

## PROTECTION OF EU FINANCIAL INTERESTS: EPPO'S COOPERATION WITH NON-EU STATES\*

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The European Public Prosecutor's Office (EPPO) is a cornerstone institution in the EU's efforts to combat financial crimes and protect its financial interests. Its role encompasses a wide range of activities, from investigating and prosecuting financial crimes to fostering cooperation and ensuring accountability. By centralizing and coordinating efforts across member states, the EPPO significantly strengthens the EU's ability to safeguard its financial resources and uphold the rule of law.

The cooperation between the EPPO and non-EU countries, particularly candidate countries, is essential for ensuring comprehensive protection against financial crimes due to their economic ties with the EU. Serbia, as candidate country for EU membership, has a vested interest in aligning its judicial and law enforcement practices and regulations with the European Union. For the period 2021-2023, Serbia has been allocated 571 million euro under the IPA III funding for national programmes. Proper utilization and protection of these funds are vital, and cooperation with the EPPO can help in achieving this objective. Through mutual legal assistance, information sharing, capacity building, joint investigations, and preventive measures, this international collaboration is safeguarding the EU's financial stability.

The paper identifies benefits and challenges of cooperation between third countries national authorities and EPPO. The paper recognizes challenges in identification of the legal basis for cooperation with the EPPO for some of the third countries and propose options for overcoming and mitigation measures.

**KEYWORDS:** EU financial interest, EU funds, EPPO, judicial cooperation, third countries.

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## Introduction

The European Public Prosecutor's Office (EPPO) was established to combat crimes affecting the financial interests of the European Union (Herlin-Karnell, 2012, p. 487). Its creation was driven by the need for a specialized body that could efficiently handle cross-border financial crimes within the EU (Matić Bošković, 2022, p. 132). The EPPO was established by Council Regulation 2017/1939, adopted on October 12, 2017 (EPPO Regulation),<sup>1</sup> as the result of a political agreement among a group of EU member states that recognized the necessity of creating a dedicated body to tackle financial crimes impacting the EU (Dabić, 2019, p. 27).

The EPPO as an EU body with legal personality (Article 3 of the EPPO Regulation) is enjoying guarantees of independence (Article 6) and being accountable to the European Parliament, the Council, and the Commission, to which it submits an annual report.

The Regulation has established a complex, two-tier structure: a central level based in Luxembourg and a decentralized level consisting of delegated prosecutors in the Member States (Articles 8-13 of the EPPO Regulation). Delegated prosecutors represent the EPPO in Member States and are responsible for conducting investigations, prosecutions, and related activities. Besides the powers conferred by the Regulation, delegated European prosecutors must have the same investigative and prosecutorial powers as national prosecutors<sup>2</sup> (Matić Bošković, 2016, p. 250). Delegated prosecutors are not employees of the EPPO but are active members of the public prosecution service of the Member State that nominated them. Despite their roles within the national prosecution service, they must remain independent and impartial when performing tasks assigned by the EPPO. They are required to represent the interests of the EU and must not seek or receive instructions from their Member State, taking direction only from the EPPO. While there were arguments

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<sup>1</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

<sup>2</sup> For more about investigative and prosecutorial powers of national prosecutors see: Kolaković-Bojović, M., Tilovska Kečegi, E., and Kurtović, R. (2019) *Prosecutorial Discretion and Legal Predictability*. Journal of Eastern European Criminal Law (2). pp. 181-192; Kolaković-Bojović, M., Turanjanin, V. (2017) 'Autonomy of Public Prosecution Service - The Impact of the "Checks and Balances" Principle and International Standards', *Journal of Eastern-European Criminal Law* (2), 26-41; Kolaković-Bojović, M. (2018) *The Rule of Law Principle: the EU Concept vs. National Legal Identity*. In: Naučni skup sa međunarodnim učešćem Univerzalno i osobeno u pravu. Univerzitet u Kosovskoj Mitrovici, Pravni fakultet, Kosovska Mitrovica, pp. 137-159; Kolaković-Bojović, M. (2018) 'The Rule of Law and Constitutional Changes in Serbia'. *Međunarodna naučno-stručna konferencija "Krivično zakonodavstvo i funkcionisanje pravne države"*. Trebinje, 20-21. april 2018. Srpsko udruženje za krivičnopravnu teoriju i praksu; Grad Trebinje; Ministarstvo pravde Republike Srpske, Trebinje, 277-292

for creating a central body responsible to the EU institutions, the effectiveness of the EPPO requires familiarity with national regulations and collaboration with associates in each Member State. Thus, delegated prosecutors are pivotal in bridging the gap between the EPPO and national legal systems. Their unique position allows them to leverage local expertise and legal powers while operating under the independent and unified framework of the EPPO.

