

# The activity of the European Public Prosecutor's Office in the fight against the frauds to the detriment of European funds



EUROPEAN  
PUBLIC  
PROSECUTOR'S  
OFFICE

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# EPPO – MAIN FEATURES

- Entirely **new judicial body** (Legal basis art.86 TFUE and EPPO Regulation(EU2017/1939), Pif Directive (EU)2017/1371, National legislation)
- Supranational (EU) and hybrid prosecution's office, independent from the European and national authorities, including the national prosecutorial and judicial authorities
- Responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences that could affect the financial interests of the EU, up to the final judgement
- Direct powers of investigation and prosecution in the 22 Member States participating in the EPPO and to instruct the national authorities.
- the tools of the judicial cooperation among prosecutor's offices are not applicable –direct execution of the investigative measure by the



# Participating Member States



# Non-participating Member States



Opt-out — opt-in Member States not participating




# The concept of "Single Office"

Art. 8, par. 1, of EU Regulation 1939/2017 provides that:

*"the EPPO shall be an indivisible Union body operating as **one single Office** with a decentralized structure."*

The EPPO is, organized at a central level (Central Office) and at a decentralized national level, where the European delegated prosecutors (140) operate



 = number of the European Delegated Prosecutors

# Investigative powers, prosecution and criminal procedure

- **At national level, the edp's are intitled to handle** investigations (– principle of **legality**) ,having the same powers of the national prosecutors by adopting:
  - ***Investigative measures:***
    - available under national criminal procedural law ( a Common set of investigative measures is also identified in the EPPO Regulation)
  - **As to the applicable criminal procedure:**
    - National procedural law whose EDP is handling the case / EU procedural rights Directives/ EU Charter of fundamental rights
  - **Cross-border investigations:**
    - Among participating Member States – it acts as a single office
    - Elsewhere –judicial cooperation instruments.

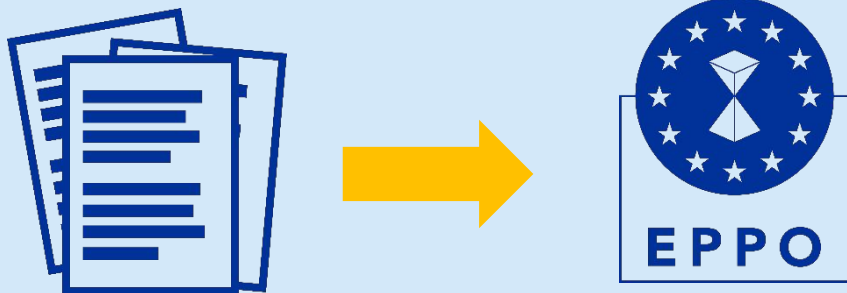


# Exercising the competence:

- the EPPO **exercises its competence by initiating an investigation** pursuant to Article 26, **or**
- deciding to exercise his **right of evocation** pursuant to Article 27 of the EPPO REGULATION
- It is an autonomous and unilateral decision, based on the obligation of the national authorities to provide information
- Duty to referral when the case should be investigate by the National Prosecutor's office
- Competent with regard to any offence within its remit committed after 20 November 2017

# Investigations: how it works

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## Information comes to EPPPO

- From private parties: Report A Crime web form
- From national authorities; from EU Agencies... Any other source or office

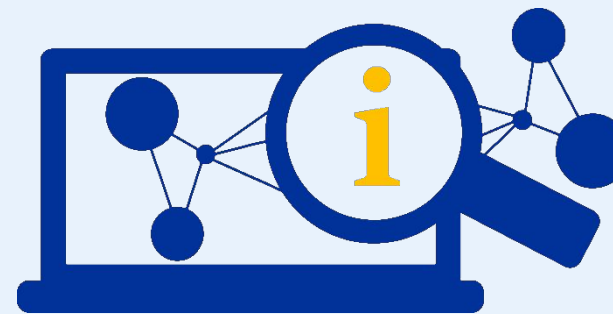
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## If opened, EDP investigates from start to finish

