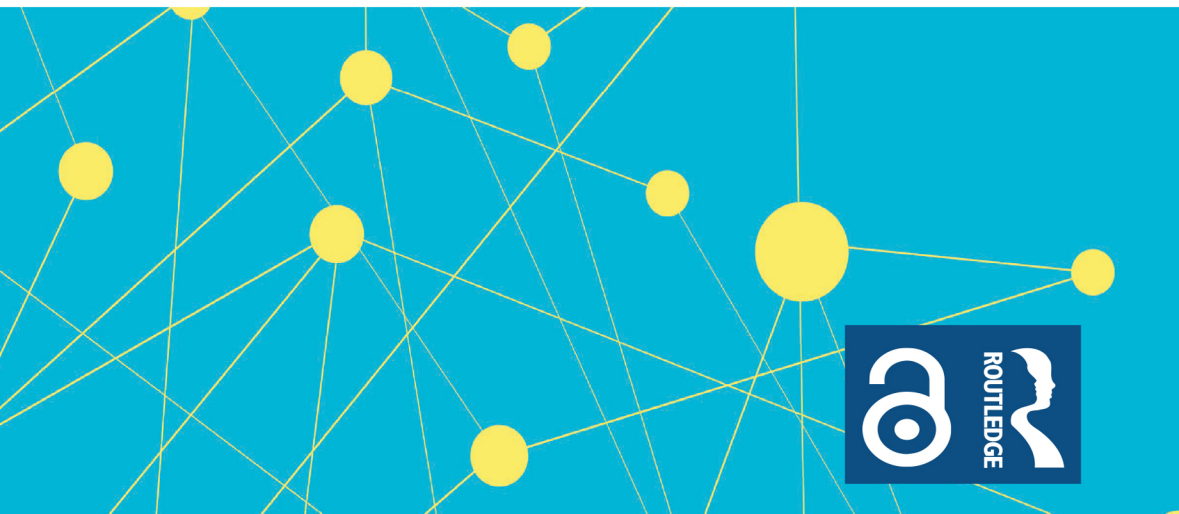
FINANCIAL CRIME AND THE OFFICE OF THE EUROPEAN PUBLIC PROSECUTOR

PROTECTING EU FINANCIAL INTERESTS IN A NEW INSTITUTIONAL LANDSCAPE

Edited by
Celina Nowak



ROUTLEDGE

Financial Crime and the Office of the European Public Prosecutor

This book examines the realities of the functioning of the European Public Prosecutor's Office (EPPO) along with the actual cooperation with other stakeholders in the EU and in the Member States. The protection of financial interests of the European Union is a Treaty obligation bearing equally on the Member States and the Union itself. In order to increase the effectiveness of the investigations and prosecutions in those areas falling under the PIF Directive, using enhanced cooperation provisions, 22 Member States established the office of The European Public Prosecutor, which came into operation in 2021. Based on examples of five Member States taking part in the EPPO from the beginning – Germany, Italy, Lithuania, Romania, and Slovakia – as well as Poland, which used to be a non-participating Member State and only recently joined the EPPO, this collection analyses the legal framework as well as the practical experience of cooperation in this field. The book will be an invaluable resource for academics and researchers in the areas of EU Criminal Law, EU Law, and EU Constitutional Law.

Celina Nowak is the Director of and Professor at the Institute of Law Studies of the Polish Academy of Sciences, and an experienced criminal law researcher and consultant with 20 years' work experience.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Contents

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1 Introduction

Celina Nowak and Anna Rybarczyk

The EU's 2024 budget, which was a part of the 2021–2027 multiannual financial framework, amounted to around EUR 189.4 billion in commitment appropriations and EUR 142.6 billion in payment appropriations.[1] Regrettably, the massive EU budget is not immune to abuse. In 2024, a total of 13,589 cases of irregularities, both fraudulent (classified as fraud) and non-fraudulent (all irregularities not classified as fraud), amounting to EUR 1.84 billion, were reported.[2] These numbers illustrate the practical fiscal importance of the protection of the financial interests of the Union.

But, aside from this practical dimension, the protection of financial interests of the European Union ("PIF") is also an issue worthy of examination from the legal point of view.

Protecting the financial interest of the Union is an obligation bearing equally on the Member States of the Union and the Union itself. Pursuant to Art. 325(1) of the Treaty on the functioning of the European Union,[3] the Union and the Member States shall combat fraud and any other illegal activities affecting the financial interests of the Union by means of measures taken in accordance with this Article, which shall have a deterrent effect and provide effective protection in the Member States and in all the institutions, bodies, offices, and agencies of the Union. Furthermore, Art. 325(2) TFEU

1 See: Report from the Commission to the European Parliament and the Council, *35th Annual Report on the Protection of the European Union's Financial Interests. Fight Against Fraud 2023*, Commission to the European Parliament and the Council, p. 6.

2 The number of fraudulent irregularities reported by national authorities to the Commission has remained relatively stable between 2020 and 2023, but increased to 1,364 in 2024, while the financial amounts linked to these cases amounted to EUR 548.8 million. The number and financial impact of the reported non-fraudulent irregularities peaked in 2023 following a growing trend over the years 2020–2023, but stabilised in 2024 with 12,225 irregularities involving a financial amount of EUR 1.29 billion. See: Report from the Commission to the European Parliament and the Council, *36th Annual Report on the Protection of the European Union's Financial Interests. Fight Against Fraud 2024*, Commission to the European Parliament and the Council, p. 19.

3 Treaty on the Functioning of the European Union of 13 December 2007 – consolidated version (OJ C 202, 7 June 2016, pp. 47–360), hereinafter as "TFEU".

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requires Member States to take the same measures to combat fraud affecting the Union's financial interests as they take to combat fraud affecting their own financial interests. In addition, Art. 325(3) TFEU indicates that, subject to other provisions of the Treaties, the Member States should coordinate their actions to protect the Union's financial interests against fraud. They are called to organise close and regular cooperation between the competent authorities with the Commission to this end.

The effective implementation of this task, which from the legal perspective involves two separate mechanisms – administrative and criminal proceedings – has been a major challenge for some Member States since the 90s, when this issue became more significant with the ever-increasing EU budget. It therefore caused frustration within the relevant EU institutions and those Member States that were fulfilling their Treaty obligations in this area. Consequently, in 2011, the European Commission expressed its dissatisfaction with Member States' efforts to protect the EU budget, believing that they were pursuing fraud against the EU less readily than fraud against their own budgets and stating that 'the level of protection for EU financial interests by criminal law still varies considerably across the Union'.[4] At the same time, the Commission pointed out that the administrative instruments in place at the time had proved insufficient to effectively combat fraud against the EU budget. For these reasons, the Commission set out a way forward to improve the situation in this regard for the EU as a whole, using mainly criminal law tools, indicating that 'the European Union stands at a crossroads. Work needs to be undertaken at three levels: procedures, substantive criminal law and institutional aspects'.[5]

Since then, efforts have been made within the Union to reform the legal and institutional framework for the protection of the EU's financial interests, with a view to improving the effectiveness of the prosecution of offences against the EU budget in the Member States.

Today, the reform of the mechanism for the protection of the EU's financial interests on the three levels identified by the Commission in 2011 is complete. New legal acts are already in force. Substantive criminal law is laid down in the 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.[6] It defines the offence of EU fraud, as well as three other offences affecting the EU financial interests, namely money laundering, corruption, and misappropriation by a public official. Also, it provides for liability of natural as well as legal persons for PIF crimes, and it contains provisions on sanctions. Additionally, it obliges Member States to establish relevant

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. On the protection of the financial interests of the European Union by criminal law and by administrative investigations. An integrated policy to safeguard taxpayers' money, COM (2011) 293 final, 2011, p. 3.

5 Ibidem, p. 10.

6 Official Journal of the European Union, L 198, 28 July 2017, pp. 29–41.

jurisdiction with regard to PIF crimes, and to take the necessary measures to freeze and confiscate the instrumentalities and proceeds from crimes against the EU's financial interests (when applicable, following the rules set forth in Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the securing and confiscation of instruments used to commit crimes and proceeds of crime in the European Union[7]).

The PIF Directive also refers to cooperation between Member States, by indicating in Article 15 that, without prejudice to the provisions on cross-border cooperation and mutual legal assistance in criminal matters, Member States, Eurojust, the European Public Prosecutor's Office and the Commission shall cooperate with each other within their respective competences to combat the crimes defined in the Directive. The Directive replaces the 1995 PIF Convention and its two protocols for the Member States bound by it, while the PIF Convention remains in force in Denmark.

Also, the European Anti-Fraud Office's (OLAF) legal framework, in respect of administrative investigations,[8] has been extensively amended, first by the Regulation (EU, Euratom) 2016/2030 of the European Parliament and of the Council of 26 October 2016 amending Regulation (EU, Euratom) No 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF);[9] and then the 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.[10]

The institutional framework changed immensely with the adoption of the Council Regulation 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO').[11] It refers to procedural aspects of the protection of the financial interests of the Union in criminal law, in particular by establishing the office of the European Public Prosecutor.

The European Public Prosecutor's Office is a body of the European Union with guaranteed independence. The EPPO consists of the European Chief Prosecutor and the College, including one European Prosecutor per Member State. These prosecutors oversee the investigations carried out by the Delegated European Prosecutors in the Member States.

7 Official Journal of the European Union, L 127, 29 April 2014, pp. 39–50.

8 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.

9 Official Journal of the European Union, L 317, 23 November 2016, pp. 1–3.

10 Official Journal of the European Union, L 437, 28 December 2020, pp. 49–73.

11 Official Journal of the European Union, L 283, 31 October 2017, pp. 1–71.

The main task of the European Public Prosecutor's Office is to investigate, prosecute, and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the EU, as defined in the PIF Directive, and the criminal offences inextricably linked to them.

The EPPO was originally established by 22 Member States, applying the procedure of the enhanced cooperation provided for in Art. 86(1) TFEU. The European Public Prosecutor's Office started its operations on 1 June 2021.

The establishment of the EPPO transforms profoundly the existing legal and institutional landscape related to the PIF crimes, as the EPPO is the first EU institution with an actual competence in the field of criminal proceedings. The investigative and prosecutorial authorities of the Member States have now a powerful counterpart, responsible for investigating, prosecuting and bringing to judgment the perpetrators of PIF crimes defined in Directive (EU) 2017/1371. Therefore, the practical aspects of everyday institutional cooperation in the PIF area have inevitably changed, as it now includes the EPPO, as well as other stakeholders in the EU and in the Member States.

What has hardly changed though is the criminal activity, in particular financial crime, especially fraud, against the financial interests of the Union. The European Parliament's resolution of 24 March 2022 on the Multiannual Financial Framework 2021–2027: *Combating oligarchic structures, protecting EU funds from fraud and conflicts of interest* (2020/2126(INI)) points out the growing involvement of organised crime, including mafia-type groups, in cross-border activities and sectors that affect the EU's financial interests. In addition, it highlights the key role and value of the European Public Prosecutor's Office in combating fraud committed against the EU's financial interests. EU budget funds have become an object of interest for criminal groups mainly because of their high value. Nowadays, as a standard, organised crime groups operate in several countries simultaneously. It is therefore clear that PIF crime, particularly organised crime, requires an efficient and coordinated response throughout the Union.

The purpose of this collection of studies is to provide an insight into the evolving network of institutional relationships on the national and supranational level in the field of protection of the financial interests of the Union.

The new institutional and legal framework is analysed here based on examples of five EU Member States originally taking part in the EPPO: Germany, Italy, Lithuania, Romania, and Slovakia, as well as Poland, which was not originally a participant in the EPPO but has recently decided to join the enhanced cooperation.

The states examined in the following have been carefully chosen for analysis. Germany (analysed by Engelhart) and Italy (presented by Nicolicchia) are the "old" EU Member States. At the same time, Italy is one of the countries with the highest level of criminality affecting the EU financial interests, while Germany reports very low level of EU crime. The other four examined countries are "newer" Member States, all located at the eastern border of the EU. They all encounter specific problems in relation to EU fraud, with Slovakia

(examined by Klimek) having one of the highest levels of crime affecting the EU financial interests, Romania (analysed by Bogdan) following suit, and Poland (described by Rybarczyk and Dziekański) and Lithuania (examined by Švedas) placing on the lower end of the line in this regard.

The analysis conducted in the chapters that follow covers several dimensions of cooperation in combating organised fraud, in particular affecting the financial interests of the European Union. The cooperation of the national law enforcement institutions goes first. Second, the analysis refers to the vertical cooperation between the national law enforcement authorities and EU institutions, such as Europol and Eurojust, EPPO, and to some extent also OLAF. This cooperation with the EPPO is of particular importance in this context, for, as it has been mentioned, the EPPO has just been established as the first EU body responsible for fighting against EU fraud. The third level of cooperation is horizontal cooperation amongst national law enforcement authorities of different EU Member States, and the fourth one is the cooperation between national law enforcement authorities of EU Member States and law enforcement authorities from other countries. The aforementioned scope of research is also reflected in the structure of the following chapters, which allows an easy comparison of the national legal and institutional systems examined. The collection concludes with a comparative chapter, presenting the main challenges ahead and indicating future research questions.

2 Investigative rules in the fight against organised crime

Domestic peculiarities and European cooperation in Italian criminal procedure

Fabio Nicolicchia

1. Investigating organised crime in Italy: general features of the so-called 'double track' rationale

In the Italian legal system, the rules of investigation in the field of organised crime suffer from a significant imbalance upstream. In fact, the law has never attempted to codify the concept of 'organised crime' in an explicit legal definition, nor has it ever provided a general, exhaustive or unambiguous list of the offences included in that *genus*.

Yet, the fact that the offence being prosecuted belongs to the group of 'organised crime' has important procedural consequences which, to a first approximation, can be identified in appreciable deviations from the ordinary statute of preliminary investigations, with a considerable increase in the powers and instruments of the investigator.