The establishment of the EPPO is grounded in the Treaty of Lisbon, specifically Article 86, paragraph 1 of the Treaty on the Functioning of the European Union (TFEU). This Article allows for the creation of the EPPO through enhanced cooperation among member states. Namely, member states interested in participating in the EPPO notified the European Parliament, the Council, and the Commission of their intention to adopt the Regulation based on enhanced cooperation mechanism provided by the Treaty of Lisbon.

The Regulation entered into force on November 20, 2017. However, Article 120 of the Regulation provided preparatory period of at least three years for both the EU and its member states to undertake necessary measures for the establishment of the EPPO. During this period, the EU and member states worked on creating the administrative, legal, and operational frameworks required for the EPPO to function effectively.

The Council of the European Union decided on the operational start date for the EPPO. The EPPO officially began its operations on June 1, 2021. In October 2019 the European Parliament confirms appointment of the first European Chief Prosecutor and in July 2020 the Council appoints 22 European Prosecutors, representing each of the participating EU member states. The EPPO's early years have been marked by significant activity and achievements, reflecting its critical role in protecting the financial interests of the EU.<sup>3</sup>

The primary competence of the EPPO is to investigate, prosecute, and bring to justice perpetrators of crimes against the EU's financial interests. Directive (EU) 2017/1371,<sup>4</sup> known as the PIF Directive, addresses the criminal aspects of fraud impacting the financial interests of the European Union. It defines specific offenses falling under the jurisdiction of the EPPO.<sup>5</sup> These include, but are not limited to,

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<sup>3</sup> Within its first seven months, the EPPO launched 576 investigations, highlighting its proactive approach. By the end of 2022, the EPPO had 1117 active investigations with an estimated financial impact of 14.1-billion-euro damages to the EU budget. The EPPO has secured substantial freezing orders, totaling 359.1 million, to prevent further financial losses. More information on the EPPO website: <https://www.eppo.europa.eu/en/about/background>

<sup>4</sup> 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.

<sup>5</sup> Specific offenses: Fraud related to EU expenditure and revenues; Cross-border value-added tax (VAT) fraud involving damages amounting to at least EUR 10,000,000; Passive and active corruption,

fraud, corruption, money laundering, and cross-border VAT fraud (Wade, 2019, p. 167). These offenses are explicitly within the EPPO's scope, emphasizing its role in investigating and prosecuting crimes that undermine EU financial integrity across Member States. The PIF Directive aims to harmonize legal frameworks and enhance cooperation among EU countries to combat fraud effectively. Regarding fraud that adversely affects the financial interests of the Union, as specified in Article 3, paragraph 2, point (d) of the Directive, the EPPO has jurisdiction when such fraud involves the territory of two or more Member States and results in a total damage of at least one million euros (Jelisavac Trošić, Kostić: 2019, p. 688).

The Regulation outlines the jurisdictional division between the EPPO and national authorities in combating offenses that impact the Union's financial interests (Preamble, point 13 of the Regulation). National authorities must forward any information related to such criminal offenses to the EPPO. If the EPPO decides to take over the case, the national authorities will relinquish their jurisdiction.

The EPPO works closely with national judicial authorities, Europol, Eurojust, and other relevant bodies to enhance the effectiveness of investigations and prosecutions. The EU's protection of its financial interests involves not only domestic oversight but also a robust external dimension that ensures funds are used effectively and responsibly wherever they are spent, including in third countries outside the EU. According to the Article 23 of the EPPO Regulation, the European Public Prosecutor's Office (EPPO) has the authority to investigate, prosecute, and bring to judgment those involved in criminal offenses related to EU funds allocated to third countries when the offences are committed by a national of the member state participating to the EPPO or by an EU official.

In efforts to extend cooperation beyond EU borders, the EPPO has engaged in negotiations and signed cooperation agreements with several third countries. The European Commission's 2024 Rule of Law Report on Serbia noted that Serbia has yet to conclude working arrangements for cooperation with the EPPO.<sup>6</sup> The author analyzed the development of cooperation agreement between the EPPO and third countries, reviewed signed cooperation agreements, and identified challenges associated with signing of these instruments. Specifically, the Article analysis arguments that Serbian authorities expressed in relation to cooperation with EPPO.

