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PROTECTING THE EU'S INTEREST BY ESTABLISHING A SUPRANATIONAL EU BODY? FINANCIAL INTEREST OF THE EU AND THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

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Abstract: *The fight against financial crime, that is, the fight against fraud directed against the financial interests of the EU, is set as one of the priority activities for the European Union (the „EU“) and the Member States. Although the EU acts proclaimed the principle of a joint fight against fraud and other illegal activities that harm the financial interests of the EU, significant results in this field have not been achieved for a long time. Namely, the lack of interest of the judicial authorities in the protection of the EU's (financial) interest as their own interest, was noticed in the Member States, while, on the other hand, the measures taken at the EU level, at the normative and institutional level, were not adequate and sufficient to combat fraud directed against the EU budget. As a result of the above, the estimated damage suffered by the European Union budget on an annual basis was from €500 million to €3 billion. However, despite the mentioned worrying data, the path to the establishment of a supranational body whose work would significantly contribute to the detection of fraud committed against the EU budget and the prosecution of criminals - the European Public Prosecutor - was not an easy one. The word is about the „young body“ of the EU, which started its work in the middle of 2021, and which went through a „development path“ of 20 years - was first proposed in the project Corpus Juris (1997) and was established in 2017. Bearing in mind the importance of the establishment and work of the aforementioned body for the protection of the financial interests of the EU, the author indicates its origin and development, the arguments for and against its establishment, as well as the results achieved by this body in its work.*

Key words: *Protection of Financial Interest of the EU, the European Public Prosecutor's Office*

INTRODUCTION:

The responsibility of the EU to undertake measures and activities aimed at combating various types of crime that it facilitates as a community is a logical consequence of the goal of establishing this political and economic union, which is reflected, among other things, in ensuring the free movement of people, goods, services and capital. In this sense, the principle of the free market, in addition to facilitating the improvement of people's lifestyles, also creates conditions for easier execution and greater expansion of criminal activities that involve cross-border activities. The response of the EU and the Member States to this negative social phenomenon, in order to be successful and produce the desired results, implies the willingness of the Member States to cooperate and show trust in other Member States in terms of taking measures and activities in the criminal justice field. Since criminality knows no borders, the reaction to it, should not and must not be hindered or even impossible by the territorial and normative limitations of the Member States. Therefore, the assumption of the success of preventing and suppressing cross-border crime is reflected in the joint struggle of Member States at the international level. The activities of the EU in order to ensure efficient and facilitated combating against cross-border crime are reflected in the establishment of instruments of international legal assistance in criminal matters and the principle of mutual recognition of decisions, as well as in the establishment of bodies and organizations relevant to the provision of international legal assistance in criminal matters. In this sense, in 1998, the European Judicial Network (the „EJN“) was formed after the adoption of the Joint Action on the creation of a European Judicial Network (98/428/JHA, Official Journal L 191, 07/07/1998 P. 0004 – 0007) by the European Council (the „Council“). Establishing direct contacts between Member States, especially in the fight against cross-border, organized crime, is the goal of establishing the EJN, in order to improve judicial cooperation among Member States.

However, the establishment and realization of cooperation through the EJN did not prove to be a sufficiently effective means to achieve the desired goals in the field of combating transnational, organized crime, which gave birth to the idea of forming a body in the field of judicial cooperation based on the example of Europol, which is the result of promoting European integration in sphere of police

cooperation. Bearing in mind the above, in the Conclusions of the Council from the summit in Tampere 1999 (Tampere European Council 15 and 16 October 1999, Presidency Conclusions, point 46) the need for the formation Eurojust, was established. In accordance with the Tampere Conclusions, Eurojust (which was established by Council Decision of 28 February 2002, 2002/187/JHA) includes national prosecutors, judges or police (of equal competence) according to its legal system. The main task of the Eurojust, which works closely with the EJC, is to facilitate the coordination and cooperation of competent authorities for criminal prosecution and investigation. It is a cooperative unit, not a supranational prosecutorial body, which preserves the sovereignty of Member States in the field of criminal law and justice. A new governance system of Eurojust, by the Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) of November 14, 2018 (Regulation (EU) 2018/1727, Official Journal of the European Union, L 295/138), was established.

