member States were able to agree with each other about the adoption of the Regulation.

According to the Regulation, the main objective of the enhanced cooperation is the following: "Both the Union and the Member States of the European Union have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not always sufficiently investigated and prosecuted by the national criminal justice authorities. In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the criminal prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States of the European Union, does not always sufficiently achieve that objective."[27]

3.1. Does the EPPO violate the sovereignty of Member States?

The establishment of the EPPO has its legal basis in primary law (Article 86 TFEU) and, therefore, any legal objections against its establishment are futile, moreover, such objections could also jeopardize the attainment of the EU's objectives, thus they violate the principle of loyalty. By ratifying the Lisbon Treaty in 2007 resulting in the adoption of the TFEU, Hungary expressly accepted the possibility of the establishment of the EPPO. As far as the formulation of the EPPO's structure and its rules of operation are concerned, Member States may rely on conventionally used arguments, as set out in Article 67(1) TFEU that prescribes an obligation to respect the fundamental rights and the different legal systems and traditions of the Member States.

[27] Preamble paragraphs (3) and (12) of the Regulation.

The selection of the legal basis for the establishment of the EPPO was a wise compromise: establishment within the exclusive competence of the EU pursuant to Article 325 TFEU could also not have been legally questioned, however, reaching the necessary political compromise was unrealistic, and it would not have been expedient to establish the EPPO by a majority decision. Thus, the solution of shared competence within the area of freedom, security and justice, as a Union policy remained. This meant that the unanimous decision of all Member States was required for the establishment of the EPPO in a special legislative procedure as per Article 86 TFEU. The significance of enhanced cooperation in relation to the EPPO was that the requirement of unanimity only had to be met in respect of the participating (i.e., not all) Member States. In other words, in the absence of a legal basis, the argument based on a violation of Member States' sovereignty cannot be upheld.

3.2. Does the EPPO violate the principle of subsidiarity?

According to Article 5(2) of the Treaty on the European Union (hereinafter referred to as "TEU"), under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The subsidiarity test encompasses two closely related questions: first, whether the Member States can sufficiently achieve the proposed action or not, and second, whether the proposed action can, by reason of the scale or effects of the same, be better achieved at Union level. The two steps are linked because if the Member State action is not sufficient, this will often lead to the conclusion that the given policy objective can be better achieved through Union action. According to Article 5(3) TEU, the principle of subsidiarity is not applicable to the Union's exclusive competences. The competence to establish the EPPO (conferred by Article 86 TFEU) does not fall within the exclusive competences referred to in Article 3 TFEU and cannot be regarded as an exclusive competence by nature either (i.e., a competence which, although not included in the list in Article 3 TFEU, can only be exercised by the Union and in relation to which the analysis of subsidiarity would be irrelevant). Accordingly, the principle of subsidiarity is applicable to Article 86 TFEU.[28]

The establishment of the EPPO in itself does not violate the principle of subsidiarity, however, it should be examined if its internal model and regulatory features meet the subsidiarity test.

[28] Communication from the Commission to the European Parliament, the Council and the National Parliaments on the review of the proposal for a Council Regulation on the establishment of the EPPO with regard to the principle of subsidiarity, in accordance with Protocol No. 2 Brussels, 27.11.2013 COM(2013) 851 final

3.3. Does the EPPO lead to more efficient law enforcement?

Efficiency and the measurement thereof have always been an evergreen topic of criminology the world over. There is no universally accepted definition of efficiency, nor does an audited methodology for scaling exist. However, indicators of the EPPO's efficiency can be identified beyond doubt and these may serve as the basis for the development of a measurement tool. Nonetheless, according to the general opinion, the capability to recover damages and assets appear to serve as fundaments in the assessment of the EPPO' efficiency. On the other hand, the fragmentation resulting from the diversity of the procedural systems and interests is commonly regarded as the main obstacle to the protection of the financial interests of the EU. In light of the above, the discourse can be summarised as follows.

Currently, efficient EU-level law enforcement against offences affecting financial interests can be differentiated from the Member State level along the following criteria:

- there will be investigations under joint supervision,
- there is no need to struggle with the cumbersome tools of mutual legal assistance,
- however, the procedural framework is not entirely new, thus less difficulties are expected compared to the case where independent, supranational procedural rules would have been developed.

The same arguments can be reversed to question the attainment of the original objective:

- no joint supervision can succeed due to the significantly different investigations and traditions of the Member States,
- the hybrid system (viz. Member State prosecutors representing and enforcing Union interests) further complicates the already fragmented system of criminal cooperation, as it requires legal connections (links) that currently do not exist, and if the European Delegated Prosecutor's work is subject to the legal environment in the Member State then it is unclear weather these investigations will be more efficient.

At the same time, one can also argue that the protection of financial interests is, by definition, more efficient if the procedures are initiated and the necessary investigations are conducted as opposed to the inactivity or reluctance of national prosecution services.

3.4. Is there a risk of forum shopping within the EPPO?

The phenomenon of forum shopping[29] is usually associated with premeditated criminal conduct, however, it may also occur on the side of law enforcement. The factors serving as the basis of forum shopping in our case are factually present in traditional intergovernmental cooperation, but they are mainly used as the overt or covert currency in political compromises and intergovernmental relationships.

These manoeuvres have already lost their political connotation between European states, however, they still exist as a consequence of the most important achievement of criminal justice integration in the EU, although they operate in a hidden (informal) manner. The transnational recognition of *ne bis in idem*, the obligation to coordinate (at least initially) any parallel criminal proceedings, the supranational EU legal basis established to resolve conflicts of jurisdiction[30] enable countries that have jurisdiction for a specific criminal offence, which affects more than one state to make a decision (that may even bind all of them) about which country will eventually conduct the proceedings. In these cases, the difference in the availability of evidence in different countries involved may be a key consideration. Besides the types and severity of the applicable sanction, procedural rules (possibility of detention, possibility of the application of covert, undercover operations, etc.) will also be taken into account.

It is obviously irreconcilable with the humanistic principles of criminal justice systems based on state coercion, if the country of procedure was chosen on the basis of the severity of the applicable sanction, or because the law offers fewer grounds for the exclusion of criminal responsibility, or the requirements in the evidentiary procedure are not as strict as in other countries.

Any system that allows the opt-out of certain geographical territories from its common area of jurisdiction inevitably entails certain risks. The authorities of the individual countries can decide to conduct the proceedings independently from each other, which may give rise to conflicts of jurisdiction and may eventually lead to the failure to prosecute punishable offences and to the impunity of the perpetrators of such offences. The phenomenon of forum shopping may appear on the side of both law enforcement and offenders. In the previous case, the participating countries, for reasons of expediency, may decide about the place of prosecution that breaches the underlying principles of their national criminal procedural rules. In the latter case, offenders may choose a country that poses the least risk to them to commit a criminal offence, which may be a threat to Hungary and Poland, the two Member States not participating in the EPPO, provided that their legislative environments are more lenient.

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[29] In the context of criminal justice, forum shopping means an international connection, namely that the parties (whether the offenders or the authorities) choose the place of their actions (the place of the commission of the offence or the place of procedural measures) based on the applicable law of the given country.

[30] Council Framework Decision 2009/948/JHA of 30 November 2009 on Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings, OJ L 328, 15.12.2009, 42.

4. The opinion of certain Member States and experts

In the following section, we shall briefly summarise the key points of the arguments related to participation or non-participation in the EPPO in Italy,[31] the Netherlands (joined later), Sweden (announced intention to join in 2019), and a non-participating Member State, Hungary, based on the publicly available political statements, the considerations of national parliaments, the literature, and the opinions of experts.

4.1. Italy

The community of legal professionals in Italy has been a strong supporter of the EPPO from the very beginning. The political support varied depending on the EU-related policies of the respective Italian governments, however, it is worth noting that the 2003 EU presidency of the Berlusconi administration, with the support of the British government, played a key role in the failure of the Nice Treaty.[32] Italy changed its position in the subsequently relaunched political discourse and the establishment of the EPPO was one of the priorities of the 2014 Italian presidency.[33] According to the opinion of legal professionals, Italy's opting out would not have been defensible in a political sense due to the potentially large number of cases in Italy. Italy was also one of the most ardent supporters of extending the EPPO's competence to cover acts of terrorism.