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encompassing bribery of public officials (both receiving and offering bribes) that results in or is likely to result in harm to the EU's financial interests; Misappropriation of EU funds or assets by public officials; Money laundering involving proceeds derived from any of the aforementioned offenses; Acts such as incitement, aiding, abetting, or attempting to commit any of the listed offenses.

<sup>6</sup> European Commission, 2024 Rule of Law Report – Country Chapter on the rule of law situation in Serbia, Brussels, SWD(2024) 831 final, p. 2.

## Protection of the EU financial interests

Fraud against the financial interests of the European Union has long been a key concern for Community institutions, prompting significant intervention in national criminal law (Baciu, 2013, p. 151). In 1987, the European Commission established the Task Force Anti-Fraud Coordination Unit (UCLAF), which became operational in 1988.<sup>7</sup> During the 1990s, the European Union actively passed numerous anti-fraud measures, encouraging member states to prosecute fraud against the EU's financial interests. However, allegations of internal embezzlement led to institutional reforms (Mitsilegas, 2009, p. 201). Criticism of UCLAF resulted in the establishment of the European Anti-Fraud Office (OLAF) to replace it in 1999. The legal basis for the EU's anti-fraud activities is Article 325 of the Treaty of Lisbon.

Unlike Europol and Eurojust, OLAF does not have legal personality but functions as a body attached to the European Commission (Ruszkowski, 2019, p. 108). It was established by a 1999 Commission Decision, which outlined OLAF's tasks, including internal and external administrative investigations, with OLAF operating independently.<sup>8</sup> Regulation 1073/99 further defined OLAF's investigative powers.<sup>9</sup>

To address operational issues, Regulation 883/2013 replaced the 1999 Decision, enhancing OLAF's effectiveness in combating fraud, corruption, and other illegal activities affecting the EU's financial interests.<sup>10</sup> The so-called OLAF Regulation was amended with Regulation 2020/2223, which came into force on January 17, 2021.<sup>11</sup> The new Regulation harmonizes the roles and competencies between OLAF and the European Public Prosecutor's Office (EPPO), ensuring effective information exchange, supporting EPPO investigations, and preventing overlapping actions.

OLAF lacks police or prosecutorial powers and must forward information to national prosecuting authorities or EU bodies for necessary action. It cannot independently initiate court proceedings but submits cases to national bodies or the EPPO.

<sup>7</sup> See: [https://anti-fraud.ec.europa.eu/about-us/history\\_en](https://anti-fraud.ec.europa.eu/about-us/history_en)

<sup>8</sup> Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF), 1999/325/EC, ECSC, Euroatom.

<sup>9</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).

<sup>10</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

<sup>11</sup> Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations.

The Regulation expanded OLAF's jurisdiction to protect EU interests from violations leading to administrative or criminal proceedings. OLAF's investigative powers include on-site inspections and detailed hearing procedures. It conducts administrative investigations of fraud, corruption, and other illegal activities affecting the EU's financial interests and those involving EU officials. Upon completing investigations, OLAF may recommend national prosecuting authorities initiate legal proceedings.

The Regulation mandates each member state designate a body or institution to support OLAF at various investigation stages. Anti-fraud coordination services in each EU member state now play a more significant role in supporting OLAF's external and internal investigations.

For external investigations, Regulation 2020/2223 stipulates that only EU law governs on-the-spot checks and investigations by OLAF, contingent on the economic operator's agreement. Economic operators must cooperate with OLAF, providing all relevant information if involved in or possessing information about the investigation. The Regulation also strengthens the rights of business entities, allowing them assistance from a person of their choice, including an external legal advisor, during on-site checks and inspections.

Regarding internal investigations, the 2020 Regulation grants OLAF access to all relevant information held by EU institutions, bodies, offices, and agencies, regardless of the media type. OLAF can request access to information on privately owned devices used for work purposes if there is reasonable suspicion of relevant information being stored on them. OLAF is also authorized to inspect the accounts of all EU institutions and bodies and, if necessary, take custody of relevant documents or data.

The Regulation allows OLAF access to bank account information under the same conditions as competent national authorities, enhancing investigation efficiency. The probative value of OLAF reports has been strengthened in proceedings before the Court of Justice, non-criminal proceedings before national courts, and national administrative proceedings. OLAF reports and attached evidence are admissible in these contexts, though in criminal proceedings, they are treated similarly to reports from state administrative inspectors.

