

The EPPO's transformative power on criminal justice in the Member States – experiences of a European Delegated Prosecutor of the Czech Republic

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I am fully aware of the fact that articles of experts are written in a very serious manner, with numerous references to various sources and reputable literature. However, I would like to use the opportunity given to me by the editors to approach readers in a slightly different way, to share my personal view on the topic in question: The European Public Prosecutor's Office's (EPPO) transformative power on criminal justice (not only) in the Member States.

1 Introduction

Finding a way to fight cross-border crime without interfering much with the sovereignty of the individual states is one of the biggest challenges in the field of international police and judicial cooperation. Every authority tasked with conducting criminal proceedings has to respect borders. International crime, however, does not. The perpetrators do not have to respect any of the strict rules binding the official authorities. Instead, they are able to take advantage of the formal duties imposed upon officials. To be able to face the situation effectively, those fighting crime need the international cooperation to be as intensive as possible. The EPPO represents the most institutionalised form of such a cooperation in the area of criminal justice.

Every new office has to be prepared to face many problems, and there is no exception for the EPPO. One of the main issues are the diverging opinions on the need for such an office, both in the participating as well as the non-participating Member States. The establishment of the EPPO was followed by passionate discussions, various questions were asked. This particular one was repeated over and over again: Is it really within the powers

of the new office to investigate relevant crimes¹ and to bring perpetrators to judgement in a more effective way? In other words: Will it significantly influence the future of criminal justice all over Europe? I was not sure about the answers in the past. I am pretty sure now, after a few years of the EPPO's operation.

The aim of this article is not to present the structure of the EPPO. But for the purpose of further explanation, I would like to summarise the following: The EPPO is composed of two levels, the central one and the decentralised one.² The central level encompasses the European Chief Prosecutor (ECP), one European Prosecutor per participating Member State (EP, two of which are Deputies of the ECP), the Administrative Director, and dedicated technical, investigative and support staff. The decentralised level comprises the European Delegated Prosecutors (EDPs) located in the individual participating Member States. To put it very simply, EDPs are the persons who handle investigations and prosecutions in their Member State of origin, under the supervision of a European Prosecutor from the same Member State, on behalf of the competent Permanent Chamber (PC) (which monitors and directs the investigations and prosecutions conducted by the EDPs). The European Chief Prosecutor supervises it all. As to the international judicial cooperation, the EDPs are acting in close cooperation by assisting and regularly consulting each other in cross-border cases under the rules set out in Article 31 of the EPPO Regulation. How does it work and why has their cooperation proved to be successful?

2 Cross-border investigations within the EPPO

Before I get to the advantages, I would like to describe an undesired side effect of using the usual instruments of mutual judicial cooperation: No matter whether the European Investigation Order (EIO)³ or Mutual Legal Assistance (MLA) is used, the documents (concerning a similar request for assistance in criminal matters) end up – provided the right national office

1 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.

2 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO Regulation), especially Chapter III.

3 Established by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

is reached out to – on the table of a foreign public prosecutor, in order to be executed sooner or later. Such a prosecutor is very often a specialist for international legal cooperation, not an expert for investigating serious economic crimes. Even if they are (by chance) a specialist for both disciplines, they have no other information about the case itself other than those summarised in the request. Trying to do their best, they have only limited knowledge about the background of the criminal conduct under investigation. Such information may be distorted or actually lost in translation. They may contact a colleague abroad if necessary. But a language barrier on both sides often prevents effective communication. Even if the requested investigative measures are successfully executed, the handling prosecutor sees the results with a significant delay in time, including translations. Only then are they able to consider whether any other assistance is needed in the very same state.

The situation within the EPPO is fundamentally different. EDPs assist each other in cross-border cases via a measure called the *Assignment*, set out in Article 31(1) of the EPPO Regulation:

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.

But what does this provision really mean in practice?

All EDPs located in different states have the very same specialisation: they are experts in serious economic crimes and also have experience in the field of international cooperation in criminal matters. There is no language barrier – the working language inside the office is English.⁴ They have a common understanding of the issue, and they understand the special needs of investigations linked to ‘white collar’ crimes. They have a very good knowledge of the background of the case, which is provided to them by the

4 Art 107(2) EPPO Regulation; Decision 002/2020 of the College of the European Public Prosecutor's Office (EPPO) of 30 September 2020 on internal language arrangements, Art 1(1) The working language for the operational and administrative activities of the EPPO shall be English. (2) French shall be used along with English in the relations with the Court of Justice of the European Union.

colleague not only in the *Assignment*. They may also arrange a call anytime or contact each other via other secure communication channels. They are allowed and obliged to discuss the case in which they are assisting, with the aim to assist each other in the most efficient and quick way, protecting the human rights at the same time.⁵