A special type of crime that required a stronger and more adequate EU response in order to combat it is financial crime. First of all, it is a criminal offence of fraud directed against the financial interests of the EU. In order to provide protection to the EU's financial interests, in 1987 the European Commission (the „Commission“) established a Unit for combating fraud under its responsibility - UCLAF (UCLAF stands for Unité de coordination de la lutte anti-fraude, see Mitsilegas, 2009, 210). As a consequence of certain events that resulted from the increasing activity of UCLAF (see Mitsilegas, 2009, 210), a reform of the institutional framework in the field of combating financial crime followed. UCLAF was replaced by a new unit - the European Anti-Fraud Office (OLAF stands for Office lutte anti-fraude), which was established by the Commission's Decision in April 1999 (SEC (1999) 802, Official Journal of the European Communities, L 136, 31 May 1999). OLAF's competence is reflected in the ability to investigate issues concerning fraud, corruption and other criminal acts that harm the financial interests of the EU, in connection with certain issues, like: „all EU expenditure, some areas of EU revenue, mainly customs duties, suspicions of serious misconduct by EU staff and members of the EU institution“ (https://anti-fraud.ec.europa.eu/about-us/what-we-do_en). Although it is evident from the above that the EU has taken significant steps and efforts to combat transnational, organized and financial crime, the desired results have not been achieved, especially

when it comes to protecting the financial interests of the EU. Therefore, it was necessary to adopt a different position (policy) in relation to effective and successful opposition to this type of crime. Although it is not a new idea, since it was woven into the Corpus Juris project, with the establishment of a supranational body - the European Public Prosecutor, a big step was taken to overcome the obstacles to the successful combating of financial crime directed against the EU budget. Namely, as the first-mentioned EU bodies were formed in order to achieve, encourage and facilitate cooperation and coordination of the activities of the judicial authorities of the Member States in the field of combating cross-border, especially organized crime, it was necessary to establish a body with different nature whose jurisdiction will not be limited sovereignty of Member States. The aforementioned need arose as a consequence of the increasing endangerment and violation of the financial interests of the EU by committing, first of all, the criminal offense of fraud, which causes the EU has large financial losses annually.

1. PROTECTION OF THE FINANCIAL INTEREST OF THE EU BY ESTABLISHING THE EUROPEAN PUBLIC PROSECUTOR: THE WAY FROM CORPUS JURIS (1997) TO DIRECTIVE (EU) 2017/1371

The idea of protecting the financial interests of the EU is not recent. Namely, the idea of enhanced protection of the financial interest of the EU appeared as a consequence of the allocation of own resources of the former European Economic Community based on the Council Decision of 21 April 1970. It is about the Council Decision on the Replacement of Financial Contributions from Member States by the Communities' own Resources (70/243 ECSC, EEC, Euratom, Official Journal of the European Communities No L 94/19). The reports of the European Court of Auditors (the „ECA“) from the 80s of the last century (which was established as an independent body in 1978, with the aim of evaluating and controlling community expenditures) indicated that this is a justified concern for the need to protect financial interests. Namely, the ECA identified certain irregularities and cases of fraud (see Pujas, 2003, 780).

By recognizing that crime affecting EU revenues and expenditures does not involve only one, but several Member States, and that it is an organized criminal activity, the EU made the first attempt to create a joint approach to combating criminal offenses directed against financial interests of EU. In this sense, the Council adopted the Convention on the Protection of the European Communities' Financial Interests (PIF Convention) of 1995 (Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 Official Journal of the European Communities, L 312/1). An attempt to raise awareness of the importance of the need to undertake stronger measures and activities that will be effective in combating financial crime (that is, fraud) that damages the EU budget is woven into the project Corpus Juris („Corpus Juris: introducing penal provisions for the purpose of the financial interests of the European Union“), which was published in 1997. Corpus Juris was intended to establish a set of legal principles on which to fight financial crime at the EU level.

Corpus Juris contained a proposal for the formation of a supranational body - the European Public Prosecutor (the „EPP“). The aforementioned proposal is based on the fact that the then existing measures are not capable of producing results in the field of protecting the EU budget. Obstacles to the effective fight against financial crime at the EU level (primarily fraud), which were established in the Corpus Juris, related to: 1) limited, territorial competence of national judicial authorities; 2) the existence of differences between the legal systems of the Member States, which allowed fraudsters to „avoid“ criminal responsibility. To overcome the mentioned obstacles, the following measures were proposed in the Corpus Juris (in addition to the establishment of the EPP): 1) „assimilation“ - Member States should provide protection to the financial interests of the EU, that is, the EU budget from fraud, through legal measures; 2) „co-operation“ - the basic premise for effective fight against transnational crime is the establishment of mutual cooperation and the use of cooperation instruments established at the EU level, as well as the use of other bodies such as Europol and Interpol; 3) „harmonization“ - under the mentioned measure is meant the adoption identical legal measures and which would primarily refer to the prescription of common definitions of offenses as well as rules of procedure (see more in Corpus Juris - A Criminal Law System for the EU? By Senior European Experts, 2011). Since the Corpus Juris did not take effect, the need for enhanced protection of the financial interest of the EU was

