

## Section 3. Legal Studies

*Sara Mahilaj,  
University of Urbino, Italy  
PhD Student in Global Studies:  
Economy, Society and Law*

### **THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE: BUILDING TRUST ACROSS THE EUROPEAN UNION**

**Abstract.** The European Public Prosecutor's Office (EPPO) mandate to investigate and prosecute crimes that affect the financial interests of the European Union (EU) as a whole, as well as its cooperation with non-participating member states, demonstrates the EU's commitment to upholding the rule of law and protecting its citizens. By effectively combating fraud and corruption, the EPPO helps build trust between member states and strengthens the accountability of EU institutions.

Given the importance of the EPPO's mandate, it is critical to assess its contribution to building trust and accountability in the EU. This paper investigates how the European Public Prosecutor's Office (EPPO) achieves this goal. The paper highlights that the EPPO's mandate and cooperation efforts contribute significantly to the EU's trust-building efforts by effectively combating financial crimes, promoting transparency and collaboration between member states, and upholding the rule of law. However, there are also challenges to effective cooperation, such as differences in legal systems and varying levels of political will among member states. Nevertheless, the EPPO has the potential to play a significant role in promoting transparency and combating fraud and corruption in the EU. Continued efforts to enhance cooperation and overcome challenges will be necessary to fully realize this potential.

**Keywords:** EPPO Regulation, EU Member States, PIF Directive, The European Public Prosecutor's Office.

## 1. Introduction

The origin of the EPPO can be traced back to a 1995 meeting of the Presidents of the European Criminal Law Associations at Urbino University in Italy, where the concept of a European legal space for the protection of the financial interests of the European Communities was first proposed [15]. The Corpus Juris report, published in 1997, proposed the creation of a European Public Prosecutor's Office, which would have the power to investigate and prosecute criminal offenses affecting the EU's financial interests. The proposal was discussed at the European Council meetings, and the Treaty of Lisbon eventually provided the legal basis for the establishment of the EPPO in 2017. The EPPO was established with the appointment of Laura Kövesi as the first European Chief Prosecutor in 2019, followed by the appointment of 22 European Prosecutors in 2020, and officially began its operations on June 1, 2021, with the publication of its first annual report in 2022 [10].

The European Public Prosecutor's Office is a relatively new institution within the European Union and was established as an independent EU body with the mandate to investigate and prosecute crimes affecting the financial interests of the EU. Its creation represents a significant step towards strengthening the rule of law and protecting the EU's citizens from fraud and corruption. The EPPO's mandate also includes cooperation with non-participating EU member states, a crucial aspect of its work that aims to ensure consistent and effective action against crimes that threaten the EU's financial interests. Building trust is essential because it can strengthen the legitimacy of institutions and encourage cooperation between individuals and nations, thereby contributing to the stability and prosperity of a society or community. Consider trust to be, as Kasperson et al. state, the evaluation of a social relationship based on the violation or fulfillment of certain expectations [12]. This idea, that trust is based on the fulfillment of certain expectations, is interesting, as it highlights the importance of consistent and transparent actions by institutions such as the European Public Prosecutor's Office in order to maintain and strengthen trust.

As the topic of the European Public Prosecutor's Office was discussed for many years before its establishment, there have been various studies and reports published on the subject. For instance, Busuioc et al. argue that the EPPO has the potential to enhance the EU's capacity to combat fraud and other illicit activities that threaten its financial interests [2]. However, the scholars also identify some obstacles that may impede

the EPPO's efficacy, such as the lack of harmonization in criminal law and procedure among EU member states [13] and the limited resources allocated to the EPPO [13]. Overall, these studies indicate that the EPPO's success will depend on its ability to navigate these obstacles and establish itself as a trustworthy and effective institution in the eyes of EU member states and citizens.

## **2. Methodology**

The research question that will follow this paper is: How does the European Public Prosecutor's Office contribute to building trust in the European Union through its mandate to investigate and prosecute crimes affecting the financial interests of the EU? It will involve a literature review and analysis of relevant documents, reports, and official communications from the European Public Prosecutor's Office. However, the EPPO's effectiveness relies on its ability to cooperate with both participating and non-participating member states. This paper will examine the mechanisms through which the EPPO cooperates with non-participating member states and the challenges and opportunities for such cooperation. Furthermore, it will analyze how the EPPO's work contributes to building trust between EU member states and strengthening the accountability of EU institutions.

