

**52nd Plenary meeting of the  
European Judicial Network  
26-28 November 2019**

**COVER NOTE**

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**From:** EJM Secretariat

**To:** EJM Contact Points

**Subject:** The future relations between the EJM and the EPPO

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The EJM Contact Points will find hereunder a discussion paper on the possible areas of cooperation between the EJM and the EPPO.

## EJN and EPPO:

### Exploring Future Cooperation

#### I. The European Public Prosecutor's Office

The concept of the European Public Prosecutor's Office (EPPO), a dedicated independent EU body combating crimes affecting the financial interests of the Union, was cemented already in the Treaty on the Functioning of the EU (TFEU).<sup>1</sup> The concept materialised, in October 2017, by the adoption of the [EPPO Regulation](#),<sup>2</sup> creating and providing the legal basis for the EPPO as a body of the EU with legal personality.<sup>3</sup> Currently, 22 Member States<sup>4</sup> participate in this enhanced cooperation. The EPPO is expected to be operational, with its central office in Luxembourg, by November 2020, 3 years from the entry into force of the EPPO Regulation.

#### Competence of the EPPO

- *Material Competence*

The EPPO has the competence to investigate and prosecute, through the national courts of the Member States, **crimes against the Union's financial interests**. These crimes involve fraud normally above EUR 10.000, corruption and **cross-border VAT fraud** above 10 Million Euros.<sup>5</sup> Furthermore, the EPPO has the competence with regard to inextricably linked offences; even when the maximum sanction of the linked offence is equal or greater than the offence affecting the financial interests of the EU, as long as the former has been instrumental to commit the latter. The EPPO could even have

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<sup>1</sup> 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>2</sup> Council Regulation 2017/1939, 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

<sup>3</sup> EPPO Regulation, Art. 3.

<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> EPPO Regulation, Arts. 4, 22. *See also* EPPO Regulation, Art. 27(8). The criminal offences affecting the Union's financial interests are defined in Directive 2017/1371, 5 July 2017, on the fight against fraud to the Union's financial interests by means of criminal law.

competence in some cases where the crime does not reach the necessary threshold if it is better placed to investigate and prosecute the crime.<sup>6</sup>

The EPPO material competence may be extended to crimes having a **cross-border dimension** by a unanimous decision of the European Council.<sup>7</sup> At the moment, the European Commission has proposed to extend the competence of the EPPO to **cross-border terrorist crimes**, to link potentially fragmented national investigations.<sup>8</sup>

- *Territorial and Personal Competence*

The competence of the EPPO is limited to crimes that were committed in whole or in part within the **territory of a Member States which participate in enhanced cooperation** on the establishment of the EPPO or to the **nationals of these Member States** if they have extraterritorial jurisdiction for the same crime.<sup>9</sup>



To date, 22 Member States have joined in the EPPO: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Spain and Slovenia. Other EU states may join at any time.

### **Structure of the EPPO and its functioning**

The EPPO is structurally independent from any other EU institutions or services; it is an indivisible Union body with a decentralised structure, composed of two levels:

- **The Central Office:** the central will be seated in Luxembourg and consists of the European Chief Prosecutor, its two Deputies, the European Prosecutors (one per participating EU Member State) and the Administrative Director; and
- **The European Delegated Prosecutors:** a decentralised level, located in the participating EU Member States. The European Delegated Prosecutors may also exercise functions as

<sup>6</sup> EPPO Regulation, Art. 25, Recitals 56, 60 (“The EPPO could appear to be better placed, inter alia, where it would be more effective to let the EPPO investigate and prosecute the respective criminal offence due to its transnational nature and scale, where the offence involves a criminal organisation, or where a specific type of offence could be a serious threat to the Union’s financial interests or the Union institutions’ credit and Union citizens’ confidence. In such a case the EPPO should be able to exercise its competence with the consent given by the competent national authorities of the Member State(s) where damage to such other victim(s) occurred.”)

<sup>7</sup> TFEU, Art. 86(4).

<sup>8</sup> European Commission press release “A reinforced European Public Prosecutor's Office to fight cross-border terrorism” Strasbourg, 12 September 2018.

