

41<sup>st</sup> Regular Meeting of the

European Judicial Network

12 February 2020, The Hague

#### COVER NOTE

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From: Presidency and the EJM Secretariat

To: EJM Contact Points Correspondents

Subject: EJM and the EPPO: Steps towards cooperation

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The EJM Contact Points will find hereafter the conclusions from the discussions taken place in 2019 relating to the cooperation between the EJM and the EPPO

The EJM Contact Points are invited to discuss the questions below during the 41<sup>st</sup> Regular Meeting

#### Questions

Considering the conclusions of the European Judicial Network concerning the potential ways for cooperation with the European Public Prosecutor's Office, we would like to invite you to reflect on the following points:

- 1) For participating Member States: How is your Member State preparing for the entering into functions of the EPPO? Has your Member State started internal discussions on how to support the operation of the EPPO? How do you foresee that the EJM could materialise the cooperation with the Delegated Prosecutors; European Prosecutors and with the EPPO investigations in general?
- 2) For non- participating Member States: How do you foresee that the EJM could materialise the cooperation with the with the EPPO investigations?
- 3) Regarding the cooperation between the EPPO and non-EU countries: Do you foresee any challenges with regards to the cooperation with the investigations carried out by the EPPO? Will bilateral/multilateral agreements be sufficient to provide assistance to EPPO investigations (see EPPO Regulation Art.104, Par 4 and 5)? What could be your particular role as EJM Contact Point?
- 4) Complementary actions: Have you started receiving information or trainings on the EPPO? Could the EJM support this process with any additional action?

## EJN and EPPO:

### Steps towards cooperation

#### Introduction

After the adoption of the Regulation 2017/1939 establishing the European Public Prosecutors' Office<sup>1</sup> (EPPO), the European Judicial Network (EJN) started analyzing the manners in which both bodies could cooperate with each other. During 2019, the EJN dedicated itself to find possible synergies to support the establishment and operation of the EPPO.<sup>2</sup>

During the first round of discussions, the EJN Contact Points acknowledged the intention to cooperate with the related formation and operational aspects of the EPPO. The discussions evolved as the EPPO advanced in its establishment.

The joint will to cooperate was shared by Ms Laura Codruța Kövesi, first European Chief Prosecutor, when she stated that **"the EJN will be a key player in the day-to-day business of the EPPO"**. Hence, in the near future both EU bodies should clarify the modalities for cooperation, especially concerning non-participating MS. Additionally, the EJN and the EPPO should explore synergies in relation to the well-established EJN contacts in Third Countries.

#### Background information

##### I. The European Judicial Network

For more than 20 years, the EJN has been facilitating cross-border investigations within and outside the EU. The EJN Contact Points are experts in judicial cooperation in criminal matters who, in addition to their work at the national level, act as active intermediaries and facilitate judicial cross-border cooperation. For this purpose, the EJN Contact Points build mutual trust with colleagues from their own country and from other EU Member States, with EU Institutions and EU bodies as well as with candidate countries, with other judicial networks and with third countries.

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<sup>1</sup> See Council Regulation 2017/1939, 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

<sup>2</sup> Discussions took place under the 40<sup>th</sup> Regular Meeting of the European Judicial Network, 52<sup>nd</sup> Plenary Meeting of the European Judicial Network under the Romanian Presidency of the Council of the European Union and 53<sup>rd</sup> Plenary Meeting of the European Judicial Network under the Finnish Presidency of the Council of the European Union.

## II. The European Public Prosecutor's Office

The EPPO is a major step in the integration of the judiciary in the EU. The EPPO will be the EU's first independent and decentralised prosecution office dedicated to combat crimes affecting the financial interests of the Union.<sup>3</sup> The EPPO is planned to operate from November 2020 across all participating EU Member States<sup>4</sup>.

Together with the European Court of Justice, the EPPO will represent the EU's Justice Pillar and protect the European values, citizens and financial interests.<sup>5</sup> The EPPO will not be part of the existing EU institutions and is planned combine European and national efforts in a unified and efficient approach.

## III. Shared competence between the EJN and the EPPO

### a. Material competence

Considering the broad range of crimes in which EJN Contact Points support, it is likely that the EJN Contact Points are today assisting investigations that would in the future fall within the competence of the EPPO. Indeed, EJN Contact Points have reported that in the last two years they have worked in several cases involving fraud, financial crimes and corruption, which could be within the competence of the EPPO.