The code often links the special regime to the existence of a specific breach included in a significant, rather heterogeneous, and not always coherent, lists of individual offences, which has been consolidated over time in a number of provisions such as, *inter alia*, Article 51(3-*bis*) and (3-*quater*) and Article 407(2)(a) of the Code of Criminal Procedure. If the investigation, in any case, concerns one of those offences considered therein, the maximum duration of the inquiry can be extended to as much as two years, against a physiological duration confined to eighteen months, a choice that is all the more relevant in view of the structural summary nature that should characterise the preliminary investigation prior to the commencement of the action in adversarial systems such as the Italian one. Investigations into offences relating to the whole of 'organised crime' also benefit from an *ad hoc* regime for the use of the insidious tool of the so-called *Trojan horse*.[1] Restrictions on the suspect's access to information concerning the investigation against him or her that can normally be communicated complete the picture,[2] together with the possibility of

1 Articles 266(2a) and 267 of the Italian Code of Criminal Procedure.
2 Article 335, para. 3 of the Italian Code of Criminal Procedure.

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using the invasive investigative means of the so-called 'agent provocateur' and undercover operations.[3]

Although it is outside the scope of the strictly understood rules of investigation, the special rules on precautionary measures also deserve at least a mention as they provide for a significant easing of the conditions for the application of precautionary measures, once again when we are in the presence of criminal phenomena perceived as having particular social alarm. The more widespread use of pre-trial detention also inevitably ends up conditioning the pace and dynamics of the investigation. More specifically, in those cases, a relative presumption of the adequacy of pre-trial detention is established, which is the only applicable measure, unless elements are acquired that can testify to the radical absence of precautionary needs, or in cases that these can be satisfied through the application of another measure.[4] All the more so, one of the abstractly relevant precautionary requirements listed in Article 274 of the Italian Code of Criminal Procedure is the danger of committing "organised crime offences".

Sometimes the specialty derives from the reason that the facts for which proceedings are being conducted can be ascribed to an unnamed and entirely undefined concept of 'organised crime offences' which, in theory, could also include violations detrimental to the financial interests of the Union, as is typically the case with the significantly more permissive rules for the use of wiretapping of communications or conversations. In such a case, the interception may be ordered simply in the presence of sufficient evidence of the crime, whereas, on the other hand, the existence of serious evidence is ordinarily required, and wiretapping may be carried out in home spaces even if there is no reason to believe that criminal activity is taking place there and for a longer period of time than in the majority of cases.[5]

A final regulatory reference of some relevance for our purposes is to be found in the admittedly rather vague notion of an 'organised criminal group' used in Article 1(1) of Law No. 146 of 16 March 2006, which ratified the UN Convention of Palermo against transnational organised crime in Italy.[6] Evidently aware of the unease generated by this set-up, case law has, over time, attempted in some way to bridge the definitional gap by affirming that "not only mafia crimes and associative crimes provided for by special incriminatory rules, but any type of criminal association, pursuant to Article 416 of

3 See again Article 9 of Law No. 146/2006 with specific regard to transnational organised crime. Presidential Decree, 9 October 1990, No. 309, Article 97 for what concerns antidrug legislation.

4 Article 275, para. 3 of the Italian Code of Criminal Procedure.

5 Article 13 Decree-Law No. 152 of 13 May 1991. It has to be highlighted that Decree-Law 10 August 2023, No. 105, recently extended that special regime to all offences committed in the conditions described by Article 416 *bis* of the Criminal Code regarding mafia-type organisations.

6 See Article 3, para. 1 of law n. 146/2006.

the Italian Criminal Code, related to the most diverse criminal activities" can abstractly fall within the category here under consideration.[7] In fact, in the Italian criminal system, the offence of criminal association provided for in Article 416 of the Criminal Code punishes anyone associated in order to commit any of the offences provided for in the Code on a stable basis.

The tendency summarised here is one of the historical features of Italian criminal procedure which, since the mafia emergency of the early 1990s, has been characterised by the creation of a so-called 'double track' procedure, in which the ordinary rules laid down for the generality of cases are accompanied by provisions specifically dedicated to the investigation and to the procedure inherent in mafia-type crime, a module that has been extended over time to other types of offences.[8]

Leaving aside the regulatory specialties, it is interesting to add here that investigations regarding organised crime are distinguished even earlier from general investigations for reasons linked to the very nature of the enquiry, even irrespective of the existence of the special rules of procedure that derogate from the general provisions. What is crucial, in this regard, is the physiological complexity of the subject matter of the investigation, a complexity that, to say the least, appears to be exacerbated in cases of organised fraud against the finances of the Union, which is the subject of particular attention here, and which is notoriously characterised by complex fraudulent mechanisms and concatenations.[9] In these cases, the institutions of the investigation receive special, practical implementation in order to allow the activity to take place. Illuminating in this respect is the example of computer seizures, which often result in a generalised apprehension in the impossibility of making a distinction already on the spot between elements that are relevant or extraneous to the investigative interest,[10] with serious concerns for the effectiveness of the principle of proportionality that should limit the interference of the authority in the sphere of individuals to what is strictly necessary.

The vertiginous rise in the importance of patrimonial sanctions in the repressive techniques of organised crime, in accordance with the trends dictated at supranational and especially European level, is also fully a part of this scenario.[11] In the investigative field, asset ablation favours a wide and early

7 Cass., Sez. un., 22 March 2005, Dep. 11 May 2005, No. 117706. On this topic see also A. Zampaglione, *La prova nei processi di criminalità organizzata*, Wolters Kluwer, 2016, p. 67.

8 P. L. Vigna, Fighting Organised Crime, with Particular Reference to Mafia Crimes in Italy, *Journal of International Criminal Justice*, Volume 4, Issue 3, July 2006, p. 522.

9 As it happens for example in the case of the so-called VAT Carousel Fraud.

10 L. Bartoli and G. Lasagni, Antifraud Investigations and Digital Forensics: A Comparative Perspective, in M. Caianiello and A. Camon (eds.), *Digital Forensic Evidence: Towards Common European Standards in Antifraud Administrative and Criminal Investigations*, Wolters Kluwer, 2021, p. 210.

11 For a comprehensive overview, C. Fijnaut, The Strategy of the European Union Against Serious Transnational Crime, in F. Allum and S. Gilmour (eds.), *The Routledge Handbook of Transnational Organised Crime*, Routledge, 2021, p. 522.

recourse to the instrument of seizures, according to a real redundant pattern in the dynamics of investigations into organised fraud, which feeds upstream complex and in-depth asset investigations aimed at identifying the assets that can be seized.[12]

2. Specialisation and centralisation in investigating organised fraud at national level

The structure of relations between the institutional actors in charge of investigations into organised crime at a national level also differs significantly from the usual one envisaged in general cases. This is a further aspect of specialty that can always be traced back to the regulatory evolution generated by the mafia emergency of the early 1990s, which originates a marked centralisation of investigative competence. This is clearly intended to ensure effective coordination between the various bodies involved, guaranteeing synergic action to additionally avoid the dispersion of the knowledge held by the various authorities.[13]

In detail, Article 51, paragraphs 3-*bis*, 3-*quater* and 3-*quinquies* of the Italian Code of Criminal Procedure establishes the investigative competence of the district prosecutor for a whole series of offences that can be traced back to the concept of organised crime or that are perceived as being of particular social alarm. These include association for the purpose of international smuggling of foreign tobacco products. Article 372(1-*bis*) of the Code of Criminal Procedure then allows the Attorney General at the Court of Appeal to call off the preliminary investigation if coordination between the different investigations does not appear effective. Article 54-*ter* of the Code of Criminal Procedure, conversely, specifically regulates the eventuality of conflicts of jurisdiction between different offices of the public prosecutor in matters of organised crime, requiring the involvement of the branches of the national anti-mafia and anti-terrorism prosecutor's office.

This office is part of the National Anti-Mafia and Anti-Terrorism Directorate (D.N.A.), set up by Decree no. 367 of 20 November 1991, and exercises, through the powers listed in detail in Article 371-*bis* of the Code of Criminal Procedure, the coordination of the activities of the individual District Anti-Mafia Directorates (D.D.A.) set up in the district prosecutors' offices distributed throughout the national territory in relation to investigations concerning the offences referred to in Article 51(3-*bis*) and (3-*quater*), also making use for this purpose the Anti-Mafia Investigative Directorate (D.I.A.), an

12 More in detail, even with specific regard to the single techniques, G. Furciniti and D. Frustagli, *Le indagini economico patrimoniali nel contrasto alla criminalità organizzata*, Giuffrè, 2013.

13 S. Lorusso, "Superprocura" e coordinamento delle indagini in materia di criminalità organizzata tra passato, presente e futuro, *Dir. pen. cont.*, February 2014, p. 24.

inter-force police department in charge of preventive and judicial investigations relating to mafia crime.

However, the law does not establish exclusive competences of the different police forces in the material execution of investigations concerning organised crime, although the different corps are internally endowed with specialised departments. The Guardia di Finanza, which is particularly relevant from our perspective as it is in charge of the repression of crimes of an economic-financial nature, a group that also includes organised fraud against the European Union, is no exception. For this purpose, a *'Nucleo Speciale Spesa Pubblica e Repressione Frodi Comunitarie'* (Special Unit for Public Expenditure and Repression of Community Fraud) has been set up within the corp, which is responsible for ascertaining the regular use of resources allocated at European level. In its activities, the unit also makes use of the operational relations institutionally maintained with competent Authorities, Bodies and Institutions in the sector. In its activities, the unit also makes use of the *Sistema Informativo Anti Frode – (S.I.A.F.)*, an important business intelligence tool created in 2013 as a result of the contribution of the Union with the main objective of strengthening the action against EU fraud. In essence, it is an integrated database of data from different sources through which the military can acquire and analyse useful information to direct and plan investigation activities.

Again, with regard to the provision of useful information to feed investigations, emphasis must be placed on the significant delay accumulated by the Italian legislator in transposing Directive 2019/1937/EU, on the protection of persons who report breaches of Union law, the transposition deadline of which expired in December 2021, and which was finally implemented only by Legislative Decree 10 March 2023, no. 24. Clearly, this is also a crucial tool to ensure the adequate flow of knowledge in favour of the authorities in charge of repressing organised fraud, which often originates in closed contexts that are difficult for investigative bodies to access.

However, it must be said that through Legislative Decree No. 75 of 14 July 2020, the Italian legislator transposed Directive 2017/1371 (the so-called PIF Directive). The implementation of the European source was translated in this case into some amendments to the Criminal Code, essentially aimed at tightening the sanctioning treatment of certain types of offences and extending the criminal relevance of the conduct of embezzlement, fraud and undue inducement to give or promise benefits to cases in which the conduct relates to facts that harm the financial interests of the Union, with damage exceeding EUR 100,000. Additionally it has to be mentioned the expansion of the list of so-called predicate offences capable of giving rise to the concurrent formally administrative liability of legal persons under Legislative Decree No. 231 of 8 June 2001, which now includes, *inter alia*, the offences described in Articles 4 (untrue declaration), 5 (omitted declaration) and 10-*quater* (undue compensation) of Legislative Decree No. 74/2000 provided that they are "committed in the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro".

On this point, there has been a recent corrective intervention by Legislative Decree No. 156 of 4 October 2022, in substance aimed at extending the confiscation hypotheses already provided for and at broadening the area of punishability for the implementation of cross-border systems aimed at evading value added tax.

Our brief overview of the main attributes of the Italian system of enforcement cannot be said to be complete without at least a mention of the complex so-called 'anti-mafia' prevention system under Legislative Decree No. 159/2011. Overall, this consists of a series of personal and patrimonial measures that can be adopted against a large number of persons who are considered to be socially dangerous, even though they are not necessarily the recipients of an actual criminal charge. It should be said that, far from confining its scope to persons suspected of being connected to mafia-type criminal circles, the system today also applies to persons generically considered to be engaged in unspecified criminal activities, in addition to, insofar as it is of particular interest here, those simply suspected of the crime of aggravated fraud to obtain public funds, which, under Article 640-*bis* of the Criminal Code, punishes anyone who procures, by artificial means, public funds or other financial resources, or who is suspected of committing a crime of fraud, punishes anyone who procures through artifice and deception contributions, financing or other disbursements from the State or the European Union.[14]

The activities that can be carried out in order to gather elements useful for the application of a measure of prevention are, for the most part, left to the discretion of the prosecuting authority, without being typified in an appropriate regulatory source. It is also for this reason that in the Italian criminal procedure the ideally consecutive phases of the prevention and repression have agglutinated, giving rise to a long continuous line of mixed, amphibious and ambivalent operative techniques, to the detriment of the function of the principle of the rule of law.[15] Only Article 19 of Legislative Decree no. 159/2011 is concerned with specifying the power to carry out investigations into the standard of living, financial resources and assets of candidates for the application of certain prevention measures for the purpose also of identifying sources of income. Such investigations are aimed, in particular, at ascertaining whether the persons, against whom the adoption of a measure of prevention has been proposed, hold licenses or the necessary authorisation to engage in entrepreneurial and commercial activities, including enrolment in professional registers and public registers, whether they benefit from contributions, financing or loans and other disbursements of the same type, however denominated, granted or disbursed by the State, public bodies or the European Union.

14 Article 4 of Legislative Decree 159/2011, lett. i-*bis*.

15 D. Negri, La regressione della procedura penale ad arnese poliziesco (sia pure tecnologico), *Arch. pen.*, 2016, p. 46.

3. Vertical cooperation between national authorities and European institutions: the implementation of the EU regulation 2017/1939 in Italy

In the field of 'so-called' vertical cooperation between national authorities and European bodies, attention is today understandably monopolised by the novelty represented by the European Public Prosecutor's Office, established pursuant to Regulation 2017/1939/EU, which has finally come into operation following the adoption of the body's internal regulation[16] and the transposition that took place in the national sphere through Legislative Decree No. 9 of 2 February 2021. Indeed, the domestic rules intervene only on the aspects strictly necessary for the material operability of the Public Prosecutor's Office, postponing, to a later date, the adoption of rules relating to other important profiles, such as the regulation of cross-border investigations carried out with the cooperation of another European Public Prosecutor's Office based in a different Member State pursuant to Article 31 of the Regulation.

