

# The EPPO's Structure and Powers— 1 European Head, 22 National Swords

21 November 2019 – Updated September 2020

The European Public Prosecutor's Office ("EPPO") is a new European Union body responsible for investigating and prosecuting criminal offences affecting the Union's financial interests in 22 of its 27 Member States.<sup>1</sup> The EPPO is expected to start active investigations in November 2020. This Update considers the EPPO's structure and powers in more detail.

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## Supervising, Coordinating, and Directing Investigations at the EU Level

Operating out of a central office in Luxembourg, the EPPO is organised as follows:

- **The European Chief Prosecutor.** The head of the EPPO will chair the College of European Prosecutors ("EPs"), direct the EPPO's activities, and represent the EPPO externally. The European Chief Prosecutor is appointed for a nonrenewable term of seven years by common accord of the EU Council and Parliament.<sup>2</sup> Two Deputy European Chief Prosecutors are appointed by the College from its members for renewable periods of three years.
- **The College.**<sup>3</sup> The EU Council appoints one EP per participating Member State to serve on the College for a nonrenewable term of six years, extendable for a maximum of three years, from a list of three candidates presented by the Member State and

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<sup>1</sup> See Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the "[EPPO Regulation](#)"). Denmark, Hungary, Ireland, Poland, and Sweden have opted not to participate. In April 2019, the Swedish Prime Minister indicated that Sweden may [opt-in at a later stage](#).

<sup>2</sup> On 17 October 2019 Laura Codruța Kövesi was formally appointed the first European Chief Prosecutor.

<sup>3</sup> For details see the Debevoise article "[Meet the College of European Prosecutors](#)".

reviewed by a selection panel.<sup>4</sup> The first College of 22 EPs was finally appointed on 29 July 2020.<sup>5</sup>

The College is responsible for strategic decisions, including EPPO's priorities, and its investigation and prosecution policies. It will take policy decisions on matters of principle arising from individual cases, e.g., regarding the consistent application of the EPPO Regulation, but will not intervene operationally in individual cases.

Finally, the College will adopt the EPPO's internal rules of procedure, proposed by the European Chief Prosecutor, and establish the Permanent Chambers ("Chambers").

- **The Chambers.** The Chambers are composed of a Chair (the European Chief Prosecutor, a Deputy European Chief Prosecutor, or another EP) and two EPs. The Chambers will supervise the investigations and prosecutions conducted by the European Delegated Prosecutors ("EDPs", see below) and ensure the coordination of investigations and prosecutions in cross-border cases. The Chambers are also responsible for implementing the decisions taken by the College.

The number of Chambers and their organisation will be determined in the EPPO's internal rules of procedure. Drafts of the rules of procedure as well as the Conditions of Employment for the EDPs are already in existence.<sup>6</sup>

Individual EPs will supervise the investigations and prosecutions handled by the EDPs in their Member States of origin, on behalf of the competent Chambers. These "supervising" EPs will act as the liaisons between the EPPO's central and national levels.

EDPs responsible for investigations will need the approval of the competent Chamber to make the following operational decisions:

- **Bring a case to judgement before national courts.** A failure by the Chamber to respond represents tacit approval. The Chamber does not have the power to dismiss a case when considering a proposal to bring a case to judgment.

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<sup>4</sup> Malta was unable to find three eligible candidates which eventually led to an amendment to the operating rules allowing it to present a reduced list of two eligible candidates. See "[Updated: Malta faced difficulties to comply with European Public Prosecutor's Office requirements](#)", article of June 9, 2020.

<sup>5</sup> See <https://www.debevoise.com/insights/publications/2020/07/eppo-meet-the-college-of-european-prosecutors>.

<sup>6</sup> See "Non-paper from the Commission services on the state of play of the setting up of the European Public Prosecutor's Office (EPPO)" of March 5, 2020, available [here](#).

- **Dismiss a case.** The grounds for dismissal include: the death or winding up of a suspect or accused natural or legal person; the expiry of the national statutory limitation to prosecute; or, importantly, lack of sufficient evidence.
- **Apply a simplified prosecution procedure.** Where the applicable national law provides for a means of disposing of a matter on terms agreed with the suspect, such as a deferred prosecution agreement (“DPA”), its use is subject to Chamber approval. The Chamber will weigh the following factors:
  - the seriousness of the offence (in particular, the loss caused);
  - the willingness of the suspect to pay compensation; and
  - respect for the general objectives and basic principles of the EPPO Regulation.

The College will adopt a policy on the application of these factors.

- **Referral of a case to national authorities.** Such referrals will be made if: the EDP investigation reveals that the EPPO does not have jurisdiction; the offence involves less than EUR 100,000 in damage to the EU’s financial interests and need not be handled by the EPPO; or the EPPO considers dismissing the case and a national authority requests a referral.
- **Reopen an investigation following initial dismissal.** If facts not known at the time of the dismissal of an investigation subsequently come to light, the competent Chamber has the power to reopen the case.