The Regulation strengthens cooperation with Eurojust and Europol, allowing for the exchange of operational, strategic, and technical information. It mandates a close relationship between OLAF and the European Public Prosecutor's Office, based on sincere cooperation. OLAF must notify the EPPO without undue delay of alleged criminal conduct within the EPPO's jurisdiction.

Both administrative and criminal law tools are necessary for the protection of EU financial interests because they provide a comprehensive approach to comba-



ting fraud, corruption, and other illegal activities (Bellacosa, de Bellis, 2023, p. 16). Administrative tools allow for swift and preventive actions. OLAF conducts administrative investigations into fraud, corruption, and other activities detrimental to the EU's financial interests. These investigations can be internal (within EU institutions) or external (involving economic operators and other entities). OLAF can perform on-site inspections to gather evidence quickly and efficiently. These checks are crucial for detecting and stopping fraudulent activities in their early stages. In relation to access to information OLAF has the authority to access all relevant information held by EU institutions and can request information from private entities involved in investigations. This broad access is vital for comprehensive investigations. Administrative tools include the ability to recommend actions to prevent further fraud. For example, OLAF can suggest improvements in financial controls within EU institutions or recommend suspension of payments to suspected fraudulent beneficiaries.

Criminal law tools are essential for ensuring that severe violations are adequately punished and act as a deterrent to potential offenders and provides for stringent penalties, including imprisonment and substantial fines, which are essential for punishing offenders and deterring future crimes.<sup>12</sup> The EPPO has the authority to prosecute crimes against the EU's financial interests. This includes initiating criminal proceedings, conducting investigations, and bringing cases to court. Criminal investigations can involve coercive measures such as searches, seizures, and arrests, which are necessary for gathering evidence and securing suspects.

The collaboration between OLAF and EPPO is designed to leverage the strengths of both administrative and criminal law tools, ensuring a comprehensive and efficient approach to protecting EU financial interests. The effective exchange of information between OLAF and EPPO is crucial. OLAF's administrative investigations often uncover evidence that can be used in criminal prosecutions. Timely sharing of this information ensures that EPPO can take swift action. OLAF and EPPO work complementarily. While OLAF handles administrative investigations, EPPO focuses on criminal prosecutions. This division of labor allows each body to specialize and operate efficiently within its mandate. However, Protocols are in place to prevent overlapping actions. This ensures that resources are used efficiently, and investigations are not duplicated, which could delay proceedings and reduce their effectiveness. According to Article 101 para 3 of the EPPO Regulation OLAF supports EPPO's criminal investigations

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<sup>12</sup> For more about developing penal policies at the national level, see: Kolaković-Bojović, M. (2022) 'Human Rights Protection: From Populism to the Evidence - Based Policy Making', in: Pavlović, Z. (ed.) *Yearbook. No. 5, Human rights protection : from childhood to the right to a dignified old age : human rights and institutions*. Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 63-80.

by providing expertise, conducting complementary administrative investigations, and gathering evidence that can bolster criminal cases (Dianese, Grozdev, 2022, p. 281).

Regulation 2020/2223 provide a clear legal framework that defines the roles and responsibilities of OLAF and EPPO. These frameworks ensure that both bodies operate within the boundaries of their mandates while maintaining a close working relationship.

### **Legal basis for EPPO cooperation with third countries**

Legal basis for EPPO cooperation with third countries are Articles 99 and 104 of the Regulation, which deals with the relations between the European Public Prosecutor's Office and third countries. The Article 99 envisages that EPPO can establish and maintain cooperative relations with EU institutions, non-participating EU Member States, third countries, and international organizations as necessary for its tasks. It may directly exchange information with these entities, unless restricted by regulation. Additionally, the EPPO can conclude technical and operational working arrangements to facilitate cooperation and information exchange, but these arrangements cannot allow personal data exchange or have legally binding effects on the EU or its Member States.

Article 104 outlines several key mechanisms for cooperation, which include working arrangements with third countries' authorities, strategic information exchanges, and the secondment of liaison officers to the EPPO. The EPPO can designate contact points in third countries to facilitate cooperation in line with its operational needs.

Three main possibilities for judicial cooperation are conclusion or accession to international agreements (para 3), the application of existing multilateral treaties (para 4) and applying the double hat principle by European delegate prosecutor (Franssen, 2019, p. 200).