stated by the Commission in its opinion of January 26, 2000 („Adapting the institutions to make a success of enlargement“, Commission Opinion in accordance with Article 48 of the Treaty on the European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties, (com (2000) 34 final)). On that occasion, the Commission indicated the need for urgent measures to be taken in order to establish effective means for the fight against fraud and the protection of the financial interests of the EU. Within the aforementioned measures, the Commission pointed out that „the provisions governing the tasks and the role of a European Public Prosecutor responsible for the investigation on the whole of the European territory for fraud and its prosecution before national courts“. The need for the establishment of such a supranational body is also incorporated in the Additional Commission contribution to the Intergovernmental Conference on institutional reforms The criminal protection of the Community's financial interests: a European Prosecutor (Communication from the Commission, COM(2000) 608 final), which states that the damage to financial interests suffered by the EU in 1998 amounted to over €1 billion. As this proposal of the Commission for the establishment of the EPP as a supranational body was not adopted (by the Intergovernmental Conference: the „IGC“), the European Commission pointed out that when reconsidering the idea of establishing the EPP at the next IGC, it will prepare a Green Paper (see more in Annual Report 2000 Protection of the Communities' Financial Interests and the Fight against Fraud COM (2001) 255 final/2).

The desire of the Commission to create an appropriate institutional and legal framework for the protection of the EU budget is supported by the data contained in the Annual Report of UCLAF from 1998, which indicate that out of the total number of cases (5318 cases) in connection with which there was a suspicion that the word was fraud related to the EU budget, in about 20% of cases it really was word on fraud (Fight against Fraud 1998 Annual Report, IP/99/860). In this sense, the Commission made a proposal to provide a legal basis for the establishment of the EPP by adding a new article to the Treaty on the European Community. This would also be in the spirit of the Treaty of Amsterdam, which proclaimed the responsibility of Member States for the protection of the community's financial interests. Also, the proposal of the Commission for the formation of the EPP is based on the idea that „criminals must find no way of exploiting differences in the

judicial system of Member States“, which is woven into the conclusions of the Council of Europe from Tampere in 1995.

Although the EU has taken certain measures at the institutional level in order to provide an adequate response to financial crime and to protect financial interests, such as the establishment of OLAF, the reports of the aforementioned body state that there are still many limitations for an efficient and effective fight against fraud, such as for effective judicial cooperation among Member States (Annual Report 2000 Protection of the Communities' Financial Interests and the Fight against Fraud COM (2001) 255 final/2).

A significant step regarding the establishment of the EPP in the light in which it exists today was made precisely by the adoption of the aforementioned document Green Paper on criminal-law protection of the financial interest of the Community and the establishment of a European Prosecutor (COM (2001) 715 final). As established in this document „this Green Paper sets out to show that as a result of the European Public Prosecutor and the centralized management of detection and prosecution activities the Community would enjoy effective and equivalent protection of its financial interests throughout the Union, as demanded by the Treaty“. However, until the entry into force of the Treaty of Lisbon in 2009, the EU did not have an adequate chance for a strong fight against crimes against EU financial interests. The Lisbon Treaty standardized the legal basis for the creation of the EPP. Namely, in accordance with Art. 86 of the Treaty of the Functioning of the European Union, the Council was given the opportunity to establish the European Public Prosecutor's Office from EUROJUST by a unanimous decision, after securing the consent of the European Parliament. Thus, in July 2013, the Commission highlighted the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM/2013/0534 final - 2013/0255 (APP)) as an authority that would have the authority to conduct an investigation for criminal acts directed against the financial interests of the EU and to undertake criminal prosecution in relation to the perpetrators of those acts. The aforementioned Regulation establishing the European Public Prosecutor's Office (the „EPPO“) was adopted in October 2017 (Official Journal of the European Union, L 283/1).