## **3. The European Public Prosecutor's Office Mission and Role**

Investigation, prosecution, and judgment of those responsible for crimes including fraud, corruption, and money laundering that harm the financial interests of the European Union are all tasks that fall within the competence of the EPPO. It also aims to guarantee that the perpetrators are held accountable and that the EU budget is safeguarded against fraud and other criminal acts. The EPPO Regulation and the PIF Directive are two key pieces of EU legislation that work together to establish and define the European Public Prosecutor's Office (EPPO) and its mission to fight against fraud and other criminal offenses that affect the EU budget. While the EPPO Regulation sets out the basis for the functioning of the EPPO, the PIF Directive defines which crimes are considered crimes affecting the EU budget and are subject to investigation and prosecution by the EPPO. The PIF Directive binds all participating Member States equally, allowing for national adaptation into law and creating a harmonized competence across the EPPO's member states for the crimes it investigates and prosecutes, despite the lack of a common EU criminal code [10]. According to Directive (EU) 2017/1371, the EPPO is tasked with investigating and prosecuting criminal offenses that have

an impact on the financial interests of the Union. The EPPO carries out investigations and prosecutes cases in the competent courts of the Member States until they have been finally disposed of [5].

As clearly stated in Article 22 of the regulation, the EPPO's competence is not affected by how a similar criminal act is classified under the national law of each participating member state, and it can investigate and prosecute criminal offenses affecting the financial interests of the Union regardless of such differences. This means that the EPPO has a wider scope of competence in investigating and prosecuting criminal offenses that may not have been pursued by national authorities due to differences in national law definitions or limitations. In respect of national direct taxes, an exception is made for criminal offenses. Article 24 establishes that the EPPO should be notified without delay of any criminal conduct that falls under its competence and that such reports should contain a minimum amount of information regarding the facts, damage, legal qualification, and any involved persons. Article 25 of the EPPO establishes the conditions under which the EPPO can exercise its competence and the circumstances under which it should refer the case to competent national authorities. Together, Articles 24 and 25 outline the procedures for reporting criminal conduct falling under the EPPO's jurisdiction and the conditions under which the EPPO can take action. These articles aim to strengthen the fight against crimes affecting the financial interests of the European Union and promote effective cooperation between the EPPO and national authorities.

The PIF Directive requires participating member states to incorporate its provisions into their national laws to combat fraud against the EU's financial interests and ensure consistency in defining offenses, imposing penalties, and setting time limits for prosecution. It defines the crimes that fall within the mandate of the EPPO, including cross-border VAT fraud with damages of over EUR 10,000,000, fraud impacting the EU's financial interests, corruption likely to damage the EU's financial interests, misappropriation of EU funds or assets by a public official, and offenses related to money laundering and organized crime linked to the previous categories [6].

The challenges to effective cooperation in the EPPO's mandate cannot be ignored. It is important to recognize that differences in legal systems and varying levels of political will among member states can hinder the effectiveness of the EPPO's efforts. To address these challenges, it is necessary to continue to work towards improving the

coordination and cooperation between member states and the EPPO. This includes efforts to harmonize legal systems and establish clear communication channels between participating and non-participating member states. Additionally, increasing awareness of the EPPO's mandate and the importance of combating financial crimes can help to strengthen political will and support for the EPPO's work.

### ***3.1 Cooperation with the European Public Prosecutor's Office other partners***

The EPPO collaborates with various partners both inside and outside the European Union during its investigations and prosecutions. Authorities from both participating and non-participating EU Member States, as well as EU institutions, bodies, offices, and agencies, are among these partners. Working arrangements have been made with OLAF, Eurojust, Europol, the European Court of Auditors, the European Investment Bank, and the European Investment Fund, and an agreement has been reached with the European Commission [7]. As per Article 86 TFEU, the EPPO was required to be established by Eurojust, which necessitated a strong connection between the two organizations based on reciprocal collaboration and relied on its support in accordance with Article 100 of the EPPO regulation. Article 100 of the Regulation establishes a close relationship between the EPPO and Eurojust, allowing them to cooperate and develop operational, administrative, and management links. The European Chief Prosecutor and the President of Eurojust must meet regularly to discuss common concerns, as stated in the same article. The EPPO can also rely on the support and resources of the administration of Eurojust.

Article 101 establishes a cooperative relationship between the EPPO and OLAF, allowing them to share information and support each other in investigations while preventing OLAF from opening parallel administrative investigations into the same facts as the EPPO's criminal investigation. According to Article 102, the EPPO may seek relevant information kept by Europol about any offense within its jurisdiction, and Europol may give analytical help to an EPPO investigation. The cooperation established in Article 103 between the EPPO and the Commission aims to protect the financial interests of the Union by ensuring that relevant institutions, bodies, offices, or agencies of the Union have access to sufficient information from the EPPO to take appropriate measures without compromising the confidentiality of its investigations. This collaboration can help to increase the efficiency

and effectiveness of law enforcement efforts, leading to more successful investigations and prosecutions of criminal activities that span multiple Member States.

