



Collana del Dipartimento di Giurisprudenza
dell'Università di Milano-Bicocca

The EPPO and the Rule of Law

Edited by

Benedetta Ubertazzi



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dell'Università di Milano-Bicocca

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A PRACTICAL ANALYSIS OF EPPO'S OPERATION

Serena Cacciatore

SUMMARY: 1. Introduction. – 2. The creation of the European Public Prosecutor's Office and its consequences. – 2.1. European perspective. – 2.2. Spanish and Italian perspective. – 3. Final consideration. – 4. Bibliography.

1. Introduction

This paper proposes to analyse the European Public Prosecutor's Office, established by Council Regulation (EU) 2017/1939 on October 12th 2017 (hereafter EPPO Regulation).¹ The enhanced cooperation for the creation of this independent body of the European Union (hereinafter EU) involved the agreement regarding sixteen countries, which were later joined by other Member States, until twenty-three countries were involved.² These countries have an obligation to report to the European Public Prosecutor's Office any criminal con-

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), Official Journal of the European Union of 12 October 2017, No. L. 283/1, pp. 1-71. See L. BACHMAIER WINTER, *La Fiscalía Europea*, Marcial Pons, Madrid, 2018; see also M. BELLACOSA, M. DE BELLIS, *The protection of the EU financial interests between administrative and criminal tools: OLAF and EPPO*, in *Common market law review*, 1, 2023, pp. 15-50. I agree with those who see the European Public Prosecutor's Office as a truly revolutionary phenomenon, the scope of which cannot be underestimated. In this regard, A. DAMATO, *La tutela degli interessi finanziari tra competenze dell'Unione e obblighi degli stati membri*, Cacucci, Bari, 2018, p. 27.

² Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain. According to N. FRANSSSEN, *Every euro counts ... and so does every second: the EPPO and cross-border cooperation in relation to seizure and freezing in the 23 participating member states*, in *Eucrim: the European Criminal Law Associations's forum*, 3, 2022, pp. 206-212. See also R.A. MÓRAN MARTÍNEZ, *Investigación transfronterizas y cooperación judicial internacional. La Fiscalía Europea*, in *Revista del Ministerio Fiscal*, 9, 2020, pp. 22-51.

duct detrimental to the EU financial statement.³ In other words, it is a European body that investigates crimes that harm the EU's financial interests such as: fraud, corruption, money laundering, and cross-border VAT fraud.⁴ The European Public Prosecutor's Office is destined, therefore, to improve the criminal protection of these interests by providing added value, i.e., overcoming the fragmentation of cross-border crime investigations and establishing a uniform policy for the prosecution of crimes in its sphere of competence.⁵

Before EPPO became operational, only national authorities could investigate these crimes, as their jurisdiction ends at the national border. Today, EPPO conducts cross-border investigations regarding fraud exceeding EUR 10,000 involving EU funds or cross-border VAT fraud cases involving damage exceeding EUR 10 million. Its role is crucial in establishing a uniform prosecution policy between the participating Member States; therefore, it should help to create a common feeling of justice, which, as the European Commission has emphasised, is the main goal of the EU justice area.⁶

The crimes for which the EPPO has jurisdiction are intentional acts, so-called "PIF crimes" that can have a negative impact on the taxes paid by European taxpayers. The same are listed in Directive (EU) 2017/1371 of the European Parliament and of the Council of July 5th 2017,⁷ laying down rules 'on the fight against fraud to the Union's financial interests by means of criminal law'. In the Annual Report of the European Public Prosecutor's Office for 2022,⁸ mention is made to alleged fraud related to the use and submission of false, in-

³ See A. VENEGONI, *The EPPO faces its first important test: a brief analysis of the request for a preliminary ruling in G.K. and others*, in *Eucrim: the European Criminal Law Associations' forum*, 4, 2022, pp. 282-285; see also A. MONTESINOS GARCÍA, *La nueva Fiscalía Europea*, in *Revista General de Derecho Europeo*, 53, 2018, pp. 163-196.

⁴ See the official website <https://www.consilium.europa.eu/it/policies/eppo/>. See also L. CAMALDO, *Work in progress sulla procura europea: alcuni emendamenti proposti nella recente risoluzione del Parlamento Europeo*, in *Cassazione penale*, 7-8, 2014, pp. 2696-2704.

⁵ See S. CACCIATORE, *La politica dell'Unione Europea in tema di criminalità organizzata*, in P.R. SUÁREZ XAVIER, A.M. VICARIO PÉREZ (eds.), *Cooperación judicial civil y penal en la Unión Europea: Retos pendientes y nuevos desafíos ante la transformación digital del proceso*, J.B. Bosch, Barcelona, 2023, pp. 57-86.

⁶ See K. AMBOS, *Derecho Penal Europeo*, Thomson Reuters, Cizur Menor, 2017; see also T. ALESCI, *Riparto di giurisdizione e Procura europea*, in *Processo penale e giustizia: Rivista di dottrina e giurisprudenza*, 3, 2021.

⁷ 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, Official Journal of the European Union, L 198/29, pp. 29-41. See C. DI FRANCESCO MAESA, *Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law: A Missed Goal?*, in *European Papers*, 3, 2018.

⁸ Annual Report 2022: EPPO puts spotlight on revenue fraud https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO_2022_Annual_Report_EN_WEB.pdf.

accurate or incomplete statements or documents, as a result of which funds administered by the Union were illegally withheld on financial statements. In addition to the most serious forms of VAT fraud (particularly carousel fraud), VAT fraud through missing traders and fraud committed within a criminal organisation.⁹ These fraud schemes occur mainly in the automotive, electronic device and textile sectors and usually involve several companies operating in multiple countries, either as intermediate operators or as missing operators. Existing statistics are general and show that the most common PIF crimes are subsidy fraud and tender fraud.

