

# WEBINAR

## European Public Prosecutor's Office – latest developments for European lawyers

28 SEPTEMBER 2026, 10:00-13:00 CET



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28 September 2026

10:00 – 13:00 CET

Online on Zoom



#TRAVAR2 Project



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# WEBINAR

## European Public Prosecutor's Office – latest developments for European lawyers

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Nastasja Fuxa

**Recent legislative and policy developments**



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# Overview of the presentation



1. What is the EPPO and why do we need it?
2. HU joining the EPPO and the end of enhanced cooperation
3. The Commission's first EPPO evaluation
4. Review of the EU's anti-fraud architecture (AFA) + possible revision of the EPPO Regulation
5. Intended future negotiations of international agreements for cooperation between the EPPO and third countries

# What is the EPPO?



**“The EPPO shall be responsible for **investigating, prosecuting** and **bringing to judgment** the perpetrators of, and accomplices to, **criminal offences affecting the financial interests of the Union**”**

Art. 4 Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the **European Public Prosecutor’s Office**; Article 86 TFEU

- Established with Regulation (EU) 2017/1939
- Initially a measure of enhanced cooperation
- Operational since 1 June 2021
- Currently 25 participating MS

# What is the EPPO competent for?



- The EPPO investigates, prosecutes and brings to judgment crimes against the EU budget, such as defined in the 'PIF Directive':
  - ❖ Fraud, including complex VAT fraud
  - ❖ Corruption
  - ❖ Money laundering
  - ❖ Misappropriation of funds or assets
- Offences regarding the participation in a criminal organisation, if the focus of the criminal activity is to commit a PIF crime
- Inextricably linked offences

# The role of the Commission ('internal' & 'external')



- Budget
- Reporting - cooperation under EPPO-COM Agreement
- Monitor 'implementation'/application of the Regulation by MS (infringements? revision?)
- Monitor implementation of the PIF Directive by MS
- Secretariat of the selection panel for European Prosecutors/ECP
- External representation of the Union - EPPO's relations with third countries

# HU joining the EPPO and the end of enhanced cooperation



- HU request to join the EPPO made on 29 May 2026
- COM Decision confirming HU's participation of 10 July 2026
- Only DK and IE, which have opt-outs from the area of freedom, security, and justice, are now not participating in the EPPO
- End of enhanced cooperation (COM Notice C/2026/3792) – EPPO Regulation now fully part of the *acquis*
- Participation in the EPPO will be mandatory for accession countries

# The Commission's first EPPO evaluation - I



- Evaluation obligation in Article 119 EPPO Regulation
- Concerns the **implementation and impact of the EPPO Regulation**, as well as the effectiveness and efficiency of the EPPO and its working practices
- **Commission report COM(2026) 491 final of 18 September 2026**

Overall, the evaluation assesses the implementation and impact of the EPPO Regulation very positively, highlighting the EPPO's successful operations and the significant added value it brings in complex cross-border cases, while at the same time mentioning areas for improvement.

# The Commission's first EPPO evaluation - II



## Key findings of the evaluation

- **Effectiveness:**

- + *“The EPPO Regulation has been effective in establishing and operationalising a new, well-functioning EU-level investigative and prosecutorial framework for PIF offences.”*
- ~ *“Consistency depends to a large extent on the implementation of the Regulation by Member States. The evaluation notes some areas where uneven implementation has prevented the EPPO from fully exercising its investigative powers.”*

# The Commission's first EPPO evaluation - III



## Key findings of the evaluation

- **Efficiency:**

- + *“The EPPO has generally used its allocated resources efficiently to attain its objectives, in a context where the extent of its operational activity far exceeded expectations.”*

- “The overall benefits of the EPPO could significantly outweigh the costs related to its establishment and functioning.”*

- ~ *“Challenges in the EPPO’s work that impact its efficiency derive from the inadequate implementation of the EPPO Regulation in the Member States.” (e.g. no direct reporting to the EPPO)*

# The Commission's first EPPO evaluation - IV



## Key findings of the evaluation

- Internal coherence:

- + *“The EPPO Regulation and its implementation have proven to be coherent overall, both internally and externally, despite some gaps, inconsistencies and/or ambiguities.”*
- ~ Difficulty in calculating the damage threshold of EUR 10 million in cross-border VAT fraud
  - Notion of the ‘focus’ of activity of criminal organisations
  - Complex rules regarding inextricably linked offences
  - Delineation of the EPPO’s data protection regime vis-à-vis national law

# The Commission's first EPPO evaluation - V



## Key findings of the evaluation

- **External coherence – EU cooperation frameworks:**
  - + *“EPPO’s mandate is generally consistent with the mandates of OLAF, Europol, Eurojust and other relevant EU bodies. Overall, cooperation frameworks broadly function well.”*
  - ~ Remaining challenges mainly concern (i) information exchange via a hit/no-hit system, (ii) complexities in the legal framework regarding cooperation between the EPPO and OLAF.

# The Commission's first EPPO evaluation - VI



## Key findings of the evaluation

- **External coherence – procedural safeguards:**

- + No major structural non-compliance issues were identified regarding EPPO Regulation's coherence with the EU Charter of FR, the ECHR, the procedural rights Directives, and the case law of the CJEU and European Court of Human Rights.
- ~ *“Differences in national procedural safeguards and shortcomings in the transposition of the procedural rights Directives affect the uniformity of defence rights in EPPO proceedings, particularly on legal aid, access to case files, translation practices, and standards of pre-trial detention.”*

Area for improvement: procedural safeguards for suspects and accused persons

# The Commission's first EPPO evaluation - VII



## Key findings of the evaluation

- **Added value:**

*“The evaluation concludes that the EPPO provides significant EU added value compared to what Member States could have achieved acting alone, while acknowledging that the absence of precise data on the extent to which PIF crimes were investigated and prosecuted before the EPPO means it is not possible to exactly quantify benefits and outcomes.”*

# AFA review and possible revision of the EPPO Regulation



- 2025 COM White Paper for the Anti-fraud Architecture Review

The Commission's aim is to enhance the effectiveness of the actions of the key anti-fraud actors involved in the protection of the Union budget, avoid overlaps, while improving cooperation and information sharing among them, and make better use of financial and human resources.

- COM proposals for the revision of the mandates of Eurojust and Europol (24 June 2026)
- Results of the AFA review will be presented in a Commission Communication at the end of 2026 that may be accompanied, as appropriate, by possible legislative proposals related to the key AFA actors

Possible proposals for the revision of the EPPO Regulation, the PIF Directive and the OLAF Regulation

# Intended future negotiations of international agreements for cooperation between the EPPO and third countries



- The number of active EPPO cases linked to non-EU countries has significantly increased since the EPPO started operating.
- Article 104: different possible legal bases for cooperation with third countries
- The EPPO may conclude **working arrangements** with third countries' competent authorities - 28 working arrangements at the end of 2025
- The evaluation found an **increasing need for more formal and legally binding agreements** with third countries.