The Chambers also have the authority to instruct the EDPs they supervise to initiate an investigation, to take over a national investigation (the “right of evocation”), refer matters of strategic or general interest arising from individual cases for consideration by the College, allocate an unassigned investigation to an EDP, or reassign a case to an EDP in another Member State.

Finally, Chambers, acting through the supervising EP, have the power to issue binding instructions to an EDP handling a specific case if necessary for the efficient handling of the investigation or prosecution, in the interests of justice, or to ensure the consistent functioning of the EPPO.

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## Investigating and Prosecuting Offences at the National Level

EDPs will investigate and prosecute cases on behalf of the EPPO in their respective Member States. Each participating Member State will nominate at least two EDPs from their public prosecution service or judiciary for appointment by the EPPO's College for renewable terms of five years. The current budget proposal provides for a total of 140 EDPs.

- **Commencing investigations.** EDPs can commence investigations if there are reasonable grounds to believe that an offence within the EPPO's competence is being or has been committed.
- **Conducting investigations—the EDPs' powers.** EDPs will conduct investigations, as directed and instructed by the Chambers. For this purpose, EDPs will have the same powers as national prosecutors. If not already provided for in national law, if the offence subject to the investigation is punishable by a maximum penalty of at least four years' imprisonment, the EPPO Regulation provides that all EDPs should have the power to order, or apply to national courts for:
  - the **search** of any premises, land, means of transport, private home, clothes and other personal property and computer systems and take the necessary conservatory measures;
  - the **production of relevant objects or documents**;
  - the **production of stored computer data** (encrypted or decrypted);
  - the **freezing of the instrumentalities or proceeds of crime**;
  - the **intercepting of electronic communications**;
  - the **tracking and tracing of an object by technical means** including controlled deliveries; and
  - the **arrest or pre-trial detention of a suspect** (in accordance with the national law applicable in similar domestic cases).

The power to compel answers is not on this list, meaning that only EDPs in Member States where national prosecutors have such powers will be able to compel answers. When seizing documents and data, the EDPs will be bound by national rules on confidentiality and privilege.

- **Concluding investigations.** The EDP will submit a concluding report to the supervising EP containing a case summary and a draft decision on disposal for the competent Chamber to consider for approval: judgment before the competent national court, application of a simplified prosecution procedure (such as a Deferred Prosecution Agreement), referral to national authorities, or dismissal.

Following a judgment of a national court, EDPs will submit a report to the competent Chamber for instructions in relation to any possible appeals.

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## Independence and Accountability

Neither the EU's institutions nor its Member States have authority over the EPPO or any of its members. The EPPO will report annually to the EU Parliament, Council, and Commission. These institutions can apply to the European Court of Justice for the removal of the Chief Prosecutor or an EP if they are no longer able to perform their duties or in the case of serious misconduct.

EDPs can be dismissed on the same grounds by the College. To the extent that it does not prevent them from fulfilling their obligations to the EPPO, EDPs may function part-time as national prosecutors in which case national disciplinary measures cannot be taken against them in respect of their work as EDPs.

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## Outlook

The EPPO will certainly face operational challenges, in particular related to its two-level structure. Its forthcoming rules of procedure will therefore be critical to its effectiveness.

It is clear that the EDP is intended to be a procedurally powerful enforcement authority. In certain Member States, national prosecutors do not currently have the minimum powers set out for the EDPs in the EPPO Regulation or the required independence. These Member States will have to provide for an appropriate status for the EDPs in their national regimes. It is possible, therefore, that the insertion of the EDP into the national criminal procedures of the Member States will spur wider reform at the national level. For instance, the French legislative proposal for special status for EDPs<sup>7</sup> both challenges the traditional roles of French prosecutors and investigating

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<sup>7</sup> See [http://www.assemblee-nationale.fr/dyn/15/dossiers/parquet\\_europeen\\_justice\\_penale\\_specialisee](http://www.assemblee-nationale.fr/dyn/15/dossiers/parquet_europeen_justice_penale_specialisee).

magistrates, and aliments the national debate on reforming criminal procedure more widely, particularly in relation to the independence of prosecutors.<sup>8</sup>

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Please do not hesitate to contact us with any questions.

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<sup>8</sup> See, e.g., [https://www.lemonde.fr/idees/article/2020/09/02/francois-molins-et-jean-louis-nadal-il-est-urgent-de-garantir-l-independance-statutaire-des-magistrats-du-parquet\\_6050629\\_3232.html](https://www.lemonde.fr/idees/article/2020/09/02/francois-molins-et-jean-louis-nadal-il-est-urgent-de-garantir-l-independance-statutaire-des-magistrats-du-parquet_6050629_3232.html).