In the examination of the European Public Prosecutor's Office, starting with its legal nature, one of the most interesting but also most critical aspects of the European Public Prosecutor's Office investigations will be analysed, namely the cross-border investigations governed by Article 31 of the aforementioned Regulation.¹⁰ In addition, concrete and real-life aspects will be examined, incorporating the point of view of practitioners, in order to learn about the progress of this new European body. In this regard, the study will focus on the European and national perspective not only in Italy but also in Spain.¹¹ The integration of the European Public Prosecutor's Office in different national judicial systems implies a greater respect for the specificities of each Member State that, however, do not conflict with the EPPO Regulation.¹²

The analysis of the perspectives mentioned is the result of fieldwork, namely the interviews conducted as part of the Jean Monnet module entitled 'THE

⁹S. ALLEGREZZA, *Verso una procura europea per tutelare gli interessi finanziari dell'Unione. Idee di ieri, chances di oggi, prospettivi di domani*, in *Diritto penale contemporaneo*, 2013, <https://archiviodpc.dirittopenaleuomo.org/d/2610-verso-una-procura-europea-per-tutelare-gli-interessi-finanziari-dell-unione>.

¹⁰From the point of view of S. RUGGERI, *Indagini e azione penale nei procedimenti di competenza della nuova procura europea*, in *Processo penale e giustizia*, 3, 2018, pp. 958-976. See also F. LOMBARDI, *La Procura europea: A) Dal Corpus Juris al Decreto legislativo n. 9 del 2021*, in *Processo penale e giustizia*, 2021, 4, https://www.processopenaleegiustizia.it/Article/Archive/index_html?ida=970&idn=66&idi=-1&idu=-1.

¹¹The words are from M.J. TRILLO-FIGUEROA MOLINUEVO, *Estudio sobre el proceso de adaptación normativa al ordenamiento jurídico español del reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea*, in *Direito e Justiça: Estudos contemporâneos*, 14, 2022, pp. 282-285. See also L. SALAZAR, *Habemus EPPO!: La lunga marcia della Procura europea*, in *Archivio penale*, 3, 2017, pp. 1-61.

¹²For example, in this area, the figure of the investigating judge and its compatibility or otherwise with the provisions of the Regulation has been analysed by several authors; in Spain, unlike other Member States such as Belgium, it has been decided to abolish this figure. See C. SABADELL CARNICERO, *Retos de la Fiscalía Europea*, in L. FONTESTAD PORTALÉS, A. HERNÁNDEZ LÓPEZ, P. RAMÓN SUÁREZ XAVIER, M.Á. PÉREZ MARÍN, S. GUERRERO PALOMARES (eds.), *Tratado sobre la Fiscalía Europea y el procedimiento penal especial de la L.O. 9/2021, de 1 de junio*, Aranzadi, Navarra, 2023, pp. 127-153.

EPPO and EU law: a step forward in integration'.¹³ Projects selected as Jean Monnet modules¹⁴ are chosen on the basis of a competitive process and assigned by the European Commission to institutions, in this case universities, which it considers qualified for their excellence in teaching and research. STEPPO was assigned to the University of Milano-Bicocca,¹⁵ for a duration of four years (2022-2025).¹⁶ The project aims to provide EU citizens with an introductory overview of the European Public Prosecutor's Office through dialogue between prosecutors, EU officials, professionals, academics, students, and the general public.

Specifically, the Interviews Committee¹⁷ is tasked with interviewing experienced professionals in the field of European integration, with a focus on the role of the European Public Prosecutor's Office. To this purpose, we interviewed a number of European Delegated Prosecutors (hereinafter EDPs), as well as lawyers, magistrates and experts in the field, such as Francisco Jiménez Villarejo, Deputy Supreme Court Prosecutor of the Kingdom of Spain and Head of the International Cooperation Unit at the General Prosecutor's Office, as well as Concepción Sabadell Carnicero, at the time of the interview, Prosecutor of the European Public Prosecutor's Office representing Spain, Salvador Guerrero Palomares, lawyer and professor of procedural law at the University of Malaga, as well as interviews with Italian professionals, including EDPs Calogero Ferrara and Amelia Luise, both at the *Procura della Repubblica presso il Tribunale di Palermo*; as well as Stefano Castellani and Pasquale Profiti, the two EDPs from Turin and Bologna, respectively. Among the latest interviewees

¹³ The website of the project is available at <https://www.steppo-eulaw.com/>.

¹⁴ Jean Monnet is considered the "Father of Europe", referring to the role he played in the early days of the present European Union, having been the first President of the High Authority of the European Coal and Steel Community, under the Schuman Plan. Thereafter, he continued to play an important role in European integration throughout his life. For these reasons, the Module mentioned above is named after him. For more, J.F. BARROSO MÁRQUEZ, *Jean Monnet: la punta del iceberg comunitario*, in *RUE: Revista universitaria europea*, 33, 2020, pp. 79-94.

¹⁵ European Union Centre of Excellence, more information available on the official website at <https://www.steppo-eulaw.com/>.

¹⁶ The coordinator of the Jean Monnet STEPPO module is Professor Benedetta Carla Maria Angela Ubertaini, the subcommittees are different from each other: Steering Committee, Criminal Lawyers, Prosecutors, Academic, Judicial Bodies, Law Enforcement Agencies, National Institutions, EU Institutions Subcommittee, Connect Subcommittee, Create Subcommittee, Collaborate Subcommittee, Game Subcommittee, Baking insurance and financial authorities, High School Subcommittee, Audit Institutions Subcommittee, Real estate transactions, Media Subcommittee, Art & Cultural Heritage Crimes. More information is available at <https://www.steppo-eulaw.com/>.

¹⁷ It is composed of Alejandro Hernández López, professor of procedural law at the University of Valladolid, Cristina Ruiz López, professor of procedural law at the University of Córdoba, Ana Vicario Pérez, doctoral student at the University of Burgos, and Costanza De Caro, doctoral student at the University of Florence.

we have chosen a doctoral student from the Basque Country, Olga Vicente Sarasúa, to find out the point of view of those who, research first-hand on the subject. Through the various interviews we intend to gather practical information such as interesting data and professional experience in this area. The interview form has been translated into the different languages, depending on the interviewee's background, and the interview was in most cases recorded and, of course, authorised by the interviewees. The chapter will conclude with a brief reflection.

2. *The creation of the European Public Prosecutor's Office and its consequences*

After a long period characterised by a lack of awareness, the creation of the European Public Prosecutor's Office has been very well received by practitioners from both the judiciary and the legal profession. After its entry into force on June 1st 2021, it has attracted much attention and curiosity. This has meant firstly, for magistrates, an expansion of their competencies, and secondly, for the legal profession, specific preparation in the field to face this new challenge.¹⁸ It is a unique institution, in that it is a judicial office in its own right; not a cooperative agency like those existing within the EU or other international bodies, nor a court that decides on certain questions of interpretation of the norms. In this case, it is an investigative and prosecutorial judicial office operating in a wide territory in terms of the size and variety of legal systems involved.