# Reference documents - I



## EPPO Regulation

- Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO) of 30 June 2017: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1939&qid=1789663584330>

## PIF Directive

- The 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: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.198.01.0029.01.ENG&toc=OJ:L:2017:198:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.198.01.0029.01.ENG&toc=OJ:L:2017:198:TOC)

# Reference documents - II



Commission notice C/2026/3792 of 13 July 2026 concerning the effects of Commission Decision (EU) 2026/1701:

- [EUR-Lex - 52026XC03792 - EN - EUR-Lex](#)

Commission report COM(2026) 491 final of 18 September 2026 on the evaluation of the EPPO Regulation:

- [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52026DC0491&qid=1790259343065>](#)

Commission White Paper on the AFA review:

- [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025DC0546&qid=1753799750304>](#)

# WEBINAR

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Michele Simonato

### The EPPO – How It functions



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# Overview



1. Introduction: main features of the EPPO
2. Exercise of the EPPO competence
3. Cross-border evidence gathering
4. Judicial review of EPPO's procedural acts

# Main Features of the EPPO



## ➤ An **independent EU body**

*Only act in the interest of the Union (no instruction from Member States or other EU authorities)*

## ➤ A “**specialised**” transnational prosecution office

*(Complex) rules on material, territorial and personal, temporal competence*

## ➤ A “**multilevel**” EU body

*(‘...an indivisible Union body operating as one single Office with a decentralised structure.’)*

# EPPO structure

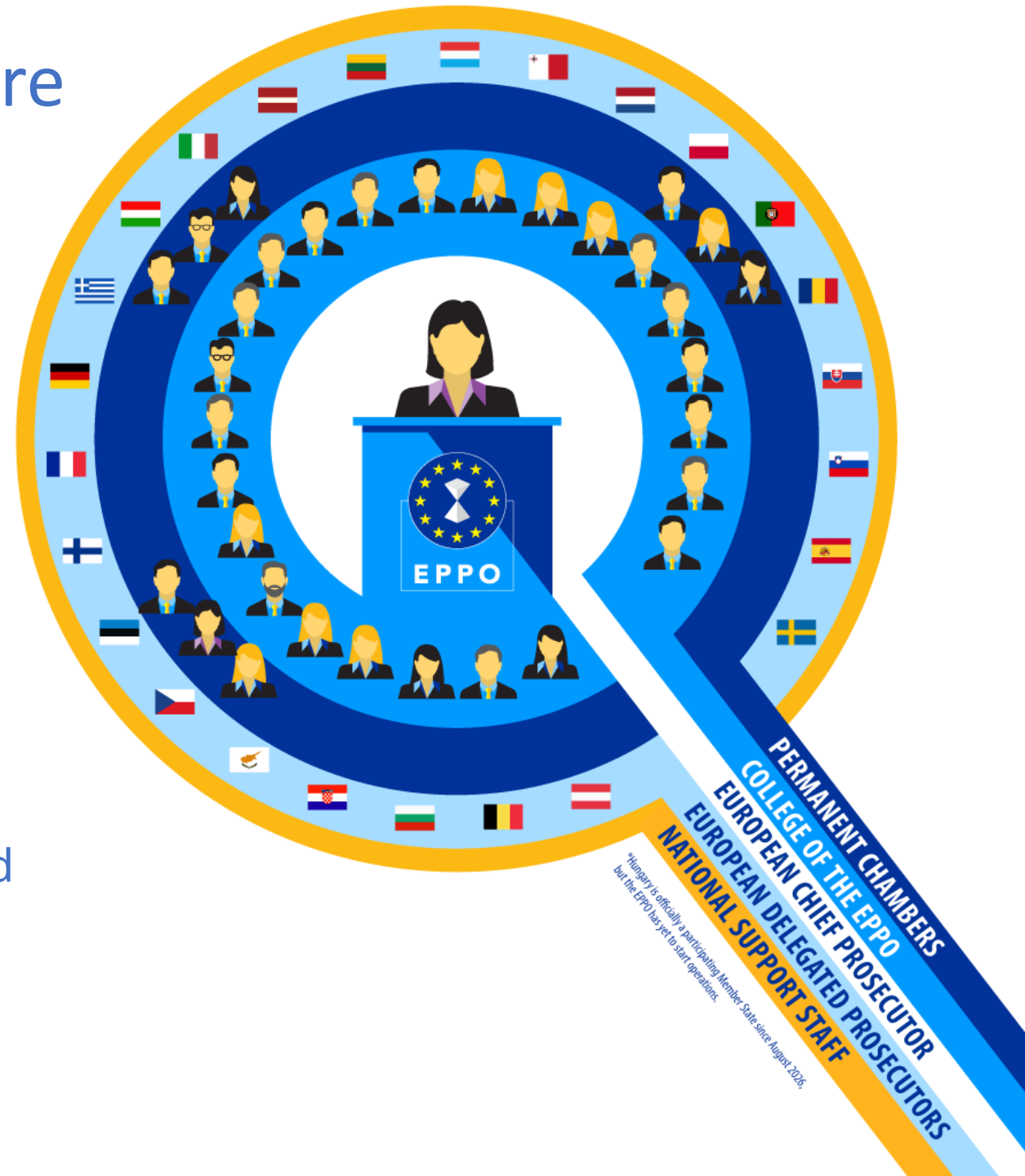
The central level:

- the European Chief Prosecutor,
- 24 European Prosecutors, two of whom are appointed by the College as Deputies for the European Chief Prosecutor,
- the Administrative Director, dedicated technical and investigative staff.

The decentralised level:

- European Delegated Prosecutors located in the participating Member States.

The **central level** supervises the investigations and prosecutions carried out at the **national level**.



# European Delegated Prosecutors

Active number of  
European Delegated  
Prosecutors: **180**



EUROPEAN  
PUBLIC  
PROSECUTOR'S  
OFFICE



# European Delegated Prosecutors (EDPs)



- EDPs **handle investigations and prosecutions** in their Member State of origin.
- They shall be granted by their Member State at least the **same powers** as national prosecutors.
- They remain **integrated** at an operational level in their national legal system and judicial and prosecution structures.
- They work under the **supervision** of a European Prosecutor from the same Member State, while **Permanent Chambers** monitor and direct the investigations and prosecutions conducted by the EDPs.