The existing set-up seems to have been proved to be adequately functional if one considers that, according to the statistics released for the year 2021, Italy ranks first among the member countries in terms of the number of investigations opened by the EPPO.[17] However, there is no shortage of critical profiles in the choices made by the national legislator that are abstractly capable of affecting the functionality of the body and, ultimately, the future effectiveness of the strategies to fight crimes against the financial interests of the Union.

Most of the twenty Italian Deputy European Public Prosecutors are already operational, following the conclusion of the special agreement provided for in Article 13(2) of the Regulation. Likewise, the National European Public Prosecutor has already been appointed in accordance with the procedure laid down in Article 16(1) of the same source. In this regard, it is worth noting that Italy, unlike other Member States, has opted to attribute to the delegated prosecutors only prosecutorial functions in the interest of the European Public Prosecutor's Office, without availing itself of the option of a '*part-time*' appointment also expressly provided for by the regulation in order to preserve for the appointed prosecutors also powers relating to proceedings of purely national importance.[18]

16 Act 2021/C 22/03 of 21 January 2021.

17 According to EPPO 2021 Annual Report, https://www.eppo.europa.eu/en/news/eppo-investigates-eu54-billion-worth-loss-eu-budget-its-first-7-months-activity#:~:text=Of%20the%20576%20investigations%20opened,taken%20over%20by%20the%20EPPO), Italy has 120 active investigations pending.

18 See Article 13, para. 3. With some critical remarks on this point, highlighting that on a functional perspective the exclusive competence of the delegated national prosecutor could excessively limit the investigative spaces, R. Belfiore, I procuratori "super distrettuale" per i reati che ledono gli interessi finanziari dell'Unione europea: Un nuovo "terzo binario" investigativo, *Sist. pen*., December 2021, p. 67.

In relation to proceedings attributed to the European Public Prosecutor, the Italian legislation does not provide for any derogation from the ordinary jurisdiction criteria laid down in the Code. This therefore implies that the proceedings, attributed to the European Public Prosecutor established at the district seat, may well be dealt with at one of the courts in the district, nor is there any provision for the district jurisdiction of the investigating judge existing instead under Article 328(1-*bis*) and (1-*quater*) of the Code of Criminal Procedure for the offences listed in Article 51 paras 3-*bis*, 3-*quater* and 3-*quinquies*. This choice clearly differs from that made in other European jurisdictions, which have sometimes even centralised jurisdiction for 'EPPO cases' at a single national seat. Although a harbinger of organisational problems, the Italian solution appears undoubtedly more sensitive to the principle of the so-called "natural justice" enshrined in Article 25 of the Constitution, and to the principle of equality also laid down in Article 3 of the Constitution.[19] Moreover, pursuant to Article 9(2) of Legislative Decree No 9/2021, Deputy European Public Prosecutors exercise their prosecutorial functions throughout the national territory, regardless of the place of assignment.

An element of a strong divide in the statute of the delegated European Public Prosecutor, compared to the regime of treatment reserved for national colleagues, is that which relates to the independence granted to the former with respect to the domestic system. As is well known, in fact, and as solemnly proclaimed in Article 6 of the regulation, 'the EPPO shall be independent . . . and . . . shall act in the interest of the Union as a whole'. The national legislation transposes this important principle in the text of Article 9(3) of Legislative Decree No 9/2021, when it expressly states that Deputy European Public Prosecutors are not subject to the powers of hierarchical direction normally conferred on public prosecutors by the relevant provisions of national law. This is, in fact, a very important aspect of functional criticality, which is explicitly stated in the instructions issued by the Italian "Consiglio Superiore della Magistratura" in its resolution on the "organisation of public prosecutor's offices following the establishment and start of activities of the European Public Prosecutor's Office".[20] Whilst reaffirming, in principle, the absolute institutional autonomy of the European Public Prosecutor's Offices, the document in question, in fact, repeatedly refers to the opportunity for a "uniform application, both by national prosecutors and by DEPs, of the organisational circulars of the prosecuting offices adopted in order to implement and ensure the operability of primary rules that relate – directly or indirectly – to the exercise of judicial functions". It is possible to comprehend plastically in this passage the basic

19 See L. Salazar, L'adeguamento interno da parte italiana al regolamento EPPO alla vigilia dell'avvio delle prime indagini, *Sist. pen.*, April 2021, p. 60, which is afraid of the delays caused by such option.

20 https://www.csm.it/documents/21768/87316/organizzazione+uffici+requirenti+e+EPPO+%28delibera+28+luglio+2021%29/a01a2429-60bf-cf8f-06fc-10fd1ce9800e.

ambiguity of the statute of the national representatives of the European Public Prosecutor's Office, upstream deriving from the subjection of the DEP to the law of the Member State in which he or she operates. Moreover, this ambiguity reaches its maximum level in the eventuality contemplated by Article 13(3) of Regulation 2019/1939 itself, i.e. when the hierarchical power of the national authority would be exercisable or not against the same magistrate only depending on the specific capacity held at that particular moment. Beyond this general consideration which is, moreover, not relevant for the Italian context in view of the aforementioned choice to reserve exclusive functions to DEPs operating in the national legal order, the insistence of the Consiglio Superiore della Magistratura on the need for functional and organisational consistency of the offices, in which DEPs are incardinated, is striking. Although these needs are undoubtedly relevant, the markedly innovative nature of the independence of the European body would perhaps have suggested a more cautious approach in relation to this delicate aspect.

In the economy of the profitable functioning of the new body, the management of the flow of criminal information between national authorities and the European Public Prosecutor's Office is obviously crucial. In fact, only a system of orderly allocation of 'cases' can guarantee the effective and timely involvement of the supranational body, whilst avoiding delays and those delays due to possible conflicts with the national Public Prosecutor's Office.[21]

The choice of the national legislation, in this respect, has been that of the so-called 'double entry', i.e. of the simultaneous communication of information concerning offences in respect of which 'the European Public Prosecutor could exercise his jurisdiction pursuant to Articles 22 and 25(2) and (3) of the Regulation shall be submitted or forwarded not only to the national Public Prosecutor but also to the Deputy European Public Prosecutor'. Apart from the case where the DEP expressly waives the exercise of jurisdiction, the national public prosecutor also retains ownership of the file after the expiry of thirty days from the entry of the offence in the appropriate register.[22] Nothing is stated, however, about the case in which it is the EPPO that receives directly the report of the fact, a hypothesis which is, moreover, at least residual at present in the practice in our country with only three reports coming from private individuals out of the two hundred sixty-two reports handled by the EPPO in the year 2021.[23]

21 Our translation from the original text in Italian. More in general, on the importance of the flow of crime reports already with regard to cooperation between national authorities and OLAF, see D. Negri, Best Practices and Operational Models in Financial-Economic Investigations in Europe in View of the EPPO, in A. Bernardi and D. Negri (eds.), *Investigating European Fraud in the EU Member States*, Hart Publishing, 2017, p. 163.

22 Article 14 Legislative Decree No. 9/2021.

23 See again the EPPO 2021 Annual Report, https://www.eppo.europa.eu/en/news/eppo-investigates-eu54-billion-worth-loss-eu-budget-its-first-7-months-activity#:~:text=Of%20the%20576%20investigations%20opened,taken%20over%20by%20the%20EPPO.

The 'double entry' option is probably intended to minimise any risk of dispersal of communications relating to criminal offences potentially resulting from a lack of coordination between the national and Eurpoean bodies. Conversely, the effective operation of the EPPO is largely left to the scruples of the police services first and then of the national prosecutors who, in the face of the rather vague wording of Article 14 of Legislative Decree No 9/2021, which matches the vague criteria for conferring jurisdiction laid down by the regulation, leave intact a substantial margin of discretion in identifying the offences in respect of which the European Public Prosecutor 'may exercise jurisdiction'.

The delicacy of this aspect is clear in the national context when the emphasis is placed on the advisability of drawing up special documents to better specify the information to be immediately transmitted also to the DEPs.[24] Another useful expedient to regulate information flows between police authorities, national prosecutors' offices and the DEPs is the designation of a special 'contact point' in each national prosecutor's office, responsible precisely for managing communications with the delegated European prosecutors and the centralised structure of EPPO.[25]

4. Horizontal cooperation inside and outside the EU

Turning now to the analysis of the landscape of horizontal investigative cooperation between European Union Member States, a specific reference has to be made to the European Investigation Order (EIO) governed by Directive 2014/41/EU which still represents the most advanced instrument for the circulation of evidence, with pre-eminence over the provisions of the mutual assistance conventions that may exist between the States bound to the application of the Directive, including Italy. The EIO, unlike its predecessor, represents a mechanism of a tendentially all-encompassing nature, i.e. referring both to actual evidence and to the performance of "all investigative acts aimed at obtaining evidence".[26]

The directive does not contain any specific provisions dedicated to investigations into organised fraud and offences affecting the financial interests of the Union. Nevertheless, Chapter IV, dedicated to provisions referring to certain

24 G. Melillo, Il ruolo delle Procure della Repubblica di fronte alla nuova normativa sulla Procura Europea, *Quest. giust.*, 29 April 2021, https://www.questionegiustizia.it/articolo/il-ruolo-delle-procure-della-repubblica-di-fronte-alla-nuova-normativa-sulla-procuraeuropea#:~:text=Protocols%20of%20agreement%20or%20convergence,that%20specific%20reato%2C%20but%20also.

25 As suggested by the document already cited, note no. 20.

26 S. Allegrezza, Collecting Criminal Evidence Across the European Union: The European Investigation Order Between Flexibility and Proportionality, in S. Ruggeri (ed.), *Transnational Evidence and Multicultural Inquiries in Europe: Developments in EU Legislation and New Challenges for Human Rights-Oriented Criminal Investigations in Cross-Border Cases*, Springer, 2014, p. 53.

investigative acts, takes into consideration specific investigative measures that are undoubtedly relevant in the perspective of the investigation dedicated to shedding light on conduct detrimental to the Union budget. One may consider the information on bank and other financial accounts, information on banking and other financial operations and the monitoring of banking or other financial operations that are being carried out through one or more specified accounts considered at art. 26, 27 and 28.[27]

The Italian legislator implemented Directive 2014/41/EU by means of Legislative Decree No. 108 of 21 June 2017, bringing the acquisition of banking information back to the instrument of seizure from banks and to the duties of documentary exhibition, *pursuant to* Articles 255 and 256 of the Code of Criminal Procedure, and the real-time monitoring of financial transactions back to the institution of interception of communications regulated by Articles 266 et seq. of the national code of procedure.[28]

As regards the first measure, although undoubtedly this is detrimental to the right to respect for private life and protection of personal data enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the EU, interpreted in the light of Article 8 of the European Convention on Human Rights,[29] it must be said that under national law, it can be simply ordered by the public prosecutor, a solution that is hardly compatible with the outcome of certain recent rulings of the Court of Justice, albeit mainly referring to the acquisition of telephone traffic data. Reference is made in this case to the case-law which holds that Article 15(1) of Directive 2002/58/EC on the protection of privacy in the telecommunications sector must be interpreted as precluding national legislation which makes the public prosecutor competent to authorise access to telephone traffic and location data for the purposes of a criminal investigation, at least where he plays the role of a party to the criminal investigation, as is the case in the Italian system.[30] The principle also seems *mutatis mutandis* exportable in the field of banking investigations, especially if one considers that, as mentioned earlier, the information thus acquired falls within the sphere of protection of the right to respect for private life.

However, with reference to the rules governing the real-time acquisition of data relating to financial transactions, the significant divergence emerging from the Italian transposing legislation is striking with respect to the classification of similar activities where they are ordered by national authorities. In a purely domestic dimension, they are considered as simple searches or as atypical operations due to the non-communicative nature of the data acquired. If, in one regard, the express reference to the rules on wiretapping by the rules

27 On this regard, G. Lasagni, *Banking Supervision and Criminal Investigation: Comparing the EU and US Experiences*, Springer, 2019.

28 Article 20 of Legislative Decree No. 108/2017.

29 See, among others, ECHR, 27 April 2017, Sommer v. Germany, § 48.

30 See CJEU, 17 December 2020, C-746/18.

implementing the directive of the EIO, from which derives the need for a judge's authorisation and the existence of strict conditions for the execution of the measure, considerably burdens the functionality of the cooperation, in another respect, it appears to be a mandatory solution in order to ensure the compliance of the regulatory framework with the guarantees of the rule of law and proportionality, expressly provided for in Article 52 of the Charter of Fundamental Rights of the Union.

For what constitutes extra-EU cooperation, the rogatory procedure, governed by Articles 723 et seq. of the Code of Criminal Procedure, as reformed by the provisions of Legislative Decree no. 149 of 3 October 2017, is the traditional method for acquiring evidence abroad and providing assistance in investigative matters to foreign counterparts. Letters rogatory may relate to both acts of investigation and evidence in the strict sense. A rogatory can be used to obtain evidence such as witnesses, statements of the accused, searches, seizures, wiretaps or even just for the transmission of documents or other existing objects. Additionally included are those "further activities, mainly pertaining to the investigative phase, that can provide information and documentation that can be used in the trial from which the request originates".[31] Here, the panorama is extremely wide and varied: it embraces special investigative techniques such as undercover activities, cross-border observation, spontaneous information or controlled deliveries.

Of particular importance today is the possibility of taking statements from defendants or witnesses by resorting to transactional videoconferencing, a highly effective tool that combines respect for defence guarantees with the need to save time and resources, which has recently received specific regulatory attention, albeit only on the passive side of assistance, in the provisions of Articles 726-*quinquies* and 726-*sexies* of the Code of Criminal Procedure.