[http://europa.eu/rapid/press-release\\_IP-18-5682\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5682_en.htm)

<sup>9</sup> EPPO Regulation Arts. 2(1), 23(a), 23(b), Recital 64 (“The EPPO should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States.”) See also Art. 23(c) with regards to persons who were subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence.

national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation.<sup>10</sup>

The Central Office of the EPPO, via its Permanent Chambers, is in charge of monitoring and directing the investigations and prosecutions conducted by the European Delegated Prosecutors and of ensuring the coordination in cross-border cases and the coherence of the activities of the EPPO.

The European Prosecutors, on behalf of the relevant Permanent Chamber, are to supervise the investigations and prosecutions (conducted by the European Delegated Prosecutors) in their Member State of origin. They are the bridge between the European Delegated Prosecutors and the competent Permanent Chamber. In addition, where the national law provides for an internal review of certain acts within the structure of the national prosecutor's office, the review of such decisions taken by the European Delegated Prosecutor should fall under the supervision powers of the supervising European Prosecutor.

Finally, the European Delegated Prosecutors are to be equipped with the same powers as national prosecutors and would be responsible for the investigations and prosecutions on behalf of the EPPO in their respective Member States.

## **II. Cooperation with the EPPO**

### **Background**

- *The EPPO*

The EPPO Regulation provides for a system of shared competence between the EPPO and the national authorities of the participating Member States, supporting and informing each other.<sup>11</sup> Institutions, bodies, offices and agencies of the Union, as well as national authorities, must report without undue delay any information to the EPPO about offences in respect of which it could exercise its competence. It is up to the Member States to decide whether to set up a direct or centralised system.<sup>12</sup>

With regard to Eurojust specifically, the EPPO shall establish and maintain a close relationship based on mutual cooperation within their respective mandates and on the development of operational, administrative and management links.<sup>13</sup>

Importantly, the EPPO may have working arrangements with Member States which do not take part in the enhanced cooperation of the EPPO, in particular with regard to the exchange of strategic information and the secondment of liaison officers to the EPPO.<sup>14</sup> In this context, the Commission may submit proposal for rules to ensure effective judicial cooperation in criminal matters.<sup>15</sup>

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<sup>10</sup> EPPO Regulation, Art. 13(3).

<sup>11</sup> EPPO Regulation, Recitals 13, 14.

<sup>12</sup> EPPO Regulation, Art. 99, Recitals 49, 52, 69, 100.

<sup>13</sup> EPPO Regulation, Art. 100, Recital 10.

<sup>14</sup> EPPO Regulation, Arts. 99(3), 105.

<sup>15</sup> EPPO Regulation, Recital 110.

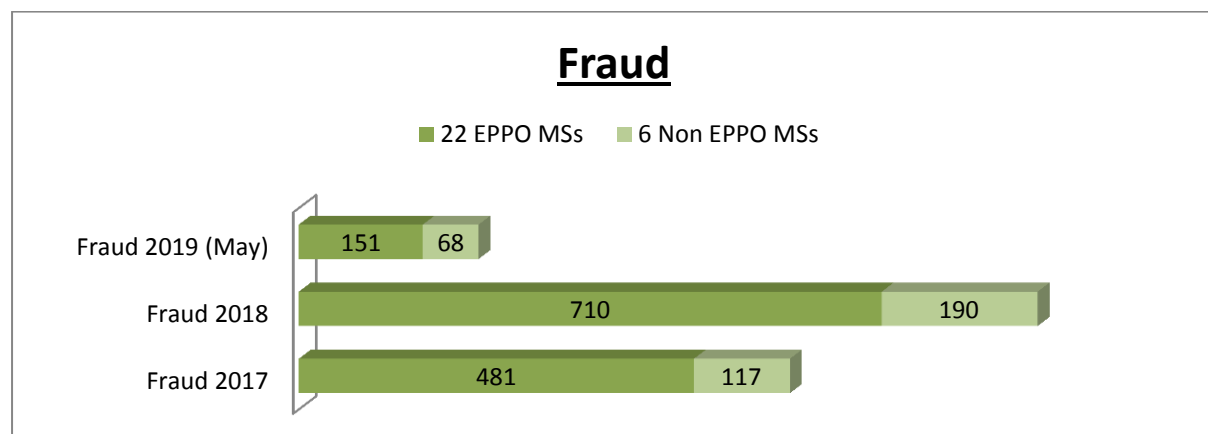
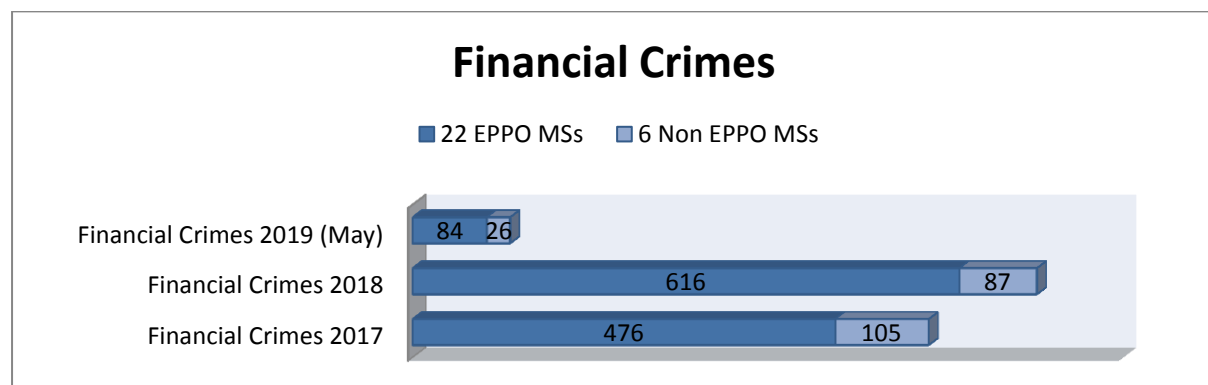
- *The EJM*