In this regard, it should be noted, Article 86 of the Treaty on the Functioning of the European Union (TFUE) (...) provides that 'in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust', in its second paragraph it further elaborates on this idea by stating that the European Public Prosecutor's Office, (...) 'shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests'. The scope of competence, therefore, relates to offences affecting, as anticipated, the Union's financial interests, and which in turn is also obviously provided for in the EPPO Regulation. However, beyond this expression of a general character, the debates between the European Com-

¹⁸See J.A.E. VERVAELE, *The European Public Prosecutor's Office (EPPO): Introductory Remarks*, in W. GEELHOED, L.H. ERKELENS, A.W.H. MEIJ (eds.), *Shifting Perspectives on the European Public Prosecutor's Office*, Springer, Nueva York, 2018; see also H.H. HERRNFELD, D. BRODOWSKI, C. BURCHARD, *European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*, Beck Somo hart, Germany, 2021.

mission and the Member States regarding the specific competence of the European Public Prosecutor's Office and its allocation with national authorities have generated a complex set of rules, described by the Supreme Court as difficult to interpret in an unambiguous and uniform way.¹⁹ It is true that Article 86(4) of the TFUE²⁰ provides for the possibility of extending the powers of the European Public Prosecutor to 'serious crimes having a cross-border dimension'. This notion would include particularly serious crimes with a cross-border dimension referred to in Article 83(1) of the TFEU, including organised crime, as long as they are serious crimes affecting more than one Member State. As is well known, for this to happen, the European Council should act unanimously, after approval by the European Parliament and consultation with the Commission. The possibility of expanding its scope, therefore, exists and will depend on the results of its operation in its first years; in the following paragraphs we will discuss this issue in detail.

Regarding the material competence of the European Public Prosecutor's Office, in general terms, whereas Article 12 of the EPPO Regulation emphasises a couple of key principles, the European Public Prosecutor's Office should be competent to prosecute PIF crimes in accordance with the principles of subsidiarity and proportionality set forth in Article 5 (paragraphs 3 to 4) of the Treaty on European Union (TEU).²¹ Furthermore, in order for the EPPO Regulation to achieve its objectives, it must ensure that its impact on national legal systems and institutional structures is as minimal as possible. This statement is crucial, as the EPPO Regulation opted for a regime of shared competence between the European Public Prosecutor's Office and national authorities in the fight against PIF crimes.

¹⁹ Especially, the practical application of these rules generates some problems when it comes to deciding whether to initiate the investigation of certain crimes. Indeed, in some States it will be possible to investigate, in others it will not be possible. Interview with Concepción Sabadell Carnicero on 17 November 2022.

²⁰ Literally: 'The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.' In this regard, F. DE ANGELIS, *The European Public Prosecutor's Office (EPPO). Past, Present, and Future*, in *Eucrim: the European Criminal Law Associations' forum*, 4, 2019.

²¹ Literally: '(...) Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, neither at the central nor at the regional and local level, but can, by reason of the scale or effects of the action in question, be better achieved at the Union level (...). By virtue of the principle of proportionality, the content and form of Union action shall be limited to what is necessary to achieve the objectives of the Treaties.'

The EPPO Regulation also includes any other crimes related to those to the detriment of the Union's interests (e.g., crimes related to money laundering).²² In case of extension of the jurisdiction of the European Public Prosecutor's Office, the question of whether the related criminal conduct falls within the material scope of that body's jurisdiction is a sensitive issue. In this regard, there is a need for a doctrine from the Court of Justice of the European Union (CJEU) that will provide more legal stability, on the one hand, and respects the analysis and assessment of the existence of evidence of the commission of the crime by the competent national judicial bodies, on the other. Undoubtedly, from a substantive law perspective, there is a "grey area" in relation to so-called "inextricably linked crimes" as a legal concept that needs to be fully explored and interpreted, as anticipated, by the CJEU, as an autonomous concept of EU law. In my view, the correct approach should be that of factual criteria and functional in line with Articles 54-56 of the EPPO Regulation. The same makes explicit reference to the notion of inextricably linked offences: 'should be considered in light of the relevant case law, which, for the application of the *ne bis in idem* principle, adopts as a relevant criterion the identity of the material facts (...) understood as the existence of a set of concrete circumstances inseparably inter-related in time and space'. Moreover, they should be considered ancillary, in that they are instrumental to the crime affecting the EU interests; i.e., such other crime was committed to procure the material and legal prerequisites and to create the conditions for the commission of the crime affecting the financial interests of the Union.

Regarding the organisational structure of the European Public Prosecutor's Office, it is on two levels: central and national.²³ The first consists of a chief European Public Prosecutor and a college of prosecutors who define the strategy implemented by EPPO and supervise the investigations conducted by the European Delegated Prosecutors at the national level. The second, which is the national level, consists of the Deputy European Prosecutors and the Permanent Chambers; while the EDPs, are responsible for conducting criminal investigations and are independent of their respective national authorities; the Perma-

²² Another concrete example could be the aggravated fraud to obtain European funds intended to resurface roads. If they used suitable but waste material to resurface this public road and thus we are talking about actual waste, the waste trafficking will be related to the PIF crime. In this case, waste trafficking would not be the responsibility of EDPs but since it is connected to the fraud they will exercise their competence for that as well. See S. KATSANAKI, *The gathering of e-evidence by the EPPO and the relevant admissibility issues*, in *Jean Monnet Network on EU Law Enforcement, working paper series*, 4, 2022, available at <https://jmn-eulen.nl/papers/>.

²³ From the point of view of C. RODRÍGUEZ-MEDEL NIETO, *En el corazón de la Fiscalía Europea: las Salas Permanentes*, in *Revista de Estudios Europeos*, No. extra 1, 2023, pp. 1-27. From a critical point of view, L. PRESSACCO, *Indagini e promovimento dell'azione penale del Pubblico ministero europeo*, in *Rivista italiana di diritto e procedura penale*, 4, 2021, pp. 1353-1395.

ment Chambers monitor investigations by adopting decisions.²⁴ Both structures coexist and play an active role in cases under the jurisdiction of the EPPO. In other words, while investigations and prosecutions are conducted in the courts of the Member States by the European Delegated Prosecutors; the guidelines and instructions they execute are determined centrally and channelled through the Permanent Chambers, a new collegial body that concentrates the majority of decisions at the operational level.