The EU can conclude new international agreements or accede to existing ones in areas under the EPPO's competence, such as cooperation in criminal matters. Specifically, Article 104 para 3 states that any international agreement concluded by the EU or to which the EU has acceded shall be binding on the EPPO. The EU is currently a party to the UN Convention against Transnational Organized Crime (UNTOC)<sup>13</sup> and the UN Convention against Corruption (UNCAC).<sup>14</sup> Additionally, the EU has bilateral mutual legal assistance agreements with the United States<sup>15</sup> and Japan.<sup>16</sup>

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<sup>13</sup> EU signed UNTOC on 12 December 2000 and approved on 21 May 2004. [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en)

<sup>14</sup> EU signed UNCAC on 15 September 2005 and approved on 12 November 2008. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-14&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&clang=_en)

<sup>15</sup> Agreement on mutual legal assistance between the European Union and the United States of America of 25 June 2003, *O.J. L* 181, 19 July 2003.

<sup>16</sup> Agreement between the EU and Japan on mutual legal assistance in criminal matters of 30



Furthermore, the EPPO can be recognized as the competent authority replacing national judicial authorities for crimes within its remit. Article 104 para 4 envisages that in the absence of an agreement, member states should, if permitted under the relevant multilateral agreement and subject to third country acceptance, recognize and notify the EPPO as a competent authority for implementing multilateral agreements. Member states are obliged to recognize the EPPO as competent for PIF crimes and notify third countries of this status, potentially requiring amendments to existing agreements.

Interpretation of the Article 104 para 4 could be that if the third country and the EU do not have a bilateral mutual legal assistance treaty, cooperation should primarily rely on Council of Europe instruments.

Finally, the European Delegated Prosecutors (EDPs) can act in their national capacity to request mutual legal assistance from third countries. Article 104 para 5 enables if the previous mechanisms are unavailable, the handling EDP can use their powers as a national prosecutor to request mutual legal assistance based on international agreements concluded by their member states or applicable national law, informing third countries that the EPPO will be the final recipient of the information. EDPs must act transparently and seek third country consent where necessary, ensuring the third country is aware that the EPPO will ultimately use the provided information.

Recital 109 of the Regulation provides context and sets a hierarchy among the cooperation mechanisms. Member states are encouraged to facilitate the EPPO's functions based on the principle of sincere cooperation under Article 4 para 3 of the Treaty of EU. If the first option (concluding or acceding to international agreements) is not feasible, alternative options must be explored.

In case where the three main mechanisms fail, Article 104 para 5 includes a provision for ad hoc cooperation based on reciprocity or international comity. The EPPO can request mutual legal assistance from third countries in individual cases, subject to any conditions imposed by those third countries.

The EPPO can provide information or evidence upon request to competent authorities in third countries for use in investigations or as evidence, but only if it is in the EPPO's possession. The Regulation does not cover extradition, leaving this sensitive area to member states. EDPs can request their member state's competent authority to issue an extradition request according to applicable treaties and national law.

The practical application of Article 104 must consider public international law, European law, and national law. The modalities for judicial cooperation will be influenced by these legal frameworks and the specific operational needs of the EPPO.

Regardless of the legal pathway the EPPO pursues, it ultimately depends on the consent of the third countries involved, as it is rooted in the principle “a treaty does not create either obligations or rights for a third state without its consent” as par Article 34 of the Vienna Convention.<sup>17</sup>

Amending an existing treaty to include the EPPO, especially a multilateral one, is a challenging task. The difficulty lies in identifying treaties suitable for the EPPO's limited mandate. Crafting a new treaty between the EU and a third country under Article 218 of the Treaty on Functioning of the EU might be more feasible. However, this requires clarity on the EPPO's role and types of mutual legal assistance it will cover. Additionally, since not all EU member states participate in the EPPO, the procedural aspects of treaty adoption need careful consideration. For new treaties under Articles 218 and 86 Treaty on Functioning of the EU, unanimous approval by participating member states is necessary, without requiring non-participating member states to agree. However, for amending multilateral treaties involving non-participating member states, their consent is needed. Notifications to third countries about the EPPO's role as a competent authority must align with existing agreements, but third countries might still resist cooperation, leading to counter-declarations. Coordinated notifications by the EU and the 22 participating member states could mitigate confusion.