4.2. The Netherlands

Broad professional discourse took place about the entire project of the EPPO and also about participation in the enhanced cooperation, while professional arguments were also used in the political debate in the national parliament. The main reason for non-participation was the claim that the Member States' actions were effective enough to protect the financial interests of the EU, and that the EU should rather be granted with powers to review the work of Member State

[31] Though not among the original 16 Member States who announced the establishing of the enhanced cooperation on the EPPO (see footnote 15), by the time the Regulation was adopted, Italy has already joined the enhanced cooperation on the EPPO, therefore it practically counts to the founders.

[32] Carbone (2010), 97, 102.

[33] http://italia2014.eu/media/1349/programma_en1_def.pdf

authorities, as well as that the further development of Eurojust and OLAF was more desirable. Another argument was that once established, the EPPO runs the risk of "mission creep" (i.e., if the EPPO is effective against fraud, it will acquire further competences).

In addition to the foregoing, the idea to join the EPPO was disputed and varied, yet the 2016 Dutch presidency significantly facilitated the negotiations, even though it was against participation up to November. By then, the government was in favour of the Regulation's draft version and requested the parliament's approval to take part. The main reason was that opting out was not in balance with the country's interest and non-participation would give rise to an equal number of uncertainties. Accordingly, a pragmatic approach needs to be taken with regards to the participation in the EPPO and it should be understood that participation ensures the possibility of influencing the process of development.[34] This argument was not accepted by the lower house of the Dutch parliament at the time. In 2017, however, the coalition agreement of the new government contained the intention to participate in the EPPO in order that the Netherlands could also have a say in shaping the applicable regulations. In 2018, the parliament's lower house supported the plan (as the government held the majority) and so did the senate (upper house), thus the Netherlands could join the enhanced cooperation on the EPPO. However, the parliament strongly opposed the extension of the EPPO's competence to acts of terrorism.

4.3. Sweden

The Swedish parliament also submitted a reasoned opinion[35] concerning subsidiarity in relation to the first draft of the Regulation, and their main arguments included the EPPO's too broad competences, the sufficiency of Member State action (i.e., EU action did not have any added value), and the absence of substantive law harmonisation. The government was not particularly supportive of the idea to join the EPPO either, even though they acknowledged that there was great need for the protection of the EU's financial interests.

In April 2019, the Swedish prime minister announced that Sweden intended to join the EPPO[36] and called it one of the government's key priorities. Currently, an expert report is under preparation about the necessary legislative steps that will be subject to public consultation in the future. It is planned that the materials will be completed by December 2020, after which the government will request the Swedish parliament's approval for joining the EPPO.

[34] Franssen (2020).

[35] Beside the opinions of other Member States, this is also summarised in Commission Communication COM(2013) 851 final: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0851&from=EN

[36] https://www.government.se/speeches/20192/04/speech-by-prime-minister-stefan-lofven-in-european-parliament-3-april-2019/

4.4. Hungary

In 2013, the Parliament participated in the yellow card procedure and submitted a reasoned opinion to the European Commission about the draft Regulation.[37] The majority of the arguments used at the time (e.g., lack of substantive law harmonisation, no legal basis for the establishment) have become obsolete since then and one may conclude that the political debate never went deeper than the level of slogans. The political debate still remains subdued, as currently the government is strongly in favour of non-participation. The collection of signatures, a political action by nature, ended in 2019 with 680 thousand signatures in favour of the EPPO,[38] and two initiatives were put forward to hold referenda, but both were rejected by the National Election Committee in 2018.[39] Although no professional consultation with the representatives of the legal professions took place, the topic was and is still discussed in the academic community.

In addition to the similar arguments used in other countries, the Hungarian government also invoked a constitutional concern based on Article 29(1) of the Fundamental Law which provides that in Hungary, the prosecution service shall exclusively exercise the state's power to punish, i.e., it holds the monopoly to prosecute criminal offences. The following arguments may be derived from this:

- due to exclusivity, only the Hungarian prosecution service may act as public prosecutor; it holds the monopoly to prosecute criminal offences in Hungary (counter-argument),
- one could also argue that the focus is on the interpretation of the notion of the state in this context, i.e., that the power to punish concerning the actual protected legal interests at EU level must be regarded as equivalent to the Member States' power to punish, thus the prosecution services of Member States can take action in respect thereof (counter-argument that recognises the existence of the power to punish of a supranational entity),
- if we do not regard the EU's financial interests as protected legal interests subject to the state's power to punish, the relevant Article of the Fundamental Law cannot be interpreted in respect of an international organisation that does not qualify as a state (pro argument).

Should Hungary join the EPPO, any constitutional concerns could easily be disposed of by amending the Fundamental Law by the adoption of a separate provision, thus any reference to such concerns appears to be ostensible.[40]

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[37] See Parliament Resolution no. 87/2013: https://www.parlament.hu/irom39/12694/12694.pdf. The document referred to in footnote 35 also contains the position therein.

[38] Mr. Ákos Hadházy, independent member of the Hungarian Parliament, initiated the collection of signatures in order to promote Hungary's participation in the EPPO. Mr. Hadházy informed about the outcome of this initiative on his social media account: https://www.facebook.com/hadhazyakos/posts/2029671097143723?comment_id=2029719167138916

[39] See the National Election Committee's Resolution 54 of 2015 (approved by decision No. Knk.IV.37.359/2015/3 of the Curia) and Resolution 1031 of 2018 (approved by decision No. Knk.VII.38.177/2018/2 of the Curia).

[40] Polt (2019), 137.

We may conclude that the majority of arguments against the EPPO are the same everywhere, moreover, one should bear in mind that these arguments have already been used more than once and with different intensities during the history of EU integration: first at the establishment of OLAF (formerly: UCLAF), and most recently in relation to the Eurojust reform.[41] It is also clear, however, that professional arguments matter little as only the transformation of the political landscape, rather than professional discretion, has brought about change in hesitant or resisting Member States. In other words, the political landscape changed first, and this facilitated the acceptance of pro-EPPO arguments promoted by legal professionals.

4.5. Learnings from stakeholder interviews

In order to explore in detail the process and the reasons of various Member States for joining or not joining the EPPO, we interviewed experts of the given Member States. The 12 interviewees were selected according to Member States and legal professions (judge, prosecutor, defence attorney, Justice Ministry expert).[42]

Based on the stakeholder interviews, no cultural or geographical divisions exist between the Member States under review in respect of the EPPO based on whether they joined the EU before or after 2004. One of the key learnings from the interviews that applies to all Member States under review is that participation or non-participation in the enhanced cooperation on the EPPO was never perceived as a legal-professional issue, but rather as a political one. This also applies to the two late-joiners, the Netherlands and Sweden. In other words, the decisive factor for Member States joining later was that the already known legal arguments convinced the policy makers who were initially against the EPPO. This conclusion may also be significant in respect of Hungary's participation, to occur hopefully sometime in the future.

The key conclusions derived from the stakeholder interviews are the following:

1. The Italian, Swedish, Polish and Dutch respondents, as well as all three Romanian respondents and three of the Hungarian judges agreed that the EPPO, if provided with sufficient resources, may be more effective as it can devote all of its efforts (work) to investigating criminal offences within its competence and can become highly specialised, since there are no other cases it also needs to focus on. In the absence of different law enforcement interests, the EPPO can establish a uniform case-law.

[41] Vervaele (2017).

[42] The distribution of interviewees: four judges and one prosecutor for Hungary, an expert of the Ministry of Justice for the Netherlands, an expert of the Ministry of Justice for Sweden, an expert of the Ministry of Justice for Poland, a prosecutor, a judge, and a defence attorney for Romania, and an expert of the Ministry of Justice for Italy. The interviewees received the questions by email and responded to them in writing. All selected interviewees responded to the questions. The Hungarian interviewees received the questions in Hungarian and the rest of the interviewees in English. The interview questions are not attached to this study for reasons of space, however, they are available from the Author or from Transparency International Hungary Foundation. The Author is in possession of the responses of interviewees.

2. The Italian, Swedish, Polish and Dutch respondents, as well as all three Romanian respondents and all four of the Hungarian judges agreed that the system of the EPPO may be suitable for better detecting, identifying and prosecuting criminal offences affecting the EU's financial interests. It may be particularly suitable for uncovering cross-border criminal relations that may not be detected by purely national investigations.

3. Only the Polish respondent was of the opinion that the EPPO is nothing more than an adaptation to the recently developed, non-traditional criminality. According to this respondent, crimes are typically cross-border in nature and are committed in an organised manner, thus EU-level law enforcement can reduce the advantage on the criminals' side resulting from the difficulties of cooperation between the various Member State authorities.