The request originates from the issuing (or assisted) state and is directed to the issuing (or assisting) state. The traditional distinction runs between active (foreign) letters rogatory, in which the state requests assistance, and passive (or from abroad) letters rogatory, in which, speculatively, the state is requested by another state to offer assistance.

A number of general principles apply: For example, the one expressed by the Latin brocardo *locus regit actum*, which calls for the application of the law of the requested state.

The principle of double criminality also applies, i.e. the impossibility of granting a request for judicial assistance if the act for which the requesting authority is prosecuting is not also a crime under the law of the requested State. This latter limitation on cooperation is less far-reaching, in the case of 'letters rogatory', than its counterpart in the case of extradition: the bilateral prediction of the fact does not represent an insurmountable obstacle, as the

31 M. R. Marchetti, Rapporti giurisdizionali con autorità straniere, in M. Bargis (ed.), *Compendio di procedura penale*, Cedam, 2020, p. 961.

various conventions often do not provide for such a limitation or, even if there is a trace of it, its scope of application concerns only house searches or seizures.

However, both the *locus regit actum* principle and the dual criminality principle are progressively losing their centrality in judicial cooperation in criminal matters. There are more and more exceptions, explicit or implicit, to these traditional principles and how the jurisprudence of the European Courts, both from Luxembourg and Strasbourg, is laying the foundations of a different perspective, oriented towards mutual trust and mutual recognition, which is moreover now expressly emphasised even within the same codified discipline in Article 696-*bis* of the Code of Criminal Procedure.

Article 727 of the Code of Criminal Procedure regulates the modalities of the active rogatory request: it must go through the Minister of Justice, who will forward it via diplomatic channels, unless the conventional rules allow direct contact with the foreign judicial authorities. The new Article 727(2), of the Code of Criminal Procedure, downsizes the role of the political authority when, if the request for assistance is addressed to a Member State of the European Union, it allows the exercise of the so-called ministerial blocking power only in the cases and within the limits established by the conventions in force and by Union law.

The procedure that regulates passive, rogatory letters provides that the request from the foreign State is received by the Minister of Justice (unless contractual law provides for direct contact between judicial authorities). If the request for cooperation comes from another EU Member State, however, ministerial control over the appropriateness of executing the request degrades to a mere eventuality that can only be exercised in the cases and within the limits contemplated by European sources.

Certain deliberations, of an exquisitely political nature, are the responsibility of the minister alone when the request for assistance comes from a third State: he must reject the request if there is a risk of compromising 'the sovereignty, security or other essential interests of the State' or if, in the case of the summoning of a witness, expert or defendant before a foreign authority, the foreign State does not offer 'an appropriate guarantee of the immunity of the person summoned' or when the principle of reciprocity is not respected. In two other cases, the review is the responsibility of both the minister and the judicial authority: the request for 'letters rogatory' must be refused if it is clear that the acts in question are prohibited by law or contrary to the fundamental principles of our legal system, or if there is a risk of contributing to a discriminatory process, unless the person concerned consents. If the decision is taken by the political body, it can only be based on the 'socio-political situation of the requesting state'.

If the application is deemed admissible, the Minister shall forward it, within thirty days, to the public prosecutor at the court of the district capital in which the activities requested are to be performed. In the event of multiple activities to be carried out in several districts, the prosecutor of the district in which the greatest number of acts is to be carried out, or, in the event of numerical

parity, the prosecutor of the district in which the act of greater investigative importance is to be carried out. The 2017 reform, in fact, scaled down the operation of the criticised, preventive filter mechanism of the Supreme Court of Cassation, the result of a 2001 reform, which had aroused strong reservations mainly due to the fact that a decision to entrust a judge with a choice with wide margins of discretion was in conflict with Article 25(2) of the Constitution. Pursuant to Article 724(6) of the Code of Criminal Procedure, the involvement of the Court of Cassation is still provided for only in the event of a dispute concerning cases in which the involvement of the judge in the rogatory procedure is necessary.

The most significant innovation made by Legislative Decree No. 149/2017 is, in fact, undoubtedly represented by the remodeling of the so-called *exequatur* procedure. In fact, the representative of the prosecution will now be able to decide, autonomously, on the admissibility of the request for assistance by possibly executing it with a reasoned decree, the intervention of the judge being confined to specific hypotheses.

5. Conclusions and recommendations

It must be acknowledged at this point that the latest national developments on the subject of investigative cooperation, aimed at combating fraud detrimental to the financial interests of the Union, created a well-structured regulatory framework and to a positive commencement of the activities of the new European Public Prosecutor within the Italian legal system. Despite the fact that statistics seem to show that national provisions are of course adequate to ensure EDPs operativity, the real effectiveness of the normative framework should probably be assessed on a longer period, when more data on prosecution and adjudication will also be available.

With the sole exception of the association aimed at smuggling foreign processed tobacco, the strategies to combat so-called PIF fraud at national level still tend to be outside the so-called 'double track' scheme, a historical trait of the national establishment in terms of criminal investigations still very much focused on the fight against mafia crime.

The extension of that special regime to this type of offence could undoubtedly result in strengthening the coordination and incisiveness of the action to combat these phenomena. However, this option would introduce a further significant element of fragmentation into the system, with correlative sacrifices for the prerogatives of the subjects involved in the investigations. Additionally, the irresistible rise of the *praeter delictum* prevention system, as has been observed for some time now, is also dedicated to those who are simply suspected of the crime of aggravated fraud for the purpose of obtaining EU financial disbursements. That system gives rise to significant concerns for the protection of the rights of those affected by the preventive measures, mainly in view of the incisiveness of such sanctions in the face of the almost total vagueness of the prerequisites that lead to their application.

More in general, and still adopting a right oriented perspective, it has to be said that the vague wording of many provisions of the European regulation might give raise to serious concerns for defence rights. It is true that art. 41 of the EPPO regulation recalls the *acquis communitaire* on the protection of the accused's rights; However, provisions are thought of for a purely national context, not for a system where the European prosecutor might exercise its competence throughout the whole continental territory.

Apart from normative solutions which could be in the future introduced by legislators, it is probably the development of mutual trust between the EPPO and EDPs from one side, and national enforcement authorities on the other side, that will play a major role in ensuring the functioning of the European prosecution model.

3 Vertical and horizontal cooperation in countering organised fraud in the European Union

Experience of Lithuania

Gintaras Švedas

Introduction

Lithuanian criminal procedure foresees that all criminal acts (including crimes related to organised fraud) are investigated and prosecuted following the same procedures provided in the Code of Criminal Procedure[1] (CCP). The legality principle applies to pre-trial investigations and prosecutions in Lithuania, since, in accordance with Art. 2 of the CCP, a prosecutor and a pre-trial investigator must institute criminal proceedings in every case in which the elements of a criminal act become apparent and shall take all measures to conduct, as soon as possible, the pre-trial investigation to uncover the criminal act. According to the doctrine of Lithuanian criminal procedure, the legality principle in the criminal justice system also means that pre-trial investigators and prosecutors must react to all information concerning the commission of criminal acts and must adopt all necessary pre-trial investigative decisions and conduct all necessary pre-trial investigative actions for the detection of criminal acts.[2]

The pre-trial investigation of every criminal act starts from the date of the opening of a pre-trial investigation and ends with the transfer of the indictment or any other final procedural act to the court.[3] The main tasks of the pre-trial investigation are to: (a) promptly and properly identify all the circumstances of the criminal act; (b) identify the person who committed the criminal act; (c) enable a proper examination of the case in the court; etc. When these challenges are fulfilled, the pre-trial investigation has to be completed by the preparation of an indictment (the traditional function of the prosecutor),

1 Lietuvos Respublikos baudžiamojo proceso kodeksas, *Valstybės žinios*, 2002, No. 37-1341.

2 G. Goda, M. Kazlauskas and P. Kuconis, *Baudžiamojo proceso teisė*, Vilnius: Teisinės informacijos centras, 2005, p. 67; G. Goda, *Lietuvos Respublikos baudžiamojo proceso kodekso komentaras. I-IV dalys (1–220 straipsniai)*, Vilnius: Teisinės informacijos centras, 2003, p. 13; G. Švedas and R. Merkevičius, Presentation of National Systems of Investigation, Prosecution, Evidence and Procedural Safeguards: Lithuania, in K. Ligeti (ed.), *Toward a Prosecutor for the European Union*, Oxford: Hart Publishing, 2013, Volume 1, p. 411; G. Švedas, *Criminal Law in Lithuania*, Wolters Kluwer, 2022, p. 199, et seq.

3 G. Goda, M. Kazlauskas and P. Kuconis, *Baudžiamojo proceso teisė*, Vilnius: Teisinės informacijos centras, 2005, p. 288.

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which is an integral part of the pre-trial investigation. The prosecutor chooses the moment of the indictment. Such a decision is made by the prosecutor only when he or she considers that the circumstances of the committed criminal act are identified, there is no more need for any pre-trial actions and it is clear that the trial court will be able to prove the guilt of the suspect.[4]

The pre-trial investigation shall be organised and led by a prosecutor. The prosecutor may instruct the police or another investigative institution to carry out a pre-trial investigation of any crime, or misdemeanour, or individual pre-trial investigation actions. When deciding which pre-trial investigation institution shall conduct a pre-trial investigation, it is necessary to take into account who conducted the operational investigation, to assess the investigators' experience in investigating this category of cases and other circumstances that determine the effectiveness of further investigation. If necessary, the prosecutor may form an investigation team of officials from several different pre-trial investigation institutions. Moreover, pursuant to Art. 170 of the CCP, the prosecutor may, on his or her own initiative, take a decision to conduct a pre-trial investigation, which shall be organised and conducted by him or her.

1. Cooperation of the national law enforcement authorities

1.1 National network of law enforcement authorities responsible for countering organised fraud

Art. 164 of the CCP states that pre-trial investigation shall be conducted by officers of pre-trial investigation institutions. Art. 160 of the CCP prescribes that the main pre-trial investigative institution is the police. The other specialised pre-trial investigative institutions are the Special Investigations Service, the Financial Crimes Investigations Service, the State Fire Prevention Service, the State Border Guard Service and the Customs, in respect to criminal acts which come to their notice when discharging the primary functions provided for in the laws regulating their activities and the Prosecutor General's recommendations. The Lithuanian network of law enforcement authorities, responsible for countering fraud and organised fraud,[5] comprise mainly the Financial Crime Investigation Service, the Lithuanian Police, the Special Investigations Service and the Customs authorities of Lithuania.

According to the laws and Prosecutor General's recommendation, "On the distribution of the pre-trial investigation between the institutions of the pre-trial investigation",[6] pre-trial investigation of the crimes and misdemeanours

4 Ibidem, p. 343.

5 "Fraud and organised fraud" in this research means PIF offences.

6 Lietuvos Respublikos Generalinio prokuroro Rekomendacijos dėl nusikalstamų veikų tyrimo paskirstymo ikiteisminio tyrimo įstaigoms, *Valstybės žinios*, 25 April 2003, No. 39-1805.

related to state taxes, state (municipal) fees, state social insurance and other contributions established in Chapter XXXII "Crimes and Misdemeanours Against the Financial System" of the Criminal Code[7] (CC) shall be conducted by the Financial Crime Investigation Service (FCIS). It should be noted that the Financial Crime Investigation Service is a centrally specialised Lithuanian authority responsible for the investigations of criminal acts related to the receipt and use of the European Union (further, also EU) and foreign financial assistance funds, in addition to illegal enrichment crime provided in Art. 189[1] of the CC.

The Financial Crime Investigation Service is the main Lithuanian law enforcement institution responsible for the prevention, detection and pre-trial investigation of fraud and organised fraud, money laundering and terrorist financing, the illegal receipt and use of the funds of the financial support from the European Union and illegal enrichment. The activity of the FCIS and its 4 territorial units are regulated, *inter alia*, by the Law on The Financial Crime Investigation Service of the Republic of Lithuania.[8] The mission of the FCIS is to protect the state financial system by revealing and investigating crimes and misdemeanours in addition to other violations of law. The goal of the Financial Crime Investigation Service is to elaborate methods of countering criminal activities against the State financial system. The Service pursues this objective by implementing the measures of criminal intelligence, disclosing and conducting the pre-trial investigation and prevention of criminal acts, implementing the measures of countering money laundering and terrorist financing, and the means, which warrant the legitimacy of the receiving and use of the financial support funds of the European Union and other foreign countries, performing the expertise of one's commercial and financial activity and submitting the specialist's conclusion on it. According to the aforementioned Law on the Financial Crime Investigation Service, the main functions of the FCIS are: (a) pre-trial investigation of international and domestic criminal acts related with the fraud and avoidance of value added tax (VAT), excise duties, income tax and other taxes in addition to the fraudulent management of accounts; criminal acts related to the illegal receipt and use of EU support funds; legalisation of the proceeds of crime (money laundering) and illicit enrichment; criminal acts in the field of swindling and misappropriation or squandering of property in such financial institutions as banks and credit unions and manipulating the prices (fraud) in the energy sector, etc.; (b) application of criminal intelligence measures, conducting investigation of economic and financial activities; (c) implementation of preventive measures against criminal acts and other violations of law against the financial system, financial assistance of the European

7 Lietuvos Respublikos baudžiamasis kodeksas, *Valstybės žinios*, 2000, No. 89-2741; No. 112-4973.

8 Lietuvos Respublikos finansinių nusikaltimų tyrimo tarnybos įstatymas, *Valstybės žinios*, 30 March 2002, No. 33-1250.

Union and foreign states, as well as anti-money laundering and terrorist financing measures; (d) co-operation with law enforcement and other institutions and agencies of the Republic of Lithuania and foreign states, international organisations on issues within the sphere of competence of the Service; (e) collection, analysis and assessment of the information on illegal receipt and use of financial assistance of the European Union and foreign states; etc.