### EUROPEAN CHIEF PROSECUTOR (ECP)

- Supported by 2 Deputies
- Heads the EPPO, organises the work
- Represents the EPPO vis-à-vis the institutions of the EU, Member States and third parties

### COLLEGE OF THE EPPO

- The ECP + 1 European Prosecutor (EP) per participating Member State
- Decision-making on strategic matters to ensure coherence, consistency and efficiency in the prosecution policy
- Adoption of internal rules of procedure

### EUROPEAN DELEGATED PROSECUTORS (EDPs)

- At least 2 EDPs per participating Member State
- Responsible for investigating, prosecuting and bringing to judgement cases falling within the EPPO's competence

### PERMANENT CHAMBERS

- Each has 3 members: 2 EPs + Chair (ECP, one of the Deputies, or an EP)
- Operational decisions: bringing a case to judgement; dismissing a case; applying simplified procedure; referring case to national authorities; instructing EDPs to initiate investigation or exercise right of evocation
- European Prosecutors supervise EDPs in their Member State on behalf of Permanent Chambers



# The College of the EPPO



- European Chief Prosecutor + one European Prosecutor per participating Member State
  
- ROLE:
  - Decision-making on **strategic matters**, to ensure coherence and consistency
  - Adoption of internal rules of procedure
  - Appointment of EDPs

# The Permanent Chambers (PCs)



- The Permanent Chambers **monitor and direct the investigations and prosecutions conducted by the EDPs.**

In practice, the Permanent Chamber decides, based on a proposal by the EDP, whether to prosecute the case before a national court, to dismiss it or opt for simplified procedures (e.g. plea bargaining).

# The Permanent Chambers (PCs)

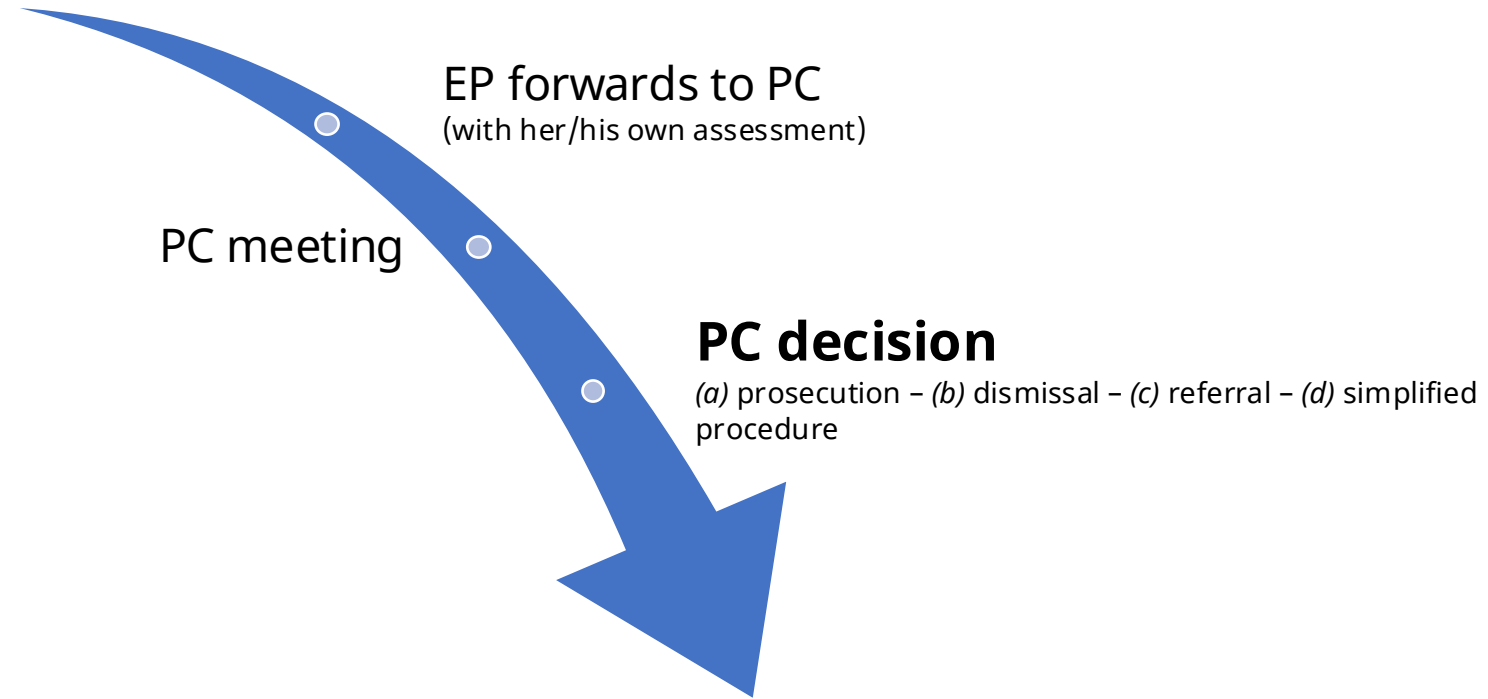


- 15 Permanent Chambers
- Composed of **three permanent members** *EPs from MS not* involved in the investigation!
- Plus, one ad-hoc member (*the supervising EP*)
  - Random allocation of cases to PCs
  - EDP proposal or regular monitoring
  - Case management system (CMS) and case file
  - PC meeting (possible written procedure)
  - Decision (by simple majority)
  - Translation of PC decision
  - EDP's implementation according to national law

# Example: The Termination of an Investigation



EDP's submits a report to EP

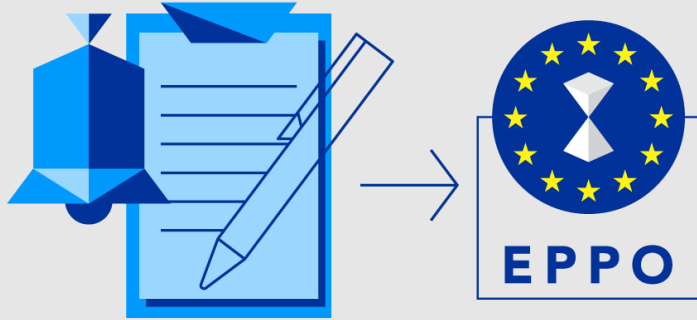


EDP *'pursues the matter accordingly'*

# Investigations: How they Work



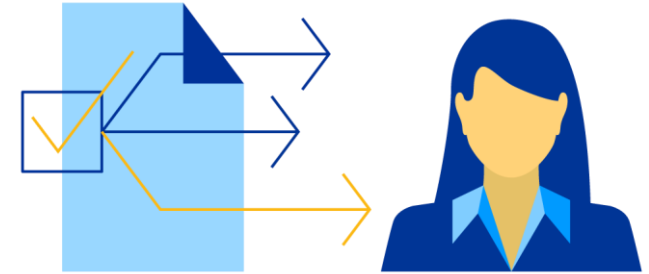
1



Information comes to the EPPO:

- ▶ From private parties via Report a Crime web form
- ▶ From national authorities and IBOAs

2



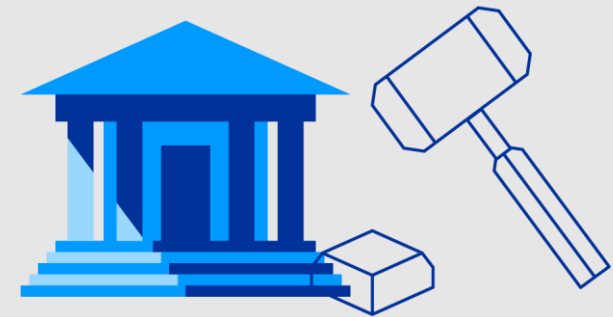
Verification and registration in digital **Case Management System** and assigned to a European Delegated Prosecutor.

3

If opened, EDP investigates from start to finish

- ▶ Supported by EPPO financial investigators and case analysts
- ▶ Supported by national police, customs, tax services...
- ▶ Monitored by a **Permanent Chamber in Luxembourg**

4



Case is tried before the national courts.

# The Verification (i.e., the ‘selection of cases’)



| Initiation (Art. 26)                                                                                               | Evocation (Art. 27)                                                                                 |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Crime report from national authorities, IBOAs, private parties ( <i>criminal investigation not initiated yet</i> ) | Crime report from ‘judicial or law enforcement authority’ ( <i>criminal investigation ongoing</i> ) |
| Legality principle                                                                                                 | Right of evocation                                                                                  |
| ‘Reasonable grounds to believe ...’                                                                                | Added value of EPPO investigations (College Guidelines)                                             |
| Competence of the EPPO                                                                                             | Competence of the EPPO                                                                              |

Rec. 13:

This Regulation provides for a system of **shared competence** between the EPPO and national authorities in combating crimes affecting the financial interests of the Union, based on the right of evocation of the EPPO.

# Main Issue: The Competence of the EPPO



## Competence (Art. 22)

- **PIF offences** provided by the 'PIF Directive' (expenditure fraud, customs fraud, VAT fraud, corruption, misappropriation, money laundering)
- Participation in **criminal organisation** (if 'focus' is PIF offences)
- Offences '**inextricably linked**' to PIF offences (but never on direct taxes, not even if inextricably linked)

## Exercise of competence (Art. 25)

- **Minimum threshold** of €10k (unless 'repercussions at Union level' or committed by EU staff)
- '**Preponderance test**' as regards **sanctions** for inextricably linked offences
- '**Preponderance test**' as regards **damage** for customs offences (or consent of national authorities if EPPO better placed)

If disagreement with  
national prosecutors



***Conflict of competence***  
(decided by a national  
authority)



Possible referral to  
CJEU for preliminary  
ruling

# Open Question 1

(on the competence of the EPPO)



- Should the national authority deciding on conflicts of competence be a judicial authority? Or at least, should its decisions be subject to judicial review?

**CJEU, C-506/25, *Raukar-Gamulin and others***

- Hearing on 20 October 2026

## Open Question 2

(on the competence of the EPPO)



- What are the procedural consequences on national cases for not informing the EPPO?

**CJEU, C-407/25, *Tersten*** - Opinion of the AG of 17 September 2026

- National prosecutions are not precluded or invalid
- National authorities should inform the EPPO of ongoing proceedings, and the EPPO may exercise the right of evocation even after the prosecution

# Rules on the 'Choice of Forum'

## (Art. 26(4) EPPO Regulation)



- When initiating an investigation, a case is allocated to a handling EDP according to **territoriality principle** (*'where the focus of the criminal activity is or... where the bulk of the offences has been committed'*).
- Possible **deviations from territoriality, if duly justified**, according to the criteria (in order of priority):
  - residence of the suspect
  - nationality of the suspect
  - place of the main financial damage
- In principle, possible reallocation to another EDP during investigation (Art. 26(5)), or even to bring case to prosecution in a different Member State if there are sufficiently justified grounds to do so (Art. 36(3))

Recital 87: *'(...) Procedural acts that relate to the choice of the Member State ... should therefore be **subject to judicial review** by national courts, at the latest at the trial stage.'*

# After the Exercise of the EPPO Competence



## During the investigation

- General principles (Art. 28)
- Privileges and immunities (Art. 29)
- Investigative measures (Art. 30)
- **Cross-border investigations** (Art. 31-33)
- Arrest and surrender (Art. 33)
- Cooperation with third countries (Art. 104) and non-participating Member States (Art. 105)

## At the end of the investigation

- Procedure to terminate an investigation (Art. 35)
- Prosecution (Art. 36)
- Dismissal (Art. 39)
- Simplified prosecution procedures (Art. 40)
- Referral to national authorities (Art. 34)

References to  
applicable  
**national law**  
!!

# Cross-border Investigations (within the 'EPPO-zone')



- Cross-border investigations within the “intra-EPPO zone” (participating Member States) are carried out in accordance with **Article 31 of the EPPO Regulation**.

*Sui generis* mechanism of “assignment of a measure”, replacing, as a rule, within the EPPO area, MLA and mutual recognition instruments (EIO).

- Exception: para. 6 of Article 31

Use of other instruments “*if the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation*”

See the Guidelines on the application of Article 31 (College Decision 052/2024)

# Article 31 EPPO Regulation



- Handling EDP **assigns** a measure to an assisting EDP
  - No need of real 'recognition' – concept of single office
  - No real grounds for refusal (although similar to EIO) – but consultation mechanism
- **Justification and adoption of the measure:** law of the Member State of the handling EDP
- **Execution** of the measure: law of the Member State of the assisting EDP
- **Judicial authorisation?**
  - Question of an Austrian court to CJEU: a full review in the MS of the assisting EDP, also on the justification and adoption of the measure?

