

**Protecting taxpayers against  
fraud and corruption**

The **European**  
**Public**  
**Prosecutor's**  
**Office**





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# Why an EPPO?

## 1 A POWERFUL PROSECUTOR TO FIGHT EU FRAUD

Money aimed at improving the welfare of EU citizens has always been the target of criminals and fraudsters. Every year, cross-border VAT fraud causes an estimated damage of EUR 50 billion to the budgets of the Member States and the EU. And in 2017, Member States (MS) reported fraudulent irregularities of around EUR 500 million.

These offences often remain insufficiently investigated and prosecuted at national level due to a lack of law enforcement and judicial resources, or due to an under prioritising of the protection of EU finances by the Member States. Cross-border cases are also difficult to investigate and suffer from gaps in judicial cooperation. Serious fraud and corruption cases often end up uninvestigated and unprosecuted, thus generating a feeling of impunity.

### A response is needed

Article 86 of the Lisbon Treaty has allowed the establishment of the European Public Prosecutor's Office ('the EPPO'), a game-changing new Union body with the ability to conduct swift investigations and prosecutions across the participating Member States of the European Union.

Using real-time information exchange and 'boots on the ground' investigations, the new office will enhance the protection of the EU's financial interests, fill gaps in judicial cooperation not already covered by existing Union bodies (Eurojust) or by administrative investigations into irregularities and fraudulent activities (European Anti-Fraud Office (OLAF)), and ensure an effective and equivalent investigation and prosecution in all participating EU Member States.

### First supranational body of its kind

Coordinated and supervised by a central level, EPPO investigations will be conducted within the territory of EU Member States and cases will be brought before national courts.

Established by EU Regulation 2017/1939 of 12 October 2017, the EPPO will be the first supranational public prosecution office in charge of criminal investigations and prosecutions. The EPPO is expected to begin its operational work at the end of 2020.

## EPPO: KEY FACTS

### Central level

- Based in Luxembourg.
- One European Chief Prosecutor appointed by the European Parliament and the Council.
- A College composed of the European Chief Prosecutor and European Prosecutors.
- 22 European Prosecutors (one for each participating MS) appointed by the Council.
- Permanent Chambers, comprising a chair and two permanent members.
- One Administrative Director appointed by the College.
- Over 100 staff working for both the central office and decentralised level.

### Decentralised level

- At least two European Delegated Prosecutors located in each participating MS.

### Expected start of operations

- After 20 November 2020.



# What can the EPPO do?



## 2 INDEPENDENT INVESTIGATIONS AND PROSECUTIONS

The EPPO represents the first true supranational prosecutorial body with the powers to independently carry out investigations and prosecutions into crimes affecting the financial interests of the Union.

It will be able to prosecute and bring the suspected perpetrators of such crimes to judgment in the 22 participating EU Member States. Non-participating Member States may decide to join the EPPO at any stage.

### Protected from influence

The EPPO's independence is at the heart of the project. From the moment they are appointed, the European Chief Prosecutor and all the Prosecutors are protected against any improper influence from the European or the national level (e.g. political interference in prosecutions).

Though fully independent, the EPPO remains accountable to the European Parliament, the Council and the Commission for its general activities without prejudice to its obligation of discretion and confidentiality as regards individual cases.

In conducting its investigations and prosecutions, the EPPO is guided by the principles of legality,

proportionality, impartiality and fairness towards the suspects or accused persons and will have to seek evidence, in favour or against them.

### Financial damage

The focus of its mandate will be fraud and other crimes affecting the EU's financial interest (so-called 'PIF' offences, as defined under Directive (EU) 2017/1371):

- fraud relating to expenditures and revenues
- fraud relating to VAT (insofar as it is connected with the territory of two or more MS and worth at least EUR 10 million)
- money laundering of assets derived from defrauding the EU budget
- active and passive corruption or misappropriation that affect the EU's financial interests, and
- taking part in a criminal organisation if the focus of its activities is to commit crimes against the EU budget.

These fraudulent activities have a direct impact on people's everyday lives, fuel insecurity among citizens, inflict serious damage on a wide range of economic players and businesses and ultimately undermine the credibility of the Union as such (see box).

