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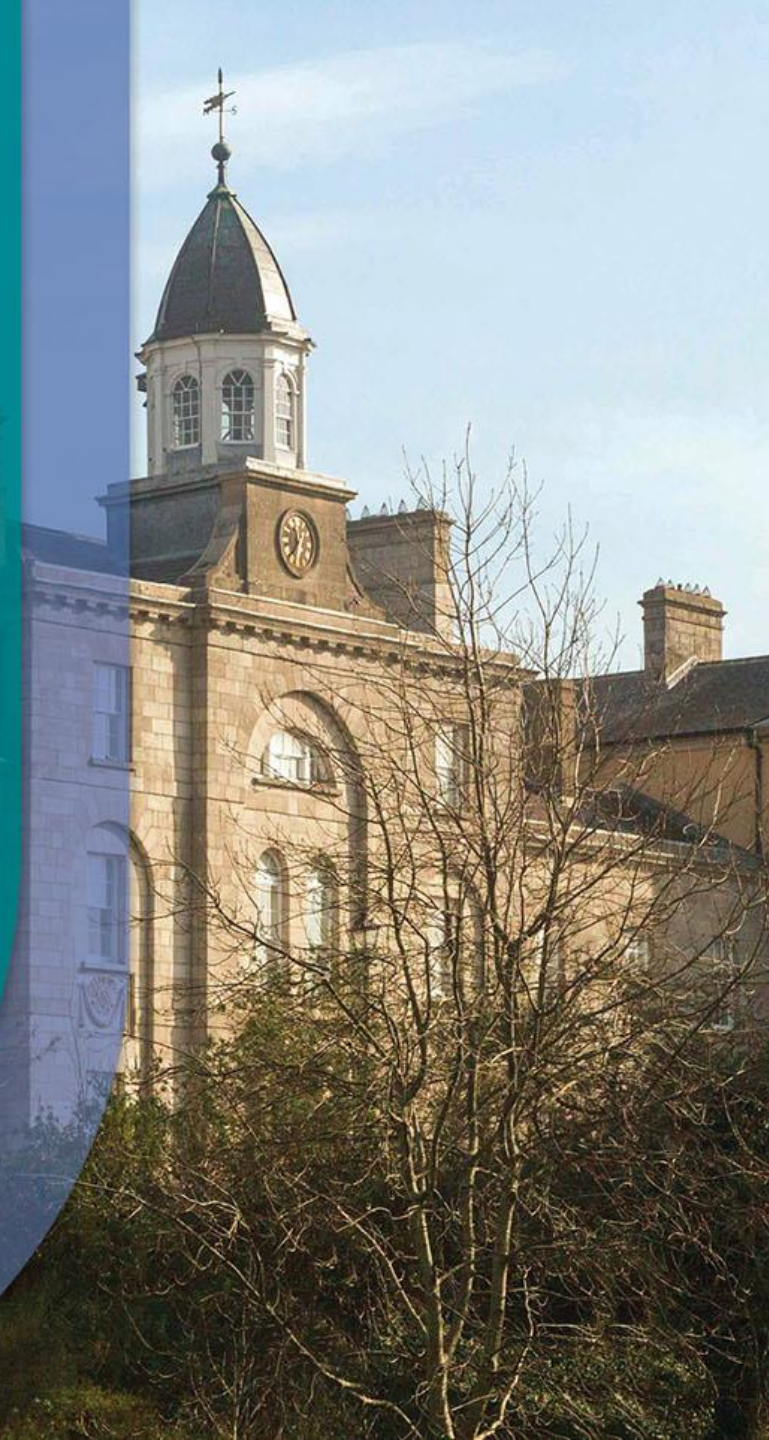
Stiúrthóra Ionchúiseamh Poiblí
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Introduction

The European Public Prosecutor's Office (the 'EPPO')

- A. Background
- B. Competence
- C. Structure
- D. Investigations
- E. Prosecutions
- F. What's next?

A. Background

EPPO is a unique, supranational prosecutor's office and European Union body grounded in [Article 86](#) of the [Treaty on the functioning of the European Union \(TFEU\)](#) which states that:

'In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust'.

