The EPPO's institutional responsibility: the annual report as a strategic cornerstone in the EU's anti-fraud architecture

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The European Public Prosecutor's Office (EPPO) is the cornerstone of the EU's anti-fraud architecture. Operating as an independent body with a mandate to investigate and prosecute crimes affecting the EU budget, its unique position necessitates a robust framework of institutional responsibility, ensuring transparency and accountability. The Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO Regulation), particularly Article 7 and the broader provisions regarding accountability, establishes this framework, demanding a delicate balance between operational independence and democratic oversight.

This paper will delve into the institutional responsibilities of the EPPO, examining its relationship with the European Parliament, the Council, the Commission, and national parliaments, as mandated by the Regulation. Crucially, it will propose that the Annual Report is not merely used as the basis for a retrospective performance assessment, but as a strategic tool for shaping the EU's entire anti-fraud architecture.

1 Introduction

The EPPO's mandate, to combat crimes against the EU's financial interests, demands independence specific to a judicial body. This independence is crucial for ensuring impartiality and effectiveness in investigations and prosecutions. However, judicial independence also necessitates robust mechanisms of accountability. The EPPO Regulation addresses this by establishing a multi-layered accountability structure.

The first thing to note is that the EPPO is not an EU agency, and that its activity, consisting of criminal investigations and prosecutions, cannot be subject to review by political or administrative bodies. However, this does not eliminate the need for institutional oversight without infringing on its prosecutorial independence. The key aspects of this oversight include

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democratic accountability, which enhances public trust, budgetary, policy and legislative coherence, and interinstitutional coordination.

However, institutional accountability extends beyond mere assessment of performance. The EPPO's findings, shared mainly via its Annual Report, should be leveraged as a strategic instrument for shaping EU anti-fraud policy. This report, published in all official EU languages, provides a comprehensive overview of the EPPO's activities, but also, perhaps more importantly, a unique, data-driven insight into the evolving landscape of crimes affecting the EU budget.

This data, including trends in fraud patterns, emerging criminal methodologies, and vulnerabilities in EU funding mechanisms, can inform legislative initiatives, budgetary decisions, and the development of targeted anti-fraud strategies.

2 Balancing efficiency and legality: the dilemma of prosecutorial performance metrics

The idea that the quality of justice could be measured by performance indicators is not self-evident. Evaluating the performance of a prosecutor's office presents a complex and often contentious challenge, and the difficulty only increases when it comes to evaluating the performance of the EPPO, the first transnational prosecution office in history. Unlike private or even many public sector entities, where output can be measured in clear, quantifiable units, prosecutorial work is embedded within a broader legal and institutional context that resists simplistic metrics. The difficulty lies in defining what 'success' looks like in a judicial institution whose primary mandate is to uphold the rule of law, rather than to maximise efficiency or productivity in a commercial sense.

While key performance indicators (KPIs) are commonly used across sectors, their application to prosecutorial functions raises important conceptual and normative concerns. Is an efficient prosecutor's office one that brings more indictments? One that secures more convictions? One that works within a constrained budget? Or perhaps one that proactively investigates and seizes criminal proceeds? Each of these indicators captures a facet of performance, yet none provides a comprehensive or definitive measure of prosecutorial effectiveness. A high number of indictments may suggest prosecutorial activism but could also reflect overcharging or weak evidentiary thresholds. Conversely, a low acquittal rate might suggest strong

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case selection, but it might equally indicate risk aversion and under-prosecution of complex or high-level cases.

When applied to the EPPO, these difficulties are amplified. As a newly established, transnational prosecutorial body with jurisdiction across 24 EU Member States, the EPPO operates in a diverse legal and procedural landscape. Uniform metrics may not fully account for these contextual differences, and performance indicators must be sensitive to the EPPO's mandate: to investigate and prosecute crimes affecting the EU's financial interests, and to do so with fairness, legality, and procedural integrity. For instance, measuring the volume of assets seized or the number of investigations initiated may provide insight into the EPPO's activity levels, but they do not necessarily correlate with long-term impact on financial crime deterrence or legal accountability.

Ultimately, the question of who is best placed to assess prosecutorial efficiency is as important as how it should be measured. Internal evaluations by the EPPO risk self-referential assessments while external oversight—whether by judicial bodies or European institutions—may lack operational nuance. An ideal framework would balance quantitative data with qualitative evaluations, including case complexity, cross-border cooperation, and respect for fundamental rights, ensuring that performance assessment remains aligned with the EPPO's legal and ethical obligations.

3 Accountability to the European Parliament: democratic oversight and strategic input

The European Parliament, as the directly elected representative of EU citizens, holds a central role in ensuring the EPPO's institutional accountability. Article 7(2) of the EPPO Regulation mandates the European Chief Prosecutor (ECP) to appear annually before the Parliament to provide an account of the EPPO's general activities. This public hearing serves as a vital tool for democratic oversight, allowing Members of the European Parliament (MEPs) to scrutinise the EPPO's activity, raise concerns, and demand explanations.