Article 3(1) of the EPPO Regulation reads, ‘The EPPO is hereby established as a body of the Union’. In this regard, it is necessary to dwell on the legal nature and ask whether it can be called an institution, an agency or rather a body.²⁵ First, it cannot be called an institution, at least so far, although the situation may change in the future, as it is not included in the list of EU institutions in Article 13.1 of the TEU.²⁶ Nor can it be called an agency, since the European Public Prosecutor’s Office ‘should be established from Eurojust’ (Article 10 of the EPPO Regulation). From the same Regulation it appears that the European Public Prosecutor maintains close relations with Eurojust²⁷ on the basis of mutual cooperation within the framework of their respective mandates and the development of operational, administrative and management links between them (Article 100 of the EPPO Regulation).²⁸ A relationship between EPPO and Eurojust is more

²⁴ See E.C. PÉREZ-LUÑO ROBLEDO, *La nueva fiscalía europea*, in J.M. MARTÍN RODRÍGUEZ, L. GARCÍA ÁLVAREZ (eds.), *El mercado único en la Unión Europea: balance y perspectivas jurídico-políticas*, Dykinson, Madrid, 2019, pp. 1107-1120; see also L. LÚPARIA DONATI, J. DELLA TORRE, *Origen y antecedentes de la Fiscalía Europea*, in L. FONTESTAD PORTALÉS, A. HERNÁNDEZ LÓPEZ, P. RAMÓN SUÁREZ XAVIER, M.Á. PÉREZ MARÍN, S. GUERRERO PALOMARES (eds.), *Tratado sobre la Fiscalía Europea y el procedimiento penal especial de la L.O. 9/2021, de 1 de junio*, Aranzadi, Navarra, 2023, pp. 87-126, specifically p. 88.

²⁵ See M. JIMENO BULNES, *La Fiscalía Europea: un breve recorrido por la Institución*, in J.M. ASENCIO MELLADO, O. FUENTES SORIANO (eds.) *El Proceso como garantía*, Atelier, Barcelona, 2023, pp. 59-103; see also G. DE AMICIS, “Competenza” e funzionamento della procura europea nella cognizione del giudice, in *La legislazione penale*, 2022, pp. 1-37.

²⁶ Literally: ‘(...) The Union’s institutions shall be: the European Parliament, the European Council, the Council, the European Commission (hereinafter referred to as ‘the Commission’), the Court of Justice of the European Union, the European Central Bank, the Court of Auditors.’

²⁷ Eurojust is an EU agency for judicial cooperation in criminal matters, established to strengthen the principle of mutual recognition and mutual trust. See N. ALONSO MOREDA, *Eurojust, a la vanguardia de la cooperación judicial en materia penal en la Unión Europea*, in *Revista de Derecho Comunitario Europeo*, 41, 2012, pp. 119-157. See also V. COVOLO, *From europol to eurojust – towards a european Public Prosecutor: where does OLAF fit in?*, in *Eucrim: the European Criminal Law Associations’ forum*, 2, 2012, pp. 83-88.

²⁸ The following Articles (Articles 101-102) regulate, respectively, relations with OLAF and Europol. From the point of view of F. JIMÉNEZ VILLAREJO FERNÁNDEZ, *Cooperación de la Fiscalía Europea con Eurojust, Europol y OLAF*, in L. FONTESTAD PORTALÉS, A. HERNÁNDEZ LÓPEZ, P.R. SUÁREZ XAVIER, M.Á. PÉREZ MARÍN, S. GUERRERO PALOMARES (eds.), *Tratado sobre la Fiscalía Europea y el procedimiento penal especial de la L.O. 9/2021, de 1 de junio*, Aranzadi, Navarra, 2023, pp. 675-718.

of proximity than origin. This is further confirmed by Article 3.3 of the same Regulation, which states that 'The EPPO shall cooperate with Eurojust and rely on its support in accordance with Article 100', the European Public Prosecutor's Office therefore, is granted the status of being its own as a body.

2.1. European perspective

Article 31 of the EPPO Regulation, mentioned earlier, focuses on one of the aspects defined by many authors as most critical, namely cross-border investigations. That Article establishes the basis for cross-border cooperation in cases with more than one jurisdiction.²⁹ The key points concern: mutual assistance between EDPs; coordination of the investigations, which can be achieved by exchanging of information and establishing of common strategies; and again, the role of national competent authorities who are personally involved. The EDP is responsible for investigations and decide what steps to take, under the supervision of the European Public Prosecutor of his Member State and the decisions of the Permanent Chamber hearing the case. Alongside the EDP, responsible for cross-border cooperation within the territory in which the European Public Prosecutor's Office operates, there is a delegate in charge of providing assistance. The delegate is located in a participating Member State where the investigative act is deemed useful and necessary for the European Public Prosecutor's Office investigations.

In cross-border investigations,³⁰ the European Public Prosecutor's Office goes beyond the traditional mechanisms of judicial cooperation. In other words, the European Public Prosecutor's Office does not use the European Investigation Order (hereinafter EIO)³¹ to acquire evidence in the territory of another

²⁹ See E.C. PÉREZ-LUÑO ROBLEDO, *La nueva fiscalía europea*, in A. SÁNCHEZ RUBIO, J.M. MACCARRO OSUNA, J.M. MARTÍN RODRÍGUEZ, L. GARCÍA-ÁLVAREZ (eds.), *El mercado único en la Unión Europea: balance y perspectivas jurídico-políticas*, Dykinson, Madrid, 2019, pp. 1107-1120; see also V. COMI, *Interessi finanziari UE, procura europea, difesa: nessun passo indietro sul piano delle garanzie*, in *Archivio penale*, 2, 2013, pp. 1-18.