The adoption of this Regulation was preceded by Directive 2017/1371 of July 5, 2017, which was adopted in accordance with the Treaty of Lisbon (Directive (EU) 2017/1371 of the European Parliament and of the Council, of July 5, 2017, on the fight against fraud to the Union's financial interests by means of criminal law). The aforementioned Directive regulates a set of minimum rules necessary for the fight against fraud and other illegal activities directed towards the interests of the EU, which refer to the definition of criminal offenses and sanctions. In terms of this directive, Member States should incorporate into their legal system the crime of fraud that affects the financial interests of the EU.

2. ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE: ARGUMENTS FOR AND AGAINST

The path to establishing EPPO was neither easy nor simple. From the proposal presented in Corpus Juris (1997) to the establishment of the EPPO (2017), 20 years have passed. The need for a body that will have supranational competence and that will be responsible for the investigation and prosecution of perpetrators of financial crime that causes damage to the financial interests of the EU is based on the following reasons: 1) the absence of interest from the national authorities of individual Member States in terms of prosecuting perpetrators of crimes acts against the financial interests of the EU because they do not harm national interests (The Treaty of Lisbon: an impact assessment - 10th Report of Session 2007-08, 151); 2) fraud against EU financial interests was not considered a priority by national authorities. As reasons for this, the following are highlighted: the complexity of European legislation, difficult cooperation with national authorities of other Member States in the case of transnational fraud, etc. In this sense, EU interests are not provided equal protection by the Member States as national interests (De Angelis, 2019, 274); 3) as stated in the Commission Staff Working Document (COM(2013) 534 final) (SWD(2013) 274 final): „current levels of information exchange and coordination at national and European level are insufficient to effectively prosecute offenses affecting the EU's financial interests... Only a very small part of the total amount of fraud is ever recovered from criminals: below 10%. The deterrent effect of the current enforcement regime is

therefore insufficient. There is no centrally placed body that can deal with these obstacles and ensure continuity in the investigation and prosecution process”; 4) an effective fight against fraud in relation to the EU budget cannot be achieved without the existence of European criminal legislation (Pujas, 2003, 786); 5) as established in the Euro NEEDS project: „these are crimes likely to be combated successfully only if a criminal justice perspective beyond the traditional, nationally-bound is assumed“ (Wade, 2013, 445); etc.

In addition to the above-mentioned arguments in support of the establishment of the EPPO, it is extremely important to point out the data on the estimated damage caused to the EU budget, which, with the existence of an adequate institutional and legal response, would be significantly less. According to the Commission, EPPO Impact Assessment, the damage suffered annually by the EU budget due to fraud ranges from €500 million to €3 billion (see Giuffrida, 2017; Csonka, 85). For example, in 2016, „1,410 irregularities designated as fraudulent, involving €391 million, covering both expenditure and revenue“ were discovered (European Union: New Rules to Fight Crimes Against the EU's Budget Take Effect, Library of Congress), while in 2020, reported the 1,056 fraudulent irregularities had a combined financial impact of €371 million (European Anti-Fraud Office: Press Release No 19/2021).

On the other hand, the reasons that were highlighted against the proposal to establish the EPPO since the Corpus Juris project first of all referred to: 1) the issue of the principle of national sovereignty, since in the case of the establishment of such a supranational body for investigation and prosecution, sovereignty would be transferred to EU, which is particularly worrying considering that it is a very sensitive area such as criminal justice (see Corpus Juris; Wade, 2013, 440; Oberg, 2021, 165); as well as 2) the possibility of violating the fundamental rights of suspects, since the EPPO will have powers that go beyond the powers of national judicial authorities (see Wade, 2013, 439).

The proposal to establish the EPP was opposed by The Law Society of England and Wales and the Law Society of Scotland. The reasons on which the arguments against the establishment of the EPP are based are: „1) the EPP would cut across national prosecutors and the detail of how this would be achieved in the various national legal systems was „fraught with political and other implications“; 2) the

experience of arriving at an agreed definition of particular crimes at EU level had not been wholly successful and the question of what constituted offenses against the Union's financial interests was unlikely to be an easier one to agree; 3) questions surrounded the prosecutorial system to be adopted and the role of the EPP within that system“. Also, from the perspective of the Freedom Association, the establishment of a supranational authority responsible for investigation and prosecution represents „transparent attempts to diminish national police and justice systems“ (The Treaty of Lisbon: an impact assessment - 10th Report of Session 2007-08, 152).