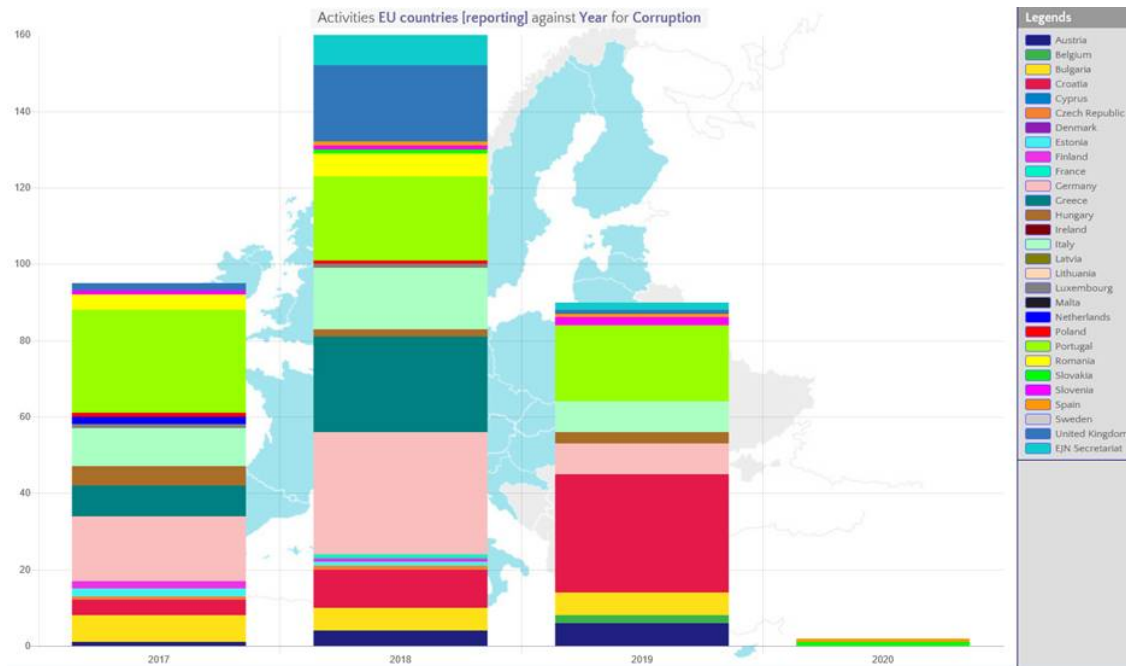
Based on the information reported by EJN Contact Points, the following charts depict the reported number of cases – total number is projected to be higher - in which the EJN Contact Points provided assistance to cross-border investigations involving Financial Crimes, Fraud and Corruption. Since it was not required at the time of obtaining the statistics if these were **crimes** against the financial interests of the Union, these activities nevertheless show that the EJN Contact Points assist very often with cases that could fall within the competence of the EPPO.

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<sup>3</sup> See Council Regulation 2017/1939, 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office and Article 86(1) of the TFEU ("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. The Council shall act unanimously after obtaining the consent of the European Parliament."

<sup>4</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Luxembourg, Italy, Malta, Portugal, Romania, Slovenia, Slovakia, Spain and The Netherlands.

<sup>5</sup> Statement by the European Chief Prosecutor, Ms Laura Kövesi during the 53<sup>rd</sup> Plenary Meeting of the European Judicial Network, 20 to 22 November, Helsinki, Finland.