The '[EPPO Regulation](#)' itself from 2017 (European Council Regulation (EU) 2017/1939 of 12 October 2017) established EPPO and sets the basis for its functioning. This includes the requirement in participating Member States, to investigate, prosecute and bring to judgement perpetrators of, and accomplices in, offences against the financial interests of the European Union ([Article 4, EPPO Regulation](#)).

Background (2)

The '**PIF Directive**' ('Protection des intérêts financiers') (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) limits the offences that can be investigated by the EPPO to include:

- **Cross-border VAT fraud** involving damages of at least €10 million & **other types of fraud** affecting the EU's financial interests.
- **Corruption** that damages, or is likely to damage, the EU's financial interests.
- **Misappropriation** of EU funds or assets by a public official.
- **Money laundering** derived from criminal offences covered by the PIF Directive
- **Participation in a criminal organisation**, if the focus of the criminal activity is to commit crimes affecting the EU's financial interests.
- **Other offences inextricably linked to one of the previous categories**, if they damage or risk damaging the EU's financial interests.

Background (3)

Member States – who is in?

Of the 27 EU Member States:

- 22 have joined EPPO including the only other common law jurisdiction, Cyprus.
- 3 have not joined EPPO (Hungary, Poland, Sweden).
- 2 have exercised opt outs (Denmark and Ireland).

Background (4)

Member States - who is out?

Criticism for non-participation

EU chief prosecutor accuses Ireland of delaying financial crime investigation

'We had to postpone everything because we didn't receive this answer,' says head of European Public Prosecutor Office'

(Irish Times 1st June 2022)

B. Competence

Article 25 EPPO Regulation

EPPO can exercise a binding power on participating Member States which allows EPPO to initiate or to take over an investigation into PIF offences.

In certain additional circumstances, EPPO has discretion to exercise its competence including, e.g. where the damage to the EU's financial interests is below €10,000 but the case has repercussions at EU level, or if EU officials could be suspected of having committed the offence.

EPPO can choose not to exercise its competence if the damage caused to the EU's financial interests would be less than the damage to another victim.

Competence (2)

Examples of activity undertaken by EPPO in September 2023 include:

- Filing charges in a case in Latvia involving a project funded by the EU's European Neighbourhood Instrument.
- Undertaking searches as part of an investigation into a University in Romania and suspected fraud involving Erasmus funds.
- Charging the former president of the football club Dinamo București for fraud following house searches in Romania and France in May this year, in an investigation into a €30 million fraud involving EU and national funds.
- Carrying out searches at the General Inspectorate of Aviation within the Romanian Ministry of Interior, in an ongoing investigation concerning public procurement.
- EPPO has also been involved in the conviction of three individuals in Germany of import smuggling of luxury cars and organised tax evasion following an investigation led by EPPO and carried out by the Hanover Customs Investigation Office.

C. Structure

Article 8 EPPO Regulation- EPPO operates on two levels:

- **Central EU level** in Luxembourg and
- **Decentralised level** in each of the 22 member states

Despite its two levels, EPPO is an indivisible EU body. Its case management system, which is the repository of all operational information, allows a case to virtually go back and forth between the decentralised levels and central level of EPPO.

Structure (2)

Central Level (Articles 8, 9, 11 and 12 EPPO Regulation) consisting of

- European Chief Prosecutor
- Two deputy Chief Prosecutors
- 22 European Prosecutors ('EPs') for each Member State
 - who together form a "College",
 - which is responsible for operational oversight and strategic matters,
 - but cannot take operational decisions in individual cases.

The 22 EPs also supervise investigations conducted in their own Member States.

Structure (3)

Sitting below the College are:

- 15 Permanent Chambers ([Article 10 EPPO Regulation](#))
- Comprised of 3 European Prosecutors who monitor and direct on cases randomly allocated and take the “main” decisions.
- Additionally, the EP supervising an investigation or prosecution in an individual case (i.e., the EP from the Member State of the EDP handling the case) takes part in the deliberations and decision-making of the Permanent Chamber in that individual case.