#### **4. The European Public Prosecutor's Office and non-participating member states**

Non-participating Member States' position regarding the EPPO is distinctive because, despite not being subject to the EPPO Regulation, they still have obligations under EU law. As EU member states, they have a duty to cooperate with EU institutions and agencies, including the EPPO, to ensure the effective functioning of the Union. The Treaty on European Union (TEU) Article 4 highlights the principle of sincere cooperation among the EU member states and the Union, where both parties are expected to assist each other in carrying out tasks that arise from the treaties. As per this article, the member states are required to take all necessary measures to fulfill the obligations that arise from the treaties or from the actions of the Union institutions. Additionally, member states must facilitate the achievement of the Union's tasks and avoid any actions that could undermine the attainment of the Union's objectives [16]. In relation to the EPPO and non-participating member states, this means that despite not being bound by the EPPO regulation, the non-participating states are still obliged to cooperate with the EPPO in carrying out its mandate under EU law.

Article 325 of the Treaty on the Functioning of the European Union (TFEU) states that both the European Union and its member states have the obligation to counter fraud and other illegal activities that could harm the financial interests of the Union. Measures to be taken in this regard should be such as to act as a deterrent and provide effective protection in all the institutions, bodies, offices, and agencies of the Union and the Member States. Moreover, the member states have the same obligation to counter fraud affecting the financial interests of the Union as they have to counter fraud affecting their own financial interests [17]. The establishment of enhanced cooperation in the European Union, as outlined in Article 328(1) TFEU, allows for the participation of all member states at any time, including in ongoing cooperation. While the Commission and participating member states of the EPPO should promote the involvement of as many EU member states as possible, the regulation is only binding and applicable to those who have agreed to enhanced cooperation on the establishment of the EPPO, or by a decision adopted in accordance with Article 331(1) TFEU. However, this

does not preclude non-member states from cooperating with the EPPO or participating in joint investigations if they have a vested interest in protecting the financial interests of the EU.

The non-participating member states are also expected to cooperate based on existing EU instruments, particularly the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Convention on Mutual Assistance in Criminal Matters and the Framework Decision on the European Arrest Warrant. The first one provides a framework for cooperation between the member states in criminal matters, including the exchange of information and evidence, the execution of requests for assistance, and the transfer of proceedings [4]. The second instrument streamlines and simplifies the extradition process between EU Member States [4]. Both of these instruments are essential for the effective functioning of the EU's criminal justice system, and non-participating Member States have an obligation to cooperate with them.

Non-participating EU member states are expected to cooperate with the EPPO because the EPPO has the mandate to investigate and prosecute crimes affecting the financial interests of the European Union as a whole, even if they occur in non-participating member states. Therefore, cooperation from non-participating member states can be crucial for the EPPO to effectively carry out its mission. Those member states may still request the EPPO to investigate criminal conduct affecting the EU's financial interests, provided that the conduct is closely linked to criminal conduct affecting the financial interests of participating member states or that its cross-border dimension justifies the intervention of the EPPO, as stated in Article 105 of the EPPO Regulation. It is worth noting that while some non-participating EU member states may be criticized for not joining the EPPO, they may still cooperate with the EPPO on a case-by-case basis. Examples of such cooperation include sharing information, evidence, and other relevant material with the EPPO. It should be noted, however, that Article 105 is limited in its scope and does not provide for the full participation of non-participating EU Member States in the EPPO's activities. Non-participating Member States cannot attend meetings of the College of the EPPO, do not have voting rights in the EPPO's decision-making processes, and are not required to contribute to the EPPO's budget.

Currently, Hungary, Poland, and Sweden are the only EU Member States that have decided not to join the EPPO. Denmark and Ireland have

an opt-out from the area of freedom, security, and justice (AFSJ). This issue has been of great interest to different researchers. As Ormandy concluded in his study, these states may be on the way to disintegration [14]. In its article, Franssen highlights the legal issues and lack of legal certainty regarding future judicial cooperation between the EPPO and non-participating member states and suggests that a separate legal instrument or instruments may be necessary to address these issues [11]. After analyzing the relation between EPPO and non-participating EU member states, Becková suggests that the situation with Poland's refusal to cooperate with the EPPO highlights the need for a more robust legal framework to ensure effective cooperation between the EPPO and non-participating EU member states [1]. Even the European Chief Prosecutor, Kövesi, has raised concerns about the lack of cooperation from Ireland and other EU member states in relation to the EPPO [18]. This is because Ireland and some other member states have persistently refused to execute EPPO's requests for judicial cooperation, hindering EPPO's ability to obtain evidence and counter criminality affecting the Union budget. The concerns raised by legal scholars and the European Chief Prosecutor Kövesi highlight the need for a more robust legal framework and effective mechanisms for judicial cooperation between the EPPO and non-participating member states to ensure the EPPO's ability to counter criminality affecting the Union budget is not hindered.