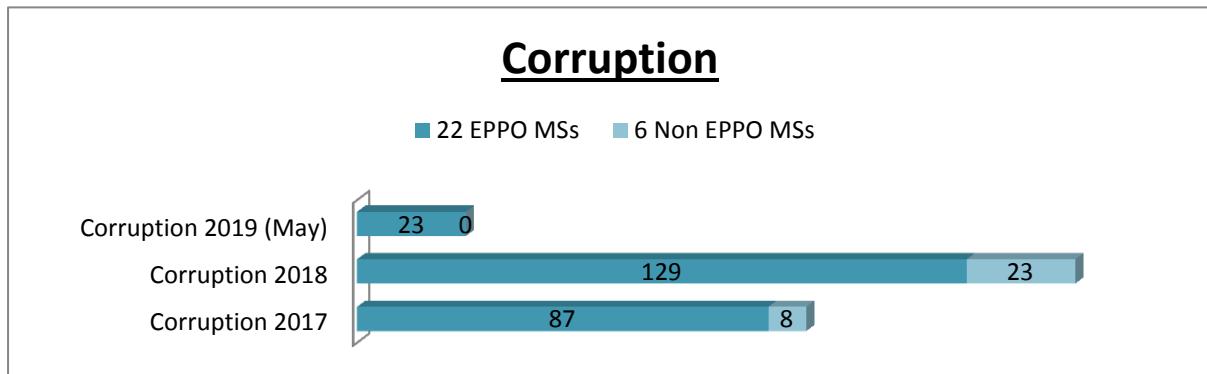
The EJM Contact Points are experts in judicial cooperation in criminal matters who, in addition to their work at the national level, act as active intermediaries and facilitate judicial cross-border cooperation within the EU. For this purpose, the EJM Contact Points build mutual trust with colleagues 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.

- *Shared material competence*

Considering the broad range of crimes in which EJM Contact Points support, it is assumed that the EJM Contact Points are today assisting investigations that would in the future fall within the competence of the EPPO. Indeed, EJM 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 EJM Contact Points, the following charts depict the *minimum* number of cases in which the EJM 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 EJM Contact Points assist very often with cases that could fall within the competence of the EPPO.





However, it should be kept in mind on the other hand that the EPPO competence, except for serious VAT fraud, is not limited to cross-border investigations.

- *Shared territorial competence*

While the competence of the EPPO is limited<sup>16</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>17</sup> of the 22 Member States that participate in the “enhanced cooperation”, the EJP has competence to assist in cross-border cooperation is wider and includes all EU Members States.



### EJP Cooperation with EPPO

In light of the above, it is important to analyse and discuss the areas where the EJP and the EPPO could work together and to assist each other in strengthening the investigations of the crimes against the EU financial interests.