- Supported by EDPs cross-border investigations
- EPPPO financial investigators and case analysts
- Supported by national police, customs, tax services...
- Supervised by a Permanent Chamber in

2



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

4



**Case is tried before the national courts**  
(dismissed or prosecuted)

# Eppo's action

- Art. 22(1)EU REGULATION: The EPPO shall have jurisdiction for offences affecting the financial interests of the Union as referred to in Directive (EU) 2017/1371



# Eppo's action

- a) in respect of expenditure – procurement and non-procurement-related (fraud, corruption, misappropriation, fraud bid rigging, trading in influence)
  - b) in respect of revenue (own resources) - other than VAT (smuggling, custom frauds not involving fraud)
  - c) in respect of revenue arising from VAT connected with the territory of two or more Member States and a total damage of at least EUR 10 million (Vat frauds, custom frauds involving import VAT)
- Organised crime when focused on PIF offences, money laundering from PIF Offences, inextricably linked offences



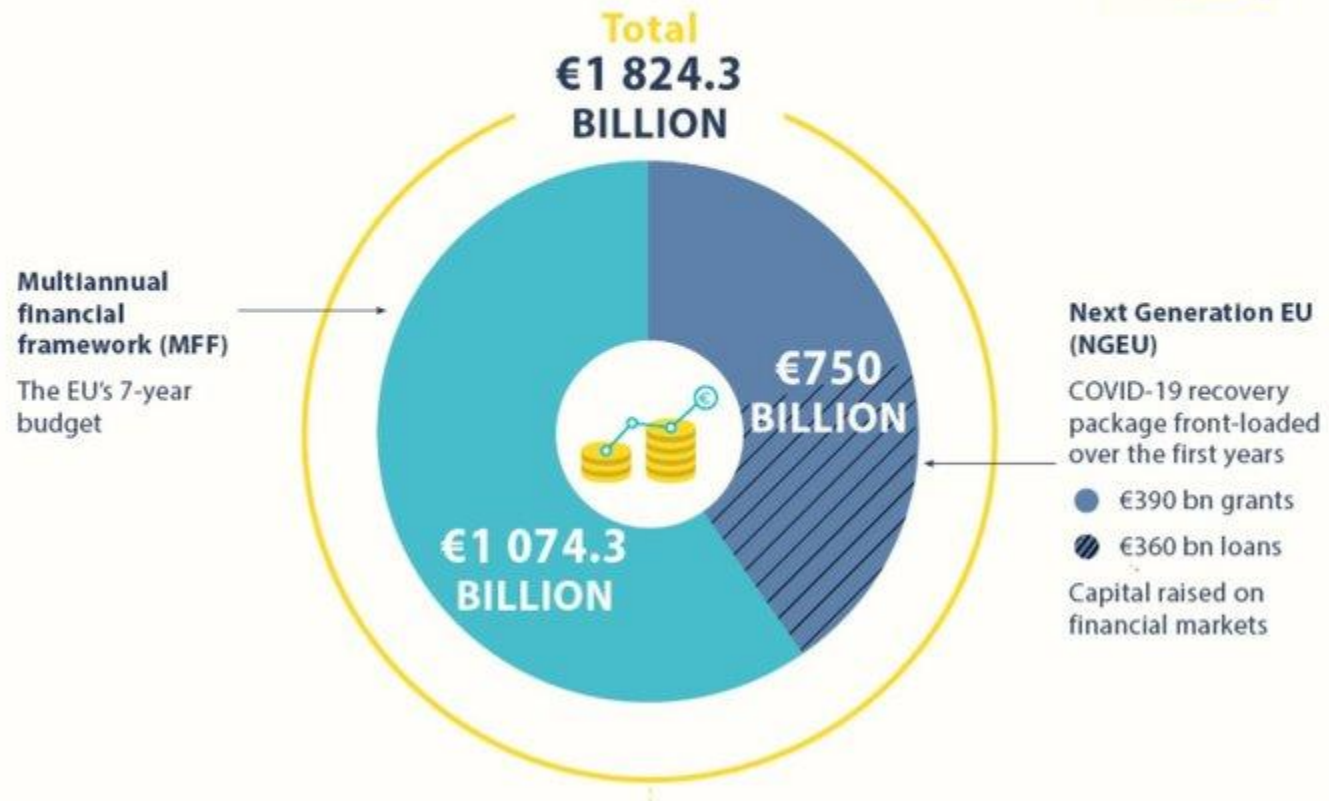
- The funds can be used by the Member states for financing both ongoing and new projects;
- **It is necessary to find a criterion for assessing when a case of fraud/misappropriation falls under the EPPO's competence**
- Concept of fraud as envisaged in the PIF Directive: Starting point