The EPPO also has ancillary competence – the ability to investigate and prosecute any other illegal activity that is ‘inextricably linked’ to a PIF offence. This includes offences that are strictly aimed at ensuring the material or legal means to commit a PIF offence (e.g. forgery) or to ensure the profit or product from the PIF offence committed, provided that the ancillary offence is less serious, from a sanctions perspective, than the PIF offence. If it is more serious, it will stay, as a rule, under the competence of the national prosecution authorities. The EPPO will also refrain from exercising its competence when the damage to the Union budget

does not exceed the damage caused to another victim (e.g. the Member States’ budgets).

While it is bound to prosecute a wide range of offences, the EPPO will prioritise cases that fall under its competence, according to general criteria (this will be the EPPO’s ‘prosecution policy’). Moreover, it can decide not to take up or transfer to the national authorities fraud cases under EUR 100 000, when due to the degree of seriousness of the offence or the complexity of proceedings there is no need to investigate or prosecute the case at the Union level.

## CRIMES INVESTIGATED BY THE EPPO

The EPPO can investigate any type of fraud involving EU funds, for example fraud of Regional Funds, Common Agricultural Policy Funds and so on. These include the abuse of tender procedures. The EPPO will also be able to investigate complex VAT carousel fraud cases.

### VAT carousel fraud

A supplier established in Member State 1, the ‘conduit company’, supplies goods (VAT exempted) to a second entity established in Member State 2, the ‘missing trader’.

This trader then takes advantage of the VAT-exempted intra-Community supply of goods and resells, at a very competitive price, the same goods in the domestic market of Member State 2.

The competitive price is possible because, despite the trader charging its customer VAT, it does not declare this to the tax authorities, thus increasing its profit margins.

The missing trader then disappears, making tax collection impossible in the State in which goods or services are consumed.

The same transaction can be repeated in a circular, or ‘carousel’, manner.

### How does the EPPO add value?

- Has the mandate, the powers and the resources to fill the enforcement gap in the participating Member States to tackle crimes against the EU budget.
- Can share and cross-check information in respect of cross-border cases with other EU bodies and national authorities.
- Receives information, by obligation, from Member States on VAT fraud cases connected to cross-border VAT fraud that may cause damage above EUR 10 million.

### Tender procedures

EU tender procedures are often very technical and can be distorted by gaining access to confidential information in order to favour one competitor.

In such cases it can be very difficult for national authorities to detect and investigate any irregularity of fraud warning signs.

### How does the EPPO add value?

- Combines technical expertise of highly-specialised staff and key partners.
- Has the capacity to conduct cross-border investigations on the territory of different participating Member States.
- Uses simplified procedures identical to those available to national prosecutors.

# How does the EPPO work?

## 3 CROSS-BORDER COLLABORATION IN THE NATIONAL AND EU INTEREST

The EPPO will operate as a single office organised at a central and decentralised level. Its central level comprises a College formed of the European Chief Prosecutor and 22 European Prosecutors, one per participating Member State.

The decentralised level is embedded in each participating Member State's justice system and composed of the European Delegated Prosecutors (EDPs) – who must be, when appointed as EDPs, active members of the national public prosecution service or judiciary in charge of conducting investigations and bringing cases to the national courts.

### Getting information

To efficiently investigate, prosecute and bring to judgment perpetrators, the EPPO must be duly informed of any fact that may constitute an offence falling under its mandate.

To this end, national competent authorities, as well as all institutions, bodies, offices and agencies of the Union shall, without undue delay, report to the EPPO any criminal conduct that falls under its competence.

These competent entities may make use of the reporting procedures already in place at the national level, or OLAF at the EU level, as long as the EPPO receives the structured information as required by the EPPO Regulation.

The EPPO can also gather information to initiate a case from other sources or in a pro-active way, such as through mainstream news, private parties or whistleblowers. Whistleblowers should be protected in line with the recently agreed EU Directive for the protection of whistleblowers and should not be deterred by fear of retaliation.

### Investigation and prosecution

Once a case is initiated by an EDP or under instruction of a Permanent Chamber, as a rule it will be handled by the EDP from the EU Member State where the focus of the criminality originates, for example where the main offence was committed.

In cases where it is justified, an EDP from a different MS can be designated to handle the case, such as in a Member State where the suspect has habitual residence or nationality, or where the main financial damage occurred.

Once designated, the competent EDP will order investigation measures on his/her own or will instruct the competent national authorities to do so.

While the EPPO will bring the cases to the competent national courts in line with the applicable national law and the EPPO Regulation, the organisation of the EPPO's internal work will be governed by the internal rules of procedure, to be adopted by the College.