Main decisions include whether to:

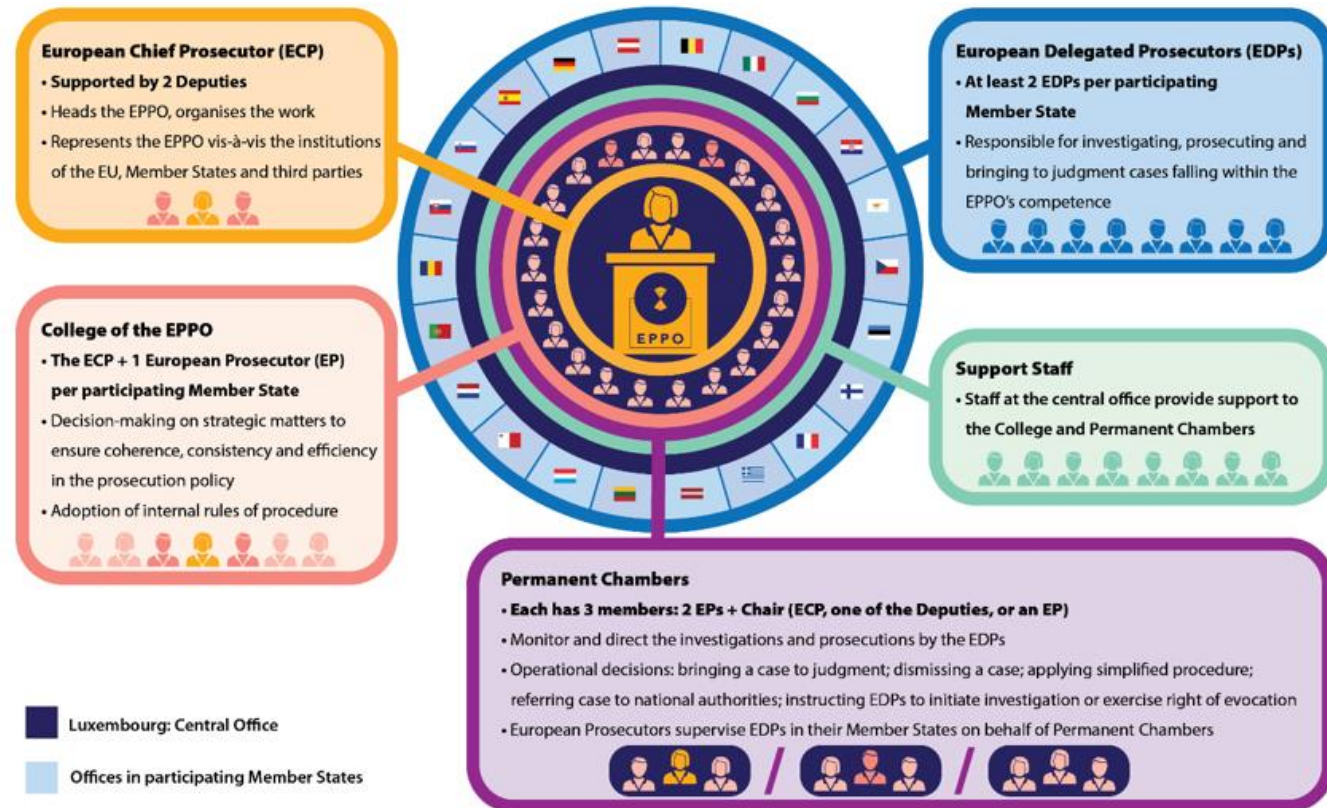
- Instruct a European Delegated Prosecutor to initiate or take over an investigation
- Refer a case to the national authorities
- Dismiss a case
- Lodge an appeal

Structure (4)

Decentralised Level

- Embedded in the participating country's justice system.
- Minimum of two European Delegated Prosecutors (EDPs) for each participating Member State ([Article 13 EPPO Regulation](#)).
- Must be active members of the public prosecution service or the judiciary.
- Shall act on behalf of EPPO in Member States with national powers to investigate and prosecute, in addition to powers conferred by the EPPO Regulation

Structure (5) (From EPPO website)



Structure (6)

Budget & Costs

- €65.5 million initial adopted budget for 2023.
- EPPO covers the salaries of EPs and EDPs.
- Member States are obliged to provide EDPs with resources and necessary equipment including the cost of a regional office ([Article 96\(6\) EPPO Regulation](#)).