In this context, the Parliament can and should use the EPPO's Annual Report to identify systemic weaknesses and propose amendments to existing regulations, fostering a proactive and preventative approach to combating financial crime.

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The annual hearing should thus be seen as an opportunity for a strategic dialogue, where beyond reporting on past activities, the ECP should engage with MEPs on emerging threats and potential policy responses. This interaction should be framed as a collaborative effort to strengthen the EU's anti-fraud architecture, leveraging the EPPO's operational experience and the Parliament's legislative powers.

This said, the Parliament's role in monitoring and reviewing the EPPO extends beyond the Annual Report hearings to a more continuous and structured approach, with the possibility to focus on aspects of the EPPO's performance such as:

- Operational effectiveness: The extent to which the EPPO successfully prosecutes fraud and corruption cases affecting the EU budget.
- Cooperation: How the EPPO cooperates with national prosecutorial authorities and other EU bodies like the European Anti-Fraud Office (Office Européen De Lutte Anti-Fraude, OLAF) or agencies like Europol and Eurojust.
- Resource allocation and budgetary efficiency: Whether the EPPO's financial and human resources are sufficient and properly managed.
- Legal challenges: Identifying regulatory or procedural barriers that may hinder the EPPO's effectiveness.

To fulfil its oversight function, the European Parliament has several tools at its disposal:

1. Different types of hearings
2. Budgetary control and financial scrutiny
   - o The Parliament, particularly through its Budgetary Control Committee (CONT), reviews how the EPPO spends EU funds and can withhold EPPO's discharge.
   - o The Parliament, as budgetary authority, also plays a crucial role in defining the material conditions for the EPPO's activity.
3. Reports and investigations
   - o Any parliamentary committee can initiate reports or investigations on relevant topics with relevance to the EPPO's activity.
4. Legislative interventions
   - o The Parliament can propose amendments to close legal loopholes identified by the EPPO but, more generally, on any policy aspect with potential impact on the EPPO.
5. Conditionality mechanisms

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- The Parliament can propose linking the disbursement of EU funds to Member States to an efficient and independent operation of the EPPO.

4 Accountability to the Council: intergovernmental cooperation and strategic alignment

The Council, representing the Member States, holds an equally important role in ensuring the EPPO's institutional accountability and disposes of substantially the same set of tools as the Parliament to do so, including policy recommendations and strategic guidance, particularly through the Justice and Home Affairs Council.

Also in this context, the EPPO's Annual Report should serve as a tool for aligning national anti-fraud strategies, while the annual hearing should be the occasion for a strategic dialogue on national anti-fraud strategies.

By providing a comprehensive overview in each Member State and creating a perspective to compare the data, the report can inform national risk assessments and facilitate the sharing of best practices, assist in identifying vulnerabilities in their national systems and developing targeted measures.

5 Accountability to the Commission: strategic integration

The Commission, as the executive body of the EU with the power of legislative initiative and assisting the EU budgetary authority, also plays a role in ensuring the EPPO's accountability, particularly in terms of policy alignment, and institutional coordination. Article 7(1) of the EPPO Regulation mandates the EPPO to transmit its Annual Report to the Commission, facilitating relevant information dissemination for further development and adjustment of relevant EU policies.

Making use of its right of initiative, the Commission's oversight role of the EPPO includes:

- Policy integration: Incorporating EPPO findings into EU legislative and policy initiatives related to anti-fraud measures.
- Interinstitutional cooperation: Facilitating coordination between the EPPO and other numerous stakeholders to ensure a unified approach to the antifraud activities.
- Legal and regulatory review: Proposing legislative amendments where necessary.

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Moreover, given the Commission's assisting function in the budgetary process, the EPPO submits financial reports to the Commission, which incorporates EPPO's requests into its EU's budget proposals.

Given its executive role, the importance of the EPPO's Annual Report for the Commission is arguably even higher, as it should be integrated into its broader anti-fraud strategy. The Commission should use the data and insights provided in the report to inform its policy recommendations, legislative proposals, and budgetary decisions.

The Commission can also use the Annual Report to identify potential vulnerabilities in EU funding mechanisms and propose targeted measures to mitigate fraud risks. This proactive approach will strengthen the EU's financial resilience and protect its resources from criminal exploitation.

6 Accountability to national parliaments: bridging the gap and strategic collaboration

The EPPO's mandate has a direct impact on national legal systems and national parliaments can be essential stakeholders in the EPPO's accountability framework. Article 7(2) of the EPPO Regulation acknowledges this by mandating the ECP to appear before national parliaments at their request, however a more structured approach can be envisaged.

National legislatures have a crucial role in incorporating the EPPO's findings into domestic anti-fraud policies, ensuring compliance by overseeing national authorities' cooperation with the EPPO, for example by monitoring how national prosecutors handle EPPO referrals or address issues of conflicts of competence.

Strengthening national parliamentary engagement with the EPPO can ensure that EPPO findings translate into actionable domestic reforms, enhancing fraud prevention and prosecution of relevant fraud.

7 The Annual Report: a key contribution

The EPPO's Annual Reports have a deliberate design that goes beyond simple performance reporting and are structured to provide a comprehensive and insightful overview of the EU's fraud landscape, facilitating strategic decision-making at both EU and national levels.