However, despite the long opposition to the establishment of a supranational EU body that will be responsible for the investigation and prosecution of perpetrators of fraud, that is, financial crime that harms the EU's financial interests, the EPPO was established. By establishing the EPPO, the EU, that is, the Member States, took a big step towards a decisive fight against financial crime, that is, towards the protection of the financial interests of the EU. In this way, with the cooperation with other bodies and organizations established at the EU level, first with OLAF, then with EUROJUST, EUROPOL, as well as with the application of informal forms of cooperation and the principle of mutual recognition of decisions, a good basis for an adequate and effective fight against financial, organized and transnational crime. In order for the measures and activities undertaken to achieve the desired goal and to identify weaknesses, it is important to note that in accordance with Art. 325(5) of the Treaty of Lisbon (Treaty on the Functioning of the EU), drawing up a report on the protection of the financial interests of the EU (PIF report), the duty of the Commission. The aforementioned report contains detailed measures taken to combat fraud against the EU budget, at both levels: European and national.

3. EPPO IN THE LIGHT OF NOWDAYS

After being established in 2017, EPPO started work one year ago, on June 1, 2021, after the Commission officially confirmed the start date of May 26, 2021 (European Public Prosecutor's Office, <https://vvv.eppo.europa.eu/en>). The establishment of the EPPO, whose decisions are directly implemented in the

territory of the European Union, is based on the idea of creating a single legal area, i.e. it represents the embodiment of the principle of vertical cooperation, as opposed to the principle of mutual recognition, i.e. the principle of horizontal cooperation (Bugarski, Pisarić, 2019; Allegrezza, Mosna, 2018; Ligeti, Weimberg, 2015).

The EPPO has the status of a legal entity and acts as an independent body in relation to the Commission, other European institutions, bodies, agencies as well as in relation to national governments. In accordance with Article 4 of Directive (EU) 2017/1371, the EPPO „is responsible for the investigation, prosecution and sentencing of perpetrators and accomplices of criminal offenses affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 and established by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.“ EPPO activities are based on the principles of rule of law and proportionality, impartiality and timeliness (efficiency), the principle of sincere cooperation. Material Competence of EPPO is prescribed by Art. 22 of Directive (EU) 2017/1371, according to which „the EPPO shall be competent in respect of the criminal offenses affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371... the EPPO shall also be competent for offenses regarding participation in a criminal organization as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organization is to commit any of the offenses referred to in paragraph 1.“ Except in the cases mentioned, the EPPO is competent „for any other criminal offense that is inextricably linked to criminal conduct that falls within the scope of paragraph 1 of this Article.“ That is, in order to protect the financial interest of the EU, the EPPO is responsible for investigating fraud involving EU funds of over €10,000 and cross-border Value Added Tax (VAT) fraud involving damages above €10 million (see also EPPO Annual Report: 2021).

The structure of the EPPO is two-tiered, that is, the EPPO is organized at the central and local level (art. 8 of Directive (EU) 2017/1371). The seat of the EPPO is located in Luxembourg. Investigations initiated by European Delegated

Prosecutors in Member States are supervised by the European Chief Prosecutor and 22 European Prosecutors in Luxembourg. Delegated Public Prosecutors (located in participating Member States) act in accordance with the instructions of the EPPO headquarters, while in relation to national governments and national judicial authorities, they are independent in their work. During the implementation of criminal prosecution and investigation activities, Delegated Public Prosecutors act in accordance with national criminal law, and decisions on their cases are made by national courts. In accordance with Regulation (EU) 2017/1371, the jurisdiction of the EPPO is mandatory (on the jurisdiction of the EPPO, see more in Regulation (EU) 2017/1371 and in the EPPO Annual Report: 2021). Although the EPPO started its work relatively recently, the results of its activities are significant. As stated in the EPPO Annual Report: 2021, in seven months a large number of backlogs opened by national authorities before the start of EPPO's work were processed. In addition to the above-mentioned cases, in the seven-month period, the EPPO dealt with all the backlog of OLAF investigations as well as „new reports on suspected fraud“. The number of reports received by the EPPO is 2,832, while the number of investigations that have been opened is 576. The estimated damage to the EU budget is €5.4 billion. Also, in the aforementioned Report, it was pointed out that the EPPO greatly contributed to the efficiency of the procedure: bearing in mind that the provision of mutual legal assistance, organizing coordinated searches or arrests across borders has been a matter of weeks, instead of months, as well as improving and facilitating international cooperation, bearing in mind that a total of 290 assisting measures were provided by delegated public prosecutors to each other.

It is important to note that currently 22 Member States participate in the enhanced cooperation. Working arrangements are established with countries that do not participate in cooperation (Hungary, Poland, Sweden, Denmark and Ireland) in order to define the way of cooperation between non-participating countries and the EPPO (European Public Prosecutor's Office, <https://www.eppo.europa.eu>).

