

EPPO's institutional independence and sustainability

(In-)Dependency of the EPPO on national resources

Lorenzo Salazar

The establishment of the European Public Prosecutor's Office (EPPO)¹ as a supranational prosecutorial authority represents not only the Union's commitment to protecting its budget against frauds but also an experiment of European enhanced integration, blending national legal traditions with an innovative prosecutorial body. Independence is at the core of the design of the new Office.

The EPPO's independence is not a merely declaratory concept; rather, since its conception, it has appeared vital for ensuring the impartial exercise of its prosecutorial functions, safeguarding the Office from undue external influence and reinforcing its capacity to act exclusively in the interest of the Union as a whole.

An examination of the principles underpinning its institutional design – specifically independence, accountability, and the status of its staff and delegated prosecutors – offers an opportunity for some considerations which may also be useful in the perspective of a possible future reform.

1 The principle of independence

1.1 Substantive and functional aspects

The EPPO Regulation unequivocally stipulates that '[t]he EPPO shall be independent'.² This provision crystallises the essential nature of the EPPO as an institution insulated from external direction or influence.

The concept of *independence*, as codified in the EPPO Regulation, must be understood both in its *external* dimension – freedom from interference by external actors such as Member States, national authorities, or Union

1 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced co-operation on the establishment of the European Public Prosecutor's Office (EPPO Regulation).

2 See Art 6(1) EPPO Regulation.

institutions not part of the EPPO – and in its *internal* dimension, which acknowledges the hierarchical organisation of the EPPO itself. The rationale for this *independence*, stemming already from the very first design of the EPPO in the Corpus Juris in 1997,³ is that independence is necessary and strictly functional for the performance of its powers of investigation and prosecution, also having in mind that the investigation and prosecution activities of the EPPO ‘should be guided by the legality principle’.⁴

This concept seems to mirror the basic (but at the same time *revolutionary*) idea underlying Article 5 of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,⁵ which has been revealed to be a key provision in the overall system of the Convention. Its Article 5 reads as follows: ‘Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved’. Though recognising the possibility of maintaining national regimes inclined to prosecutorial discretion (*principe d’opportunité des poursuites*) or to mandatory prosecution (*principe de légalité des poursuites*), it recognises as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to any form of improper influence nor to concerns of a political nature.⁶

This dual dimension of independence – external and internal – finds further elaboration in the principles of *active and passive independence*. While the first obliges the EPPO to act in the interest of the Union as a whole and neither seek nor take instructions from any person external to the EPPO, *passive independence* imposes reciprocal obligations on Member States and EU institutions to refrain from seeking to influence the exercise of the EPPO’s investigative and prosecutorial powers. Such duality

3 M Delmas-Marty, *Corpus Juris portant dispositions pénales pour la protection des intérêts financiers de l’Union européenne* (Economica 1997).

4 See Recital 66 EPPO Regulation.

5 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [1997] OECD/LEGAL/0293.

6 See OECD, ‘Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions’ (21 November 1997), at <https://legalinstruments.oecd.org/public/doc/205/185f5f38-ba6b-4e35-93a8-50fa739c7005.pdf>, mn 27.

reinforces the functional autonomy of the EPPO, ensuring that its mandate is not compromised by national or political considerations.

1.2 Institutional guarantees of independence

The functional independence of the EPPO is further reinforced by a constellation of institutional safeguards embedded within the EPPO Regulation. The selection and appointment procedures for the European Chief Prosecutor (ECP), the European Prosecutors (EPs), and the European Delegated Prosecutors (EDPs) are meticulously designed – notwithstanding the number of compromises needed to reach unanimity among delegations – to protect the impartiality and autonomy of the body.

For instance, the appointment of the ECP, conducted pursuant to Article 14 of the EPPO Regulation, involves a competitive selection process overseen by an independent panel, thus minimising the potential for undue political influence. The Italian Presidency of 2014 achieved an important result by managing to reach an agreement on a procedure which, by allowing applications by all candidates who fulfill the conditions provided for by the Regulation without the need for any designation nor endorsement by the governments of Member States, defended the full independence of the Head of the Office⁷.

Also, the procedure for the appointment of EPs (through a system inspired both by the panel provided for by Article 255 of the Treaty on the Function of the European Union (TFEU) and the trio of candidates needed for the appointment of the judges at the European Court of Human Rights) and the one for the appointment of the EDPs (with the EPPO College having the final word on the appointment of the candidates designated by the Member States) seem to provide an effective contribution to the overall independence of the Office.