One the challenges with the EPPO is that judicial cooperation traditionally occurs between states, which the EPPO is not. States typically designate a central authority for receiving and executing mutual legal assistance requests. Direct communication with judicial authorities in third countries is sometimes allowed by national laws, as seen in the Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.<sup>18</sup>

The EU's bilateral mutual legal assistance treaties with the United States and Japan also follow the central authority concept. Although the EU is a party to UNCAC and UNTOC, it has not designated a central authority, as it lacks one. Even if member states agree to the EPPO as a central authority for specific crimes, its narrow mandate versus the broader scopes of UNCAC and UNOTC complicates matters. Central authorities, usually ministries of justice or prosecutor general's offices, add complexity as the EPPO's independence depends on cooperation from potentially pollical actors. Recent European Court of Justice decisions on European Arrest Warrants highlight the importance of ‘independence’ (Matić Bošković, 2020: 341).<sup>19</sup>

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<sup>17</sup> Vienna Convention on the Law of Treaties, 23 May 1969, entered into force on 27 January 1980.

<sup>18</sup> European Treaty Series No. 182, Strasbourg, 8 November 2001.

<sup>19</sup> Judgments of 27 May 2019 in Joined Cases C-508/18 *OG* and C-82/19 *PPU PI* and in Case C-509/18 *PF*. In deciding on the European Arrest Warrant (EAW) application, the Court examined whether the public prosecution authority of the Member State issuing the EAW

For judicial cooperation with third countries, the EPPO must follow applicable national and international laws. This stems from Article 5 para 3 of the Regulation: *The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation.* Additionally, the EPPO must adhere to strict data exchange rules with third countries as outlined in Articles 80 to 83 of the Regulation. These provisions ensure compliance with both national and European legal frameworks.<sup>20</sup>

The 'double hat' principle and the EPPO's role as a 'legal successor' for PIF crimes require careful consideration. The EPPO shares competence with national authorities, complicating its role as a legal successor unless it has effectively exercised its competence in a given case. This ambiguity can confuse third-country authorities about who to contact within the EU. Even if third countries accept an EDP acting as a national prosecutor, courts may question the legitimacy of the evidence gathered, affecting its independence in legal proceedings.

Judicial cooperation with third countries must be reciprocal. Third-country authorities seeking assistance in PIF cases will likely contact the central authority in the member state involved unless the EPPO can be directly contacted. The EPPO's limited mandate and inability to guarantee all evidence needed by third countries complicate its role as an executing authority. Therefore, third countries must evaluate whether engaging with the EPPO is beneficial, given its constraints.

Till now the Working arrangements on cooperation between the EPPO and third countries' authorities were signed with Prosecution services of Albania (2022), Georgia (2022), Moldova (2022), Montenegro (2022), North Macedonia (2022), Seychelles (2024), Ukraine (2022 and 2023), USA (2022), and Bosnia and Herzegovina (2023).<sup>21</sup> Key parts of the working arrangements relate to operation and strategic cooperation. Operation cooperation includes cooperation on gathering evidence, freezing of assets, joint investigation teams and extradition, while strategic cooperation relates

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provides a sufficient level of judicial protection. In its judgment on 27 May 2019, the CJEU ruled that the public prosecution in Germany lacks guarantees of independence from executive and political interference, and therefore, cannot issue a European Arrest Warrant. On autonomy of public prosecutors see: Matić Bošković, M., Ilić, G. (2019) *Javno tužilaštvo u Srbiji: Istorijski razvoj, međunarodni standardi, uporedni modeli i izazovi modernog društva*. Beograd: Institut za kriminološka i sociološka istraživanja; Matić Bošković, M., Nenadić, S. (2018) *Evropski standardi u oblasti pravosuđa. Strani pravni život*, 62 (1), 39-56. <https://doi.org/10.5937/spz1801039b>

<sup>20</sup> For more about phasin in approach of EU to the candidate countries, see: Kolaković-Bojović, M. and Simonovski, I. (2023) The Accession Negotiations of North Macedonia to the EU: Between New Methodology and Old Challenges. In: *International scientific conference "Law between the ideal and the reality"*. Faculty of Law, Institute for Comparative Law, Priština, Belgrade, pp. 103-115

<sup>21</sup> See: <https://www.eppo.europa.eu/en/about/international-cooperation#cooperation-between-the-eppo-and-non-eu-states-third-countries>

to exchange of strategic and other information, secondment of liaison officers to the EPPO, EPPO contact points in the national authority, meetings, technical support and channels of communication.

By 30 September 2022, 17 member states participating in the EPPO notified the EPPO as a competent authority for the purposes of the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols. Switzerland believes that under the current framework, EPPO recognition as a competent authority under the 1959 European Convention is legally untenable without the EU itself being a member.