# Article 31 EPPO Regulation



## **C-281/22, G.K. and others (Parquet Européen)** – *Judgment of 21 December 2023*

- The Court of Justice endorsed a model with a **division of tasks** between the courts of Member States of the handling and assisting European Delegated Prosecutors
  - in MS of the **assisting** EDP: only matters concerning **enforcement** of measure
  - in MS of the **handling** EDP: matters concerning **justification and adoption** of measure
    - for measures that seriously interfere with fundamental rights, it is for the Member State of the handling European Delegated Prosecutor to provide, in national law, for adequate and sufficient safeguards, such as a prior judicial review, in order to ensure the legality and necessity of such measures (par. 75)

# Judicial Review

## (Art. 42 EPPO Regulation)



| General principles on EU law and national courts                                                                                                                                                                                                                                                                   | Art. 42(1) EPPO Regulation<br>( <i>peculiarity of the EPPO system!</i> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• National courts interpret both national and EU law</li><li>• However, if doubts about EU law → CJEU preliminary ruling (Article 267 TFEU)</li><li>• Only the CJEU can assess the validity and annul acts of EU institutions, bodies, offices or agencies (IBOAs)</li></ul> | <ul style="list-style-type: none"><li>• Direct actions before <b>national courts</b> (≠ <b>Art. 263 TFEU</b>)</li><li>• Procedural acts that are intended to produce legal effects vis-à-vis third parties shall be subject to review <b>by national courts</b> in accordance with the requirements and procedures laid down by national law</li><li>• [exception, <b>Art. 42(3)</b>:<br/>Direct actions for annulment before CJEU (Art. 263 TFEU) concerning EPPO decisions 'to <b>dismiss a case</b>, in so far as they are contested <b>directly on the basis of Union law</b>']</li></ul> |

# Competence of the CJEU



## ➤ Preliminary rulings (Art. 267 TFEU)

- a) Validity of procedural acts of the EPPO, in so far as question raised **directly on the basis of EU law**
- b) Interpretation or validity of provisions of EU law (including the Regulation)
- c) Interpretation of Art. 22 and 25 EPPO Regulation (conflicts of competence)

## ➤ Direct actions against EPPO's **non-procedural acts**

Action for damages (Art. 268 TFEU)

Arbitration clauses in contracts (Art. 272 TFEU)

Disputes in staff-related matters (Art. 270 TFEU)

Dismissal of European Chief Prosecutors and European Prosecutors

Review of decision affecting data subjects' rights

Review of EPPO decisions which are not procedural acts, and of any other administrative decisions...

# Question 1:

Is Art. 42 compatible with the Treaties?



**CJEU, C-328/24 P, *Mincu Pătrașcu Brâncuși v EPPO*** – Judgment of 16 April 2026

- Yes, it is a valid derogation from the exclusive jurisdiction of the EU Courts to review the legality of acts of EU IBOAs (see Art. 86(3) TFEU)
- Particular nature of tasks and structure of the EPPO
- Substantial level of integration of EPPO within the Member States' systems of criminal procedure.
  - *'...the legal effects that procedural acts of the EPPO produce vis-à-vis third parties are, to a large extent, determined by the national law applicable to those acts...'* (par. 78).

## Question 2:

What is the scope of Art. 42(1)?



- EDP decision to summon two witnesses (who are not suspects)
- The suspects (≠ summoned witnesses) would like to appeal that EDP's decision to summon two witnesses
- Spanish Law (9/2021): no judicial review for this EPPO's procedural act
- The same decision, if issued by an investigative judge in national proceedings, could be subject to judicial review

### Question to the CJEU (*in essence*):

- Is the summoning of a witness a procedural act '*intended to produce legal effects vis-à-vis third parties*', namely the suspect?

# Question 2:

## What is the scope of Art. 42(1)?



**CJEU, Case C-292/23, EPPO v I.R.O.** – Judgment of 8 April 2025

- The concept of 'procedural acts (...) ' is an '**autonomous concept of EU law** which must be interpreted on the basis of uniform criteria'
- It cannot be decided in the abstract and in general whether summoning witnesses is such a procedural act, but an **in concreto assessment** made by national courts is necessary  
*'Since the perimeter of the procedural safeguards granted to the various categories of persons may thus vary depending on the national procedural rules of the Member State concerned, the perimeter of the procedural acts that it is admissible for those persons to challenge before the national courts may, consequently, also vary depending on which national law is applicable' (§72)*
- Not necessarily a 'direct challenge', but judicial review may also take the form of an '**incidental question**'
- The '**principle of equivalence**' must be respected (i.e. procedural rules in situations governed by EU law cannot be less favourable than in similar domestic situations)

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Dr. Anna Oehmichen

**Right not to be tried or punished twice in criminal proceedings  
for the same criminal offence**



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# I. Role of defence in EPPPO proceedings



# I. Role of defence in EPPO proceedings

- EPPO proceedings are focussed on prosecution, not defence
  - For truth finding and reaching a fair judgment, defence is equally important
  - Only one chapter (VI), consisting of two articles, in EPPO Regulation dedicated at “procedural safeguards“, and actually, with regards to defence rights, limited to “access to a lawyer pursuant to Directive 2013/48/EU“
  - Aside from these two articles, references to defence rights can be found in Recitals 80 and 83-85 (recitals = not binding)
- ⇒ Demonstrates how much importance the legislator has attached to defence rights

# I. Role of defence in EPPO proceedings



Brussels, 18.9.2026  
SWD(2026) 278 final

COMMISSION STAFF WORKING DOCUMENT

EVALUATION

*Accompanying the document*

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL

on the implementation and impact of Regulation (EU) 2017/1939 on the European  
Public Prosecutor's Office

{COM(2026) 491 final}

EN

**First EPPO Commission Evaluation Report**, accompanying Commission Staff Working Document, 18.9.2026: SWD(2026) 278 final), p. 44:

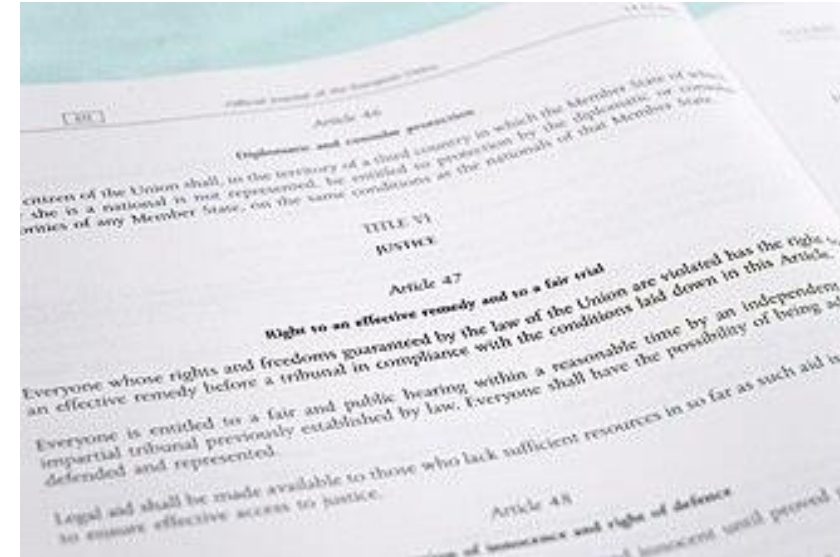
*Desk research and stakeholder feedback indicate that **differences in national procedural rights (...)** are compromising the uniformity of defence standards in EPPO cases. Some respondents (...) reported shortcomings in the protection of procedural rights for suspects and accused persons at national level. They further stated that these shortcomings were resulting in **different standards of defence in EPPO proceedings**, thus **potentially undermining the right to a fair trial**. In particular, defence lawyers highlighted **practices of prolonged pre-trial detention without indictment** (sometimes for more than a year) as well as **indictments that are often amended or fragmented** (resulting in defendants facing multiple and successive indictments).*