4. The Polish respondent, the Dutch respondent and the Romanian judge and prosecutor were of the opinion that, due to the common "area of competence" created by the EPPO, the specific offences (and their perpetrators) can be handled in one procedure, irrespective of the original national jurisdiction.

5. One of the Hungarian judges and the Romanian attorney responded that the success of the EPPO in cases where the Member State prosecution services did not or could not act appropriately (so far) would be dependent on the EPPO's "local" capacity to promote its own interests (rather than on the regulations).

6. The Italian respondent, the Polish respondent, the Dutch respondent, the Romanian prosecutor and attorney and two of the Hungarian judges said that the phenomenon of forum shopping cannot be excluded in the system of the EPPO, although they regarded this threat to be rather theoretical. They considered the possibility of state forum shopping to be non-existent.

7. The respondents had divergent thoughts about the possibility of political influence over the EPPO. One line of thought was that politics can be excluded from the operation of the EPPO – three of the Hungarian judges, among others, believed so. The other position, represented by the Romanian attorney, was that the possibility of exerting influence or pressure will continue to exist. In fact both arguments, leading to contradictory conclusions, were based on the "double hat" legal status.

8. Of the Hungarian respondents, one of the judges considered it a sign of the partial dependence of the EPPO on politics that the European Prosecutors are not selected by open tender and with the exclusion of Member State politics.

9. All of the respondent Hungarian judges as well as the Romanian attorney and prosecutor believed that the EPPO would not be more effective as there are no guarantees that the Member State investigating authorities would not hinder the work of the European Delegated Prosecutor. In their view, the solution would be if the EPPO had exclusive competence.

5. European Union funds in Hungary

5.1. The role of European Union funds in Hungary

The risks arising from Hungary's non-participation in the enhanced cooperation on the EPPO can only be assessed and evaluated if we are aware of the magnitude of the funds transferred by the European Union to Hungary and the efficiency of the national measures aimed at ensuring the sound use of those funds.

For the 2014–2020 programming period, Hungary receives financial support amounting to almost HUF 9 thousand billion (EUR 25 billion) at September 2020 exchange rates from the European Structural and Investment Funds. This represents 4 percent of the Hungarian GDP on average annually. In the 2014–2020 programming period, Hungary ranks fifth among the Member States of the European Union in terms of EU funds per capita.[43] The Hungarian public authorities spent HUF 3,430 billion through public procurement processes in 2019, which corresponds to 7.8 percent of the country's GDP in that year. In 2018, the amount spent through public procurement processes represented 7.3 percent of the GDP, as opposed to 2017, when this amount equated to almost 10 percent of the country's GDP. On average, approximately half of all public procurement processes are funded in part or in full from EU funds.[44]

In Hungary, TI-Hungary was the first to write about absorption pressure in its 2015 report on corruption risks associated with the use of EU funds.[45] Since then, the Hungarian government declared on several occasions that its primary objective was to use as much EU funds as quickly as possible.[46] In view of this, the government plans to use 110–115 percent of EU funds allocated to Hungary so that they can submit the invoices of an alternative project should certain projects fail to pass the inspection of the Commission. It follows from the above that project planning, the justification of the objectives to be attained by the projects, and control itself have become secondary and all government measures are aimed at achieving the main objective, i.e., to maximise the fund allocation.

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[43] TI-Hungary's calculation based on Eurostat data. The methodology and the results of the calculation are in the possession of TI-Hungary.

[44] 2019 Report of the Public Procurement Authority: https://kozbeszerzes.hu/data/filer_public/89/0a/890a30f6-732b-4200-ac5b-acbd70567e14/kozbeszerzesi_hatosag_2019_evi_beszamoloja.pdf

[45] László Kállay: *The Corruption Risks of EU Funds in Hungary:* https://transparency.hu/wp-content/uploads/2015/11/The-Corruption-Risks-of-EU-funds.pdf

[46] https://www.kormany.hu/hu/innovacios-es-technologiai-miniszterium/europai-unios-fejlesztesekert-felelos-allamtitkar/hirek/magyarorszag-toronymagasan-vezet-a-regioban-az-unios-forrasok-felhasznalasa-teren

The use in Hungary of funds received from the European Union entails a number of additional systemic corruption risks. State institutions are not only unable to eliminate these risks but in many cases they create possibilities for abuse themselves. As the aim is to spend a vast amount quickly, projects implemented with EU funding are often overbudgeted. Overbudgeting and inadequate control significantly contribute to the spreading of overpricing among EU projects. (TI-Hungary's aforementioned 2015 study concluded that overpricing may occur in more than 90 percent of projects and its average rate may reach 25 percent.)

The state organs charged with the selection of the beneficiaries of EU funding, with the supervision of the use of EU funds and with planning the supported projects operate under the control of the same managing authority. In other words, they are controlled by the same state leaders (deputy state secretary and ultimately the minister). Therefore, the control bodies are facing disincentives to monitor the projects properly, as it would, on the one hand, slow down the use of funds and, on the other hand, if they were to detect any deficiencies or irregularities, the government would place itself under suspicion that it had not selected the beneficiaries carefully enough.

The institutional guarantees of genuine independence are questionable both at organisational and personal level. It is telling that the Directorate General for Audit of European Funds, the monitoring body established pursuant to the mandatory requirements of the European Union and designed to operate independently from the managing authorities, operates with the Ministry of Finance and its employees are government officials.

5.2. The protection of the EU's financial interests in Hungary

OLAF applies its own tools to lay the foundations for the protection of the EU's financial interests both within EU institutions and in respect of Member States. Its main role is financial and administrative control, during which it may also make judicial recommendations or notifications to the Member States, if it suspects a criminal offence. According to the 2019 OLAF report,[47] the Hungarian authorities conducted 2,697 irregularity procedures in respect of the funds received from the European Structural and Investment Funds during the five-year period between 2015 and 2019.[48] This roughly corresponds to the data of Portugal (2,773 irregularity procedures) and Czechia (2,159 irregularity procedures), whose EU funding is similar to that of Hungary. OLAF's own procedures concerning Hungarian projects were concluded with a recommendation in 43 cases. Hungary was the first in this ranking, i.e., OLAF found the most irregular EU-funded projects in Hungary. Hungary is also the first in the number of recommendations for

[47] https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf?fbclid=IwAR0UhjjAD836olGtMOhPtnm9piyUVRnoNDyya97k2b5JsEX7UdhWJg-N2jU. The figures and the conclusions drawn in this subchapter are all based on and derived from the aforementioned OLAF Report.

[48] Not all irregularity procedures were related to fraud.

recovery of funds: OLAF recommended to the Commission to recover almost 4 percent of the resources allocated for European Union projects implemented in Hungary. This exceeds almost ten times the EU average, although the significant amount of money to be recovered in the so-called "Metro Line M4" project has kept the ratio of recovery high for Hungary for years.

During the same period, the prosecution service dismissed eight cases filed on the basis of OLAF's recommendations and brought indictments in seven cases. Accordingly, the indictment rate reached by the prosecution service was 47 percent in 2019. In this regard, we draw attention to the fact that the Hungarian prosecution service had the worst indictment rate in the EU for years. The situation improved somewhat in 2018 and the prosecution service, as well as the Hungarian government often claimed that the indictment rate in Hungary (45 percent) was better than the EU average (36 percent).

At the end of 2019, however, 18 cases were still pending in Hungary that had been initiated on the basis of OLAF's judicial recommendations. This was one of the highest ratios in the European Union. The number of pending cases (22) is higher in both Romania and Italy, however, these countries have had more open OLAF cases than Hungary to begin with. At the same time, in Czechia for example, there are only six cases about which the prosecution service has not yet made a decision, while the indictment rate is 75 percent in Lithuania, 67 percent in Greece, 60 percent in Croatia, and a stunning 100 percent in Malta. It is worth noting that the indictment rate in the whole of the European Union is low because there are Member States in which OLAF investigates only one or two cases that are often not followed by indictments.[49]

The indictment practice of the prosecution service in itself reveals hardly anything about the prudency of the use of EU funds in Hungary. This is primarily so because although OLAF sends its judicial recommendations to the prosecution service, the prosecution service itself is not responsible for the orderly use of EU funds. Therefore, we could not be satisfied even with a 100 percent indictment rate as it would only suggest that the Hungarian prosecution service agrees with the conclusions of OLAF's investigations. Accordingly, it would be more telling to see how efficiently do public authorities (such as the managing authorities or the Public Procurement Authority) involved in monitoring the use of EU funds under shared management perform their work. As the relevant information is not accessible publicly,[50] we can only guess whether the Hungarian monitoring authorities have identified any irregularities and taken the necessary measures in the EU-funded projects resulting in indictment or the recovery of funds by the Commission acting on OLAF's recommendations.