The importance of EPPO's work can be seen from the work results that were achieved in a relatively short time. Graph 1 shows the number of open

investigations in participating Member States. Also, for each Member State it is shown whether it is a cross-border investigation.

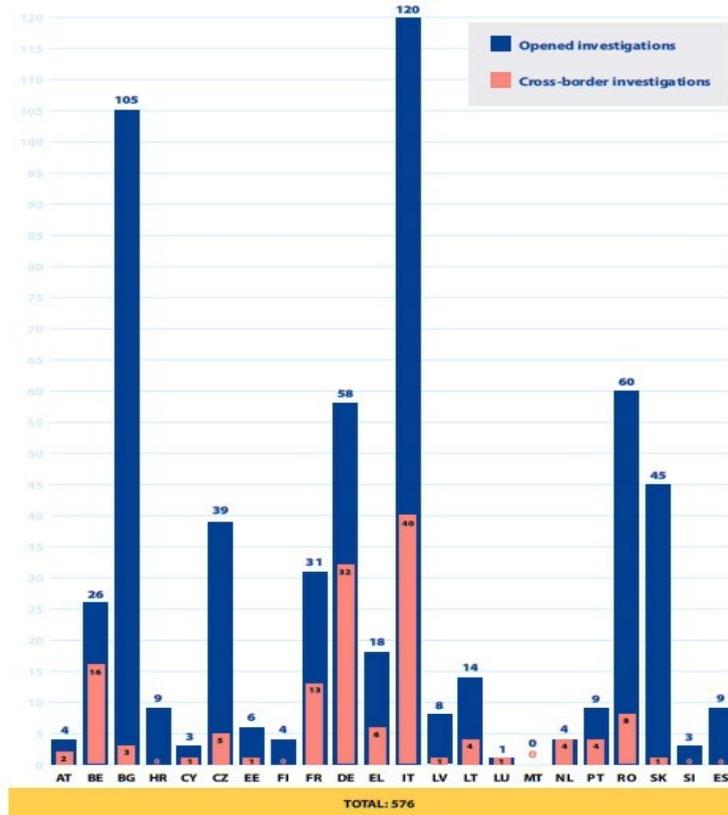


Chart 1: Open investigations in Member States

(Source: EPPO Annual Report: 2021 <https://www.eppo.europa.eu/en/documents?keywords=&category=All&page=2>)

From the results shown in Chart 1, it follows that investigations have been opened in 21 of the 22 Member States. Namely, the investigation was not opened only in Malta. In the largest number of countries where investigations have been opened, there are a certain number of cross-border investigations (out of 21 countries where investigations were initiated, only 4 countries had no cases of

cross-border investigations). Namely, in the total number of open investigations, the number of cross-border investigations (142) is incorporated, which is about 25%. From the results presented in Graph 1, it emerges that the role of the EPPO as a supranational authority is extremely important for achieving cross-border cooperation in the field of criminal prosecution and investigation of financial crimes. A greater number of investigations, viewed from the perspective of Member States in particular, were opened in the following Member States:

- Italy - about 21% of investigations from the total number of open investigations, of which a third of the investigations (33.33%) are of a cross-border nature;
- Bulgaria - about 18% of investigations out of the total number of open investigations, of which about 3% are cross-border investigations;
- Romania - about 10% of investigations from the total number of open investigations, of which about 13% are cross-border investigations;
- Germany - about 10% of investigations out of the total number of open investigations, of which more than half of the investigations (about 55%) are of a cross-border nature;
- Slovakia - about 8% of investigations from the total number of open investigations, of which about 2% are cross-border investigations;
- Czech Republic - about 7% of investigations from the total number of open investigations, of which about 13% are cross-border investigations;
- France - about 5% of investigations from the total number of open investigations, of which about 42% are cross-border investigations;
- Belgium - about 4.5% of investigations from the total number of open investigations, of which about 62% are cross-border investigations;
- Greece - about 3% of investigations from the total number of open investigations, of which about 33% are cross-border investigations;
- Lithuania - about 2.5% of investigations from the total number of open investigations, of which about 29% are cross-border investigations.

Observed only from the aspect of cross-border investigations that were opened before the EPPO (142), and in relation to the Member States individually, from the information provided by the EPPO, it is established that a greater number of cross-

border investigations were opened in Italy (about 28%), in Germany (about 22.5 %), in Belgium (about 11%), in France (about 10.5%), etc.