The concept of independence is also reflected in other provisions of the Regulation providing for the self-government of the organisation of the work of the EPPO enabling it to adopt its internal rules of procedure,⁸

7 Salazar L, 'Habemus EPPO! La lunga marcia della Procura europea' (2017) *Archivio penale* n. 3, https://www.ecba.org/extdocserv/conferences/rome2020/EPPO_Salazar.pdf

8 See Art 21 EPPO Regulation.

the financial rules,⁹ the application of the Protocol on the Privileges and Immunities of the European Union ‘to the EPPO and its staff’¹⁰.

It also seems to stem from the general principles regulating the EPPO that no future extension of its powers will be possible without full confidence in its effective and complete independence.

2 Accountability as a corollary of independence

The EPPO Regulation establishes a complementary principle to independence, stipulating that ‘[t]he EPPO shall be accountable to the European Parliament, to the Council and to the Commission for its general activities’¹¹. The balance between independence and accountability is expressly acknowledged in Recital 18 of the EPPO Regulation, which frames accountability as a *complement* to independence.¹²

The practical expression of this accountability is articulated through the EPPO’s obligation to prepare and transmit an *annual report* on its general activities to the European Parliament and to national parliaments, as well as to the Council and the Commission.¹³ Against this background, the EPPO seems to be accountable for its general activities to the EU institutions while, with regard to the national parliaments of the Member States, the ECP shall appear before them, at their request only, to give account of the general activities of the body. This underscores the supranational character of the EPPO, which is accountable only to the EU institutions as a whole, thus reflecting the fundamental principle of unity in the exercise of Union competences.

9 See Art 95 EPPO Regulation.

10 See Art 96(5) EPPO Regulation.

11 See Art 7(1) EPPO Regulation.

12 See Recital 18 EPPO Regulation: ‘Strict accountability is a complement to the independence and the powers granted to the EPPO under this Regulation. The European Chief Prosecutor is fully accountable for the performance of his/her duties as the head of the EPPO and as such he/she bears an overall institutional accountability for its general activities to the European Parliament, the Council and the Commission. As a result, any of these institutions can apply to the Court of Justice of the European Union (the ‘Court of Justice’), with a view to his/her removal under certain circumstances, including in cases of serious misconduct. The same procedure should apply for the dismissal of European Prosecutors.’

13 See Art 6(2) EPPO Regulation.

Moreover, the mechanism for the removal of the ECP or the EPs¹⁴ reinforces the high threshold for dismissal, which requires a finding of *serious misconduct* by the Court of Justice of the European Union. In no case it seems possible that the ECP could be removed because of a possible discontent or lack of appreciation by the Parliament or another Institution with the substance of the annual report presented to them or with the general activities conducted by the EPPO. This safeguard further ensures that the accountability relationship does not degenerate into a tool for exerting improper political or national influence over the EPPO's prosecutorial discretion.

Finally, it is also interesting to note that the ECP, during her appearance at this conference,¹⁵ explained that it is the European Chief Prosecutor who is held accountable by the Institutions, rather than the College of the EPPO.

3 Budgetary autonomy as a pillar of independence

Furthermore, the overall group of rules on the budget may also be considered relevant to the independence of the EPPO.

The financial autonomy of the EPPO is recognised in Article 95 of the EPPO Regulation, in conjunction with Recital III, which affirms that '[t]o guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union'. The budgetary framework of the EPPO thus plays a critical role in insulating the institution from external pressures that may arise through financial leverage or constraints as further demonstrated by the final consideration in Recital III. It stipulates that, though subject to the relevant Union standards applicable to all EU agencies and bodies, due regard should be put, 'however, to the fact that the competence of the EPPO to carry out criminal investigations and prosecutions at Union level is unique'.

Under Article 92 of the EPPO Regulation, the EPPO is empowered to prepare an estimate of its revenue and expenditure, which is then submitted to the European Commission as part of the Union's overall budgetary process. However, the final decision regarding the budgetary allocations

14 Provided for by Art 14(3) EPPO Regulation.

15 'Strengthening the Future of the European Public Prosecutor's Office', Villa Vigoni, 31 March – 2 April 2025.

for the EPPO rests with the Commission, subject to the scrutiny of the budgetary authority. While this procedure follows the model applicable to Union agencies under Article 70 of Regulation (EU, Euratom) 2024/2509¹⁶ and formerly Article 208 of Regulation (EU, Euratom) No 966/2012¹⁷, it raises pertinent questions as to whether the EPPO's unique mandate and competence – distinct from that of regulatory agencies – require an enhanced level of financial autonomy.

It should be further considered that the principle of budgetary independence is not a merely technical matter of resource allocation; rather, it is inextricably linked to the functional and operational independence of the EPPO. Adequate financial resources are indispensable to ensure the EPPO's capacity to undertake complex, cross-border investigations and prosecutions, and to maintain the integrity of its activities free from external interference.