Currently, the primary attention of the FCIS is paid to the prevention, disclosing and pre-trial investigation of criminal acts related to money laundering, VAT embezzlement, illegal receipt and use of the funds of the financial support from the European Union and other foreign countries. The FCIS focuses on the disclosure and pre-trial investigation of large-scale, sensitive and cross-border criminal acts adversely affecting the European Union and (or) national financial system. In 2021, the FCIS recorded a total of 622 criminal acts (in 2019, this figure stood at 875), investigated as many as 527 criminal acts (in 2019, this number totalled 555). As many as 82.5 percent of all the recorded criminal acts were investigated (in 2019–45.5 percent). Moreover, in 2021, the FCIS was given 334 tasks to carry out investigations of the economic financial activity, out of which 195 (or 58 percent) were prepared by the officials of the Service, and 139 (or 42 percent) by the officials of other law enforcement institutions. In 2021, specialists of the Financial Crime Investigation Service, having completed the investigations of the economic financial activity, submitted 653 conclusions and explanations of the specialists[9] (in 2018, this figure stood at 662).[10]

With a view to preventing the illegal embezzlement of the European Union and other foreign countries financial support, The Board of the Illegal Support Prevention and Investigation of the FCIS maintains close cooperation with the Lithuanian authorities, responsible for the European Union and other foreign countries financial support management, law enforcement institutions and tax administrators, such as the Ministry of Finance of Lithuania (Managing Authority); the National Audit Office of Lithuania; the Ministry of Agriculture of Lithuania; the Central Project Management Agency; he Lithuanian Business Support Agency; the European Social Fund Agency; the Environmental Projects Management Agency; the National Paying Agency under the Ministry of Agriculture of Lithuania; the Transport Investment Directorate; the State Tax Inspectorate under the Ministry of Finance of Lithuania; the Investment and Business Guarantees, Ltd., etc.

9 Finansinių nusikaltimų tyrimo tarnybos prie Lietuvos Respublikos vidaus reikalų ministerijos 2021 m. metinė ataskaita, https://fntt.lt/data/public/uploads/2022/06/svp-fntt-2021-metine-ataskaita-2021-03-21-tg.pdf.

10 Financial Crimes Investigation Service Under the Ministry of Interior of the Republic of Lithuania Activity in 2019 Report, https://fntt.lrv.lt/media/viesa/saugykla/2023/11/vhX_mN-GNlY.pdf.

It should be noted that on 24 May 2002, the Financial Crimes Investigations Service, in decision[11] No. 747 of the Government of the Republic of Lithuania, was designated as a coordinating authority responsible for collaboration with the European Anti-Fraud Office (OLAF) and taking part in the activities of the Anti-Fraud Coordination Service (AFCOS).

The Lithuanian Police is the main policing institution in Lithuania. The Lithuanian Y dot. Police is a statutory organisation, ensuring public order and safety, detecting and investigating criminal acts and other violations of law in addition to rendering other social (humanitarian) aid for people. The police activity is regulated, *inter alia*, by the Law on Police of the Republic of Lithuania.[12] The main tasks of the Lithuanian Police are to: (a) protect human rights and freedoms; (b) ensure public order and safety; (c) prevent criminal acts and other violations of law; (d) detect and investigate criminal acts and other violations of law; etc.

The Lithuanian Police comprises the Police Department and other Police units. The Commissioner General of Police can establish police units subordinate to the Police Department on a territorial and non-territorial basis and assign them to perform certain (special) police functions. In the context of combatting fraud and organised fraud, it is important to mention the Lithuanian Criminal Police Bureau (further, also LCPB). The LCPB is tasked with preventing and detecting serious and major crimes, criminal activities which arouse public interest, activities related to the functioning of criminal organizations, organized groups and their members, as well as to coordinate investigations. The LCPB operates in the entire territory of Lithuania and is primarily responsible for the prevention, disclosure and pre-trial investigation of: (a) the most serious and high-profile crimes; (b) serious and very serious crimes of interregional and international character; (c) crimes and misdemeanours that cause serious damage to the state or individuals; (d) crimes and misdemeanours committed by high-level organised crime groups; (e) crimes and misdemeanours against property, property rights and property interests, economy and business-related order, and (f) crimes and misdemeanours against the financial system and cybercrime.

Apart from being the national crime investigation authority, the LCPB actively cooperates with foreign countries and international organisations, conducts joint criminal investigations and organises cross-border, joint police operations. Furthermore, amongst the other key functions of the LCPB, there is support and coordination and cross-border cooperation between police and other law enforcement authorities of Lithuania and Interpol, *Europol*, SIRENE and law enforcement authorities of other foreign countries.

11 Lietuvos Respublikos Vyriausybės, 24 May 2002 nutarimas, No. 747, Dėl institucijos, atsakingos už bendradarbiavimą su Europos kovos su sukčiavimu tarnyba (OLAF), paskyrimo, *Valstybės žinios*, 29 May 2002, No. 53-2092.

12 Lietuvos Respublikos policijos įstatymas, *Valstybės žinios*, 27 October 2000, No. 90-2777.

The Special Investigation Service (SIS) is the main anti-corruption law enforcement agency of the Republic of Lithuania. The main task of the SIS is to reduce corruption as a threat to human rights and freedoms, the principles of the rule of law and economic development. The activity of the SIS and its 4 territorial units is regulated, *inter alia*, by the Law on the Special Investigation Service of the Republic of Lithuania.[13] In accordance with the Law on the Special Investigation Service, the key areas of the activities of the SIS are: criminal investigations and criminal intelligence due to corruption and corruption-related crimes, corruption prevention, anti-corruption education and analytical anti-corruption intelligence. The Special Investigations Service shall: (a) carry out criminal intelligence measures in detecting and preventing corruption (active and passive corruption, abuse of office, trading in influence, etc.) and corruption related crimes (fraud, embezzlement or misappropriation of property, money laundering, etc.); (b) conduct a pre-trial investigation of the mentioned criminal acts; (c) co-operate with other law enforcement institutions; (d) collect and analyse public or classified information held by the SIS about corruption and related social and economic phenomena, use of this new analytical data for the state or municipal institutions and officials decisions, relevant for the reduction of the corruption; (e) prepare and implement corruption prevention and other measures; (f) jointly with other law enforcement institutions, implement crime control and prevention programmes; etc.

Apart from being the national crime investigation authority, the SIS operates at an international level to strive for common benefits in the fight against corruption and the strengthening of corruption prevention and public awareness raising areas. The SIS encourages international cooperation among the interested parties, related anticorruption institutions and international organisations, shares its best practices and assumes responsibility for the best practices from others. Moreover, the SIS exchanges experience and information in the field of corruption investigation, corruption prevention and anti-corruption education and strengthens institutional capacity.[14]

The international interest in the experience of the SIS is steadily increasing. The SIS cooperates with many international organisations (such as the Organisation for Economic Co-operation and Development (OECD), the Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN), the European Partners Against Corruption (EPAC) and the European Union Contact-point Network Against Corruption (EACN), the European Anti-Fraud Office (OLAF), the Council of Europe's Group of States Against

13 Lietuvos Respublikos specialiųjų tyrimų tarnybos įstatymas, *Valstybės žinios*, 19 May 2000, No. 41-1162.

14 For example, in the end of 2019, the SIS signed a grant agreement with the European Anti-Fraud Office (OLAF) on a new project "Enhancing the analytical capacity of law enforcement authorities to detect and prevent fraud and corruption affecting the financial interests of the EU" under the OLAF-Hercule III program.

Corruption (GRECO), the United Nations Office on Drugs and Crime (UNODC) and others) and participate in their activities.

The Customs authorities of Lithuania's mission is legitimate, safe, fair and smooth international trade in Lithuania. Customs authorities activity is regulated, *inter alia*, by the Law on Customs of the Republic of Lithuania.[15] According to this Law, the Customs authorities of Lithuania have a pivotal role in the close co-operation with other authorities, allowing them to: to protect the financial interests of the European Union and the Republic of Lithuania, to support legitimate trade and strengthen competitiveness; to ensure the correct payment of duties and taxes; to combat counterfeiting and piracy; to support the fight against other types of fraud, organised crime, drugs and terrorism by processing information, identifying changes in trade patterns and undertaking risk assessment; to detect financial fraud, terrorist and criminal activities; etc.

The customs authorities of Lithuania consist of the Customs Department, territorial customs units and special customs offices (such as Customs Criminal Service, etc.). Territorial customs units are the main institution for the investigation of administrative offences involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania. It should be noted that the main institution responsible for the pre-trial investigation of criminal acts involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania is the Customs Criminal Service (further, also CCS). According to the aforementioned Law on Customs, the main tasks of the CCS (which is a law enforcement agency) in the area of its competence are: (1) to collect criminal intelligence for disclosing smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania; (2) to disclose and investigate criminal acts and other violations of legal acts related to customs activities; (3) to collect, analyse and evaluate information on the development of trends in smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania, economic, social and criminogenic reasons for the existence and development of smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania; and (4) to carry out international and interdepartmental cooperation in the prevention and pre-trial investigation of crimes involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania, illegal migration, etc.

The Prosecution Service is responsible for prosecution in the Lithuanian legal system. The Prosecution Service of the Republic of Lithuania comprises

15 Lietuvos Respublikos muitinės įstatymas, *Valstybės žinios*, 30 April 2004, No. 73-2517.

the General Prosecutor's Office of the Republic of Lithuania and territorial prosecutor's offices. The General Prosecutor's Office of the Republic of Lithuania is an autonomous and independent state authority, which helps to ensure lawfulness and assists courts in the administration of justice. Art. 118 of the Constitution of the Republic of Lithuania[16] prescribes that only the prosecutor shall prosecute criminal cases on behalf of the State, shall carry out pre-trial investigations and shall supervise the activities of pre-trial investigators and institutions. These constitutional provisions are more explicitly established in the Law on the Prosecution Office of the Republic of Lithuania,[17] which prescribes that prosecutors shall: (1) organise and lead pre-trial investigations; (2) conduct pre-trial investigations or separate investigative actions; (3) control the procedural and criminal intelligence activities of the pre-trial investigative institutions; (4) sustain a criminal charge before the court; (5) coordinate the activities of pre-trial investigative institutions; etc.

The European Delegated Prosecutors Office[18] started operating within the General Prosecutor's Office in 2021. The Office consists of 4 European Delegated Prosecutors (appointed by the European Prosecutor's College) and 3 prosecutor's assistants. One of the European Delegated Prosecutors was appointed as the coordinator of the Office. The General Prosecutor's Office of Lithuania was informed about the appointment of the Office coordinator.

1.2 Analysis of the practice of cooperation of national law enforcement authorities (good and bad practices and experiences)

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinion of experts,[19] allows for the conclusion that (in general) cooperation of national law enforcement authorities in Lithuania may be considered to be effective. However, it also allows for the singling out of the strengths and certain problems of legal regulation, organisational and institutional aspects of practical implementation of the cooperation between national authorities.

Laws on national law enforcement institutions responsible for the fight against organised fraud crimes (FCIS, Police Department, SIS, CCS, etc.) provide that these institutions have the right to cooperate with other national and foreign institutions. Nevertheless, there is a different legal framework for state authorities to provide information on cooperation by other national

16 Lietuvos Respublikos Konstitucija, *Vilnius*, 2005.

17 Lietuvos Respublikos prokuratūros įstatymas, *Valstybės žinios*, 2003, No. 42-1919.

18 Regulation of the Office of the European Delegated Prosecutors. General Prosecutors of the Republic of Lithuania Order, No. I-56 of 8 March 2021.

19 The expert opinion consists of information gathered during the interviews with 6 prosecutors who hold positions at various levels (including EPPO and Eurojust) and 3 pre-trial investigation officers. The interview took place in October–December of 2021.

institutions. For example, Art. 5 of the aforementioned Law on Financial Crimes Investigation Service, provides that the

> Service shall co-operate with law enforcement institutions and agencies in accordance with the procedure laid down by laws and other legal acts. The Service shall co-operate with other state and municipal institutions and agencies in implementing crime control and prevention programmes and including public organisations, natural and legal persons in these activities. The manner of its co-operation with tax administrators shall be established by the Ministry of the Interior and the Ministry of Finance.

Art. 5 of the mentioned Law on Special Investigations Service states that

> while performing the tasks assigned to it, the Special Investigations Service shall maintain professional links with other institutions of the Republic of Lithuania, also with various agencies, organisations and enterprises, and shall encourage personal initiative of natural and legal persons in implementing anti-corruption measures.

Meanwhile, Art. 11 of the mentioned Law on Customs provides that "the Customs, having information about suspected violations of legal acts, the prevention or investigation of which belongs to other law enforcement institutions of Lithuania, shall immediately submit it to these law enforcement authorities within its competence".

Moreover, as an example of the good practice of the cooperation between national law enforcement authorities bilateral and multilateral national cooperation agreements should be mentioned, such as the Agreement between the Criminal Intelligence Institutions, the Prosecutor General's Office of the Republic of Lithuania and the District Courts on the sanctioning of the means of criminal intelligence in the criminal intelligence telecommunications network (2018), Agreement between the Criminal Intelligence Institutions and the Prosecutor General's Office on Co-operation and Coordination of Criminal Intelligence (2017), Cooperation agreement between the Customs Department, State Border Protection Service, Financial Crime Investigation Service and Police Department (2010), Cooperation agreement between the Customs Department and Police Department (2005), etc. The main aim of these agreements is to make cooperation among different state institutions more effective at central and operational levels. For example, pursuant to the provisions of the Interagency Cooperation Agreement between Police, Customs and State Border Guard Service (signed on 20 May 2002), working groups are formed and contact persons appointed at central, regional and local levels of the police, customs and State Border Protection Service. As a result, cooperation forms are established, forms of sharing criminal intelligence and other data from institutional databases have been defined, etc. In addition, it should be noted that criminal intelligence activities and institutional cooperation in

the investigation of organised fraud crimes, in accordance with the Law on Criminal Intelligence of the Republic of Lithuania[20] and the recommendation of the Prosecutor General of Lithuania, "On Approval of the Recommendations on the Law on Criminal Intelligence, Application of the Norms of the Code of Criminal Procedure and Use of Criminal Intelligence Information in Criminal Proceedings",[21] must be coordinated and ensured by the prosecutor.