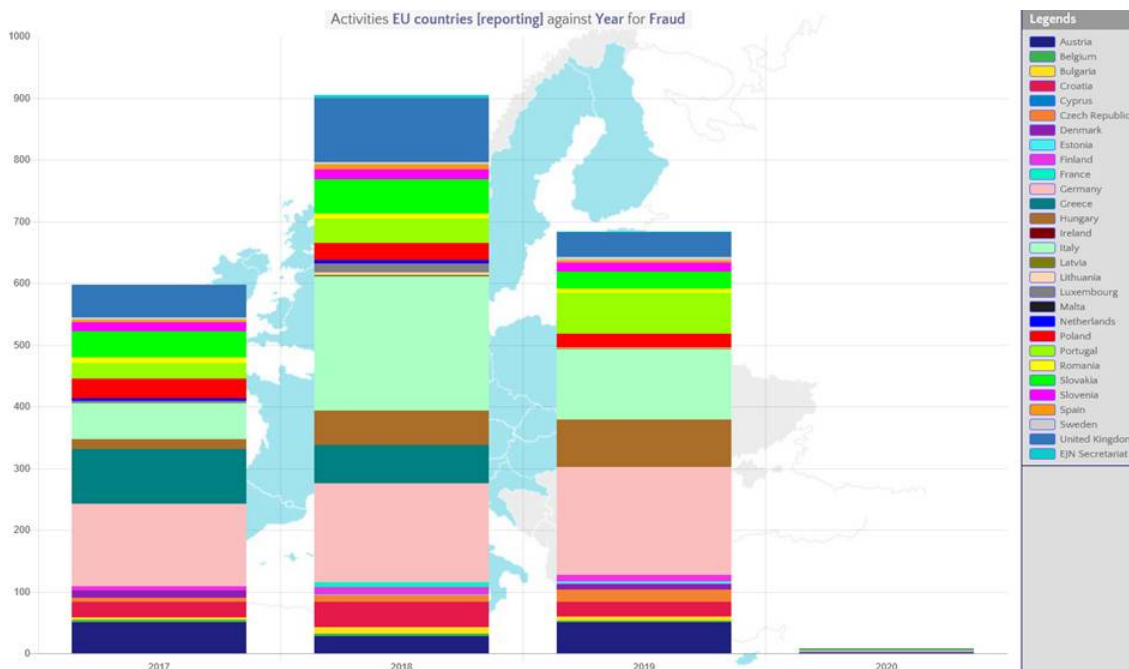
**Total amount of cases related to Corruption for 2017 – 2020: 348 cases**

2017 – 95 cases

2018 – 160 cases

2019 – 91 cases (partial reporting)

2020 – 2 cases (to date)



**Total number of cases referring to Fraud for 2017-2020: 2195 cases**

2017 – 598 cases

2018 – 905 cases

2019 – 684 cases (partial reporting)

2020 – 8 cases (to date)



**Total amount of cases related to Financial crimes: 1584 cases**

2017 – 581 cases

2018 – 717 cases

2019 – 278 cases (partial reporting)

2020 – 8 cases (to date)

#### b. Territorial competence

While the competence of the EPPO is limited<sup>6</sup>, at the moment, to the territorial and active personal jurisdiction as well as for offences that were committed outside the territory by a person subject to the EU Staff Regulations or to the Conditions of Employment<sup>7</sup> of the 22 Member States that participate in the “enhanced cooperation”, the EJM has competence to assist in cross-border cooperation is wider and includes all EU Members States.

Since the EJM has a longstanding expertise in facilitating judicial cooperation for cross-border investigations, the network is a natural partner to ensure that the EPPO investigations are efficient and effective.

<sup>6</sup> EPPO Regulation, art. 23

<sup>7</sup> Council Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385/62).

## How could the EJM and the EPPO cooperate?

As stated by the European Chief Prosecutor<sup>8</sup>, the EPPO needs to establish close cooperation with its partners and work together as a team, including all the professionals in the judiciary across Europe and non-EU countries. The EJM and the EPPO could cooperate to ensure that investigations and prosecutions are carried out in the most efficient manner.

In principle, the EJM has identified synergies with the EPPO in different scenarios:

### *Cooperation related to participating Member States*

The innovative structure of the EPPO brings with itself new challenges in the area of international judicial cooperation. During the discussions in the 52<sup>nd</sup> Plenary Meeting of the European Judicial Network, the EJM experts concluded that the structure of the EPPO demands a vertical mode of cooperation and not horizontal as it is currently the case with cross-border investigations.

In order to ensure that the Delegated Prosecutors and the EJM Contact Points exchange information, the EJM concluded that where possible, a number of Delegated Prosecutors could be nominated EJM Contact Points. To further ensure the flow of information the EJM Contact Points should have secure communication channels with the EPPO and be connected to the EPPO case management system, as the EJM has large experience in facilitating the flow of information and direct contacts.