In 2019, OLAF investigated five cases in Hungary and sent recommendations in two cases. This way, Hungary took the sixth place in the ranking of EU funding cases investigated by OLAF.

[49] For instance, the total number of cases is five in both Lithuania and Croatia, and a mere three in Malta.

[50] TI-Hungary has filed four lawsuits against various managing authorities for the accessibility of public interest information, because the said authorities have not disclosed the irregularity reports managed by them. It is part of the whole picture that OLAF also refuses to disclose its reports on the projects in question. For details, please contact TI-Hungary.

6. The EPPO and the non-participating Member States

Although the EPPO, established in the form of enhanced cooperation, will not have jurisdiction in all Member States, the non-participating Member States, including Hungary, will not be able to divorce themselves entirely from the operation of the EPPO. The Regulation contains certain provisions about cooperation with non-participating Member States, owing to serious professional discussions and the encouragement of the Slovak presidency (second half of 2016). Article (110) of the Preamble of the Regulation envisages that the Commission will submit proposals to urge the conclusion of working agreements and other bridging solutions between the EPPO and non-participating Member States in order to ensure effective judicial cooperation in criminal matters. These proposals should, in particular, concern the rules relating to judicial cooperation in criminal matters and surrender, fully respecting the Union acquis in this field as well as the duty of sincere cooperation in accordance with Article 4(3) TEU. However, the type of legal instrument in which these working agreements should be regulated is not yet fully decided, in particular because all of the EU's mandatory legal instruments are out of question. The EPPO and the competent authority of the non-participating Member State may agree on the establishment of a point of contact in the given non-participating Member State.

For non-participating Member States, the option is always available to join the enhanced cooperation, provided that they accept all of its rules. Within the framework of enhanced cooperation, all Member States may attend the meetings of the Council, however, only Council members representing Member States participating in the enhanced cooperation may vote. This also means that non-participating Member States watch the developments from the sideline[51] and have no say in the legislative process until they join the enhanced cooperation.[52]

[51] Kubin (2017).

[52] On the enhanced cooperation, see Osztovits (2011).

6.1. Prohibition of double prosecution *(ne bis in idem)*

One of the key achievements of European judicial integration is the acknowledgement and enforcement of the transnational validity of the *ne bis in idem*[53] principle through the instruments of EU law. The enforcement of this principle in respect of the EPPO and the non-participating Member States entails a significant risk. If the offence or a part thereof falls within the competence of both the EPPO and the non-participating Member State, impunity may be a realistic outcome, as well as a "competition" for the blocking effect of final decision.

If a final decision is awarded, the EPPO's procedure will result in *res iudicata*[54] and the entry into force of the prohibition under the *ne bis in idem* principle, with the negative effect that the *ne bis in idem* will also apply to parts of offences committed in a non-participating Member State that is not involved in the prosecution. The reason for this is that the conceptual and conditional framework of *ne bis in idem* in the EU, as established by the ECJ, applies the theory of identity of facts, i.e., facts inextricably linked to each other qualify as the same act, and being subject to different jurisdictions does not change this. In other words, if a series of fraud includes an offence that is committed in a non-participating Member State, *ne bis in idem* at EU level will have a blocking effect also on the adjudication of that part of the offence.

The *ne bis in idem* principle is also applied if a parallel national criminal procedure is launched, moreover, if it were to be concluded sooner than the one initiated by the EPPO, the blocking effect of the decision awarded in the national criminal procedure would also prevent the EPPO's procedure. One may conclude that such a race fundamentally questions the commitment to European values as well as the obligation to cooperate in protecting the EU's financial interests, therefore, it is to be hoped that it remains a mere theoretical possibility.[55]

It poses a further risk if and to the extent criminal proceedings can be conducted in a non-participating Member State even in the absence of the defendant (this is the case, for example, in Hungary). This may result in a situation that while the given non-participating Member State prosecutes on the basis of the principle of personality, the EPPO prosecutes on the basis of the principle of territoriality due to the jurisdiction of the participating Member State. The EPPO would only dismiss the procedure if there was a final decision by a Member State authority due to *ne bis in idem*, although it would be questionable even then whether or not the *in absentia*

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[53] It is a human rights requirement that the individual – if he/she has been sentenced once for a criminal offence and has served his/her sentence – should not fear of being subject to the jurisdiction of a state other than the one that originally established his/her responsibility for the same, formerly committed and adjudicated criminal offence.

[54] The *res iudicata* principle is a fundamental building block of the administration of justice and the related public confidence, i.e., in general, what is finally decided by a court can only be altered under very narrow circumstances, thus essentially everyone can reasonably presume the finality of decisions of last resort.

[55] According to Article 25 of the Regulation, if the EPPO has competence and decides to exercise it, the national authorities shall not exercise their own competence in respect of the same (and the inextricably linked) criminal offences, thus if all Member States joined the EPPO, the race for the blocking effect of a final decision could be eliminated.

judgement is binding on the EPPO. Member State authorities are not obliged to dismiss the procedure even in the above case, however, it is possible that the criminal proceedings are referred to the Member State where the offence was committed.

In every case where otherwise the EPPO would prosecute, the non-participating Member State is faced with a specific and constitutive decision: it may decide not to prosecute or to prosecute but only in order to trigger the legal effect of the *ne bis in idem* principle by means of its own decision, which may result in impunity, this time with effect in the whole of Europe. If such a decision is also influenced by political motivations that are aimed at condoning the acts (suspected to be) affecting the EU's financial interests, it would make a "safe haven" of the Member State and would therefore obviously violate the EU's general interests.

6.2. Criminal offences committed in the territory or by a citizen of a non-participating Member State

Offences affecting the EU's financial interests, due to their transnational nature may be committed in the territory of a non-participating Member State. If, for instance, fraudulent acts are committed in the territory of Hungary or Poland, as non-participating Member States, and such acts are inextricably linked to other similar acts committed in participating Member States, the following scenarios may ensue.

1. In the first scenario, the offences affecting the EU's financial interests (e.g., VAT fraud) are committed in Austria, Slovakia and Hungary, however, the offences are detached from each other, i.e., the parts of the acts committed in the territory of the non-participating Member State can be separated.