Being legal experts, they are able to provide quick feedback related to the executed measures, and to advise other steps if needed according to the progress of the investigation in the assisting state. They are able to react ‘on line’ to such a progress. They understand the result of the measures executed in their own state without a need of translation, and, moreover, are able to translate it quickly and operatively to the colleague who is handling the case. The assisting EDP may ask for supplementary materials, for an explanation of the situation in the state of the handling EDP, and to be able to see the case overview. All results are provided to the colleague very quickly via the electronic case management system.⁶

During this communication, not only the primary objective is achieved (the execution of the requested measures) but also the secondary one: Both interested sides are gaining knowledge about the foreign legal provisions, about the legal measures available to a colleague for the same purpose. They have sufficient expertise to be able to compare different legal backgrounds, to understand advantages and/or disadvantages of different legal provisions. They may avoid an unsuccessful practice if it is identified. They may inspire each other by using the very same provision in a different way. They are not only capable but also willing to try to use a new investigative method if they see its practical impact on the progress of the investigation.

3 The influence of the EPPO being a ‘single Office’

The aforementioned secondary objective is also achieved by the communication between the EDP and the PC monitoring and directing the investigation and prosecution conducted by the EDP.⁷ EPs appointed to the individual chambers are very skilled experts in the same field, too. By exercising their powers of supervision, they offer a fresh perspective on known topics, a new approach to the entrenched steps taken in individual

5 An alternative but less invasive measure achieving the same result in the state of the assisting EDP may be used if the situation requires it, Art 31(5) EPPO Regulation.

6 Art 44 EPPO Regulation.

7 Art 10 EPPO Regulation.

investigations. This also applies to communication with the staff supporting the investigation on the central level.

Everything mentioned above is influenced by the policy of one single Office,⁸ which means a shared responsibility for the success of cases entrusted to the EPPO, no matter who is in charge of the investigation.

The results of such an intense cooperation are also reflected in the following possibilities of the people involved: By sharing the best practice leading to more efficient investigations, EPs and EDPs are able to explain the reasons for necessary changes in national legislation in an understandable way. They are able to demonstrate the usefulness of legislative changes needed in their Member States based on individual examples and real cases. They are able to demonstrate corresponding numbers. Last but not least, successful investigation of serious cross-border economic crimes means a more effective protection of the money of European tax payers. In that situation, every proposed change of legislation is more likely to succeed, even more so if it is supported by successful judgements.

After a few years of operations, the EPPO has proved itself to be an office strong enough to be heard,⁹ to be taken seriously. That is the reason why the EPPO is in an easier position for gaining political support on the national level, also by gradually gaining credibility in all of society's perception.

4 The EPPO's transformative power

However, the EPPO's transformative power should not only be seen in how it changes the legislation, but also especially in how it changes minds. Being an EDP, I have been facing many challenges. It was not easy for the experienced and the independent public prosecutors to start listening to PCs, to seriously consider recommendations, to obey orders. It was not easy to start communicating with colleagues in the same position, to start explaining the situation in the Czech Republic to them, to try to understand the individual needs of 'foreign' investigations, to stay open to different approaches to similar problems. Being a public prosecutor requires a lot of self-confidence, of course with respect to all legal rules and other legal pro-

8 Art 8(1) EPPO Regulation.

9 See more in: European Public Prosecutor's Office, 'Annual Report 2022' (Luxembourg, 2023), at https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO_2022_Annual_Report_EN_WEB.pdf.

fessions. A public prosecutor is a so called ‘dominus litis’. They supervise the work of police officers, they have the decisive word determining the progress or the closure of the case. Joining the EPPO meant to step aside a little bit, it meant to start considering more seriously other people’s opinion during the exercising of one’s own competences. But it seems to work.

In spite of some cultural barriers which were not mentioned up until now, not only is an effort to assist each other in the best way recognisable within the EPPO, but also an effort to challenge prejudices, to learn from one another, to get to know each other better. To appreciate the power of the EPPO means to appreciate the power of the people who joined this historically groundbreaking project.

Speaking for myself, the discussions mentioned above enriched my professional approach to tasks entrusted to me, broadened my horizons and changed my mindset in a fresh way, by letting it open up to new methods (not only) of combatting serious economic crimes. I am convinced that this is the way how to change – step by step – the mindsets of the others, police officers and judges at first, in order to win a battle but hopefully also the war against international organised crime – starting in the area of economic crime.

We are living in an uneasy Europe today. Nationalists’ and other extremists’ tendencies are growing stronger. The voices of many populists are heard aloud, trying to hide their own goals pretending to advocate public interest. I believe it is necessary to counterbalance such tendencies by setting good examples showing that European Union nations do have more in common than they do not. The EPPO might become an indicator showing that it makes sense to cooperate and not to enclose ourselves in our own borders, both territorial and mental. That could be the EPPO’s ‘super power’ – in addition or even beyond its transformative power on criminal justice in the Member States.