However, discussions within the Council of Europe regarding the conclusion of a new Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters, aimed at facilitating cooperation between the EPPO and the competent authorities of other Parties, have currently been put on hold.<sup>22</sup> In addition, Switzerland maintains reservations about current proposals for cooperation with the EPPO under existing frameworks, advocating for new instruments that align with its national legal principles and sovereignty concerns.

### **Impact of EPPO Regulation on Serbia**

Since 2001, the EU has provided, through several various instruments and funds, more than EUR 3 billion in grants to the Republic of Serbia in order to support the reforms.<sup>23</sup>

Through the Instrument for Pre-accession Assistance (IPA), Serbia can receive over 200 million euros per year to support reforms within the negotiation chapters. In 2021, the European Anti-Fraud Office (OLAF) concluded two investigations related to Serbia concerning the use of EU funds managed or spent at the national or regional level.<sup>24</sup> Out of these two investigations, OLAF issued a recommendation in only one case. This limited number of investigations and recommendations suggests that OLAF does not have a significant volume of cases involving Serbia. Related to EPPO activities Serbia and legal entities registered in Serbia were part of the investigation of the VAT carousel fraud in 2022.<sup>25</sup> Collaborating across borders, European Prosecutors, European Delegated Prosecutors, EPPO financial fraud analysts, Euro-

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<sup>22</sup> Non-paper from the Commission services and the European Public Prosecutor's Office (EPPO) on the state of play of the EPPO's activities, 10 October 2022.

<sup>23</sup> See: <https://www.mei.gov.rs/eng/funds/eu-funds/>

<sup>24</sup> See: [https://anti-fraud.ec.europa.eu/system/files/2022-09/olaf-report-2021\\_en.pdf](https://anti-fraud.ec.europa.eu/system/files/2022-09/olaf-report-2021_en.pdf)

<sup>25</sup> See: <https://www.eppo.europa.eu/en/media/news/operation-admiral-eppo-uncovers-organised-crime-groups-responsible-vat-fraud-estimated>

pol, and national law enforcement authorities uncovered connections between the suspected Portuguese company and nearly 9,000 other legal entities and over 600 individuals in different countries. Eighteen months after the initial report, the EPPO is exposing what is believed to be the largest VAT carousel fraud ever investigated in the EU. This example demonstrates that Serbia is cooperating with EPPO when EU financial interest is endangered.

Judicial cooperation in criminal matters between Serbia and EU is already established through different mechanisms, specifically through Eurojust,<sup>26</sup> the European Union Agency for Criminal Justice Cooperation.<sup>27</sup> Serbia signed a Cooperation agreement with Eurojust in November 2019 and the first liaison prosecutor have taken duties in March 2020. A Cooperation agreement includes also Eurojust liaison magistrate, contact point to Eurojust, operational and strategic meetings, exchange of information and channels of transmission. In 2023, the Serbian liaison prosecutor was involved in 89 new cases, 23 coordination meetings, 4 coordination centres, and 4 joint investigation teams.<sup>28</sup>

Eurojust facilitates and improves the coordination of investigations and prosecutions and enhances cooperation between competent authorities in Member States. It plays a crucial role in facilitating the execution of international mutual legal assistance requests and the implementation of extradition requests. In comparison with EPPO, Eurojust's competence is broader and encompasses a wide range of crimes, including terrorism, drug trafficking, human trafficking, counterfeiting, money laundering, computer crime, offenses affecting the EU's financial interests, environmental crimes, etc.

Despite appearing to have similar roles, EPPO and Eurojust are significantly different. EPPO is competent to investigate and prosecute PIF crimes, while Eurojust facilitates judicial cooperation between national authorities and only has soft powers.

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<sup>26</sup> Eurojust Legal Framework includes: Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA; Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences; Regulation (EU) 2023/2131 of the European Parliament and of the Council of 4 October 2023 amending Regulation (EU) 2018/1727 of the European Parliament and of the Council and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases.

<sup>27</sup> Eurojust is a specialised hub providing tailor-made support to prosecutors and judges across the EU and beyond. The aim of the Eurojust is to ensure that national borders are no obstacle to prosecuting criminals.