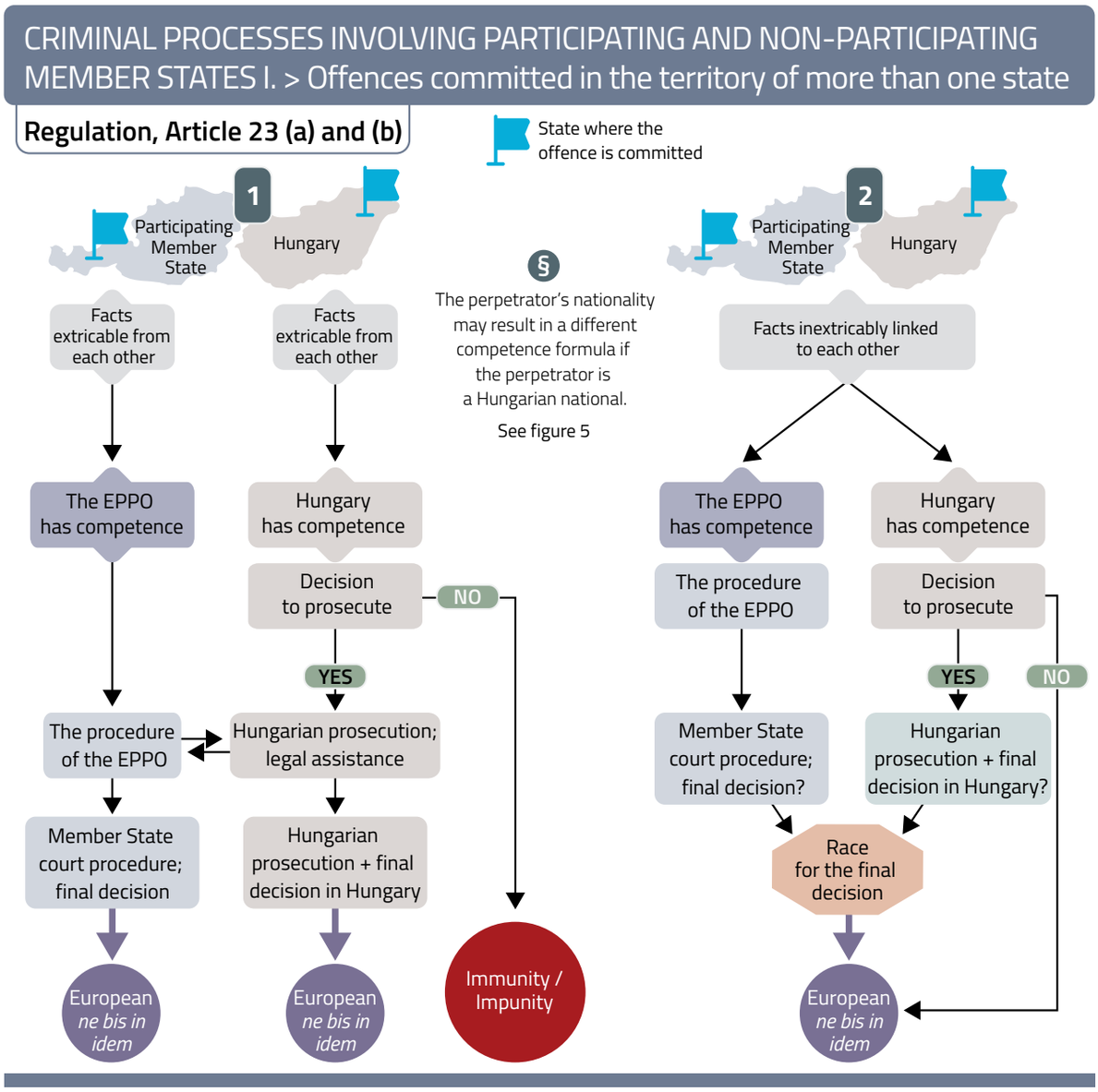
In such cases, the EPPO deals with the case, however, its competence does not extend to the parts of the acts committed in Hungary. In accordance with the Regulation, the EPPO notifies the Hungarian law enforcement agencies about the need for criminal proceedings. In other words, the EU can only enforce the Directive through the judicial system of the Member States, similarly to the case of other harmonised criminal offences. Accordingly, even if the Member State does not participate in the EPPO, the prosecution of the given offence is an EU obligation under the Directive. Failure to prosecute, either for legal reasons or because of political considerations, violates procedural legality as well as EU law and may also result in impunity.

2. In the next scenario, the historical facts of an offence affecting the EU's financial interests are realised in a way that the parts of the acts committed in the territories of participating and non-participating Member States cannot be separated from each other. In such cases, both the EPPO and the given non-participating Member State have competence to prosecute. In this case a race may ensue between the non-participating Member State and the EPPO for the

conduct of the proceedings and the adoption of a final judicial decision (on the merits of the case) in order to trigger the transnational *ne bis in idem* effect.

Criminal processes by the EPPO and by the authorities of a non-participating Member State as described in scenarios 1 and 2 above are illustrated by *Figure 4* below.

Figure 4



Source: the Author

3. Prosecution by the EPPO may also stand on the principle of personality, which grants jurisdiction on the basis of the perpetrator's nationality. It is also possible that the offence is committed by a citizen of a non-participating Member State, such as Hungarian national, in the territory of a Member State that participates in the EPPO. In such cases, the EPPO may prosecute due to the principle of territoriality and according to the Regulation, however, if the principle of active personality is applied, the non-participating Member State also has jurisdiction. In the Hungarian criminal law, for example, the jurisdiction of Hungary over the offence may be derived from the unlimited principle of active personality, as Hungary has also transposed the offence into its criminal law pursuant to the obligation under the Directive. The situation may be similar here as in the case described in scenario 2: since both the EPPO and the non-participating Member State are supposed to prosecute, a race for the *ne bis in idem* effect may ensue.

Under the Hungarian system, failure to initiate criminal proceedings in Hungary would amount to a violation of procedural legality, thus it is unlikely that the Hungarian law enforcement authority will accept the EPPO's procedure without launching its own procedure. It is likely, however, that once opened, the criminal procedure is transferred (to the participating Member State). It may also happen that by the time the Hungarian law enforcement agencies acquire foreign evidence, the EPPO reaches the final decision stage. At the same time, it may be a further problem in similar cases if the non-participating Member State requests the acquisition of some evidence from the participating Member State with a European Investigation Order,[56] as in this system of cooperation, the transfer of the evidence can only be denied if a reason for denial exists. The fact that parallel criminal procedures are being conducted is not a sufficient reason for denial, thus – in theory – the evidence would have to be transferred to the non-participating Member State. Article 13 of the Directive on the European Investigation Order provides that if the evidence is required in the executing State for other proceedings, it should be returned, if appropriate, but this is obviously only a small detail.

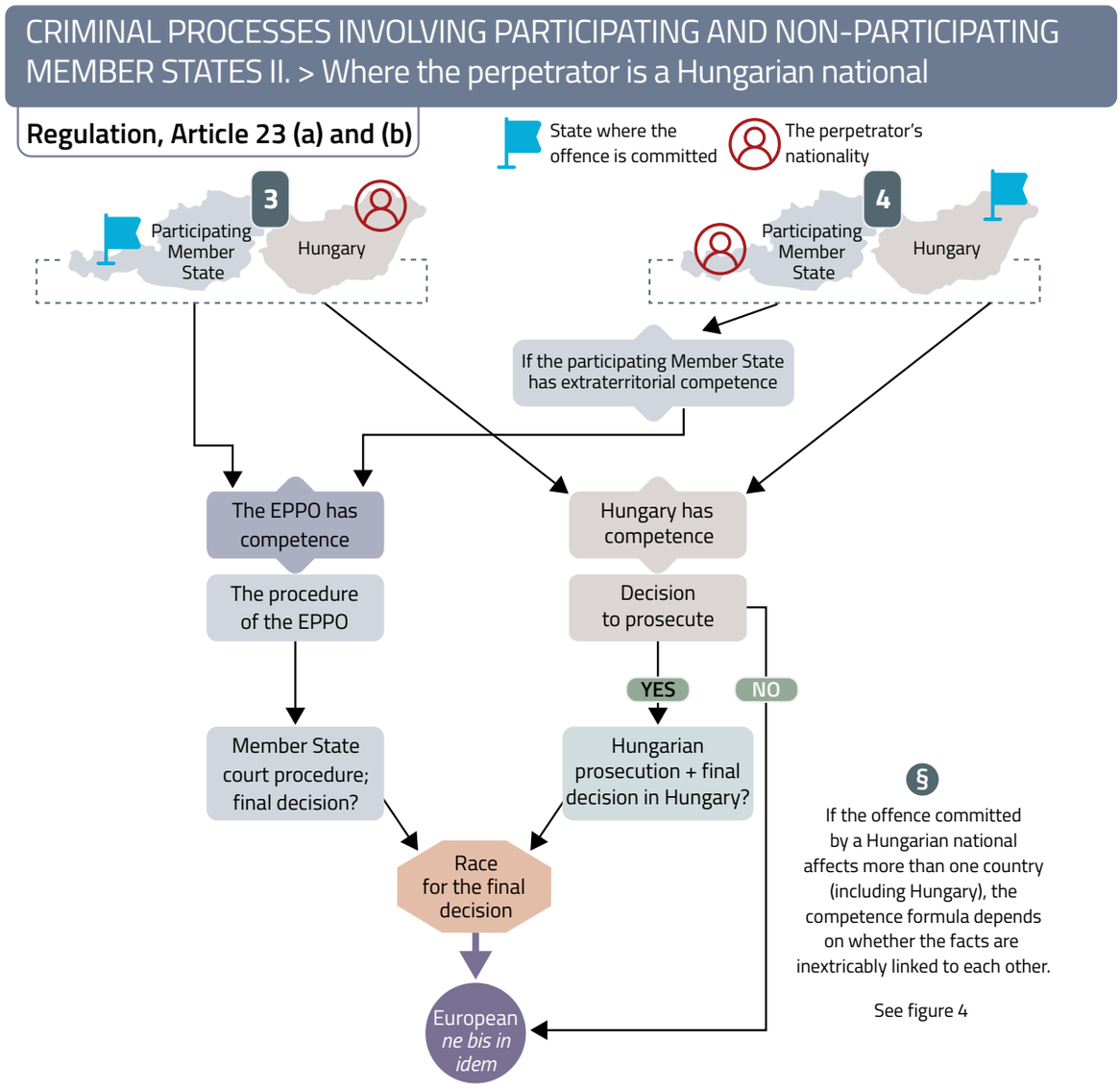
4. Pursuant to Article 23 of the Regulation, the EPPO is granted procedural rights through the transfer of the extraterritorial jurisdiction rules of participating Member States. The EPPO's competence extends to the investigation of offences committed in the territory of a non-participating Member State and affecting the EU's financial interests (and offences which are inextricably linked to them) essentially without the approval of the non-participating Member State. This will be the case in the territory of both Hungary and Poland. In this scenario, the principle of active personality recognised in the criminal law of the participating Member State is applied, i.e., the participating Member State exercises its right to punish in regard of an offence committed by its citizen outside of its territory. In such cases, (for example) Hungarian criminal jurisdiction also exists in parallel in respect of offences committed in the territory of Hungary, similarly to the formerly mentioned cases. This situation is different in that here the EPPO may request the acquisition and transfer of certain evidence. In the current legal position,