- Definition of fraud
- In general, it describes a false representation by means of a statement or a conduct made knowingly or recklessly to gain material advantage. Normally the national criminal law includes more offenses under the category of fraud (In Italy art. 640 aggravated and art. 316 bis and ter c.p.)
- **PIF Directive (art.3):** it focuses on the fraud affecting the Union's financial interest: a fraudulent conduct with respect to revenues, expenditure and asset at the expense of the general budget of the European Union including financial operations such as borrowing and lending activities. IMPLEMENTED IN ITALY by Law 75/2020, also in respect of legal entities.

# Expenditures: Identifying the source

- a) Direct management: EU funding is managed directly by the European Commission
- b) Shared management: the European Commission and national authorities jointly manage the funding
- c) Indirect management: funding is managed by partner organizations or other authorities inside or outside the EU

## Overall budget 2021-2027



# Eppo: the scope of the material competence

Is based on the concept of '**real or potential harm**' to the financial interests of the Union – meaning a conduct which '**would or may cause harm**' to the financial interests of the Union'. **For the EPPO to initiate an investigation for one of the PIF offences, the threshold is a damage of at least 10000 euros to the EU budget.**

- This could be stemmed from many provisions of the Eppo Regulation and also from the PIF Directive: Art. 4(2)(a) and (b) – corruption: **harm or may harm** the financial interests of the Union; Recital 14: ...Insofar as the **financial interests of the Union may be affected or threatened** by a conduct attributable to legal persons
- PIF Directive
- Art. 4(2)(a) and (b) – corruption: **harm or may harm** the financial interests of the Union
- Recital 14: ..Insofar as the **financial interests of the Union may be affected or threatened** by conduct attributable to legal persons
- **Potential damage – National case-law too.**
- Cass. Sez. 3 No 28416 dep. 19.7.2022: in the presence of private financing assisted by a public guarantee, which is intended to be activated only in the event of non-fulfilment of the financed entity, the financial aid must be deemed to be 'obtained' by the public body, as provided on the basis of a provision of public law, in the pursuit of specific objectives of public interest... when the public guarantee is given, moreover, the credit risk falls entirely on the State, which has previously set aside a specific fund.

# Eppo: the scope of the material competence

- In short, the interpretation of the European Public Prosecutor's Office is that the potential damage to the EU arises at the time when the EU funds are engaged in relation to a given intervention or project, as a possible financing, reimbursement or sums provided as a guarantee.
- Cases of potential damage in cases where EPPO has exercised competence so far:
  - Attempted offenses to the detriment of EU's financial interests
  - Corruption, trading in influence, bid rigging
  - EIB or EIF guarantees
  - Commitment of sums also as repayment of loans paid in advance by national authorities (e.g. Structural Funds)

## The Regulation 241/2021, as interpreted by THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE, goes in the same direction.