## Supervised investigations

Investigations conducted by an EDP will be supervised, on behalf of the Permanent Chamber, by the European Prosecutor from the same Member State as the EDP. This supervising European Prosecutor has extensive knowledge of the language and legal system of the respective Member State and is therefore best placed to be deeply involved in the proceeding and will be in a constant dialogue with the EDP.

Through the supervising European Prosecutor, the Permanent Chamber may also give instructions to the handling EDP.

## Significant powers

In addition to the measures already made available to them under the national law, the handling EDP (in cases involving offences punishable by a maximum penalty of at least four years imprisonment) is entitled to order or request a set of investigation measures, which are available under national law and/or required by the EPPO Regulation. The latter include searches, orders of production of evidence, freezing of the proceeds of crime, communication intercepts, and tracking of controlled deliveries.

In cross-border cases, and without prejudice to obtaining a previous judicial authorisation if needed, investigation measures can be assigned by the handling EDP to an assisting EDP of the other Member State without a need to make use of the current instruments of mutual recognition or mutual assistance. This is essential to enable the EPPO to function as a single EU-level prosecution office in cross-border cases.

By way of exception from this special regime, the surrender of a person requested by an EDP of another Member State will be governed by the ordinary European Arrest Warrant procedures.

## Horizontal relationships

Under specific circumstances, a case can be reallocated to another EDP from the same Member State. In exceptional situations and after approval of the competent Permanent Chamber, a European Prosecutor may also conduct the

investigation personally in his/her State of origin, assuming all the powers, responsibilities and obligations of an EDP.

## Powers of the Permanent Chamber

Once the investigation phase is complete, the Permanent Chamber will decide, on the basis of a draft decision proposed by the handling EDP, whether to prosecute the case before a national court or to consider a referral of the case, to dismiss or to apply a simplified prosecution procedure.

A case can be closed by the Permanent Chamber before trial, after a proposal by the handling EDP, when its prosecution becomes impossible due to a lack of evidence, statute of limitation, *ne bis in idem*, amnesty or immunity, etc., without prejudice to possible further investigations if new facts emerge. The grounds of dismissal are limited to those explicitly listed in the EPPO Regulation.

## Cases brought to trial

Once brought to trial before the competent national court, the case will be dealt with by the EDP in full respect of the national laws and in line with the EPPO Regulation.

In Member States that have a system of simplified procedures in place, such as transactions, national law applies.

# EPPO

*"We have zero tolerance for fraud against the EU budget. Every cent of it needs to be spent for the benefit of EU citizens."*

EU COMMISSIONER **GÜNTHER OETTINGER**, 2017

## key statistics

### PROTECTING EU FUNDS FOR EU CITIZENS



#### BILLIONS OF TAXPAYERS' EUROS AT STAKE

EU budget

EUR **137.4** BILLION

Total expenditure (2017)



EUR **467.1** MILLION

Value of reported fraud

**1 146**

Incidences of reported fraud (2017)



#### EPPO: THE EU'S FIRST SUPRANATIONAL PROSECUTOR

##### Overview

Central level HQ: **Luxembourg**

European Chief Prosecutor: **1** (plus 2 Deputies)

European Prosecutors: **22** (1 from each participating Member State)

Permanent Chambers: **3 permanent members**

European delegated prosecutors: **44+**

Central level HQ staff: **100+**

Expected start date: **End 2020**

##### Minimum case value:

- **EUR 10 000+** For fraud involving EU funds (with some exceptions under EUR 10 000)
- **EUR 10 000 000+** Cross-border VAT fraud

**22**

##### Participating Member States

|                |                 |
|----------------|-----------------|
| Austria        | Italy           |
| Belgium        | Latvia          |
| Bulgaria       | Lithuania       |
| Croatia        | Luxembourg      |
| Cyprus         | Malta           |
| Czech Republic | The Netherlands |
| Estonia        | Portugal        |
| Finland        | Romania         |
| France         | Slovakia        |
| Germany        | Slovenia        |
| Greece         | Spain           |

**5**

##### Non-participants (may join anytime)

Hungary  
Ireland  
Poland  
Sweden  
United Kingdom

**1**

##### Opt out

Denmark

**3**

##### Key partners

Eurojust  
OLAF  
Europol





# Safeguarding citizens

## 4 OPERATIONAL OVERSIGHT AND PROTECTION OF PERSONAL DATA

In the interest of all citizens, the EPPO Regulation includes several safeguards in relation to suspected persons, witnesses and victims and, for the sake of ensuring legality and compliance with EU law, the possibility of judicial review of its investigations.