<sup>28</sup> See: <https://www.eurojust.europa.eu/states-and-partners/third-countries/liaison-prosecutors/serbia>

Since other Western Balkan countries signed cooperation agreement with the EPPO it is expected that Serbian authorities do the same. However, according to the reply provided to a questionnaire on co-operation under the MLA convention the Republic of Serbia asserts that unilateral declarations by EU Member States are insufficient to establish a legal basis for cooperation with the European Public Prosecutor's Office (EPPO).<sup>29</sup> Serbia points out that its national law, specifically the Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of the RS No. 20/09), does not currently encompass provisions allowing for such cooperation. According to Article 3 of the Law, mutual legal assistance is granted for criminal proceedings falling under the jurisdiction of the requesting state's court at the time of the request. Additionally, assistance shall be provided for offenses that could lead to criminal proceedings based on administrative decisions in either the requesting or requested state. Finally, assistance shall be provided at the request of the International Court of Justice, International Criminal Court, European Court of Human Rights and other international institutions established under international agreements ratified by the Republic of Serbia.<sup>30</sup>

Furthermore, the Law on Mutual Legal Assistance in Criminal Matters, in Article 1, regulates mutual legal assistance procedures when no ratified international agreement exists, or certain matters are not covered by existing agreements. Notably, since the European Union is not a signatory to the 1959 Mutual Legal Assistance Convention, Serbia argues that this domestic law would govern mutual legal assistance cases involving the EU. In addition, Serbia is not signatory to the EU founding agreements, so Article 3 of the Law on MLA in criminal matters is not applicable.

To establish a framework for bilateral cooperation with the EPPO, Serbian authorities envisage two cumulative requirements, one is signing of bilateral agreement and second is signing of additional protocol to the European Convention on Mutual Assistance in Criminal Matters that will enable EU to become a party to the Convention. Namely, Serbia advocates for the negotiation and conclusion of a bilateral agreement with the EPPO. Such an agreement would serve as a formal legal basis for cooperation between Serbia and the EPPO, aligning with Serbia's legal requirements. Furthermore, Serbian authorities suggest negotiating an Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. This proto-

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<sup>29</sup> European Committee on Crime Problems (CDPC) Committee of Experts on the Operation of European Convention on Co-operation in Criminal Matters (PC-OC), Compilation of replies to a questionnaire on co-operation under the MLA convention, 26 October 2022, Strasbourg.

<sup>30</sup> For more about hierarchy of within the legal order of the Republic of Serbia, see: Kolaković-Bojović, M. (2021) 'Life Imprisonment and Parole in Serbia - (Un)intentionally Missed Opportunity', *Revija za kriminologiju i krivično pravo*, 59 (1), 93-108. <https://doi.org/10.47152/rkkp.59.1.2>



col would enable the EU to become a party to the convention, thereby providing a structured legal framework for cooperation that meets Serbia's legal standards.

Serbia's position underscores the necessity for explicit legal arrangements, through both bilateral agreements and international protocols, to enable cooperation with the EPPO within the framework of its existing national legislation on mutual legal assistance in criminal matters. However, it should be stressed that Serbian authorities are obliged to cooperate with EPPO in cases when EU financial interests are involved. This obligation specifically pertains to the protection of EU funds and the investigation of VAT frauds. Such cooperation ensures that financial misconduct affecting the EU's budget is effectively addressed, highlighting the importance of Serbia's role in maintaining financial integrity within the EU framework. In addition, as it is mentioned the EPPO is legally equipped to investigate and prosecute fraud cases linked to third countries. Article 23 of the Regulation affirms the EPPO's extraterritorial jurisdiction concerning PIF (protection of financial interests) offences.

### **Conclusions**

The practical usefulness of the possibilities in Article 104 for the EPPO is limited, as several third countries have interpreted that this Article does not provide a sufficient legal basis for signing cooperation agreement. Thus, the EPPO's effectiveness depends on the willingness of third states to engage in either structural or ad hoc judicial cooperation. Switzerland and Serbia identified shortcomings of Article 104 as legal basis for signing cooperation agreement and advocating for signing of additional protocol to the European Convention on Mutual Assistance in Criminal Matters that will enable EU to become a party to the Convention. According to both, Serbia and Swiss legislation, this will be crucial precondition for signing of cooperation agreement with the EPPO.

However, several third countries already opted for signing of cooperation agreement on cooperation with the EPPO (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, but also USA). In addition, Serbia is already having ad hoc cooperation with the EPPO in specific cases. Thus, it would be useful to explore other options that will enable structural cooperation with the EPPO. Given that Serbian authorities are currently amending numerous laws, including criminal legislation (criminal procedure and criminal code), it would be prudent to consider amendments to the Law on Mutual Legal Assistance in Criminal Matters to enable the signing of a cooperation agreement with the EPPO.

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