The assessment of the legal regulation allows for the conclusion that the legal framework for inter-institutional cooperation and the division of competences are sufficiently appropriate and accurate, whilst the opinion of experts shows that practical cooperation and the exchange of criminal intelligence (though improved over the past 5 to 10 years) could be more effective. Furthermore, experts confirmed the opinion already expressed in the doctrine of criminal procedure that that the main difficulty (or even challenge) is mutual trust, which determines effective day-to-day cooperation (especially exchange of information of criminal intelligence) between different institutions.[22] In addition, some experts have indicated inadequate national legislation, where the grounds for the application of the criminal intelligence measures are linked to the seriousness[23] of the crime under investigation, as well as strict interpretation of these requirements in the jurisprudence of the Supreme Court of Lithuania.[24]

One of the most beneficial aspects of the cooperation of national law enforcement authorities is that Lithuania has its own specialised authority, the FCIS, which is responsible for pre-trial investigations of criminal acts related to the illegal receipt and use of EU support funds. As a result, pre-trial investigations are concentrated in one institution. The FCIS also has a competence to perform measures of criminal intelligence. The police and the prosecution are not actively involved in the initial phase of the pre-trial investigations of criminal acts related to the illegal receipt and use of the EU support funds. Nevertheless, experts (representatives of national law enforcement authorities) have mentioned that the police are gradually engaging in such pre-trial investigations, and it is a bit worrying since it is not an easy task for prosecutors to coordinate and control pre-trial investigation actions of both law enforcement authorities. Other experts (mostly prosecutors) stated that the prosecution

20 Lietuvos Respublikos kriminalinės žvalgybos įstatymas, *Valstybės žinios*, 2012, No. 122-6093.

21 Lietuvos Respublikos Generalinio prokuroro įsakymas, Dėl Rekomendacijų dėl Kriminalinės žvalgybos įstatymo, Baudžiamojo proceso kodekso normų taikymo ir kriminalinės žvalgybos informacijos panaudojimo baudžiamajame procese patvirtinimo, *Valstybės žinios*, 2013, No. 2-83.

22 G. Švedas, Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania, in C. Nowak (ed.), *Combatting Illicit Trade on the EU Border: A Comparative Perspective*, Springer, 2021, p. 139.

23 Seriousness of the crime depends on the maximum term of the imprisonment punishment provided in the sanction of the Article of Special Part of the Criminal Code.

24 Ruling of the Supreme Court of Lithuania in criminal case No. 2K-P-94-895/2015.

should expand the participation of the prosecutors in the area of combatting (pre-trial investigation and prosecution) fraud and organised fraud.

It should be noted that the FCIS maintains close cooperation not only with law enforcement institutions, but also with the Lithuanian authorities responsible for the management of the European Union and other foreign countries financial support and tax administrators. It is beneficial since the FCIS usually has special agreements with these authorities and can access their databases. Although it is considered to be a positive aspect, which could result in more effective cooperation and successful pre-trial investigations, not all information needed for pre-trial investigations is available in these databases. For example, if a farmer who has received support from EU support funds declares the information of a concrete project by entering it onto a system (database) of certain authority, only part of the data becomes visible. Detailed information of a possible administrative offence or committed criminal act (for example, who, where, when, how and with whose help it operated) is inaccessible. Thus, it becomes necessary for the pre-trial investigation authorities to contact those authorities repeatedly and request the necessary data. This hinders the effectiveness of the cooperation. The administrative authorities themselves do not have enough resources (either economical or human) to provide pre-trial investigation authorities with such information as quickly as is required, and this results in delays of the pre-trial investigations and prosecutions. Conversely, the experts (representatives of law enforcement institutions) have also provided few examples of good administrative cooperation, such as information from the State Tax Inspectorate on their audit and the identification of suspicious transactions (cash flow "walking") in an organic farm that was supported by the EU funds. The beginning of this criminal case[25] was grounded on a precisely well-prepared State Tax Inspectorate act and later insights provided by a specialist of the State Tax Inspectorate. An additional example is related to the cooperation of the Research Council of Lithuania, which provided clearly explained information on bio/nano technologies and chemistry issues (areas in which the pre-trial investigation officer is completely incompetent), without which pre-trial investigation would be practically impossible.

Moreover, there are some anomalies (obstacles) in legal regulation regarding the legitimate use of such information gathered solely by accessing databases. There are no clear rules in the CCP (or other laws) according to which it could be confirmed that such access to a relevant database is lawful. Accordingly, it raises the question as to whether the use of such data is lawful and whether it can be used directly in pre-trial investigation and prosecution. Whereas if, for instance, the FCIS asks the State Tax Inspectorate directly to provide relevant data and receives an official answer with confirmation that the data has been obtained in accordance with agreement between the FCIS and the State Tax

25 Ruling of the Supreme Court of Lithuania in criminal case No. 2K-223-976/2020.

Inspectorate, it can be used immediately in pre-trial investigation (there are no questions about the lawfulness of the received data). However, compared to the opportunity of the national law enforcement authorities access to the databases directly, this method of obtaining information is takes more time.

One more challenge, as mentioned by experts, (representatives of national law enforcement authorities), is the primary source (national law enforcement institution or administrative agency), which is obliged to determine and inform pre-trial investigation authorities that the contract regarding EU support was breached. It is not clear whether there are enough human resources within the administrative authorities, lawyers and other specialists who are sufficiently competent to determine whether this infringement is of an administrative or criminal nature. In addition, the term within which the actual breach of the contract regarding EU support and report of a possible criminal act must be submitted to the competent investigation authority or prosecutor also remains unclear. It is obvious that the effectiveness of a pre-trial investigation depends on how rapidly the competent investigation authority is informed about the breaches of the contracts regarding EU support which may lead to criminal acts. Moreover, the longer the time frame is, the greater the risk of corruption.

In assessing the organisational aspects of co-operation between pre-trial investigation institutions, it is necessary to mention one example of a negative experience related to the issue of human resources of institutions. Practically, all law enforcement institutions have indicated a lack of qualified professionals (pre-trial investigations officers). This is implicitly confirmed by the doctrine of Lithuanian criminal procedure, which indicated a lack of appropriate education for pre-trial investigation officers, as one-third of them have no higher legal education, and 22 percent did not even have a law degree.[26] Perhaps due to the lack of qualified specialists, the former reforms of the legal framework of individual law enforcement institutions (for example, police, Special Investigation Service, State Security Department, etc.) were often aimed at providing higher salaries and wider social guarantees, which would entice pre-trial investigation officers from other institutions. Such "competition" between pre-trial investigation institutions determines the "migration" of pre-trial investigation officers from one institution to another for financial reasons. Moreover, such a situation adversely affects the pyramid of the legal system, since a pre-trial investigation officer, without any objective background, may receive a higher salary and wider social guarantees than a prosecutor. Some experts (mostly prosecutors) noted that it is an especially vital organisational aspect since the pyramid of legal systems needs to be consistent.

26 Ž. Navickienė, Ikiteismino tyrimo organizavimo optimizavimas Lietuvoje: Nunc ar ad feliciora tempora? in H. Malevski and G. Juodkaitė-Granskienė (eds.), *IX Criminalistics and Forensic Examination: Science, Studies, Practice*, Vilnius and Charkovas: Lietuvos teismo ekspertizės centras, 2013, pp. 307–308.

In the context of human resources, some problematical issues regarding the use of special knowledge and forensic examination must be mentioned. The doctrine of Lithuanian criminal procedure revealed some weaknesses in the usage of forensic examinations. These weaknesses were defined as an overload of forensic examinations and respectively long terms of the performance of forensic examinations.[27] In almost every pre-trial investigation of criminal acts related to fraud and organised fraud, forensic experts who carry out forensic examinations are needed. This forensic practice shows that, for example, between 2013 and 2015, in Lithuania, economical forensic examinations were most often performed in criminal cases concerning: a) Fraud (Art. 182 of the CC), Misappropriation of Property (Art. 183 of the CC), Squandering of Property (Art. 184 of the CC), making up 37.1 percent of all economical forensic examinations; b) Non-payment of Taxes (Art. 219 of the CC), Submission of Incorrect Data on Income, Profit or Property (Art. 220 of the CC), Fraudulent Accounting (Art. 222 and 223 of the CC) – 29.6 percent of all economical forensic examinations; c) Illegal Engagement in Economic, Commercial, Financial or Professional Activities (Art. 202 of the CC), Fraudulent Statement on Company Activities (Art. 205 of the CC), Credit Fraud (Art. 207 of the CC), Debtor's dishonesty (Art. 208 of the CC), Criminal bankruptcy (Art. 209 of the CC), Forgery of a Document or Use or Realisation of a Forged Document (Art. 300 of the CC) – 12.1 percent of all economical forensic examinations; d) Abuse of Office (Art. 228 of the CC) – 7.6 percent of all economical forensic examinations.[28]

As an example, if the object of the EU support is the construction of the buildings, special knowledge in construction is inevitable in order to assess the compliance of building complexes with actual works, in addition to or deviations from estimations. It should be noted that this type of examination was until 2014 performed only by private forensic experts, the number of which was insignificant, and this situation unduly prolongs the process of obtaining a conclusion from an expert examination. Due to the permanent demand of construction examination, the new type of construction examination was introduced into the practices of the Forensic Science Center of Lithuania. The tasks of said examination are as follows: to determine the compliance of buildings and other construction works to their projects, their prats and (or) legal regulation, to determine the reasons for damages or collapses of buildings and

27 G. Juodkaitė-Granskienė and A. Gorbatkov, Forensic Examinations in Lithuania: 30 Years of Experience (1990–2020), in G. Švedas and D. Murauskas (eds.), *Legal Developments During 30 Years of Lithuanian Independence: Overview of Legal Accomplishments and Challenges in Lithuania*, Springer, 2021, pp. 188–189.

28 M. Barkauskas and A. Spiečiūtė, Juodkaitė-Granskienė G. Ekonominių ekspertinių tyrimų galimybės tiriant ūkines ir finansines nusikalstamas veikas, in G. Švedas, J. Prapiestis and A. Milinis (eds.), *Baudžiamoji justicija ir verslas*, Vilnius: Vilniaus universiteto Teisės fakultetas, Registrų centras, 2016, p. 319.

other construction works and the amount and type of works necessary for rebuilding.[29]

However, it should be noted that pre-trial investigation officers and prosecutors do not always have sufficient competence to formulate questions for forensic examination. The assessment carried out in the Forensic Science Centre of Lithuania shows that about 10 percent of the questions submitted for forensic examination do not correspond to the competence of the forensic expert. This is due to the fact that they require answers to legal questions or the answer to them does not require special or expert knowledge. It should be noted that the effectiveness and results of economic forensic examinations depend on the formulation of the questions and the objects of the examination. Incorrectly worded questions may not even be answered by a forensic expert. Questions that are too broadly formulated may lead to an additional examination that is completely unnecessary for the final results. Moreover, a forensic expert may misunderstand incorrectly or too broadly formulated questions and perform an incomplete examination.[30] In order to avoid such errors, the Forensic Science Centre of Lithuania has prepared methodological recommendations[31] for the appointment of economic forensic examinations, which indicate the tasks to be solved by a specific forensic expert examination and typical formulations of questions.

Finally, a lack of technical equipment utilised by national law enforcement institutions may be also mentioned. Criminals of modern times, and their intelligence, are more advanced. Currently, they use information technologies and other innovations, communication and the movement of funds is more rapid and, as a result, national law enforcement institutions cannot afford not to match the pace of this. However, experts reiterated the opinion, already expressed in the doctrine of criminal procedure,[32] that progress in the supplying of technical equipment to national law enforcement institutions is not as rapid as it should be and needs to be improved.

29 G. Juodkaitė-Granskienė and A. Gorbatkov, Forensic Examinations in Lithuania: 30 Years of Experience (1990–2020), in G. Švedas and D. Murauskas (eds.), *Legal Developments During 30 Years of Lithuanian Independence: Overview of Legal Accomplishments and Challenges in Lithuania*, Cham: Springer, 2021, p. 193.

30 M. Barkauskas, A. Spiečiūtė and G. Juodkaitė-Granskienė, Ekonominių ekspertinių tyrimų galimybės tiriant ūkines ir finansines nusikalstamas veikas, in G. Švedas, J. Prapiestis and A. Milinis (eds.), *Baudžiamoji justicija ir verslas*, Vilnius: Vilniaus universiteto Teisės fakultetas, Registrų centras, 2016, pp. 314, 316.

31 Ekonominės (bankininkystės, buhalterinės, finansų, darbo ekonomikos) ekspertizės: Metodinės rekomendacijos, https://www.ltec.lt/ekonomine-metodines.

32 G. Švedas, Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania, in C. Nowak (ed.), *Combatting Illicit Trade on the EU Border: A Comparative Perspective*, Cham: Springer, 2021, p. 142.

1.3 Recommendation for improvement

Recommendations for the improvement of cooperation on national law enforcement authorities may relate to the improvement of the legal framework, the training and professional development of prosecutors, pre-trial investigation officers and public service officials, in addition to the organisational aspects related to the involvement of prosecutors in pre-trial investigations of fraud and organised fraud with EU funds, in addition to supplying better national law enforcement authorities with technical equipment and modern technologies.

The main directions of the improvement of the legal framework would be as follows:

(a) to provide legal opportunities for national law enforcement authorities to have direct access to databases of other administrative authorities and to use this data lawfully. Moreover, information stored in these databases could be more detailed and better categorised (for example, by project groups or types);
(b) to unify (or harmonise) the legal framework for the national law enforcement institutions, to provide information (including information of criminal intelligence) to other state institutions and to promote (in various ways, for example by training, joint seminars and exchange of "good practice") law enforcement institutions and their criminal intelligence unit cooperation, which should include the exchange of criminal intelligence information;
(c) to provide more precise regulation of the grounds in addition to the terms of the application of measures of criminal intelligence.