[56] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130., 2014.05.01, 1.

it is conceptually impossible for the EPPO to issue European Investigation Orders in respect of participating Member States, however, the question arises whether this legal instrument may be applied vis-a-vis non-participating Member States in the cases discussed herein. However, this would also mean the recognition of the EPPO by non-participating Member States. An alternative approach, contrary to the foregoing, may be that the European Investigation Order is issued by the authorities of the Member State, on whose extraterritorial jurisdiction the EPPO's procedure stands. Nevertheless it is certain that the race for *ne bis in idem* cannot be avoided even in this scenario, as the non-participating Member State has jurisdiction pursuant to the principle of territoriality, which it will try to enforce.

Criminal processes by the EPPO and by the authorities of a non-participating Member State as described in scenarios 3 and 4 above are illustrated by *Figure 5* below.

Figure 5



Source: the Author

In sum, there will be both negative and positive conflicts of jurisdiction between non-participating Member States (such as Hungary) and the EPPO, and these cannot be resolved without the breach of certain fundamental principles. Either some fundamental and generally accepted principles of criminal procedure will be relativized, or legal obligations deriving from the EU integration and key elements of the *acquis communautaire* will be eroded in some way or another (in particular the duty of sincere cooperation, the obligation to effectively prosecute transnational criminal offences affecting the EU's financial interests as per Article 328 TFEU and transnational *ne bis in idem*).

This can only be eliminated by generalising the system of the EPPO, as in this case the investigating authorities and prosecution services of all Member States would be obliged to ensure and facilitate the EPPO's work pursuant to the mechanisms provided for in the Regulation, and the potential conflicts of jurisdiction arising from the participation/non-participation division, the specific issues of cooperation and the adverse consequences of parallel procedures could all be eliminated.

It would be advisable that the coordination mechanism, currently only covering conflicts of jurisdiction between Member States, be also reasonably applied to relations between the EPPO and the (non-participating) Member States.[57]

6.3. The obligation to cooperate with the EPPO

Article 327 TFEU provides that any enhanced cooperation shall respect the competences, rights, and obligations of those Member States which do not participate in it. Non-participating Member States shall not impede the implementation of the enhanced cooperation by the participating Member States. The fact that non-participating Member States cannot veto the establishment or block the operation of the enhanced cooperation leaves them with no more than the possibility of passive observance, however, it is in the fundamental interests of non-participating Member States to be aware of the details, in particular if the enhanced cooperation can directly impact them. Although the TFEU provides that enhanced cooperation shall respect the interests of non-participating Member States, however, in the case of a conflict, the general integration interests and laws of the EU override the requirement to take the interests of non-participating Member States into account. The ECJ ruled that "while it is, admittedly, essential for enhanced cooperation not to lead to the adoption of measures that might prevent the non-participating Member States from exercising their competences and rights or shouldering their

[57] Council Framework Decision 2009/948/JHA of 30 November 2009 on Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings, OJ L 328, 15.12.2009, 42.

obligations, it is, in contrast, permissible for those taking part in this cooperation to prescribe rules with which those non-participating States would not agree if they did take part in it."[58]

According to Article 24 of the Regulation, the institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence. In addition, the Member State shall also inform the EPPO when one of its judicial or law enforcement authorities initiates an investigation in respect of a criminal offence for which the EPPO could exercise its competence so that the EPPO can decide whether to exercise its right of evocation.[59]

In confirmation of the foregoing, we need to emphasize that the EPPO derives its competence from the jurisdiction of participating Member States in accordance with the rules laid down in the Regulation. According to Article 105(3) of the Regulation, in the absence of the formerly mentioned working agreements, the participating Member States shall notify the EPPO as a competent "Member State authority" for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases affecting the Union's financial interests. This also means that the EPPO is to be regarded as an issuing/executing authority in respect of Union acts applying the principle of mutual recognition, i.e., non-participating Member States are also required to cooperate with the EPPO. This position is still a subject to ongoing debate in the literature, as according to the opposing opinion, the Regulation cannot bind non-participating Member States, thus any cooperation with the EPPO requires the consent of the non-participating Member State.[60] In fact this argument does not take into account the fact that there is no need for recognition by another Member State even in the case of Member State authorities participating in criminal cooperation, however, it is doubtless that this would entail the recognition of the EPPO as a "Member State authority." Nonetheless, as mentioned earlier, the participating Member State may decide to make the EPPO its executing authority and non-participating (or any other) Member States may not challenge this decision or the choice of Member State authorities that participate in the criminal cooperation based on mutual recognition. The only barrier is EU law and the Charter of Fundamental Rights, since the EPPO is also obliged to comply with the requirements therein as well as with the standards that transpire from the European Convention of Human Rights.

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[58] Joined Cases C274/11 and C295/11, 82.

[59] Non-participating Member States are not obliged to notify the EPPO. Should however a non-participating Member State start a criminal process for an offence defined in the Directive, a race for the *ne bis in idem* effect may take place in respect of the parts of the criminal act committed on the territory of a participating Member State. The non-participating Member State is not obliged to notify the EPPO in line with the Regulation. However, the principle of loyalty, and the provision of the TFEU expecting non-participating Member States to not impede the implementation of the enhanced cooperation, compel non-participating Member States to notify the EPPO of any criminal conduct in respect of which it could exercise its competence.

[60] For more details, see for example Franssen (2018), 295–296.

The same question may also be raised from the opposite direction, i.e., where non-participating Member States need to engage in criminal cooperation with another Member State in respect of offences affecting the EU's financial interests, will the EPPO or the Member State authority be the competent body for criminal cooperation? The Regulation does not authorise the EPPO to entertain requests for criminal cooperation from non-participating Member States without conducting its own investigation, i.e., in this context the Member State authority remains the competent body.

OLAF's responsibility will *de facto* increase as it will presumably focus on countries that do not participate in the EPPO, since if we expect the EPPO to detect a higher number of criminal offences, then the risk of offending will be higher than earlier in countries that are "invisible" to the EPPO.[61]

[61] IPOL_STU(2019)621806_EN, 77.

7. Summary and recommendations

The option to make Member States' access to certain EU funds conditional on their participation in the EPPO was considered in the EU's political scene. This idea is much debated, which suggests that professional arguments will be outclassed. Likewise, there is an ongoing political debate about the correlations between the respect of rule of law, access to EU funds and participation in the EPPO.[62] The deterioration of the rule of law performance of Hungary and Poland[63] and these two Member States' reluctance to join the EPPO interrelate, however, the rule of law performance of Hungary and Poland does not decline because the two countries do not participate in the EPPO. The cause and the effect are rather in reverse correlation: failure to participate in the EPPO is partly explained by the gradually diminishing respect for rule of law values in the countries concerned.

The EPPO will commence its actual operations at the time specified by the Commission, foreseeably at the end of 2020,[64] however, it is possible that this date will be postponed to 2021 due to the Coronavirus pandemic. For the time being, participation is not mandatory and Member States where the breach of the rule of law reaches a systemic level (such as Poland and Hungary[65]) are not threatened with reduced access to EU funds. Nevertheless, it is difficult to argue that the EPPO, about to commence its operations in practice, is unable to conduct investigations into fraud and corruption committed in Member States that belong to the largest beneficiaries of EU funds.

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[62] For more details, see Gabriella Nagy: *Jogállamiság és uniós költségvetés: akkor most összekötötték vagy nem?:* https://korrupcio.blog.hu/2020/07/24/jogallamisag_feltetelek.