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Here is how the report's structure supports this strategic role and provides stakeholders with the tools necessary to evaluate the effectiveness of current anti-fraud strategies:

Executive summary and key findings which provide a concise overview of the EPPO's key achievements and the most significant trends in financial crime, allowing stakeholders to quickly grasp the essential information and identify critical areas for attention.

Operational activities and case analysis, including typologies of fraud, investigative strategies, and outcomes which can be highly relevant for developing targeted preventive measures and enhancing investigative techniques. Comprehensive statistical data provides a quantitative overview of the EPPO's activities and the evolving fraud landscape, allowing data driven policy creation.

Cooperation and coordination with national authorities, EU actors (Eurojust, Europol, OLAF), and international partners, emphasising the need for a unified and coordinated approach and indicating potential gaps in cooperation.

8 *Illustrative example: VAT fraud related to cross-border e-commerce, and how the report can be used to create policy*

Cross-border e-commerce has significantly expanded, offering consumers access to a global marketplace. However, this growth has also facilitated complex Value Added Tax (VAT) fraud schemes, notably Missing Trader Intra-Community (MTIC) fraud, which exploits the EU's VAT system. The EPPO has identified such fraud as a major threat to the EU's financial interests.

Consider a scenario where a criminal organisation establishes fictitious companies across multiple EU Member States. These entities engage in trading high-value goods, such as electronics, across borders. In a MTIC fraud scheme, one company imports goods VAT-free and sells them domestically, charging VAT to the buyer. Instead of remitting the collected VAT to the tax authorities, the company disappears, resulting in significant revenue losses for Member States. Subsequent companies in the chain may continue trading the goods, eventually exporting them back to the original country, often reclaiming VAT that was never paid, thus amplifying the fraud.

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The EPPO's 2024 Annual Report highlights the severity of VAT fraud:

- By the end of 2024, the EPPO had 2,666 active investigations, with an estimated damage of €24.8 billion. Notably, VAT fraud accounted for over 53 % of this amount, approximately €13.15 billion.
- Case Example: In November 2024, the EPPO uncovered a complex VAT fraud scheme, known as Investigation Admiral 2.0, involving the trade of popular electronic goods and resulting in an estimated VAT loss of €297 million. This was linked to the initial Admiral investigation conducted in 2022, which was believed to be the largest VAT fraud ever investigated in the EU, with a damage estimated at €2.9 billion.

9 Policy implications and actions

The EPPO's findings can serve as a critical resource for EU institutions to formulate and implement policies aimed at combating VAT fraud, such as:

1. Enhanced cooperation
   - o Advocate for stronger collaboration between Member States' tax authorities and the EPPO to facilitate the exchange of information and joint investigations into cross-border VAT fraud.
   - o Develop regulatory proposals to enhance cooperation mechanisms, such as implementing mandatory e-invoicing or expanding the scope of the Central Electronic System of Payments (CESOP), which collects data on cross-border payments to detect fraudulent activities.
2. Harmonised VAT rules
   - o Initiate discussions on standardising VAT rates and rules across Member States to minimise opportunities for fraudsters to exploit differences.
     - o Grant VAT Information Exchange System (VIES) status based on trustworthiness and existence of financial guarantees, limit VAT exemptions and access to special VAT regimes to companies with proven and ongoing economic activity.
3. Digital platform accountability
   - o Propose legislation imposing stricter obligations on online platforms to monitor and report sellers' VAT compliance, ensuring that digital marketplaces are not inadvertently facilitating fraud.

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- o Expand 'deemed supplier' rules to include payment service providers and shift the obligation to collect and remit VAT to marketplaces and payment service providers in all relevant cases.

oIntroduce licensing and (better) oversight for platforms and payment providers to ensure proper monitoring and enforcement and create automatic mechanisms to share transaction data with tax authorities.

4. Capacity building
   - o Increase the ability of EU actors such as Eurofisc, the Anti-Money Laundering Authority (AMLA), and the Customs Authority to consistently detect VAT fraud, creating dedicated units and using data driven approaches.
   - o Propose budgetary adjustments to ensure that the EPPO has the necessary financial and human resources to tackle complex cross-border VAT fraud schemes.
   - o Advocate for the development of specialised training programs for tax authorities and law enforcement agencies to detect and combat VAT fraud effectively.

By leveraging these findings, EU institutions can enact targeted policies and regulations to strengthen the VAT system, enhance cooperation among Member States, and allocate resources effectively to combat fraud. This collaborative approach is essential to safeguard the EU's financial interests and ensure a fair and transparent market environment.

10 Conclusion

The EPPO's institutional accountability extends beyond mere performance evaluation. Its responsibility encompasses a strategic role in shaping the EU's anti-fraud architecture. By using the Annual Report proactively as a data-driven instrument, the EU can leverage the EPPO's operational experience to strengthen its defences against financial crime. This approach would not only enhance the EPPO's effectiveness, but also contribute to a more resilient and secure financial environment for the European Union.

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