In this respect, it has been argued that the budgetary procedure for the EPPO ought to be revisited to better reflect its *sui generis* status as a body of the Union entrusted with the exercise of public authority in the field of criminal justice.¹⁸ Such an enhanced framework would ensure that the EPPO has the necessary resources to discharge its mandate effectively, while simultaneously subjecting it to rigorous financial accountability in line with the general principles of sound financial management under Union law.

4 The role and status of EDPs

The EDPs are a cornerstone of the EPPO's decentralised operational model, acting as the linchpin between the EPPO and national legal systems. EDPs must 'be active members of the public prosecution service or judi-

16 Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union.

17 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

18 See European Parliament, Decision of 7 May 2025 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Public Prosecutor's Office for the financial year 2023 (P10_TA(2025)0087).

ciary of the respective Member States which nominated them',¹⁹ thereby ensuring their integration into domestic judicial hierarchies.

Nevertheless, the legal status of EDPs has been the subject of considerable debate. In fact the Regulation²⁰ provides that EDPs are engaged as *Special Advisors* within the meaning of Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the Union.²¹ This distinctive status, while tailored to the specificities of their role, has been understandably criticised for failing to afford EDPs the same degree of institutional security and professional guarantees as temporary agents, which is the status held by the ECP and the EPs.

This divergence in status seems to have produced practical implications for the attractiveness of the role of EDPs and their capacity to operate with full independence. Indeed, as also noted by the European Parliament,²² there is a growing recognition that the creation of a specific statute for EDPs, reflecting the judicial nature of their functions, would not only enhance the appeal of these positions but also reinforce the legitimacy and independence of the EPPO as a whole.

Furthermore, the EDPs' dependence on their national prosecution services for most of the logistics poses challenges in ensuring uniformity and coherence in the application of Union law. The national authorities remain responsible for providing the EDPs 'with the resources and equipment necessary to exercise their functions', including the provision of secretarial and logistical support.²³ Yet, the level of resources and the status of the support staff vary considerably across Member States, creating potential disparities in the capacity of EDPs to carry out their tasks effectively.

This overall situation may explain why, at least in some participating Member States, the posts of EDPs seem to have not been considered very appealing by the members of the local Judiciary.

19 See Art 17(2) EPPO Regulation.

20 See Art 96(6) EPPO Regulation.

21 Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, as amended.

22 See Resolution (EU) 2024/2253 of the European Parliament of 11 April 2024 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Public Prosecutor's Office for the financial year 2022.

23 See Art 96(6) EPPO Regulation.

5 Staff of the EPPO and local Support Personnel: challenges to consistency and independence

The definition of ‘staff of the EPPO’ under the Regulation²⁴ encompasses the personnel at the central level, explicitly excluding the ECP, the EPs, the EDPs, and the Administrative Director. Yet, the broader application of staff provisions in Chapter IX of the Regulation²⁵ has led to ambiguity regarding the precise scope of these categories.

This regulatory complexity becomes particularly evident when considering the assistance provided to the EDPs. The Regulation stipulates that ‘the European Delegated Prosecutors shall be assisted by the staff of the EPPO in their duties’,²⁶ while Recital 113 underscores that ‘the costs of the European Delegated Prosecutors’ office and secretarial support should be covered by the Member States’. Accordingly, a functional dichotomy seems to emerge: while the EPPO staff is *formally* tasked with assisting EDPs, secretarial and logistical support is eventually provided by national authorities.

This divergence may produce in practice significant implications for the independence of the EPPO’s operations. In several Member States, such as Italy, Spain and France, the practice of seconding law enforcement officers to support EDPs is well-established, fostering an operational continuity with national investigative structures. However, in other participating Member States, the provision of such support is far less systematic, creating possible discrepancies in the investigative capacities of the EPPO across the Union.

Moreover, the fact that local support personnel are employed by national authorities – rather than by the EPPO itself – raises questions regarding the application of the guarantees of active and passive independence enshrined in Articles 6 and 96(7) of the EPPO Regulation. In practice, local staff may be more susceptible to hierarchical pressures or political influences at the national level, particularly in jurisdictions where the public prosecution service is not itself institutionally independent. This creates a potential weak link in the chain of procedural safeguards, undermining the effectiveness of the EPPO’s supranational mandate.

24 See Art 2(4) EPPO Regulation.

25 See in particular Art 96 EPPO Regulation.

26 See Art 8(5) EPPO Regulation.

This situation highlights the need for a possible move towards a sort of broader principle of *assimilation*, whereby national authorities are required to provide *their* EDPs with resources and personnel *equivalent* to those available to national prosecutors. While this approach may promote functional equivalence, it also risks entrenching disparities where national prosecutorial services themselves vary widely in resources and independence.