### Safeguards

The EPPO will be subject to multi-layered guarantees. First, as with any EU body, it is bound to fully respect the Charter of Fundamental Rights of the European Union (CFREU), in particular the right to a fair trial, the right of the defence and the presumption of innocence (Articles 47 and 48 CFREU), as well as the *ne bis in idem* principle (Article 50 CFREU).

Secondly, the EPPO will have to respect safeguards provided under the EU Directives already adopted in the field of procedural rights (as implemented by the national law), which already cover a number of important issues (see box). Every suspect or accused person will also benefit from any possible additional guarantee provided by the national legislation of the Member State where the investigations occur.

### Judicial review

Like any other prosecutorial authority, the EPPO will be subject to a judicial review mechanism that will take place before the national courts of the Member State where the EPPO's activity is carried out.

In addition, the Court of Justice of the European Union (CJEU) will be able to give preliminary rulings concerning questions of validity of the EPPO's

procedural acts raised before any national court, the interpretation or the validity of provisions of EU law, including the EPPO Regulation, and the interpretation of the provisions of the Regulation concerning the material competence of the EPPO or the exercise of such competence in relation to any possible conflict that might appear with national authorities.

### Protection of personal data

Special attention is devoted to the safeguards of personal data that the EPPO will process through its Case Management System or will transfer to other parties. These data will be protected in accordance with the EU legislation in force. The European Data Protection Supervisor (EDPS) will be responsible for both advising the EPPO and monitoring its respect for data protection rules.

#### EU PROCEDURAL RIGHTS SAFEGUARDED BY THE EPPO

- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU;
- (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU;
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive 2013/48/EU;
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive (EU) 2016/343;
- (e) the right to legal aid as provided for in Directive (EU) 2016/1919.

# Working with partners

## 5 COOPERATION WITH OTHER BODIES AND NON-PARTICIPATING MEMBER STATES

In order to efficiently operate, the EPPO cannot work as a lonely knight. It has to develop relations and synergies with partners in the European Union and beyond, mainly by establishing working arrangements on mutual cooperation and exchange of information.

While Eurojust, OLAF and Europol represent its closest partners, the EPPO will also have to closely cooperate with all the Union's institutions, bodies, offices and agencies as well as the authorities of non-participating Member States, and those of third countries and international organisations.

### **Eurojust**

From the very beginning, Eurojust will be the EPPO's privileged partner. Apart from sharing information, including personal data, and allowing indirect access to their respective Case Management System, Eurojust will also be the EPPO's key partner for assisting in the judicial cooperation with non-participating Member States, as well as third countries.

### **OLAF**

With OLAF, the cooperation will focus on the mutual exchange of information on their activities. In particular, OLAF will give priority to the EPPO's criminal investigations and refrain, in such cases, from opening parallel administrative investigations, while fully supporting the EPPO's

investigations under its request. In the event the EPPO decides not to open an investigation or to dismiss a case, OLAF will be provided with all information relevant for possible further action.

### **Europol**

The working arrangements to be concluded between the EPPO and Europol will set out the modalities of their cooperation. During its investigations, the EPPO may ask Europol to provide any relevant information held by it as well as analytical support.

### **Non-participating Member States and Third Countries**

Without prejudice to the support provided by Eurojust, the medium to long-term relations among the EPPO and the authorities of third countries and non-participating Member States can be regulated through working arrangements.

They may cover, in particular, the exchange of information and the secondment of liaison officers or contact points so as to improve practical cooperation.

In the absence of such arrangements, participating Member States shall notify the EPPO as a 'competent authority' for the purpose of applicable Union instruments on judicial cooperation and relevant international agreements.

*"Establishing the European Public Prosecutor's Office will be a real game-changer. Many cases of fraud against the EU budget are transnational. We therefore need an institution which is able not only to investigate, but also to prosecute across borders."*

EU COMMISSIONER **VĚRA JOUROVÁ**, 2017

## FIND OUT MORE

### **Regulation establishing the EPPO**

<https://eur-lex.europa.eu/eli/reg/2017/1939/oj>

### **Introduction to the EPPO**

[https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office\\_en](https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en)

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The European Public Prosecutor's Office ('the EPPO') is an independent and decentralised prosecution office of the European Union with the power to investigate, prosecute and bring to judgment crimes of fraud and corruption against the EU budget. Its unique power to bring criminal prosecutions at EU-level means our money invested in the EU budget will be better protected.