EN

## II. EPPO and the Charter

- FRCh = EU primary law (Art. 6(1) TEU)
- Art. 51 FRCh: The provisions of this Charter are **addressed to the institutions, bodies, offices and agencies of the Union** with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

⇒ Unlike national prosecution services, EPPO is directly bound by FRCh



## II. EPPO and the Charter

### Mentions of the Charter in the Regulation:

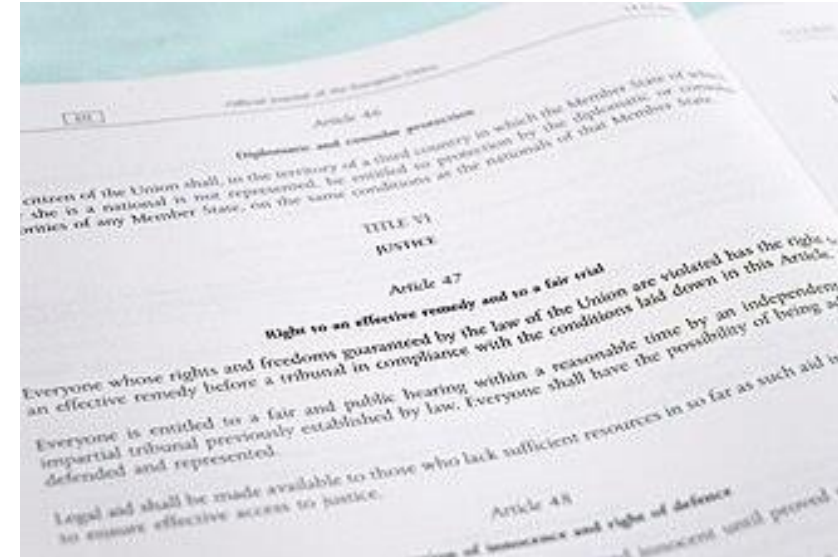
*Recitals...*

*Art. 5(1)*

*The EPPO shall ensure that its activities respect the rights enshrined in the Charter.*

*Art. 41*

=>



- I. EPPO and ne bis in idem
- II. Legal framework
- III. Practical issues

# I. EPPO and ne bis in idem

## Mentions of ne bis in idem in the Regulation:

*(83) This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter.*

*Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (ne bis in idem), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO.*

*The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.*

# I. EPPO and ne bis in idem

## Mentions of ne bis in idem in the Regulation:

*(83) This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter.*

*Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (ne bis in idem), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO.*

*The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.*

# I. EPPO and ne bis in idem

## Mentions of *ne bis in idem* in the Regulation:

(54) *The efficient investigation of offences affecting the financial interests of the Union and the principle of ne bis in idem may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union.* The notion of ‘inextricably linked offences’ should be considered in light of the relevant case-law which, for the application of the *ne bis in idem* principle, retains as a relevant criterion the identity of the material facts (or facts which are substantially the same), understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space.

## II. Legal framework

### *Article 50 FRCh*

*No one shall be liable to be tried or punished **again** in criminal proceedings **for an offence for which** he or she has already been finally acquitted or convicted within the Union in accordance with the law.*

*Same (idem) = identity of the material acts, understood as the existence of a **set of facts which are inextricably linked together**, irrespective of the legal classification given to them or the legal interest protected (CJEU, [C-436/04, Van Esbroeck, Judgment of 9 March 2006, §42](#))*

=> Import / export?



## II. Legal framework

### CJEU case law:



**Van Straaten:** the export and import of the same narcotic drugs are, in principle, to be regarded as ‘the same acts’ (para 51). The definitive assessment is, however, a matter for the competent national courts.

**Gasparini:** the marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted, constitutes conduct which may form part of the ‘same acts’ within the meaning of Article 54 of the CISA (para 55). The CJEU also repeats that the definitive assessment is a matter for the competent national courts.

## II. Legal framework

### *Article 50 FRCh*

*No one shall be liable to be tried or punished again **in criminal proceedings** for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.*

*criminal*: legal qualification under national law, intrinsic nature of the offence, degree of severity of the penalty (Åkerberg Fransson, Menci, Garlsson Real Estate SA => Engel criteria)

Administrative fine?



## II. Legal framework

### CJEU case law



**Åkerberg Fransson:** The ne bis in idem principle laid down in Article 50 of the Charter does not preclude a Member State from imposing successively a tax penalty and a criminal penalty so long as the first penalty is not criminal in nature, a matter which is for the national court to determine.



**Menci:** The administrative proceedings and penalties imposed for failure to pay VAT are criminal in nature.

**VW:** An administrative fine imposed on a company by the competent national consumer protection authority for unfair commercial practices, although classified as an administrative penalty under national legislation, constitutes a criminal penalty, for the purposes of Article 50 of the Charter, where it has a punitive purpose and has a high degree of severity.

## II. Legal framework

### *Article 50 FRCh*

*No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been **finally acquitted or convicted** within the Union in accordance with the law.*

*Final („bis“):* it is necessary for the decision at stake to definitively bar further prosecution at the national level, on the basis of the law of the Member State in which that ruling was made.

Decision can be taken by prosecution authority (Gözütök and Brügge), no penalty needs to be enforced (Kossowski, Központi Nyomozó Főügyészség), but decision at stake must have been given ‘after a determination has been made as to the merits of the case’



## II. Legal framework



### Examples of final decisions accepted by the CJEU:

- out-of-court settlement with the public prosecutor (Gözütok and Brügge, Bundesrepublik Deutschland (Notice rouge d'Interpol)),
- a court acquittal based on lack of evidence (Van Straaten),
- a court acquittal arising due to the prosecution of the offence being timebarred (Gasparini),
- a decision of non-lieu (M.) and
- a prosecutor's decision to close the pre-trial investigation taken after a detailed investigation, even though the suspect was not heard (Központi Nyomozó Főügyészség)

For details, check Eurojust Case-law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters (2024), <https://www.eurojust.europa.eu/sites/default/files/assets/2024-cjeu-case-law-on-ne-bis-in-idem.pdf>

# EPPO proceedings involve typically activities in various member states (and sometimes third countries)

Investigation 'Nimmersatt': EPPO clamps down on criminal organisation smuggling hazardous salvage cars from US

NEWS ARTICLE

16 April 2025 — 5 min read



The investigation, code-named 'Nimmersatt' ('Insatiable' in German), extends from the US to Russia, with links to Canada, Hungary, Ireland and the United Kingdom (UK), as well as **11 EU countries** of the EPPO zone. Investigative measures were conducted today and yesterday in Bulgaria, Estonia, Germany, Hungary, Latvia, Lithuania, the Netherlands, Portugal, Romania and Spain.