### **5. Opportunities for Building Trust and Accountability**

One opportunity for building trust and accountability through the EPPO is its ability to conduct independent investigations and prosecutions of crimes that affect the financial interests of the EU. By holding individuals and entities accountable for fraud and corruption, the EPPO can demonstrate its commitment to upholding the rule of law and protecting the interests of EU citizens. Since beginning operations on June 1, 2021, EPPO has received over 4,000 complaints of criminal activity from EU Member States and private parties, leading to the opening of 929 investigations as of June 2022 [7]. The fact that the EPPO has received over 4,000 complaints of criminal activity and has opened nearly 1,000 investigations within its first year of operation indicates that it is taking its role seriously and actively working to combat fraud and corruption that harms the EU's financial interests. This can help to establish the EPPO as a credible and effective institution in the eyes of EU member states and citizens, contributing to greater trust and accountability in the EU.



Another opportunity is the EPPO's cooperation with non-participating member states and non-EU member states (third countries). Article 104 of the EPPO Regulation establishes a legal framework for cooperation between the EPPO and non-EU countries. By working together to combat financial crimes, the EPPO and these states can build trust and foster a sense of shared responsibility for the protection of the EU's financial interests. For instance, in July 2022, the EPPO signed a working arrangement with Albania [19]. The agreement specifies the terms and conditions of cooperation between the European Public Prosecutor's Office (EPPO) and the Prosecutor's General Office (PGO) of Albania in relation to investigations and prosecutions involving offenses affecting the EU's financial interests. The agreement permits the exchange of information, evidence, and specialized expertise, in addition to joint investigations and prosecutions. It is worth noting that the EPPO has also signed working arrangements with other third countries, including North Macedonia, Georgia, etc., to strengthen cooperation in the fight against financial crimes. The positive aspect of these working arrangements is that they demonstrate a commitment to transparency, accountability, and mutual trust between the EPPO and these states, as well as a shared responsibility to protect the financial interests of the EU. By working together to investigate and prosecute financial crimes, the EPPO and these states are building trust and fostering a sense of collaboration that can lead to more effective and efficient law enforcement efforts across the EU. Furthermore, the willingness of non-EU countries such as Albania and Georgia to cooperate with the EPPO highlights their desire to align with EU values and potentially pave the way for future EU membership. Additionally, by working with non-EU countries, the EPPO can strengthen its reach and effectiveness in combating financial crimes beyond the borders of the EU, further enhancing its role in promoting accountability and upholding the rule of law.

Furthermore, the EPPO's focus on cross-border financial crimes highlights the interconnectedness of EU member states and the importance of collaboration in ensuring the integrity of the EU's financial system. This approach also promotes a culture of transparency and accountability, as it requires member states to be transparent about their financial activities and to cooperate with each other and with the EPPO in investigating and prosecuting financial crimes. This can ultimately contribute to building trust among member states and promoting a sense of shared responsibility for protecting the interests of EU citizens.

## **6. Conclusions**

The European Public Prosecutor's Office has a critical role in upholding the rule of law and ensuring the integrity of the European Union's financial system. Through its mandate to investigate and prosecute crimes affecting the EU's financial interests and its cooperation efforts with non-participating member states and third countries, the EPPO contributes significantly to building trust and accountability in the EU. The EPPO can be an important tool in combating fraud, corruption, and other criminal activities that harm the financial interests of the European Union. By having a centralized prosecutor's office with the authority to investigate and prosecute such cases, the EPPO can help ensure consistency and efficiency in the prosecution of these crimes across EU member states. This can ultimately lead to greater accountability and deterrence, as well as protecting the financial resources of the EU and its citizens. By continuing to operate, the EPPO can help promote transparency, accountability, and the rule of law within the European Union. Additionally, by working with non-EU countries, the EPPO can strengthen its reach and effectiveness in combating financial crimes beyond the borders of the EU. Promoting transparency, accountability, and the rule of law are essential for ensuring good governance and protecting the interests of EU citizens.

The EPPO can play a crucial role in achieving these goals by investigating and prosecuting crimes that harm the Union's financial interests, and by holding accountable those responsible for such crimes. By doing so, the EPPO can help to strengthen trust in the EU institutions and foster a culture of integrity and compliance with the law. The effectiveness of the EPPO in achieving its objectives can be further explored, as can the challenges it may face in the future. Additionally, further research can be conducted on the impact of the EPPO on the relationship between EU member states and the Union as a whole. The EPPO has the potential to be a powerful tool in combating fraud and corruption, but it also faces challenges that require continued efforts to enhance cooperation and overcome legal and political obstacles. Ultimately, the success of the EPPO in promoting transparency, accountability, and the rule of law within the EU will depend on the commitment of member states to support its operations and uphold these values.

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