Concrete experiences reported from practice indicate that these local support roles are often not considered very attractive by the most qualified personnel. The absence of Union-level incentives or formal guarantees of independence for local staff further exacerbates this problem. In the interest of securing the effective and independent exercise of EPPO functions, it may be recommended that the EPPO consider developing mechanisms – either through financial incentives or through an extension of the Protocol on the Privileges and Immunities of the European Union – to ensure that local staff can perform their duties free from external influence.

6 Concluding Remarks and possible Policy Recommendations

The analysis of the EPPO's independence and accountability regime within the broader context of European law reveals a number of structural challenges that merit closer scrutiny. Comparative analysis with other Union agencies and bodies – such as Eurojust, Europol, Frontex and OLAF – demonstrates that while these entities also perform investigative or operational tasks, none exercise powers of criminal prosecution analogous to or comparable with those of the EPPO. This *sui generis* nature necessitates a tailored institutional architecture that goes beyond the traditional agency model, recognising the unique *constitutional* role of the EPPO under Article 86 TFEU.

As it was indicated above, a possible element of concern arises from the potential tension between the national integration of EDPs and the supranational mandate of the EPPO. Unlike Europol or Frontex, which operate as support and coordination agencies, the EPPO wields direct authority to initiate prosecutions and conduct criminal proceedings before national courts. This creates a structural dynamic in which the EPPO must rely on national staff and resources to exercise its powers, even as it remains formally independent of those same national systems.

The case law of the Court of Justice of the European Union, particularly in cases addressing the independence of national judicial authorities,²⁷ provides valuable insights into the broader principles of institutional independence under EU law. However, the EPPO's hybrid nature – both supranational and operationally dependent on national structures – poses unprecedented challenges that go beyond the classic judicial independence paradigm.

The independence of the EPPO, as enshrined in Article 6 of the EPPO Regulation, is not a mere rhetorical aspiration and cannot be asserted by decree (*'L'indépendance ne se décrète pas...'*) but is instrumental and inherent to the overall action of the European prosecutor and to its incisive powers of investigation and prosecution. As the EPPO's activities expand and its role in safeguarding the Union's financial interests becomes increasingly prominent, its institutional independence should be matched by robust practical guarantees.

To this end, some sort of policy recommendations may emerge from the preceding considerations:

1. Reforming the Status of EDPs: in line with the recommendations of the European Parliament, the status of EDPs should be re-examined to align more closely with that of temporary agents under the Staff Regulations of the Union. This would provide them with enhanced job security, clearer professional guarantees and greater attractiveness for highly qualified candidates.
2. Enhancing Budgetary Autonomy: the current budgetary model, which follows the template applicable to Union agencies, may not sufficiently reflect the *sui generis* status of the EPPO. A more autonomous budgetary process – modelled on the principles of direct institutional accountability and financial independence – would reinforce the EPPO's operational capacity and democratic legitimacy.
3. Harmonising Local Support Structures: The disparate practices among participating Member States regarding the provision of local staff and resources to EDPs must be addressed. Establishing minimum standards for the support of EDPs would promote uniformity in the exercise of EPPO competences and reduce the risk of external interference.
4. Extending Guarantees of Independence to Local Staff: Given the crucial role played by local staff in supporting the work of the EDPs, it is

27 See the general principles in ECJ, Case C-64/16 *Associação Sindical dos Juízes Portugueses*, ECLI:EU:C:2018:117.

essential to extend the principles of active and passive independence to this personnel, either through amendments to the Regulation or through the adoption of implementing measures at Union level.

In conclusion, the EPPO stands as a unique institutional innovation in the evolving constitutional order of the European Union. Its dual character – supranational and operationally reliant on national structures – poses complex legal and practical questions that go to the heart of the Union's commitment to the rule of law and the effective protection of its financial interests.

Through the rigorous application of the principles of independence and accountability, and the careful calibration of its institutional design, the EPPO may serve not only as a watchdog of the Union budget but also as a model for possible future steps towards supranational integration in the field of criminal justice.

Bibliography

Delmas-Marty M, *Corpus Juris portant dispositions pénales pour la protection des intérêts financiers de l'Union européenne* (Economica 1997)

Salazar L, 'Habemus EPPO! La lunga marcia della Procura europea' (2017) *Archivio penale* n. 3

OECD, 'Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' (21 November 1997), at <https://legalinstruments.oecd.org/public/doc/205/185f5f38-ba6b-4e35-93a8-50fa739c7005.pdf>