³⁰ See G. FIORELLI, *Il pubblico ministero europeo, tra poteri investigativi nazionali e regole probatorie "in bianco"*, in *Processo penale e giustizia*, 1, 2020, pp. 190-201; see also A. PICARDI, *Aspetti procedurali delle attività investigative oltre i confini della Comunità Europea (le Squadre Investigative Comuni)*, in *Cassazione penale*, 4, 2020, pp. 1764-1778; see also G. ILLUMINATI, *La protección de los derechos fundamentales de los sospechosos y acusados en los procedimientos transfronterizos de la Fiscalía Europea*, in L. BACHMAIER WINTER (eds.), *La Fiscalía Europea*, Marcial Pons, Madrid, 2018, pp. 229-252.

³¹ In general, and in summary, EIO, from a technical point of view is a judicial decision issued by a competent authority in one Member State (issuing State), to carry out one or more specific investigations in another Member State (executing State) in order to obtain evidence in criminal proceedings. The executing authority must observe the formalities and procedures specified by the issuing authority. The decision on recognition will be taken as quickly as possible, in respect for the fundamental principles of its law. See S. CACCIATORE, *European Investigation order as an*

State. Instead it uses a system defined by the aforementioned standard, according to which it is sufficient to associate the electronic file with the Deputy European Public Prosecutor of the State where the act is to be carried out, for the execution of the same, once the measure has been ordered under the national law of the State in whose territory operates the EDP who is conducting the investigation.³²

The rules on transnational investigations represent an added value with respect to the existing instruments of international cooperation, since, as reported earlier, they allow for the “circumvention” of provisions on cooperation instruments such as letters rogatory, investigative orders or exchange of information.³³ Although the concept of “mutual recognition”³⁴ is not explicitly used, the European Public Prosecutor system is based on cooperation among EU Member States; it implies that Member States work together to deal with cross-border legal issues.³⁵ In addition to this, as some authors have noted, while this system might be effective for the European Delegated Prosecutors involved, it might not be so for the suspects, whose procedural guarantees contained both in national legislation and in EU Directives – a matter that has not been harmonised by the EPPO Regulation – may or may not be applicable in transnational cases.³⁶

instrument for the fight against organised crime, in AA.VV., *The Significance of EU Criminal LAW in the 21st Century: The Need for Further Harmonisation or New Criminal Policy?*, Vilnius University Press, Vilnius, 2021, pp. 34-38.

³² A. VENEGONI, *Il rinvio pregiudiziale davanti alla Corte di Giustizia (caso C-281/22): l'EPPO alla sua prima, importante, prova*, in *Giurisprudenza penale*, 12, 2022, pp. 1-6, specifically p. 2.

³³ In fact, as EDP Calogero Ferrara argues, there are a number of issues, for example the fact that the judicial systems are different anyway, and therefore activities that, for example, in Italy the prosecutor can do, in another State are not so. Interview with Calogero Ferrara, 27 July 2022. In this regard, M. FOUWELS, *Cooperation between the European Commission and the European Public Prosecutor's Office: an insider's perspective*, in *Eucrim: the European Criminal Law Associations' forum*, 3, 2022, pp. 204-206. See also, R. SICURELLA, Z. DURDEVIC, K. LIGETI, M. COSTA, *Manual sobre Fiscalía*, in *Proyecto EU LAW training on EPPO*, Bruselas, 2022.

³⁴ See S. CACCIATORE, *El reconocimiento mutuo como principio clave para la lucha contra el crimen organizado*, in F. JAVIER GARRIDO CARRILLO (ed.), *Lucha contra la criminalidad organizada y cooperación judicial en la UE: instrumentos, límites y perspectivas en la era digital*, Aranzadi, Cizur Menor, 2022, pp. 171-186. See also R.A. MORÁN MARTÍNEZ, *El papel del Fiscal como defensor del principio de reconocimiento mutuo de resoluciones judiciales europeas*, in *Boletín de información del Ministerio de Justicia*, 2054, 2008, pp. 175-182.

³⁵ From a critical point of view, V. RUZICKOVÁ, *The role of mutual trust and mutual recognition in the functioning of the European Public Prosecutors' office*, in *Muni Journals*, 1, 2022, pp. 67-89.

³⁶ A perfect example of this is the Directive on legal assistance, which does not recognise the possibility for the suspect to have legal representation appointed in all the Member States concerned in cross-border investigations, whereas this is possible when a European Arrest Warrant has been issued. Interview with Olga Vicente Sarasúa, Investigadora predoctoral en la Universidad del País Vasco/Euskal Herriko Unibertsitatea.

Regarding the interpretation of Article 31 of the EPPO Regulation, which is the subject of study, we have the first preliminary reference to the Court of Justice ordered by the Vienna court in Case C-281/22, GK14.³⁷ The EDP in Germany, in a case where it is investigating for breach of customs duties, needs to execute search warrants in Austria. According to German law, the search must be ordered by a judge at the request of the prosecutor, and so occurs. Although the search had already been authorised by a judge in the State of the EDP who was conducting the main investigation in Germany, the Austrian EDP, also acts in accordance with his country's domestic law and, requests validation of the search by the Austrian judge. The trial judge validates the measure.

The subjects under investigation appeal to the superior court stating that the validation should not have been ordered due to the lack of serious indications of the commission of the crime, and thus a matter of merit and not a matter pertaining to the execution of the measure. At this point, the lower court in Vienna raises the question to the Court of Justice for a preliminary ruling. In the preliminary reference, the Austrian court states that the EPPO is a unitary office and a measure, to be enforced in a State other than that of the proceeding EDP, must normally be enforced according to the law of the State where the EDP assisting for execution operates. The standard that the EPPO Regulation provides, however, is always that of the highest level of protection of the rights of the defence, and this is manifested in the standard on the necessity of for court authorisations in investigative acts.³⁸

Indeed, Article 31(3) of the Regulation states: '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', and then adds 'However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a 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'. In this case, Advocate General Tamara Čapeta, in her opinion submitted on June 22th 2023, proposed that the Court of Justice resolve the questions raised by the Vienna Tribunal, stating that:

³⁷ Request for a preliminary ruling from the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria G.), Case C-281/22, delivered on 22 June 2023, ECLI:EU:C:2023:510 available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274882&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1336832>. See G. PIAZZOLLA, *Ultime novità in materia di procura europea: la sentenza della corte di cassazione 16 dicembre 2021, n. 46140 e il rinvio pregiudiziale c-281/22 della corte d'appello di Vienna*, in *Cassazione penale*, 3, 2023, pp. 607-613.