Furthermore, in line with their role, the EJM Contact Points could provide advice with measures for judicial cooperation and the different legal instruments and its forms. During the investigations, the EJM could also act as relay in mixed cases where a large number of inextricable linked offences are present.

### *Cooperation related to non-participating Member States:*

It was agreed during the discussions in the 52<sup>nd</sup> Plenary Meeting that the EJM would have a central role, as the Contact Points in the non-participating countries could cooperate by providing information as well as assisting with cross-border measures. As identified by the representative of the European Commission, the EJM should be an EPPO partner in the Member States.

Since the EU legal instruments will be applied for investigations involving the Member States, the EJM would be in an expert position to facilitate the preparation, follow up and execution of orders and requests.

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<sup>8</sup> 53<sup>rd</sup> Plenary Meeting of the European Judicial Network under the Finnish Presidency of the Council of the European Union, 20 – 22 November 2019.



#### *Cooperation related to non-EU countries and International Organisations:*

As declared by the European Chief Prosecutor in the 53<sup>rd</sup> Plenary Meeting of the European Judicial Network, the EPPO also needs to establish cooperation with non-EU countries and international organisations. Article 104 of the EPPO Regulation provides the framework for developing such relationships. It also has provisions on the cooperation between the EPPO and non-EU countries and international organisations.

When requiring measures beyond the EU, the EPPO will rely on the existing legal instruments in place and the expertise of the national authorities and particularly the EJN to ensure that the requests for assistance made under its investigations are facilitated. It should be highlighted that when using bilateral or multilateral treaties the non-EU countries should be notified and accept that the procedures will be carried out by the EPPO. Only by fulfilling those requirements, the evidence could be admitted for the proceedings.

Furthermore, the EPPO would like to establish relations with the Council of Europe and the United Nations to acquire recognition to act as a prosecutorial authority to facilitate obtaining evidence within its investigations and prosecutions. The present EJN Contact Points from the United States of America and the Council of Europe have shown willingness to cooperate with the EPPO in its investigations.

#### *Complementary actions to prepare Member States to cooperate with the EPPO*

##### Awareness raising

The EJN is a valuable platform to disseminate information on international judicial cooperation to practitioners at national level. The EJN solidifies the European Union values and creates mutual trust among the Member States. With the goal to raise awareness regarding the competence and functioning of the EPPO together with exploring the synergies between the EJN and the EPPO, Contact Points concluded that the EPPO could be discussed during EJN Regional and National Meetings.

##### Trainings

In line with article 4(3) of the EJN Decision<sup>9</sup> the EJN Contact Points should receive trainings first to enable them to prepare practitioners to collaborate with the EPPO investigations. Therefore, if possible together with the EJN, the EJN should receive training to ensure that all matters within the

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<sup>9</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. Article 4(3) reads as follows “At their respective level the contact points shall be involved in and promote the organisation of training sessions on judicial cooperation for the benefit of the competent authorities of their Member State, where appropriate in cooperation with the European Judicial Training Network.”

competence of the EPPO are discussed and working structures within their Member States are clarified. As per the information received, the European Commission has planned to support financially training for practitioners in the coming years.

#### Appoint specialised EJM Contact Points for the EPPO

The EJM Contact Points agreed that not only appointing Delegated Prosecutors as EJM Contact Points could be fruitful to ensure the flow of communication with the EPPO, but also to indicate where EJM Contact Points are specialised in matters related to the EPPO competence. If necessary, the Member States should appoint Contact Points with this particular set of expertise.

#### Information about the EPPO in the EJM website

The EJM website offers a range of functional tools to facilitate the work of practitioners in the area of judicial cooperation in criminal matters and valuable information for different serious crimes. The information on the website is regularly updated by the EJM Tool Correspondents.

The EJM website has become essential for all EU practitioners. Hence, the EJM should include a section with information about the EPPO and its related legal instruments as well as information – *with a similar structure to the Fiches Belges* - providing details on the national implementation of the EPPO Regulation and other relevant data that could help practitioners.

Besides, the Judicial Library should not only include the notifications of the Member States clarifying the manner in which the EPPO was implemented into their national law but also any available national legislation and/or relevant case-law in the future.