<sup>16</sup> EPPO Regulation, art. 23

<sup>17</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](#)).

Indeed, during the 40<sup>th</sup> Regular meeting of the EJM in The Hague, on 20 February 2019, the future relations between the EJM and the EPPO were discussed. During the meeting it was noted that in many participating Members States steps were taken for selecting candidates for the positions of European Prosecutors and European Delegated Prosecutors.

It was apparent during the 40<sup>th</sup> Regular meeting that there is a strong will in the EJM to cooperate with the EPPO. However, Contact Points noted that such cooperation might be limited to the operational level and that a closer evaluation of the form of cooperation with the EPPO could be made after the EPPO become operational. The Contact Points also concluded that it is not necessary to have all the European Delegated Prosecutors appointed also as EJM Contact Points, but rather that there should be a Contact Point from the EPPO, in the same way that the Commission, the Council Secretariat and OLAF have a contact point.

**The EJM Contact Points are invited to discuss further how the EJM could/is expected to support the EPPO to achieve its goal in defending the financial interests of the European Union.**

- ***Providing assistance to the EPPO***

According to the EPPO Regulation, EU institutions and LEAs of Member States are required to report to the EPPO any criminal offence for which the EPPO could exercise its competence. In addition, the national authorities are required to actively assist and support the investigations and prosecutions of the EPPO.<sup>18</sup> In cross-border cases, the handling European Delegated Prosecutor should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States.<sup>19</sup>

Bearing this in mind:

- How can the EJM Contact Points support the EPPO investigations?
- Could the EJM Contact Points play a role in ensuring efficient cooperation between the EPPO and the national authorities?
- Situations may occur where the EJM CPs are involved in a national investigation and it is not clear whether the EPPO has competence or not to investigate the crime, e.g. due to uncertainty regarding the criterion of “inextricable link”<sup>20</sup>. In which manner and format can the EJM provide assistance, if any, to the EPPO in such scenarios?
- With the aim of facilitating cooperation and the exchange of information, should the EJM establish a methodology for the collaboration with the EPPO<sup>21</sup>? What would be the expected synergies? Should either one or several European Prosecutors or one or several Delegated Prosecutors be nominated EJM Contact Points?<sup>22</sup>

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<sup>18</sup> EPPO Regulation, Arts. 5(6), 24.

<sup>19</sup> EPPO Regulation, Art. 31, Recital 72.

<sup>20</sup> EPPO Regulation, Arts. 22(3), 25(3), 25(5), 27, 34.

<sup>21</sup> EPPO Regulation, Art. 99(3).

<sup>22</sup> As per the discussion during the 40<sup>th</sup> Regular meeting of the European Judicial Network

- Would it be fruitful that representatives of the EPPO are invited to EJN Plenary meetings or invited to or co-organise EJN National or Regional meetings, for discussions of common interest, key investigative measures for the crime types in question, raising awareness about the work of the EPPO, share best practices and exchange of information?
- ***Providing assistance regarding judicial cooperation with “non-EPPO States and non-EU Countries”***

As mentioned above, the EJN Contact Points have an advantage with regard to the judicial cooperation with Member States, which are not part of the “enhanced cooperation”.

- In which manner and format can the EJN provide assistance to the EPPO in such scenarios? (e.g., assistance with transmission of mutual legal assistance requests)
- How could the EJN Contact Points in Candidate, Associate and other Non-EU Countries be involved?
- Should the EJN website, e.g. the Atlas tool, provide information to assist the EPPO in case of cross-border investigations that involve “non-EPPO States”? If so, what kind of information should be provided?
- ***EJN preparations for the EPPO***

The EJN 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 EJN Tool Correspondents. The EJN website has become essential for all EU practitioners and it is frequently consulted throughout the whole EU and beyond.

- During the 40th Regular meeting it was stated that the EJN website should reflect information on the EPPO and its competences. Which kind of information would be useful to add in the EJN website in preparation for the EPPO and for cooperation with it?
- How could the EJN provide awareness/trainings to the EPPO regarding the available tools in the EJN website?
- Should the EPPO case management system be linked to the EJN (EJN Secure Telecommunications Connection) as suggested in the EPPO Regulation Art. 44(3)?
- Which kind of trainings would be useful for the EJN Contact Points to attend or to provide to their colleagues in the Member States in preparation for the start of the functioning of the EPPO?