³⁸ A. VENEGONI, *Il rinvio pregiudiziale davanti alla Corte di Giustizia (caso C-281/22): l'EPPO alla sua prima, importante, prova cit.*, p. 4.

Article 31(3) and Article 32 on enhanced cooperation for the establishment of the European Public Prosecutor's Office, must be interpreted to mean that in cross-border investigations, the court, when it has to validate a measure to be executed in the Member State where the Deputy European Public Prosecutor in charge of providing assistance acts, has the task of assessing only those aspects related to the execution of an investigative measure.

The court of the Member State in which the Deputy European Public Prosecutor is in charge of providing assistance must accept the assessment made by the European Public Prosecutor Delegate in charge of the case, regardless of whether or not the measure has been previously authorised by the courts of the Member State of the Delegated European Public Prosecutor in charge of the case.

Continuing with the analysis of Article 31, concerning the competent authorities for enforcement,³⁹ are limited to the EDPs of the corresponding Member State, when requesting the execution of an investigative measure from one or more European Delegated Prosecutors in another Member State, the Delegated European Public Prosecutor in charge of the case must simultaneously inform their own European prosecutor responsible for supervision (Article 31(2) of the EPPO Regulation). Regarding coordination for the execution of such cross-border investigative measures, especially when problems or discrepancies arise between EDPs acting in the roles of prosecutor in charge and assistant, coordinated supervision can greatly improve the understanding, quality and effectiveness of the on-going coordination, although the aforementioned Regulations regulate specifically the cases of discrepancies between the Appointed Prosecutor and the Assistant Prosecutor. In such circumstances, the role of Supervising Attorneys should be strengthened. In addition, Article 31.5 of the EPPO Regulation lists four reasons for refusal of execution, similar to the reasons for non-recognition in Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the EIO. These grounds are not directly invoked by the Assistant Prosecutor, since it is up to the Permanent Room to make the refusal decision.

One topic that has always been under discussion concerns the substantive jurisdiction of the European Public Prosecutor's Office, that is, whether it should be extended to crimes that are not limited to the protection of the EU's financial interests or membership in criminal organisations. The EPPO's impact on combating crimes against the financial interests of the EU committed by criminal organisations is undeniable, since it is the first EU organism with the compe-

³⁹ See D. CECCARELLI, *The EPPO and Fight against VAT Fraud: a Legal Obstacle in the Regulation?*, in *Eucrium: the European Criminal Law Associations'*; forum, 1, 2021, pp. 47-48. See also T. WAHL, *First EPPO case before CJEU*, in *Eucrium the European Criminal Law Associations'*; forum, 3, 2022, pp. 1-96.

tence to directly investigate and prosecute them, unlike OLAF, which can only issue recommendations to the Member States. In cases where organised crime pertains to offences falling within the competence of the EPPO, and thus involves factual associations with lesser crimes under the competence of the European Public Prosecutor's Office, the latter would be fully engaged. It would be desirable for crimes that necessarily involve multiple countries and for the rapidity that characterises investigations in this area. These are transnational environmental crimes,⁴⁰ which is one of the big topics under discussion at present, or terrorism,⁴¹ or again, human trafficking. However, this would also require a ceding of jurisdiction by national authorities as well as a strengthening of offices. For these reasons, before extending the jurisdiction of the European Public Prosecutor's Office, one should have a better perspective on its functioning and, most importantly, on its compatibility and understanding with national prosecutors' offices.

2.2. Spanish and Italian perspective

The specific modalities of cooperation and coordination between the European Public Prosecutor's Office and national prosecutors' offices may vary among EU Member States, but the overall goal is to ensure a uniform and effective response against financial crimes involving EU funds. The Spanish Public Prosecutor's Office⁴² has supported the European Public Prosecutor's Office project ever since the idea of such a proposal was launched and has now become a reality.⁴³ The Spanish legislature had to anticipate a reform of on-going

⁴⁰ A. VERCHER NOGUERA, *La evolución de delitos contra el medio ambiente en el contexto europeo: la Directiva 2008/99/CE*, in *Diario La Ley*, 10047, 2022, available at <https://diariolaley.laleynext.es/content/Inicio.aspx>.

⁴¹ The Commission proposed in 2018 extending the EPPO's material competence to cover transnational terrorism, which may provoke certain difficulties regarding the organisation and functioning of the EPPO, as some authors have pointed out, since it has been established and oriented towards the investigation and prosecution of PIF crimes. Interview Olga Vicente Sarasúa, Investigadora predoctoral en la Universidad del País Vasco/Euskal Herriko Unibertsitatea.

⁴² See T. ARMENTA DEU, *Fiscalía Europea. Su incidencia en el ordenamiento procesal español*, in V. MORENO CATENA, M.I. ROMERO PRADAS (eds.), *Nuevos postulados de la cooperación judicial en la Unión Europea (Libro homenaje a la Prof. Isabel González Cano)*, Tirant lo Blanch, Valencia, 2017, pp. 145-171; see also, J.L. GÓMEZ COLOMER, *La inserción de la Fiscalía Europea en el sistema procesal penal español*, in V. MORENO CATENA, M.I. ROMERO PRADAS (eds.), *Nuevos postulados de la cooperación judicial en la Unión Europea (Libro homenaje a la Prof. Isabel González Cano)*, Tirant lo Blanch, Valencia, 2017, pp. 217-240.

⁴³ See E. ZANETTI, *La via italiana alla procura europea nella delega per l'implementazione del regolamento (UE) 2017/1939*, in *Processo penale e giustizia*, 1, 2020, pp. 264-278; see also R. BELFIORE, *I procuratori 'super distrettuali' per i reati che ledono gli interessi finanziari dell'Unione europea: un nuovo 'terzo binario' investigativo*, in *Sistema penale*, 12, 2021, pp. 65-81.

criminal proceedings, by the *Anteproyecto de Ley de 2011* (updated in 2020), and with another attempt, which later failed in 2013.