When it comes to submitted applications/complaints, in the EPPO Annual Report: 2021 it is stated that the following appear in the role of their applicant: national authorities (in 1351 cases), EU institutions, bodies, organizations and agencies (in 190 cases), private parties (in 1282 cases). Proceedings were initiated ex officio in 9 cases. As can be seen on Graph 1, the number of open investigations is 576, of which slightly more than half of the investigations (about 52%, ie 298) are new investigations.

As the main goal of the EPPO is to help the Member States recover the damages, it is important to point out the data on the confiscated property. Namely, as stated in the EPPO Annual Report: 2021, the EPPO requested the seizure of more than €154 million, and the seizure of over €147 million was approved, which represents over three times the budget of the EPPO in 2021.

CONSLUSION

Although the need to protect the financial interest of the EU from the crime of fraud and other criminal activities was recognized in the acts of the EU, it took a long time to find an acceptable yet effective and appropriate mechanism for this. Namely, since certain measures taken at the normative and institutional level by the EU did not give wanted results in the field of fighting financial crime and protecting the financial interests of the EU, it was necessary to take a different approach. Such an approach, which is certainly based on the principles of providing international legal assistance in criminal matters and mutual recognition, was supposed to remove the obstacles to the effective fight against fraud, which other EU bodies encountered, first of all, like OLAF. Such obstacles, according to OLAF reports, related to a lack of trust between national authorities, problems in the application of certain international instruments, insufficiently efficient processing, deficiencies in staff expertise, problems of non-compliance with normative acts, etc. As OLAF is a unit that has a guiding, coordinating role in its work, as such it could not overcome obstacles in the field of protecting financial

interests, ie the EU budget. Although at the end of the last century proposals were made for the establishment of a supranational body such as the European Public Prosecutor, in order to achieve the efficiency of the fight against financial crime and the protection of the financial interests of the EU, its establishment was only in 2017. Namely, in the proposal for the establishment of a body that will have supranational competence in the field of criminal prosecution and investigation, the Member States first of all saw the danger of collapsing the principle of national sovereignty, which is particularly sensitive when it comes to the area of justice. Bearing in mind the above, it took 20 years to pass from the proposal to establish the EPP in project Corpus Juris to its establishment. The European Public Prosecutor's Office, established by Directive (EU) 2017/1371, started its work in the middle of 2021. The results highlighted in the EPPO Annual Report for 2021 support the claim about the necessity of establishing this body, which indicate that in addition to a large number of open investigations and submitted requests for seizures, the EPPO has significantly contributed to the efficiency of the procedure and the facilitation and improvement of international cooperation.

REFERENCES:

- 1 Additional Commission contribution to the Intergovernmental Conference on institutional reforms The criminal protection of the Community's financial interests: a European Prosecutor (Communication from the Commission, COM(2000) 608 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0608:FIN:EN:PDF>).
- 2 Allegranza, S., Mosna, A. (2018). Cross-Border Criminal Evidence and the Future European Public Prosecutor. One Step Back on Mutual Recognition?“, 142, in The European Public Prosecutor's Office The Challenges Ahead, Legal Studies in International, European and Comparative Criminal Law, Switzerland 2018.
- 3 Annual Report 2000 Protection of the Communities' Financial Interests and the Fight against Fraud, COM (2001) 255 final/2, https://ec.europa.eu/anti-fraud/system/files/2021-07/rep_comm_2000_en.pdf.
- 4 Бугарски, Т., Писарић, М. (2019). Оснивање и организација Европског јавног тужилаштва, Зборник радова Правног факултета у Новом Саду, 1/2019, 17-35.

- 5 Council Decision on the Replcement of Financial Contributions from Member States by the Communit'es own Resources (70/243 ECSC, EEC, Euratom, Official Journal of the European Communities No L 94/19,
- 6 https://www.legislation.gov.uk/eudn/1970/243/pdfs/eudn_19700243_adopted_en.pdf.
- 7 Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European communities financial interests, Official Journal of the European Communities, L 312/1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31995R2988>.
- 8 Council Regulation (EU) 2017/1939, of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, Official Journal of the European Union, L 283/1, 31.10.2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1939>.
- 9 Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime 2002/187/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002D0187>.
- 10 Commission Opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties: „Adapting the institutions to make a success of enlargement”, (COM (2000) 34 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0034:FIN:EN:PDF>.
- 11 Corpus Juris – A Criminal Law System for the EU? By Senior European Experts, 2011, <http://senioreuropeanexperts.org/wp-content/uploads/2011/01/corpus-juris-a-criminal-law-system-for-the-eu.pdf>.
- 12 Commission Staff Working Document Executive Summary of the Impact Assessment Accompanying the document Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013) 534 final) (SWD(2013) 274 final), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0275:FIN:EN:PDF>.
- 13 Commission of the European Communities v Hellenic Republic, Case 68/88 of 21 September 1989, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0068>.
- 14 Csonka, P. Establishment of the European 85 Public Prosecutor's Office http://www.europeanrights.eu/olaf/pdf_eng/3-Establishment%20of%20the%20European-pc.pdf.