[63] The Country Chapters on Poland (SWD(2020) 320 final) and Hungary (SWD(2020) 316 final) of the European Commission's 2020 Rule of Law Report provide detailed data about the rule of law performance of the two countries.

[64] According to the information received from the EPPO by TI-Hungary. We draw attention to the fact that according to the Regulation, the EPPO may not start its actual operations sooner than three years from the date of entry into force of the Regulation (20 November 2017). According to Article 120(2) of the Regulation, the provisions on the competence of the EPPO shall be applied with regard to any offence committed after the date of entry into force of the Regulation, from the date when the EPPO commences its actual operations. For Member States that join the enhanced cooperation later, the accession decision should specify the starting date of application of the Regulation. As in this case the rule applicable to the date of committing the offence does not change, if, for example, Hungary were to join now, the EPPO could already prosecute offences committed after the entry into force of the Regulation.

[65] It is a sign of the systemic violation of rule of law that the so-called Article 7 procedure has been launched against both Poland and Hungary, although under different circumstances and due to different national (internal legal) provisions. See TI-Hungary's report titled *Corruption, Economic Performance and Rule of Law in Hungary – The Results of the Corruption Perception Index in 2019,* 19.

In our study, we identified several risks of opting out of the EPPO, including that as a non-participating Member State, Hungary will not have a say in the development processes of the EPPO. This is problematic because we believe that in the long run, all EU Member States will join the EPPO, and being left out of the legal development process will result in limited technical latitude once Hungary joins the EPPO. In other words, the legislation applicable to the EPPO will "pass us by".

It is also a possibility that, due to the phenomenon of forum shopping, a more educated group of offenders that select the place for committing an offence on the basis of the differences of criminal law or criminal procedure, will opt for the country where they can expect more leniency or a less timely procedure. While it is not in the interest of any Member State to become a hub for white-collar criminals, it is a real threat that Hungary will become a corruption "safe haven" going forward.

The EPPO is not a panacea that solves all corruption problems overnight. We did not hide our concerns in this study, however, even the combination of these concerns cannot pale the significance and benefits of joining the EPPO. The often biased application of the law and impunity based on political position have eroded the credibility and reliability of Hungarian law enforcement agencies and public authorities responsible for combating corruption and for the sound use of public and EU funds. Therefore, we believe it is crucial for Hungary to join the EPPO. This is the only recommendation of our study.

Bibliography

Aden, Hartmut, Maria-Luisa Sanchez-Barrueco, and Paul Stephenson. *The European Public Prosecutor's Office: Strategies for Coping with Complexity*. European Parliament, 2019.

Bachmaier, Lorena (ed.). *The European Public Prosecutor's Office*. Heidelberg: Springer, 2018.

Balla, Zsuzsa. *Az EU pénzügyi érdekeinek védelme, fókuszban a korrupció elleni szervezete*. Debreceni Jogi Műhely, 2015.

Békés, Ádám and Tamás Gépész. *Az Európai Ügyészség hatásköri szabályozása. Hatékony-e a köztes megoldás?* Justum Aequum Salutare XV, 2 (2019): 39–49.

Braum, Stefan. *Europäisches Strafrecht im administrativen Rechtsstil. Zur kriminalpolitischen Konzeption des „EU-Grünbuchs Europäische Staatsanwaltschaft."* Zeitschrift für Rechtspolitik (2002): 508–514.

Button, Mark, Chris Lewis, David Shepherd, Graham Brooks, and Alison Wakefield. *Fraud and Punishment: Enhancing Deterrence Through More Effective Sanctions*. Centre for Counter Fraud Studies, University of Portsmouth, 2012.

Carbone, Maurizio. *National Politics and European Integration: from the Constitution to the Lisbon Treaty*. Elgar Publishing, 2010.

Csemáné, Dr. Váradi Erika. *A kriminológiai kutatások nehézségei az Európai Unió pénzügyi érdekeit sértő bűncselekmények körében*. In: Farkas, Dannecker, and Jacsó (2019), 471–485.

Csúri, András. *The Proposed European Public Prosecutor's Office – from a Trojan Horse to a White Elephant?* Cambridge Yearbook of European Legal Studies (2016): 1–30.

Dannecker, Gerhard. *A héacsalás elleni küzdelem Németországban*. In: Farkas, Dannecker, and Jacsó (2019), 109–118.

De Angelis, Francesco. *The European Public Prosecutor's Office (EPPO) – Past, Present, and Future*. Eucrim 4, (2019): 272–276.

Delmas-Marty, Mireille. *A Corpus Juris szükségessége, legitimitása és megvalósíthatósága*. Magyar Jog 11, (2000): 641–645.

Esser, Robert. *Die Europäische Staatsanwaltschaft: Eine Herausforderung für die Strafverteidigung*. Strafverteidiger 8, (2014): 494–504.

European Bar Association. *Cornerstones for a Draft Regulation on the Establishment of a European Public Prosecutor's Office (EPPO) in Accordance with Article 86 Par 1-3 TFEU.* New Journal of European Criminal Law 4 (1–2), (2013): 185.

Farkas, Ákos, Gerhard Dannecker, and Judit Jacsó (eds.). *Az Európai Unió pénzügyi érdekei védelmének büntetőjogi aspektusai, különös tekintettel az adócsalás, a korrupció, a pénzmosás és a büntetőjogi compliance nemzeti szabályozására, valamint a kiberbűnözésre.* Budapest: Wolters Kluwer Hungary, 2019.

Fazekas, Mihály and Lawrence Peter King. *Perils of Development Funding? The Tale of EU Funds and Grand Corruption in Central and Eastern Europe.* Regulation & Governance (2018): 14–15.

Fazekas, Mihály, István János Tóth, and Lawrence Peter King. *An Objective Corruption Risk Index Using Public Procurement Data.* European Journal of Criminal Policy and Research 22, 3 (2016): 369–397.

Fazekas, Mihály and István János Tóth. *Corruption in EU Funds? Europe-Wide Evidence on the Corruption Effect of EU-Funded Public Contracting.* In: *EU Cohesion Policy. Reassessing Performance and Direction.* Edited by J. Bachtler et al. London: Routledge, 2017, 186–205.

Franssen, Nicholas. *The Future Judicial Cooperation between the EPPO and Non-participating Member States.* New Journal of European Criminal Law 9 (3), (2018): 291–299.

Franssen, Nicholas. *Comments on the EPPO from a Dutch perspective.* In: Katalin Ligeti, Maria João Antunes, and Fabio Giuffrida. *The European Public Prosecutor's Office at Launch Adapting National Systems, Transforming EU Criminal Law.* Cedam, Wolters Kluwer, 2020, 197–219.

Garamvölgyi, Balázs. *20. § – Az Európai Ügyészség gondolata.* In: *Az európai büntetőjog kézikönyve.* Edited by Ferenc Kondorosi and Katalin Ligeti. Budapest: Magyar Közlöny Lap- és Könyvkiadó, 2008, 324–334.

Garamvölgyi, Balázs and Anna Kiss. *Az Európai Unió pénzügyi érdekeinek védelme, különös tekintettel az Európai Ügyész jogintézményére. Beszámoló a 2016. január 27-én, a Legfőbb Ügyészségen megtartott kerekasztal-beszélgetésről.* Ügyészségi Szemle (1), (2016): 66–79.

Giuffrida, Fabio. *The European Public Prosecutor's Office: King without Kingdom?* Brussels: CEPSResearch Report (3), 2017.

Gless, Sabine. *OHN(E)MACHT – Abschied von der Fiktion einer Waffengleichheit gegenüber europäischer Strafverfolgung?* Strafverteidiger (5), (2013): 317–324.

Hecker, Bernd. *Europäisches Strafrecht.* Heidelberg, 2012.

Herrnfeld, Hans-Holger. *The EPPO's Hybrid Structure and Legal Framework.* Eucrim (2), (2018): 117–121.

Jacsó, Judit and Bence Udvarhelyi. *A költségvetési csalás (áfacsalás) elleni küzdelem elméleti alapjai Magyarországon.* In: Farkas, Dannecker, and Jacsó (2019), 136–145.

Jacsó, Judit and Bence Udvarhelyi. *A pénzmosás elleni küzdelem Magyarországon*. In: Farkas, Dannecker, and Jacsó (2019), 295–309.