At this point it should be pointed out that the *Ministerio Fiscal* is currently not a figure belonging to the judiciary, with the consequence that it will not be possible to grant it the prerogatives recognised to judges and magistrates. Also worth noting is the dependence of the *Ministerio Fiscal* on the executive power. So, the presence of the investigating judge and the non-independence of the prosecution deny the possibility of transiting to a more accusatory system. For these reasons, a change in the investigative model would be desirable, moving from an investigating judge to an investigating prosecutor.⁴⁴

Reason why, the Spanish legislature was forced to dictate a legal norm that would adapt the Spanish criminal process to the requirements of the EPPO Regulation, giving birth to *Ley Orgánica 9/2021 de 1 de julio, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea*,⁴⁵ which creates what we can call the *procedimiento penal especial* for the prosecution of offences that harm the financial interests of the EU.

A specific procedure has been established for cases handled by the European Public Prosecutor's Office, where the direction of investigations is properly attributed to it. The *Fiscal Delegado español*, with the collaboration of the judicial police, will be able to carry out the investigations. It is also emphasised that there is no difference in competence between the various EDPs.⁴⁶

The Spanish penal system is described by some authors as "obsolete".⁴⁷ The possibility of this project moving forward was seen by many as a hope for overcoming the inherent "immobility" that – in criminal matters – characterises the Spanish state. As anticipated, from June 2021, after overcoming many obstacles at the national and supranational levels, the European Public Prosecutor's Office will operate in Spain as another Prosecutor's Office, although, unlike the territorial and special prosecution offices that have operated in the Spanish criminal justice system, it is a supranational prosecutor's office, acting outside

⁴⁴ The *Fiscal General del Estado*, which represents *Ministerio Fiscal*, in Italy is the *Pubblico ministero*.

⁴⁵ *Ley Orgánica 9/2021, de 1 de julio, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea*. In general terms, M. JIMENO BULNES, *La estrategia de la cooperación judicial penal europea en materia de intereses financieros*, in I.B. GÓMEZ DE LA TORRE, N. RODRÍGUEZ-GARCÍA, *De-comiso u recuperación de activos crime doesn't pay*, Tirant Lo Blanch, Valencia, 2020, pp. 267-294.

⁴⁶ In this way, the competence for the adoption of precautionary measures is given without the need for judicial intervention, taking into account that they do not affect fundamental rights and are normally urgent and provisional measures, subject to subsequent ratification and the corresponding appeals system.

⁴⁷ Interview with Francisco Jimenez Villarejo on 28 October 2022.

the Spanish Prosecutor's Office with its own structure, operational and decision-making means, autonomously and independent.

The difference between the Spanish public prosecution service and those of the rest of the EU countries, including EPPO, is that Spain is the only country where the investigation of criminal cases is not directed by prosecutors, but by judges. A structure, as mentioned earlier, which is awaiting a reform, announced and planned, but which has not yet arrived and which is delaying the homologation of the Spanish criminal justice system with the rest of the European investigation models. As long as this change does not happen, it will be difficult to incorporate European legislation, directly applicable in the Spanish criminal justice system, as did *Ley Orgánica 9/2021* of July 1st did.

In this regard, the harmonisation efforts made by *Ley Orgánica 9/2021* of July 1st to align with the rest of the EU Member States where the EPPO Regulation is applied should be commended. We highlight in this regard, the mandatory inclusion of the new figure of the Judge of Guarantee, who, as an external body to the management of the proceedings, assumes the functions of judicial review expressly provided for in the EPPO Regulation, and the power given to the EDPs in the adoption of emergency real precautionary measures, or the unprecedented inclusion of the evidentiary incident, among others.

Italy⁴⁸ implemented the Directive with *decreto legislativo del 14 luglio 2020, n. 75*⁴⁹ in 2020, and subsequently adapted its domestic legislation to the Regulation with *decreto legislativo del 2 febbraio 2021, n. 9*.⁵⁰ It can be anticipated in this regard, that the system that the Italian legislature has envisaged⁵¹ provides for a

⁴⁸In the preceding paragraphs, mention was made of the jurisdiction of the European Public Prosecutor's Office. There are problems that, for the time being, have not been encountered in practice by practitioners in the field. The reference is to interviewees who are experts in the subject matter, practitioners in the field (see previously mentioned EDPs).

⁴⁹*Attuazione della direttiva (UE) 2017/1371, relativa alla lotta contro la frode che lede gli interessi finanziari dell'Unione mediante il diritto penale. GU n. 177 del 15-07-2020.*

⁵⁰Provisions for the adjustment of national legislation to the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017, concerning the implementation of enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO).

⁵¹A concrete example regarding the conduct of the proceedings in Italy was provided to us by EDP Luise Amelie. The Prosecutor's Office in Palermo obtained the first trial that ended in first instance with a plea bargain sentence for an Article 316 *bis* in Reggio Calabria on 16 June 2022 (Article 316 *bis* c.p. italiano) '*Chiunque, estraneo alla pubblica amministrazione, avendo ottenuto dallo Stato o da altro ente pubblico o dalle Comunità Europee contributi, sovvenzioni, finanziamenti, mutui agevolati o altre erogazioni dello stesso tipo, comunque denominate, destinati alla realizzazione di una o più finalità, non li destina alle finalità previste, è punito con la reclusione da sei mesi a quattro anni*'. Considering six months of investigation without extension, Article 416 *bis* of the Criminal Code. (*Associazioni di tipo mafioso anche straniere*), the indictment and the decree ordering the trial, the technical time for the definition of the trial was short. Continues EDP Amelie Louise: '*In questo caso c'era stata una richiesta di patteggiamento da parte dell'avvocato già durante la fase delle indagini preliminari e quindi nel giro di un anno siamo già arrivati alla definizione di un*

prevalence, where an offence of those referred to in the BIP Directive is found, that the prosecutor reports both to the European Public Prosecutor's Office and to the national prosecutor.⁵² The European Public Prosecutor's Office – except in urgent acts and specific cases – carries out a prevalence if it falls among one of the crimes within its jurisdiction. The national prosecutor, on the other hand, must await the decisions of the European Public Prosecutor in this regard.