The main directions of the training and professional development of prosecutors, pre-trial investigation officers and public service officials would be as follows:

(a) to prepare and implement general and special training programmes on various issues of criminal procedure, criminal law, criminal intelligence and forensic examination.

The main directions of the improvement of the organisational aspects would be as follows:

(a) to encourage (in various ways) prosecutors to be more consistent and the increased involvement of prosecutors in pre-trial investigations of crimes related to fraud and organised fraud with EU funds;
(b) to provide for a harmonised and competitive remuneration and social security system for pre-trial investigation officials of all national law enforcement institutions and prosecutors;

(c) to allocate more resources for the acquisition of technical equipment, modern technologies, in addition to the digitisation of law enforcement and administrative institutions.

Finally, as highlighted by experts, it would also be very useful to monitor, analyse, identify and summarise the trends of administrative violations and criminal acts of fraud and organised fraud related to EU funds in addition to the preparation of recommendations for pre-trial investigation and prosecution of these criminal acts.

2. Cooperation between national law enforcement authorities and EU institutions

2.1 National legal framework related to cooperation between national law enforcement authorities and EU institutions (Europol, OLAF and Eurojust, future cooperation with EPPO)

Europol. The cooperation of Lithuania with the *Europol* (which started as early as 1996) was initially focused on only certain areas. Specifically, joint training programmes and investigations of separate criminal acts. Lithuanian police officers participated, at *Europol's* invitation, in a number of police operations aimed at investigating illegal migration flows, trends in the trafficking of human beings and the magnitude of vehicle thefts.

On 10 February 2004, the Cooperation Agreement between the Republic of Lithuania and the Europol came into force. The purpose of this agreement was, *inter alia*, to improve cooperation between the Member States of the European Union, acting through *Europol*, and Lithuania in the fight against serious transnational criminal acts. This Agreement remained in force until the date of the accession of Lithuania to the Europol Convention. The Europol Convention, and the additional protocols therein, were ratified on 22 April 2004 through the Law on the Ratification of the Europol Convention and the additional protocols contained within it (which came into force on 1 May 2004).[33] Upon the ratification by Lithuania of the Europol Convention and the additional protocols pertaining to said Convention, Lithuania became a full member of *Europol,* whose activities are currently regulated by Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.[34]

33 Lietuvos Respublikos įstatymas dėl konvencijos, parengtos vadovaujantis Europos Sąjungos sutarties K.3 straipsniu, dėl Europos policijos biuro įsteigimo (Europolo konvencijos) ir jos protokolų ratifikavimo, *Valstybės žinios*, 30 April 2004, No. 69-2384.

34 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and

The Government of the Republic of Lithuania, by implementing Council Decision of 6 April 2009, establishing the European Police Office (Europol),[35] designated the State Data Protection Inspectorate as a national supervisory authority, which aims to independently monitor the lawfulness of the transfer, retrieval and transmission of personal data to the *Europol*, and obliged Commissioner General of Police to appoint the liaison office between the *Europol* and Lithuanian law enforcement institutions.[36] Accordingly, the Europol and the Interpol National Unit, the Lithuanian National Division of the International Relations Board of the Lithuanian Criminal Police Bureau was established as a constituent part of the Lithuanian Criminal Police Bureau, which serve as a liaison office between the *Europol* and Lithuanian law enforcement agencies.[37] The key function of this Unit is the submission of the information and intelligence necessary for the performance of *Europol* tasks, responding to the information requests of *Europol*, the constant updating of the submitted data and submitting the information to be stored in the automated system of *Europol*.

Currently, Lithuania is being represented by two police and customs liaison officers at the *Europol*. The tasks of a police liaison officer are the continuous collection and exchange of information concerning actual cases, the strengthening of ties among competent institutions, the provision of consultations and assistance to the officers of law enforcement and other competent institutions of a state recipient. Over the last few years, information exchange and operations conducted with the *Europol* and foreign partners have most often been related to such areas as organised crimes against property (robberies, thefts), drug trafficking, fraud (suspicious financial operations), as well as thefts of vehicles and vehicle parts. Germany, France, the United Kingdom and Scandinavian countries are the countries with whom information is commonly exchanged.

It should be noted that the General Prosecutor's Office of the Republic of Lithuania also maintains contacts with the *Europol* and takes part in various international projects.

The European Anti-Fraud Office (OLAF). As already mentioned, on 24 May 2002, the Financial Crimes Investigations Service was designated

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replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA. Official Journal of the European Union, L 135, 24 May 2016, pp. 53–114.

35 Council Decision of 6 April 2009 establishing the European Police Office (Europol). Official Journal of the European Union, L 121, 15 May 2009, pp. 37–66.

36 Lietuvos Respublikos Vyriausybės 2009 m. gruodžio 23 d. nutarimas No. 1706, Dėl 2009 m. balandžio 6 d. Tarybos sprendimo 2009/371/TVR dėl Europos policijos biuro (Europolo) įsteigimo įgyvendinimo, *Valstybės žinios*, 28 December 2009, No. 153-6933.

37 Lietuvos policijos generalinio komisaro 2007 m. rugpjūčio 3 d. įsakymo No. 5-V-522, Dėl Lietuvos kriminalinės policijos biuro nuostatų ir struktūros schemos patvirtinimo pakeitimas, *Valstybės žinios*, 7 January 2010, No. 2-116.

as a coordinating authority responsible for collaboration with the European Anti-Fraud Office (OLAF) and participating in the activities of the Anti-Fraud Coordination Service (AFCOS) Group. In accordance with Art. 7 of the aforementioned Law on the Financial Crime Investigation Service, one of the main functions of the FCIS is to coordinate the cooperation of national law enforcement institutions and other institutions with the OLAF in addition to collecting, accumulating, analysing and summarising information related to the illegal receipt and use of financial assistance of the European Union and foreign states.

Cooperation between the Financial Crime Investigation Service and the OLAF is based on the 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 the repealing Regulation (EC) No 1073/1999 of the European Parliament, and of the Council and Council Regulation (Euratom) No 1074/1999[38] and the Agreement on the administrative cooperation between the FCIS and OLAF. The Regulation and Agreement provide that the OLAF shall: (a) provide the Member States with assistance in organising close and regular cooperation between their competent authorities in order to coordinate their actions aimed at the protection of the financial interests of the EU against fraud; (b) contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the EU; (c) promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field in the protection of the financial interests of the EU; and (d) support joint anti-fraud actions undertaken by Member States on a voluntary basis. Meanwhile, the FCIS, in accordance with the aforementioned Agreement, shall, *inter alia*: (a) carry out inspections in Lithuania in cases of (possible) fraud and other violations affecting the financial interests of the EU, if necessary, together with OLAF representatives; (b) ensure the prompt and efficient transmission of information to OLAF concerning fraud and other violations; (c) assist OLAF representatives in their missions and inspections in Lithuania; (d) ensure appropriate contacts between the other Lithuanian authorities and the OLAF.

The General Prosecutor's Office of the Republic of Lithuania also maintains direct contact with the OLAF and participates in various international projects.

38 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. Official Journal of the European Union, L 248, 18 September 2013, pp. 1–22.

The Eurojust (European Union Agency for Criminal Justice Cooperation). The Lithuanian National Office at Eurojust started its activities after the accession of Lithuania to the European Union on 1 May 2004. The functions of the Lithuanian National Member at Eurojust are performed by the prosecutor of the General Prosecutor's Office of the Republic of Lithuania.

Art. 37(2) of the Law on the Prosecutor's Office provides that Lithuania at Eurojust is represented by the Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant. The Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant shall be appointed by the Prosecutor General of Lithuania for a term of 5 years, on the proposal from the Commission for the Selection of the Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant. In accordance with Art. 37(2) and 37(4) of the Law on the Prosecutor's Office, the National Member for Lithuania at Eurojust, his or her Deputy and his or her Assistant are guided by the legislation of the Republic of Lithuania and the European Union and have the powers of a prosecutor. They also perform the functions provided in the European Union legal acts governing Eurojust[39] and the functions established by the Prosecutor General of Lithuania; for example, an order of the Prosecutor General of Lithuania "On the approval of Eurojust national coordination system"[40] establishes functions such as improving coordination between national institutions, ensuring the exchange of available information between competent prosecution authorities, improving cooperation between competent authorities and facilitating the international, mutual legal assistance and assistance in the resolution of conflicts of jurisdiction (due to parallel proceedings).

In 2020, the Lithuanian Desk at Eurojust was involved in 105 new cases, 24 coordination meetings, 3 coordination centres and 8 joint investigation teams. As the Lithuanian National Member for Eurojust practice of recent years shows, Lithuania is primarily involved in cooperation for the investigation of such serious crimes with international dimensions including various forms of fraud; money laundering; the trafficking of human beings; international drug trafficking or smuggling and those committed by organised criminal groups. Lithuanian prosecutors usually apply to the Lithuanian National Member for Eurojust with requests for transfer or expedite execution of the European Investigation Order, or with requests for other forms of international, mutual legal assistance, in addition to the enforcement of other international

39 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 (PE/37/2018/REV/1). Official Journal of the European Union, L 295, 21 November 2018, pp. 138–183.

40 Lietuvos Respublikos generalinio prokuroro 2011 m. spalio 28 d. įsakymas, No. I-290, Dėl Eurojusto nacionalinės koordinavimo sistemos nuostatų patvirtinimo, https://www.prokuraturos.lt/data/public/uploads/2015/12/eurojust-nac-koordinav-sistem-nuostatai-2011-10-28.pdf.

cooperation instruments in other countries; with requests to assist in the resolution of conflicts of jurisdiction; with a request to organise a co-ordination meeting with representatives of other countries at Eurojust and with a request for consultation on various issues of international cooperation.

The European Public Prosecutor's Office (EPPO). Lithuania, believing that it was necessary to strengthen the protection of the financial interests of the European Union whilst developing a common area of justice, was one of the European Union Member States that supported the idea of the European Public Prosecutor Office from the outset. In 2020, in order to ensure the proper functioning of the EPPO and its officials in Lithuania, amendments were adopted to the Code of Criminal Procedure of the Republic of Lithuania,[41] the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters of the Member States of the European Union of the Republic of Lithuania[42] (further, also Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters) and the Law on the Prosecutor's Office.[43]

As foreseen in Art. 174 of the Code of Criminal Procedure,

> The European Public Prosecutor's Office, in accordance with its competence in the field of investigation and prosecution of criminal acts, participates in criminal proceedings through the European Delegated Prosecutor and the European Public Prosecutor acting on behalf of the European Public Prosecutor's Office in the territory of the Republic of Lithuania.

The European Delegated Prosecutor and the European Public Prosecutor are entitled to perform the functions of a prosecutor and adopt decisions during pre-trial investigation and prosecution in accordance with the rules of criminal procedure laid down in Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")[44] (further, also Regulation (EU) 2017/1939), the Code of Criminal Procedure and other laws of Lithuania (for example, mentioned Law on Criminal Intelligence).

41 Lietuvos Respublikos baudžiamojo proceso kodekso 35, 168, 170, 214, 217, 218, 234, 381, 418, 426 straipsnių ir priedo pakeitimo ir Kodekso papildymo 17^4, 67^1 straipsniais įstatymas. TAR, 2020-06-22, No. 13619.

42 Lietuvos Respublikos įstatymo, Dėl Europos Sąjungos valstybių narių sprendimų baudžiamosiose bylose tarpusavio pripažinimo ir vykdymo, No. XII-1322 1, 51, 59, 65, 69 straipsnių ir priedo pakeitimo ir Įstatymo papildymo nauju XIV skyriumi įstatymas, *TAR*, 22 June 2020, No. 13623.

43 Lietuvos Respublikos prokuratūros įstatymo No. I-599 1, 11, 28, 29, 34^1 straipsnių pakeitimo ir Įstatymo papildymo 37^{11}, 37^{12} straipsniais įstatymas, *TAR*, 22 June 2020, No. 13620.

44 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). Official Journal of the European Union, L 283, 31 October 2017, pp. 1–71.

The functions and powers of the European Public Prosecutor and the European Delegated Prosecutor shall relate to the pre-trial investigation and prosecution of criminal acts provided in Regulation (EU) 2017/1939 and national laws. In accordance with the legal acts of the European Union and national laws, the European Public Prosecutor may perform the functions of the European Delegated Prosecutor in the Republic of Lithuania. In this case, the European Public Prosecutor shall have the same powers as the European Delegated Prosecutor. Moreover, the European Public Prosecutor and the European Delegated Prosecutor have the power to prosecute in all of the courts in Lithuania. Concurrently, the procedures of communication with law enforcement authorities of foreign countries and international organisations, in cases where the competent authority is the EPPO, are regulated by Art. 67(1) of the Code of Criminal Procedure, which states that intercommunication with foreign authorities and international organisations occurs in accordance with the previously mentioned Regulation (EU) 2017/1939, Code of Criminal Procedure and other laws (for example, mentioned Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, etc.).

2.2 Analysis of the practice of cooperation

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinions of experts, allows the identification of specific strengths and certain issues connected to legal regulations, organisational and institutional aspects of the practical implementation of the cooperation between national law enforcement authorities and the *Europol*, the OLAF, the Eurojust and the EPPO. Overall, cooperation between national law enforcement authorities and the *Europol*, the OLAF and the Eurojust is considered smooth and effective; there are no fundamental issues regarding its legal framework.

According to the opinion of experts, liaison officers, appointed for a certain period of time to represent the interests of their country and those of national law enforcement agencies as well as to pursue direct cooperation, constitute one of the most efficient cooperation forms focused in the *Europol*. Liaison officers, whose workplaces are based in the *Europol* headquarters, and being on good terms with one another, may at any time informally discuss topical issues and mediate in solving various problems or presented tasks. They may give advice on such matters as how to carry out certain investigative activities more effectively or how national law enforcement systems function. Such practices, as a rule, enable the saving of time in ongoing "live" investigations.