Art. 8: The recovery and resilience facility is implemented by the Commission under direct management

Art. 20: the Council approves, by means of an implementing decision, the assessment of the recovery and resilience plan submitted by the Member State

Art. 23: Commitment of the financial contribution: the Commission concludes, with the concerned Member State, an agreement constituting a **specific legal commitment under the Financial Regulation.**

Art. 29: Monitoring of implementation (REGIS)

**To sum up, EPPPO's competence is embedded when the legal commitment of financing of the Union could be linked to the specific project/measure in relation to which a criminal conduct is detected, regardless of the effective payment.**



- **The Italian Law n. 108/2021:** sets up an organizational model that works on two levels for steering the procedure
- **The «Codice Unico di Progetto (CUP)»** identifies a public investment project.
- It is up to the Public Administration to assign it and it is compulsory:
- It represents the requirement that a project must have for being funded by RRF and NEXT Gen EU funds;
- It has to be granted by the Public Administrations in compliance with the classification of the different channels/lines of financing established by the RRF plan
- In general, the Italian EDP's, before initiating or in the course of an investigation for a non-procurement fraud related to NRRP funds, **should collect those specific information to adopt a decision whether the**



- As a general rule, in the NRRP it has been established that all the projects have to be in line with the *performance* objectives, the so called *Milestone and target*.
- ALL the esboursements are finalized only if the Milestones and Targets are fulfilled The NRRP projects have to be previously selected by the competent Administrations in order to be inserted in the **REGIS** platform and consequently be covered by the EU funds.
- The same scheme of selection is used for some NRRP measures of financing the **tax credits**, namely the Ecobonus and Sismabonus and the transition 4.0 measures.
- It is necessary a preventive filter in order for the National Administrations to decide if go ahead by requesting the EU coverage
- In our investigations we need to gather these information. We have set up the exchange of information via specific channels.

# Investigations: traditional measures and new methods

## The Eppo: An added Value

- Acting as single office means that:
- EDPs act in close cooperation by assisting and regularly consulting each other.
- involvement of the central level, when needed.
- At national level:
- Regular coordination and operational meetings with the specialized offices of the LEA's in particular GDF.
- Developing an expertise in this type of investigation and shared data base
- In general, powers to carry out our investigations in all over the territory and also abroad
- Common instrument: requests of freezing orders of the proceeds of the frauds and/ or systematic information to the administration involved about the results of the on-going investigations to prevent the funds to be delivered

# Cooperation with OLAF and Europol

## **OLAF: Article 101 EPPO Regulation / in particular new Articles 12c to 12g of OLAF Regulation (2020/2223)**

- Working Arrangement between EPPO and Europol, July 2021
- reporting of cases within EPPO competence
- support or complement the EPPO's activity, administrative investigations
- Also Eppo can inform Olaf when is not conducting an investigation on an offence and it appears appropriate to open an administrative investigation also for the purpose of apply precautionary measures (art.105 eppo regulation)

## **Europol: Article 102 EPPO Regulation / in particular new Article 20a of Europol Regulation (doc. PE -CONS 8/22, 11.05.2022)**

- Working Arrangement between EPPO and Europol, January 2021
- new Europol Regulation: "hit/no hit system", reporting of cases within EPPO competence

# Administrative investigation

As to Olaf and other competent authorities' context, they are inspections, checks and other measures taken by competent authorities (not judicial) with a view to ensure the proper application of the Law and to achieve its objective of fight against fraud, corruption and any other illegal activities affecting the financial interests of the EU and to establish, where necessary the irregular nature of the activities under investigation. Those investigation shall not affect the powers of the Eppo or of the competent authorities of the MS to initiate Criminal proceedings

## Administrative measures (par 10)

In the framework of the protection of the Union's financial interests they may be the consequences of irregularities (withdrawal of wrongly obtained advantages).

They must be effective proportionate and dissuasive (EU Regulation 2988/95).

The PIF directive does not exempt MS from their application so MS can in principle continue to apply administrative measures in the area



**THANK YOU**