Subsequent to the decision, the national prosecutor has the possibility, if necessary, to raise a kind of conflict of jurisdiction before the indicated judicial authority, which is the General Prosecutor's Office at the Supreme Court. Again, in cases where there might be an overlap of jurisdiction, the national prosecutor's office previously expresses its opinion on possible jurisdiction, as does the General Prosecutor's Office at the Court of Cassation.⁵³

Another issue concerns the authorities responsible for resolving conflicts of jurisdiction. The EPPO Regulation entrusts individual Member States with the identification of the same.⁵⁴ In Italy, it will be the Prosecutor General at the Court of Cassation which will initiate the procedure in question, because otherwise there would be no possibility for the competent authority to resolve conflicts of jurisdiction by turning to the Court of Justice for interpretation. Others argue otherwise on the basis of the Court's traditional jurisprudence that judicial authorities are not legitimised to act.⁵⁵

For some Italian EDPs, problems arise when one has to put together the so-called PIF crimes and crimes inextricably linked to those, previously mentioned. This connection inextricably linked can sometimes result in the need to assess which crime is more serious or whether or not a conspiracy is involved or not, which could still cause the jurisdiction to be drawn over EPPO crimes, the boundary is not objectively sharp or easily discernible.⁵⁶ Moreover, concrete

procedimento'. In this regard G. DI PAOLO, S. MARCOLINI, *Verso l'istituzione di una procura europea a protezione degli interessi finanziari dell'Unione: la proposta di regolamento COM (2013) 534 final*, in *Cassazione penale*, 1, 2014, pp. 360-368.

⁵² See G. GRASSO, R. SICURELLA, F. GIUFFRIDA, *EPPO material competence: analysis of the PIF directive and Regulation*, in *The European Public Prosecutor's Office at launch Adopting National System, Transforming EU Criminal Law*, Wolters Kluwer, Milano, 2020, pp. 23-56. See also L.M. ESTÉVEZ MENDOZA, *La instauración de la Fiscalía como cooperación reforzada: problemas orgánicos y procesales*, in *Revista de Estudios Europeos*, 1, 2017, pp. 106-122.

⁵³ See L. BACHMAIER WINTER, *EPPO versus national prosecution office: A conflicting case of competence with broader dimensions*, in M.J.J.P. LUCHTMAN, F. DE JONG (eds.), *Of swords and shields: due process and crime control in times of globalisation: liber amicorum prof. dr. J.A.E. Ver-vale*, 2023, pp. 515-523.

⁵⁴ L. PRESSACCO, *Indagini e promovimento dell'azione penale del pubblico ministero europeo*, in *Rivista italiana di diritto procedura penale*, 4, 2021, pp. 1353-1395.

⁵⁵ This, like others above, are insights suggested by those who, concretely come up against such conflicts of jurisdiction (see previously mentioned EDPs).

⁵⁶ Interview with EDP Pasquale Profitti on 6 July 2022.

problems emerge related to the different judicial systems, for example, the activities that in Italy may be carried out by the prosecutor, in another country, as the study addressed shows, will be the responsibility of the judge.

In current events, no major problems have emerged in relations with other national prosecutors' offices, and apart from a few Italian EDPs who have pointed out procedural issues brought up by the defendants' defences, they also do not report exceptions of nullity of the investigation activity carried out by the European Public Prosecutor's Office based on lack of competence. In any case, the relationship with the national prosecutors – from what has emerged – tends to be a relationship of confrontation in which solutions are found without coming to any conflict.

On the other hand, in Spain, the relationship between the European Public Prosecutor's Office and the Spanish Public Prosecutor's Office is close, in the sense that, in light of the principle of loyal cooperation and mutual trust, both offices support each other and regularly exchange information in the area of the promotion of justice, with the aim of combating PIF crimes.

3. Final consideration

The European Public Prosecutor's Office aims to improve the protection of the EU budget through the effective detection and prosecution of financial crimes. It assumes a viable starting point on which to build criminal cooperation among Member States, including the integration of EU criminal and procedural laws. The lack of regulatory uniformity means that the EPPO's ability to prosecute crimes against the EU's financial interests is heterogeneous, despite the fact that the sharing of resources among Member States could contribute to more effective management of them.

Being a single European-level prosecutor's office greatly facilitates coordination among the various EDPs. This ease of coordination, as seen earlier, is certainly a factor of great progress. In addition, its dedication to financial crimes could have a deterrent effect on those who might try to commit such crimes, knowing that there is a specific body in charge of prosecuting them. Therefore, it is expected that cooperation between the European Public Prosecutor's Office and national prosecutors will lead to an increase in convictions for cross-border financial crimes.

The possibility of extending the jurisdiction of the EPPO has been another subject of study. Specifically, whether criminal conduct falls within the material scope of EPPO's jurisdiction. Certainly, this is a sensitive issue and one for which there is a need for a doctrine from the CJEU that will provide more legal stability, on the one hand, and respects the analysis and assessment of the existence of evidence of the commission of the crime by the competent national judicial bodies, on the other.

Articles 31 and 32 of the EPPO Regulation respectively govern ‘Cross-border Investigations’ and the ‘Enforcement of assigned measures’. They create a system of cooperation that surpasses all previous instruments in terms of effectiveness and efficiency. However, there may arise questions regarding the violation of fundamental rights or compliance with the case law of the Court of Justice of the European Union.

Another aspect that should be emphasised concerns the accession of European countries that currently have not joined the EPPO. It would be appropriate for all EU countries to join the EPPO; the explicit reference is to those Member States such as, Poland, Hungary, Denmark, Ireland and Sweden who do not participate in the EPPO, but this would seem to be more of an assessment on the political rather than judicial.

For the functioning of the Rule of Law in the EU, particularly in the fight against corruption, and based on the principle of maximum fairness and mutual cooperation, it is essential to establish platforms for mutual collaboration and dialogue. These spaces facilitate overcoming disagreements on jurisdictional matters related to cross-border investigations and associated crimes, thereby laying the groundwork for smooth, stable, and productive relationships between prosecutors.

As for the possibility of extending the scope of EPPO, which has been mentioned, it exists and will depend on the results of its operation in the first years and its ability to resolve disagreements with national prosecutors.

Finally, the Jean Monnet module entitled ‘THE EPPO and EU law: a step forward in integration’ will conclude in 2025. This means that interviews will continue to be developed by the Interviews Committee, and this will allow for a deepening of the topics covered. The actual impact of the European Public Prosecutor’s Office will be evaluated over time based on the actual results of the investigations and trials it will handle.

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