- 15 Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802) , Official Journal of the European Communities, L 136, 31 May 1999, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.1999.136.01.0020.01.ENG&toc=OJ%3AL%3A1999%3A136%3ATOC.
- 16 De Angelis, F. (2019). The European Public Prosecutor's Office (EPPO) Past, Present, and Future, *EUROCRIM* 4/2019, 272- 276.
- 17 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,
- 18 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1371>.
- 19 European Union: New Rules to Fight Crimes Against the EU's Budget Take Effect, Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2019-08-07/european-union-new-rules-to-fight-crimes-against-the-eus-budget-take-effect/>.
- 20 EPPO Annual Report: 2021,
- 21 <https://www.eppo.europa.eu/en/documents?keywords=&category=All&page=2>.
- 22 European Public Prosecutor's Office, <https://www.eppo.europa.eu/en>.
- 23 European Anti-Fraud Office, https://anti-fraud.ec.europa.eu/about-us/what-we-do_en.
- 24 Fight against Fraud 1998 Annual Report, IP/99/860, https://ec.europa.eu/commission/presscorner/detail/en/IP_99_860.
- 25 Green Paper on criminal-law protection of the financial interest of the Community and the establishment of a European Prosecutor (COM (2001) 715 final, <https://op.europa.eu/en/publication-detail/-/publication/4fd84a55-e95b-4332-8987-a2e0f62d33a7>.
- 26 Giuffrida, F. (2017). The European Public Prosecutor's Office: King without kingdom? CEPS , Research Report No 2017/03, February 2017, https://www.ceps.eu/wp-content/uploads/2017/02/RR2017-03_EPPO.pdf.
- 27 Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network, 98/428/JHA, Official Journal L 191 , 07/07/1998 P. 0004 – 0007, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998F042>.
- 28 Ligeti, K., Weyembergh, A. (2015). The European Public Prosecutor's Office: Certain Constitutional Issues”, 53-77 in: The European Public Prosecutor's Office

- An Extended Arm or a Two-Headed Dragon?, Hague 2015, <http://ndl.ethernet.edu.et/bitstream/123456789/60281/1/L.H.%20Erkelens.pdf#page=60>.
- 29 Mitsilegas, V. (2009). *EU Criminal Law*, Oxford and Portland, Oregon: Bloomsbury Publishing.
- 30 Oberg, J. (2021). The European Public Prosecutor: Quintessential supranational criminal law?, *Maastricht Journal of European and Comparative Law* 2021, Vol. 28(2) 164–181.
- 31 Official Journal of the European Communities, L 136, 31 May 1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A1999%3A136%3ATOC>.
- 32 Pujas, V. (2003). The European Anti-Fraud Office (OLAF): a European policy to fight against economic and financial fraud? *Journal of European Public Policy*, 10:5, 778–797, DOI: 10.1080/1350176032000124087.
- 33 Presidency Conclusions, Tampere European Council 15 and 16 October 1999, https://www.europarl.europa.eu/summits/tam_en.htm.
- 34 Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office/* COM/2013/0534 final - 2013/0255 (APP), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52013PC0534>.
- 35 Press Release No 19/2021, European Anti-Fraud Office, https://anti-fraud.ec.europa.eu/system/files/2021-10/pr_20092021_pif_report_2020_en.pdf.
- 36 Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, Official Journal of the European Union, L 295/138, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.
- 37 The Treaty of Lisbon: an impact assessment, Volume I: Report, 10th Report of Session 2007-08, Published -by the Authority of the House of Lords, London, 151.
- 38 Wade, L. M. (2013). A European public prosecutor: potential and pitfalls, *Crime Law Soc Change* (2013) 59:439–486 DOI 10.1007/s10611-012-9406-x, <https://link.springer.com/content/pdf/10.1007/s10611-012-9406-x.pdf>.