## EPPO proceedings involve typically seizing of assets of suspected persons



The screenshot displays the official website of the European Public Prosecutor's Office (EPPO). At the top left is the EPPO logo, featuring a blue circle with a white scale of justice and the text 'EUROPEAN PUBLIC PROSECUTOR'S OFFICE' and 'EPPO'. To the right is a search bar with a magnifying glass icon and the text 'English'. Below the search bar is a navigation bar with links: Home, About, Media, Documents, Contact, Careers, and FAQ. A yellow button labeled 'Report a crime' is also visible. The main content area shows a news article titled 'Investigation 'Escape Room': EPPO arrests another suspect and seizes €3.5 million'. The article is dated 22 September 2026 and is categorized as a 'NEWS ARTICLE'. The article's content is partially visible, showing a grid of blue doors, with one door open and a person running through it, symbolizing an 'escape room'.

EUROPEAN PUBLIC PROSECUTOR'S OFFICE  
EPPO

English

The independent public prosecution office of the EU

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Home > Media > News > Investigation 'Escape Room': EPPO arrests another suspect and seizes €3.5 million

### Investigation 'Escape Room': EPPO arrests another suspect and seizes €3.5 million

NEWS ARTICLE  
22 September 2026 — European Public Prosecutor's Office — 2 min read

### III. Practical issues

**EPPO proceedings involve typically activities in various member states (and sometimes third countries) and seizing of assets of suspects**

Increased risk of

- ➔ Parallel national investigations in various MS
- ➔ Parallel EPPO investigations in various MS
- ➔ Parallel EPPO and national investigations in same MS
- ➔ Parallel EPPO investigations and national investigations in various MS
- ➔ **increased defence costs for concerned persons and challenges to identify ne bis in idem due to language barriers and differences in file keeping**
- ➔ **Often limited or no budget for defence because all assets are frozen**

### III. Practical issues

**EPPO proceedings involve typically activities in various member states (and sometimes third countries) and seizes assets of suspects**

- ➔ Defence needs to coordinate with colleagues abroad
- ➔ request case file from potential parallel proceedings to be added to national investigation (e.g. through EIO)
- ➔ identify *ne bis in idem* cases and request suspending parallel investigations

# WEBINAR

## European Public Prosecutor's Office – latest developments for European lawyers

28 SEPTEMBER 2026, 10:00-13:00 CET



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Rosa van Zijl

**Defence rights in EPPO proceedings**  
**Right to an effective remedy and to a fair trial**



#TRAVAR2 Project



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# Defence rights



- Start at: Article 41 of the EPPO Regulation
- Reference to the Charter (§ 1)
  - Presumption of innocence
  - Ne bis in idem
  - Right to a fair trial
  - Principle of legality

# Defence rights



- The Regulation provides for ‘minimum protection’ (§ 2)
  - Right to a translation
  - Right to information and access to documents
  - Right of access to a lawyer
  - Right to remain silent
  - Right to legal aid
- Reference to guidelines → direct appeal possible by the defence
  - Directive 2010/64
  - Directive 2012/13
  - Directive 2016/343

# Defence rights



- Art. 41 EPPO Regulation = general legal protection
- Art. 41 = generalis in relation to other provisions in the Regulation
- Always check the Regulation first, then the Directives

See, for example:

- Art. 45 (access to case files)
- Art. 37 (evidence)

# Defence rights



- Art. 45 (Case files of the EPPO)

1. Where the EPPO decides to open an investigation or exercise its right of evocation in accordance with this Regulation, the handling European Delegated Prosecutor shall open a case file.

The case file shall contain all the information and evidence available to the European Delegated Prosecutor that relates to the investigation or prosecution by the EPPO.

Once an investigation has been opened, the information from the register referred to in Article 44(4)(a) shall become part of the case file.

2. The case file shall be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State.

# Defence rights



- Article 41(3): all procedural rights in accordance with national law
  - Suspects
  - Victims?
- Examples of rights
  - Opportunity to present evidence
  - Call forexperts
  - Call for witnesses

# Defence rights



- Evidence (Art. 37 & Preamble 80)
  - No refusal to provide evidence.
  - The requirements of, amongst others, Article 6 of the ECHR must be observed.
  - The trial judge may freely assess evidence adduced by the defendant or by the prosecutors.

## Article 37 EPPO Regulation (evidence)

1. Evidence submitted to the court by the Prosecutors of the EPPO or by the defence may not be declared inadmissible solely on the ground that it was obtained in another Member State or in accordance with the law of another Member State.
2. This Regulation does not affect the trial judge's discretion to assess freely the evidence adduced by the defendant or by the EPPO's prosecutors.

## **Article 42 (1) EPPO Regulation - Judicial review**

Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law.

## **Article 42 (1) EPPO Regulation - Judicial review**

The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

# Defence rights



- No full harmonisation
- Risk of forum shopping?
  - In principle, limited
  - Regulation lays down rules regarding allocation principles (Article 26(4))

# Defence rights



- No full harmonisation
- Forum shopping with regard to evidence gathering?
  - Regulation adopts a mixed approach to evidence gathering
    - Horizontal approach (Art. 31(4))
      - Risk: handling EDP chooses assisting EDP
      - NB: heavily dependent on the investigative measure in question
    - Vertical approach (Art. 37(1))

# Defence rights



**CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

- **Article 31 (1) Cross-border investigations**

The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure **and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.**

## CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023*

- **Article 31 (3) Cross-border investigations**

If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor **shall obtain that authorisation in accordance with the law of that Member State.** (...)

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, **the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.**

# Defence rights



**CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

- **Article 32 Enforcement of assigned measures**

The assigned measures shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

# Defence rights



## **CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

- 72. In accordance with that sharing of responsibilities, any review of the judicial authorisation required under the law of the Member State of the assisting European Delegated Prosecutor may relate only to elements connected with that enforcement.