D. Investigations

Articles 26-33 and 35 EPPO Regulation

1. Information comes to EPPO
 - From national authorities
 - From Institutions, Bodies, Offices or Agencies of the EU
 - From private parties
2. All information is registered in the case management system
 - Assigned to an EDP in a MS
3. EDP investigates from start to finish
 - Monitored by a Permanent Chamber in Luxembourg
 - Supported by national police, customs, revenue etc.
 - Supported by EPPO's financial investigators and case analysts
 - Assigning investigative measures to EDPs in other MS during cross-border investigations
4. Decision on prosecution adopted by Permanent Chamber
 - Case is tried before the national courts

(from EPPO Operations and College support)

Investigations (2)

Number of Operators in the PIF/Fraud space including

- OLAF
- Eurojust
- Europol
- Member States
- EPPO

Relations between some organizations and EPPO governed by [Articles 99-105 EPPO Regulation](#)

E. Prosecutions –

- (i) offences
- (ii) admissibility of evidence and
- (iii) question to ECJ

i. Offences - reliance on domestic criminal offences

Section 3 of the Criminal Justice (Theft and Fraud Offences)(Amendment) Act 2021 states that:

The Principal Act is amended by the substitution of the following section for section 42:

“42. (1) Subject to subsection (2), a person who intentionally commits any fraud affecting the financial interests of the European Union is guilty of an offence and is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both.

Where an offence under subsection (1) relates to acts or omissions to which Article 3(2)(d) of the Directive applies, the offence is not committed unless such acts or omissions are connected with the territory of two or more Member States and involve a total damage of not less than €10,000,000.”

Prosecutions (2)

i. Offences - reliance on domestic criminal offences (continued)

Section 5 of the [Criminal Justice \(Theft and Fraud Offences\)\(Amendment\) Act 2021](#) provides for offences by corporate bodies and states that:

“Where a relevant offence is committed for the benefit of a body corporate by a relevant person and the commission of the relevant offence is attributable to the failure, by a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, to exercise, at the time of the commission of the relevant offence and in all the circumstances of the case, the requisite degree of supervision or control of the relevant person, the body corporate shall be guilty of an offence.”

Relevant offences are also set out under [Section 5](#) of the 2021 Act and are-

- (a) an offence under section 42 or 42A,
- (b) a money laundering offence involving property derived from the proceeds of an offence referred to in paragraph (a), (c) or (d),
- (c) a corruption offence that damages, or is likely to damage, the financial interests of the European Union, or
- (d) an offence of inciting, aiding and abetting, or attempting the commission of an offence referred to in paragraph (a), (b) or (c).

Prosecutions (3)

ii. Admissibility of Evidence

Articles 34, 36, 37, 39 and 40 of the [EPPA Regulation](#) set out the rules on prosecutions.

Article 37 states that:

“Evidence presented by the prosecutors of the EPPA or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.

The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPA shall not be affected by this Regulation”.

EDPs can directly execute measures in any of the 22 participating Member States.

Prosecutions (4)

iii. Appeal and Question to European Court of Justice for Preliminary Ruling - Case C-281/22 *G.K*

Last year the ECJ was invited, for the first time, to interpret the EPPO Regulation.

The core question in this case was how to interpret [Articles 31\(3\) and Article 32](#) of the [EPPO Regulation](#) on judicial authorisation in cross border cases, in order to define the scope of the appeal to be conducted by the judge in the Member State of the assisting EDP.

Prosecutions (5)

iii. Appeal and Question to European Court of Justice for Preliminary Ruling (continued)

The opinion of the Advocate General which issued on 22nd June 2023 stated that:

“Article 31(3) of the EPPO Regulation should be understood as allowing the court of the Member State of the assisting EDP to review only the aspects related to the execution of an investigative measure, while accepting the assessment by the handling EDP that the measure is justified, whether or not the latter is backed by prior judicial authorisation of the court of the Member State of the handling EDP. That interpretation is not contrary to the wording of Article 31(3) and responds better to the objective of the EPPO Regulation to create an efficient system in the fight against crimes affecting the EU’s financial interests”.

F. What's Next?

- CJEU Judgement ([C-612/15 Kolev](#)) requires national laws to be designed in such a way as to avoid entailing a systemic risk that criminal laws affecting the financial interests of the EU go unpunished. (to give effect to [Article 325 TFEU](#)).
- Digitisation has facilitated transnational crime and EU legislative measures seek to keep up.
- Growth of EPPO? The interpretative road ahead...