Jourová, Vera. *The Cost(s) of Non-Europe in the Area of Freedom, Security and Justice. The European Public Prosecutor's Office as a Guardian of the European Taxpayers' Money*. Eucrim (2), (2016): 94–98.

Juszak, Adam and Elisa Sason. *The Directive on the Fight against Fraud to the Union's Financial Interests by Means of Criminal Law (PFI Directive) Laying Down the Foundation for a Better Protection of the Union's Financial Interests?* Eucrim (2), (2017): 80–87.

Kármán, Gabriella, Ádám Mészáros, and Katalin Tilki. *Pénzmosás a gyakorlatban*. Ügyészségi Szemle (3), (2016): 82–97.

Karsai, Krisztina. *Alapelvi (r)evolúció az európai büntetőjogban*. Szeged: Jurisperitus, 2015.

Karsai, Krisztina. *European Criminal Policy*. Forum: Acta Juridica et Politica (9), (2020): 63–81.

Kerezsi, Klára, Éva Inzelt, and Miklós Lévay. *Korrupciós bűncselekmények a büntető igazságszolgáltatás tükrében. Milyen cselekményeket rejtenek a jogerősen elítéltek aktái?* Kriminológiai Tanulmányok 51, (2014): 26–49.

Kert, Robert. *A héacsalás jogi keretei és az ellene folyó küzdelem gyakorlata Ausztriában*. In: Farkas, Dannecker, and Jacsó (2019), 91–100.

Klip, André. *The Substantive Criminal Law Jurisdiction of the European Public Prosecutor's Office*. European Journal of Crime, Criminal Law and Criminal Justice (20), (2012): 367–376.

Kostoris, Roberto E. *A European Public Prosecutor's Office against Euro-Financial Crimes: Which Future?* Journal of Eastern European Criminal Law (2), (2015): 27–32.

Kubin, Tomasz. *Enhanced Cooperation, EMU Reforms and Their Implications for Differentiation in the European Union*. Baltic Journal of European Studies. Tallinn University of Technology, 7 (2), (2017): 23–32.

Kuhl, Lothar. *The European Public Prosecutor's Office – More Effective, Equivalent, and Independent Criminal Prosecutions against Fraud?* Eucrim: The European Criminal Law Associations' Forum (3), (2017): 135–143.

Láris, Liliána. *Reasons of the Establishment of the European Public Prosecutor's Office*. Iustum Aequum Salutare (13), (2017): 219–234.

Lichtenstein, András. *Ügyészség határok nélkül? – A vádhatóságot érintő jogharmonizációs törekvések Európában*. In: *Jog határok nélkül*. Edited by Zsuzsanna Fejes. Szeged: SZTE ÁJDI, 2018, 163–173.

Ligeti, Katalin and Michele Simonato. *The European Public Prosecutor's Office: Towards a Truly European Prosecution Service?* New Journal of European Criminal Law 4 (1–2), (2013): 7–21.

Ligeti, Katalin. *Die Europäische Staatsanwaltschaft: welches Modell?* In: *Freiheit – Sicherheit – (Straf)Recht*. Edited by Krisztina Karsai, Ferenc Nagy, and Zsolt Szomora. Osnabrück: Beiträge eines Humboldt-Kollegs, 2011, 157–174.

Ligeti, Katalin. *The European Public Prosecutor's Office: How Should the Rules Applicable to its Procedure be Determined?* European Criminal Law Review (2011): 123–149.

Ligeti, Katalin. *Toward a Prosecutor for the European Union, Volume 1. A Comparative Analysis*. Oxford, Portland: Hart Publishing, 2012.

Ligeti, Katalin, Maria João Antunes, and Fabio Giuffrida. *The European Public Prosecutor's Office at Launch Adapting National Systems, Transforming EU Criminal Law*. Cedam, Wolters Kluwer, 2020.

Miskolczi, Barna. *Az európai büntetőjog alternatív értelmezése – büntetőjogi védelem az EU érdekeit sértő csalás ellen*. PhD diss., Pécs, 2018.

Osztovits, András. *A megerősített együttműködés*. In: *Az Európai Unióról és az Európai Unió működéséről szóló szerződések magyarázata*. Edited by András Osztovits. Wolters Kluwer, 2011, 2343–2354.

Payrich, András. *Az európai bűnügyi együttműködés egyes kérdései – az Európai Ügyészség*. In: *Impacts of the EU Law on National Legislation – Az uniós jog hatása a nemzeti szabályozásra*. Edited by Judit Glavanits. Győr: Széchenyi István Egyetem, Deák Ferenc Állam- és Jogtudományi Kar, Nemzetközi Köz- és Magánjogi Tanszék, 2018, 215–232.

Péceli, Ádám. *A közelmúlt változásai a pénzmosás elleni igazságügyi fellépés területén – megoldásra váró gyakorlati problémák és eredmények*. In: Farkas, Dannecker, and Jacsó (2019), 318–335.

Polt, Péter. *Az Eurojust működése és az Európai Ügyészség létrehozatalának tervei*. In: *Az EU, mint a szabadság, a biztonság és a jog térsége – Magyarország az Európai Unióban 2004–2014*. Edited by Miklós Hollán. Budapest: Nemzeti Közszolgálati Egyetem, Nemzetközi Intézet, 2014, 159–186.

Polt, Péter. *Európai Ügyész: tendenciák és lehetőségek*. Európai Jog (11), (2015): 1–6.

Polt, Péter. *Az európai ügyész*. In: *Ünnepi kötet Györgyi Kálmán 75. születésnapja alkalmából*. Edited by Péter Polt, Ervin Belovics, Balázs Gellér, and István Ambrus. Budapest: ELTE Eötvös Kiadó, 2016, 207–213.

Polt, Péter. *A költségvetés büntetőjogi védelmének egyes elméleti és gyakorlati kérdései. Hazai gyakorlat és uniós mechanizmusok*. Budapest: Dialóg Campus, 2019.

Ruggeri, Stefano. *Criminal Investigations, Interference with Fundamental Rights and Fair Trial Safeguards in the Proceedings of the European Public Prosecutor's Office. A Human Rights Law Perspective*. In: *The European Public Prosecutor's Office: The Challenge Ahead*. Edited by Lorena Bachmeier-Winter. Springer, 2018, 201–234.

Sinn, Arndt (ed.). *Jurisdiktionskonflikte bei grenzüberschreitender Kriminalität. / Conflicts of Jurisdiction in Cross-Border Crime Situations*. V&R Uni, 2012.

Spencer, John R. *Who's Afraid of the Big, Bad European Public Prosecutor?* Cambridge Yearbook of European Legal Studies (2012): 363–380.

Tóth, Géza. *A tettazonosság és a ne bis in idem elv, különös tekintettel a hazai és nemzetközi bíróságok gyakorlatára.* Szeged: Forum, 2018, 755–785.

Tóth, István János and Miklós Hajdu. *A korrupció mérési lehetőségei – lehetséges objektív indikátorok bemutatása egy magyar példa alapján. Possibilities in Measuring Corruption – Presentation of Potential Objective Indicators Based on a Hungarian Example*. Magyar Tudomány 179 (4), (2018): 507–528.

Törő, Andrea. *Bizonyíték-transzfer az európai bűnügyi együttműködésben – különös tekintettel az európai nyomozási határozatra.* PhD diss., SZTE, 2014.

Trentmann, Christian. *Eurojust und Europäische Staatsanwaltschaft – Auf dem richtigen Weg?* Zeitschrift für die gesamte Strafrechtswissenschaft, 129 (1), (2017): 108–145.

Udvarhelyi, Bence. *Az Európai Unió törekvései egy Európai Ügyészség felállítására.* Miskolci Doktoranduszok Jogtudományi Tanulmányai 17, (2017): 425–445.

Vervaele, J. A. E. *The European Public Prosecutor's Office (EPPO). Introductory Remarks*. In: *Shifting Perspectives on the European Public Prosecutor's Office*. Edited by Willem Geelhoed, Leendert H. Erkelens, and Arjen W. H. Meij Springer, 2017, 11–19.

Wade, M. L. *A European Public Prosecutor: Potential and Pitfalls.* Crime, Law and Social Change (59), (2013): 439–486.

Weyemberg, Anne and Chloé Briere. *Towards a European Public Prosecutor's Office.* European Parliament, Policy Department for Citizen's Rights and Constitutional Affairs, 2016, 1–64.

White, Simone. *Towards a Decentralised European Public Prosecutor's Office*. New Journal of European Criminal Law 4 (1–2), (2013): 22–39.


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