# Defence rights



## **CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

73. In that regard, it must, however, be pointed out that, in accordance with Article 31(2) of Regulation 2017/1939, it is for the Member State of the handling European Delegated Prosecutor to provide for a prior judicial review of the conditions relating to the justification and adoption of an assigned investigation measure, taking into account the requirements stemming from the Charter, compliance with which is binding on the Member States in the implementation of that regulation pursuant to Article 51(1) of the Charter.

## **CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

78. [T]he review conducted in the Member State of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate only to matters concerning the enforcement of that measure, to the exclusion of matters concerning the justification and adoption of that measure; the latter matters must be subject to prior judicial review in the Member State of the handling European Delegated Prosecutor in the event of serious interference with the rights of the person concerned guaranteed by the Charter.

## **CJEU, C-281/22, G.K. and others – *Judgment of 21 December 2023***

75. As regards investigation measures which seriously interfere with those fundamental rights, such as searches of private homes, conservatory measures relating to personal property and asset freezing, which are referred to in Article 30(1)(a) and (d) of Regulation 2017/1939, it is for the Member State of the handling European Delegated Prosecutor to provide, in national law, for adequate and sufficient safeguards, such as a prior judicial review, in order to ensure the legality and necessity of such measures.

# Defence rights



**CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

70. The judicial review of procedural acts intended to produce legal effects vis-à-vis third parties makes it possible to ensure that the EPPO observes the fundamental rights of persons in respect of whom those procedural acts produce such effects and, inter alia, to verify the respect, by that body, of the right to procedural fairness and the rights of the defence of suspects and accused persons, in accordance with Articles 47 and 48 of the Charter.

# Defence rights



**CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

71. In particular, such a review involves, inter alia, ascertaining whether there is compliance with not only the procedural rights of suspects and accused persons laid down by EU law but also, in accordance with all the procedural rights granted by domestic law applicable to those persons as well as other persons affected by the EPPO's procedures.

# Defence rights



## **CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

72. Since the perimeter of the procedural safeguards granted to the various categories of persons may thus vary depending on the national procedural rules of the Member State concerned, the perimeter of the procedural acts that it is admissible for those persons to challenge before the national courts may, consequently, also vary depending on which national law is applicable.

# Defence rights



**CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

Must the judicial review to which that person is entitled under Article 42(1) of the Regulation necessarily be carried out by way of a **direct appeal**?

Can it also take the form of an **incidental question** dealt with by the criminal trial court?

# Defence rights



**CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

An **incidental question** is an acceptable option, provided that it is an **effective remedy** allowing **all relevant questions of law and fact**, in particular any breaches of **rights and freedoms guaranteed by EU law**, to be properly addressed (§ 79-80).

# Defence rights



**CJEU, C-292/23, EPPO v I.R.O. – *Judgment of 8 April 2025***

§ 88 Principle of equivalence

Not acceptable: a direct appeal against acts of the European Delegated Prosecutors to be excluded in a national legal order if the latter provides for the possibility of a direct appeal against analogous acts of a national investigating judge.

# WEBINAR

## European Public Prosecutor's Office – latest developments for European lawyers

28 SEPTEMBER 2026, 10:00-13:00 CET



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Adrian Sandru

### The defence in EPPO proceedings Principles and cross-border dimensions



#TRAVAR2 Project



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# The defence in a multilevel system



EPPO proceedings combine a European prosecution structure with national criminal procedures.

Common EU safeguards do not remove the differences between national legal systems.

The defence therefore operates across two connected levels: European decision-making and national procedural protection.

# The duty to investigate impartially



The EPPO must investigate impartially and seek all relevant evidence, whether inculpatory or exculpatory.

This duty exists independently of any evidence or arguments submitted by the defence.

It concerns the conduct of the investigation itself, not only the assessment of guilt at trial.

# Presumption of innocence



## Burden of proof

Guilt must be established by the prosecution. The accused is not required to prove innocence.

## Public statements

Official communications must distinguish allegations from established guilt.

## Right to silence

The exercise of the right to remain silent must not, in itself, be treated as evidence of guilt.

# Presumption of innocence before trial



The presumption of innocence applies throughout criminal proceedings, not only at the final judgment.

An investigation, an indictment or an interim measure is not a finding of guilt.

Public information about proceedings may be legitimate, but must not present guilt as established before it has been proved according to law.

# Defence in financial investigations



An accounting irregularity does not, by itself, establish criminal liability.

The assessment remains individual: the person's conduct, responsibilities and knowledge must be considered in relation to the alleged offence.

The defence contributes through legal analysis, exculpatory evidence and, where relevant, independent technical expertise.

# Corporate and individual liability



Liability of a company does not exclude criminal proceedings against the individuals involved.

Corporate sanctions may be criminal or non-criminal under the national framework implementing the PIF Directive.

A company and its directors or employees may have distinct defence interests, even where the underlying transactions are the same.

# Silence and financial evidence



Individuals have the right to remain silent and not to be compelled to incriminate themselves.

These rights do not prevent the lawful collection of evidence that exists independently of the suspect's will.

In financial cases, a demand for an explanation must be distinguished from the lawful collection of existing records.

# Proportionality of investigative measures



Proportionality binds the EPPO in all its activities.

Measures under Article 30(1) and (4) require reasonable grounds to expect useful evidence and no equally effective, less intrusive alternative.

Protecting the Union's financial interests does not displace the need to justify the impact of measures on individual rights.

# Coordination between defence lawyers



Cross-border cases bring together lawyers working within different procedural systems and professional traditions.

For the same client, coordination connects local legal expertise with a shared understanding of the facts and the overall defence position.

Cooperation between lawyers remains subject to each client's interests, professional independence and confidentiality.

# Effective participation in proceedings



Defence rights depend not only on formal recognition, but also on a meaningful opportunity to understand and respond to the case.

Access to relevant material, adequate preparation time and necessary language assistance are central to that participation.

The volume and technical nature of financial evidence can make these safeguards particularly important in EPPO proceedings.

# The Permanent Chamber and the defence



The Permanent Chamber is part of the prosecution structure. Its decisions may determine prosecution, dismissal or a simplified procedure.

The Regulation does not provide a general right for defence counsel to appear before the Chamber.

The handling prosecutor is an important point of contact for defence submissions. Timely communication of the defence position to the Chamber remains a significant procedural concern.

# Confidentiality and the defence relationship



Confidential communication allows the client to obtain legal advice and discuss the allegations freely.

In cross-border proceedings, the treatment of legal advice and related documents may depend on their nature and the applicable national rules.

Cross-border cooperation remains subject to confidentiality and the distinct interests of each client.

# Concluding observations



The European dimension of prosecution makes the effectiveness of defence rights a shared concern across legal systems.

Common safeguards coexist with national differences in procedure, access to material and judicial remedies.

Presumption of innocence, coordinated representation and meaningful participation support fairness in EPPO proceedings.