In assessing cooperation with the OLAF, the experts (representatives of national law enforcement authorities) noted that there are few cases in which the OLAF provides information that needs to be checked as a result of possible violations or criminal acts in Lithuania, in addition to information provided by the law enforcement institutions of Lithuania that needs to be verified by OLAF representatives. For example, the FCIS receives an average of 5

notifications per year; of those, pre-trial investigations are initiated in only 1 or 2 instances. In addition, experts pointed out that the information provided by the OLAF to competent authorities of Lithuania sometimes is "out of date" and that the additionally requested assistance in ongoing pre-trial investigations is not always provided promptly. The former practice of having a permanent representative for relations with a specific state (including Lithuania) has been indicated as a beneficial aspect of the cooperation with the OLAF, but this practice has unfortunately changed in recent years.

According to the opinion of experts (prosecutors), one of the beneficial aspects of the cooperation through the Eurojust is the very simple, smooth and completely unbureaucratic procedure, since the national prosecutor from the General Prosecutor's Office or territorial prosecution office may ask the Lithuanian National Member of Eurojust by email or telephone to provide information on the pre-trial investigation being organised and indicate what assistance is expected from the Eurojust and other EU Member States. In case of specific issues, the Lithuanian National Member in Eurojust has excellent opportunities to promptly obtain the necessary, relevant information from a representative of another EU Member State; to hold a co-ordination meeting by inviting representatives of the EU Member States concerned to discuss the criminal case or hold an online meeting (Eurojust ensures a secure connection); if needed, representatives of other agencies (*Europol*, OLAF, etc.) may be involved in the co-ordination meeting; the possible assistance of other agencies in the case is discussed; the best forms of cooperation are proposed during the co-ordination meetings (for example, to create a Joint investigation group, to resolve jurisdictional issues by discussing in which country it is better to prosecute certain persons). It should be noted that there is always feedback from another EU Member State on the measures taken with regard to, for example, the assistance provided.

Conversely, experts indicated that, before contacting the Eurojust, national authorities should gather as much information as possible via other channels, such as the liaison officers at *Europol.* In addition, there is a need for greater dissemination of information pertaining to the capabilities of Eurojust and its possible provision of assistance in criminal matters for national law enforcement institutions (especially the courts). Concurrently, the number of cooperation agreements signed with third-party countries would facilitate the work of Eurojust. When such a cooperation agreement is signed, the liaison prosecutor for that country is in the Eurojust and cooperation occurs in the same way as with the EU Member States. In the absence of such a cooperation agreement, additional issues arise (in particular with regard to the transfer of personal data to a third party).

Currently, it is difficult even now to assess the completeness (or potential gaps) in the legal framework for cooperation between the EPPO and national prosecutors and law enforcement authorities, in addition to the effectiveness of practical cooperation, due to the fact that there are an insignificant number of practical examples of such cooperation in concrete criminal cases: according

to the 2021 EPPO Annual Report,[45] in Lithuania there were 13 active cases (of which 2 investigations were started in 2021), in addition to 1 ongoing case in the trial phase in court. It should be noted that the doctrine of Lithuanian criminal procedure was indicated that, for proper implementation of the Regulation, it will be necessary to adopt amendments to address nearly 30 aspects, which are directly related to the pre-trial investigation and prosecution of criminal cases.[46] Concurrently, the mentioned amendments to the Code of Criminal Procedure, the Law on the Prosecutor's Office, the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, adopted by the Seimas of the Republic of Lithuania, resolved many of the previously mentioned aspects, but not all of them. In the opinion of the author of this chapter, it is only necessary to reiterate the doubts expressed in the doctrine of Lithuanian criminal procedure[47] regarding regulatory gaps in areas such as the national system of whistle-blowing and whistle-blower protection (Law on Whistblower Protection of the Republic of Lithuania[48] and Criminal Code), criminal intelligence activity (Law on Criminal Intelligence), questions of lifting the national or international privilege or immunity from criminal jurisdiction (Statute of the Seimas of the Republic of Lithuania).[49]

From the point of view of the experts (prosecutors), the European Public Prosecutor's Office, in the context of mutual legal assistance, should become a useful innovation, which focuses on inter-institutional cooperation and the exchange of information between the *Europol*, the Eurojust and the OLAF. Experts (prosecutors) believe that, if the EPPO succeeds in gaining its leadership and implementing its competences, it will be an achievement for the whole cooperation in combating fraud and organised fraud in the European Union. European prosecutors are proactive and strongly encourage cooperation between law enforcement authorities and their criminal intelligence units. The European prosecution mechanism may be beneficial in cases in which cooperation between national law enforcement authorities of the EU Member States is needed, since European Delegated Prosecutors cooperate directly with European Prosecutors and have powers related to mutual legal assistance. However, as mentioned by experts (prosecutors), the effective operation of the EPPO has been impeded for some time by the fact that Slovenia has not appointed its own European Prosecutor.

45 EPPO, *2021 EPPO Annual Report*, Luxembourg: Publications Office of the European Union, 2022, pp. 40–41.

46 G. Švedas and U. Markevičiūtė, The EPPO Implementation: A Perspective from the Republic of Lithuania, in K. Ligeti, M. J. Antunes and F. Giuffrida (eds.), *The European Public Prosecutor's Office at Launch: Adapting National Systems, Transforming EU Criminal Law*, series Giustizia Penal Europea, CEDAM, Wolters Kluwer, 2020, p. 173.

47 Ibidem, pp. 181–183.

48 Lietuvos Respublikos pranešėjų apsaugos įstatymas, *TAR*, 7 December 2017, No. 19743.

49 Lietuvos Respublikos Seimo statutas, *Valstybės žinios*, 25 February 1994, No. 15-249.

It should be noted that experts have expressed quite conflicting views on the Eurojust and the EPPO. Some of them have emphasised that the EPPO could perform the functions of the reformed Eurojust; others have stressed that it remains difficult to assess the effectiveness of the EPPO, in addition to the compatibility (also, avoidance of the competition) of the activities of the EPPO with national systems.

Finally, despite the fact that the overall objectives of the European Public Prosecutor's Office may be considered appropriate, the European Public Prosecutor's Office should not duplicate the resources already available in other institutions. For example, if the OLAF have analytics investigators and the *Europol* employs excellent information technologies specialists, it would be disproportionate to also have them in the European Public Prosecutor's Office.

2.3 Recommendation for improvement

Recommendations for the improvement of cooperation between national and EU law enforcement authorities may relate to the improvement of the legal framework, organisational, and institutional aspects of the practical implementation of cooperation between national law enforcement institutions and EU institutions.

The main directions of the improvement of the legal framework would be as follows:

(a) to check and (if needed) make the necessary corrections to the legal acts regulating the national system of whistle-blowing and whistle-blower protection, criminal intelligence activity, and the questions related to the lifting of the national or international privilege or immunity from criminal jurisdiction, which shall allow European Prosecutors and European Delegated Prosecutors to perform their functions properly, and
(b) to monitor and assess possible gaps or competition in the competence of the EPPO and the competence of national prosecution systems, as well as competence of EU institutions (Eurojust, OLAF).

The main directions of the improvement of the organisational and institutional aspects of practical cooperation would be as follows:

(a) to apply the practice that relations with the State should be kept by the same representative of OLAF, or (alternatively) to assess the possibility of the State to have a liaison officer within the OLAF (like in the *Europol* and Eurojust);
(b) to ensure that resources provided for the EPPO shall not duplicate human, technological and other resources created or available by other EU institutions (OLAF, Eurojust);
(c) (within the competence of the EPPO and/or OLAF) to monitor, analyse, identify, and summarise trends of fraud and organised fraud related to EU funds in addition to the preparation of recommendations for their investigation and prosecution.

3. Cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States

3.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from other Member States of the EU

The main principle for the mutual legal assistance in criminal matters in Lithuania is the valid legal basis, which for mutual legal assistance in criminal matters between the EU Member States is conventions and other legal acts (framework decisions, directives, regulations) of the European Union and laws and other legal acts, and implements European Union requirements into national law.

Most aspects of mutual legal assistance in criminal matters between the EU Member States (for example, the European Investigation Order,[50] the European Protection Order,[51] Freezing and Confiscation Orders,[52] and mutual recognition of the decisions on supervision measures as an alternative to provisional detention)[53] are regulated by the framework decisions and directives, the requirements of which in Lithuania were implemented in the aforementioned Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters. Concurrently, the requirements of the Framework decision on European arrest warrants and the surrender procedures between the Member States[54] in Lithuania were implemented in the Criminal Code, the Code of Criminal Procedure and the Order of the Prosecutor General of Lithuania and Minister of Justice "On Approval of the rules for issuing a European arrest warrant and surrender a person under a European arrest warrant".[55] Furthermore, certain

50 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Official Journal of the European Union, L 130, 1 May 2014, pp. 1–36.

51 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. Official Journal of the European Union, L 338, 21 December 2011, pp. 2–18.

52 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (PE/38/2018/REV/1). Official Journal of the European Union, L 303, 28 November 2018, pp. 1–38.

53 Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Official Journal of the European Union, L 294, 11 November 2009, pp. 20–40.

54 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision. Official Journal of the European Union, L 190, 18 July 2002, pp. 1–20.

55 Lietuvos Respublikos teisingumo ministro ir Lietuvos Respublikos generalinio prokuroro 2004 m. rugpjūčio 26 d. įsakymas No. 1R-195/I-11, Dėl Europos arešto orderio išdavimo ir asmens perėmimo pagal Europos arešto orderį taisyklių patvirtinimo, *Valstybės žinios*, 2 September 2004, No. 134-4886.

forms of mutual legal assistance in criminal matters are also provided in the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU,[56] established by the Council, in accordance with Article 34 of the Treaty on European Union and Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,[57] which, in accordance with Art. 4 of the Code of Criminal Procedure, may be directly applicable.

According to the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters and Code of Criminal Procedure, in principle, all requests to the national court and the prosecutor, from the competent authority of another Member State of the European Union, are received directly or via the Ministry of Justice of the Republic of Lithuania or the General Prosecutor's Office of the Republic of Lithuania (in this case, the Ministry of Justice or General Prosecutor's Office must forward the request for the execution to the competent prosecution office or court). All further correspondence, between the court or prosecutor and the competent authority of another EU Member State, is direct. It should be noted that the General Prosecutor's Office of Lithuania is the main (central) institution for issuing the European Arrest Warrant and receiving the requests for the execution of the European Arrest Warrant. Moreover, Art. 67 of the Code of Criminal Procedure, also states that in urgent cases, requests from Lithuania to other EU Member States may be sent through the prosecutor of the General Prosecutor's Office of the Republic of Lithuania, who holds the position of the Lithuanian National Member at Eurojust (or Deputy National Member of Lithuania at Eurojust).

According to Art. 85 and 86 of the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, in cases of pre-trial investigations which fall within the competence of the EPPO, all cooperation between the EU Member States occurs through direct contacts between the European Delegated Prosecutors. If the cooperation involves an EU Member State which is not a part of the EPPO, the European Delegated Prosecutor apply

56 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union – Council Declaration on Article 10(9) – Declaration by the United Kingdom on Article 20. Official Journal of the European Communities, C 197, 12 July 2000, pp. 3–23; Konvencija dėl Europos Sąjungos valstybių narių savitarpio pagalbos baudžiamosiose bylose, kurią pagal Europos Sąjungos sutarties 34 straipsnį patvirtino Taryba, *Valstybės žinios*, 21 October 2004, No. 154-5599.

57 Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. Official Journal of the European Communities, C 326, 21 November 2001, pp. 2–8.

the mutual recognition measures provided for in the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters.

Furthemore, Art. 68(1) of the Code of Criminal Procedure and the order of the Prosecutor General of Lithuania, "On the approval of the description of the procedure for the exchange of information and direct consultation with the competent authorities of other Member States of the European Union",[58] determine the prosecutor's application to the competent authority of an EU Member State for confirmation that parallel criminal proceedings are occurring in another EU Member State; the submission of a response to a request from a competent authority of another EU Member State to provide information on whether criminal proceedings are pending against the same person in the Republic of Lithuania for the same criminal act and the procedure for the prosecutor to consult with the competent authority of another EU Member State in order to avoid parallel criminal proceedings and the potential negative consequences. All these requests should be sent and received via the General Prosecutor's Office or prosecutor of the General Prosecutor's Office of the Republic of Lithuania, who holds the position of the Lithuanian National Member at Eurojust (or Deputy National Member of Lithuania at Eurojust).

It should be noted that pre-trial investigation institutions and pre-trial investigation officers cannot apply directly to the EU Member State with a request for mutual legal assistance in criminal cases. If necessary, the pre-trial investigation officer must apply with such a proposal to the prosecutor, who organises and controls the pre-trial investigation. However, pre-trial investigation institutions and pre-trial investigation officers may apply the procedures of the simplified exchange of information in the course of pre-trial investigations or criminal intelligence, which are provided in the Rules for the Exchange of Information between Law Enforcement Institutions of the Republic of Lithuania and Law Enforcement Institutions of Other Member States of the European Union,[59] adopted by the Government of the Republic of Lithuania, in order to implement the Council Framework Decision 2006/960/JHA of 18 December 2006 on the simplification of the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.[60] These Rules provide a procedure for the exchange of

58 Lietuvos Respublikos generalinio prokuroro 2015 m. kovo 6 d. įsakymas No. I-71, Dėl Keitimosi informacija ir tiesioginių konsultacijų su kitų Europos Sąjungos valstybių narių kompetentingomis institucijos tvarkos aprašo patvirtinimo, *TAR*, 6 March 2015, No. 3470.

59 Lietuvos Respublikos Vyriausybės 2009 m. birželio 17 d. nutarimas No. 633, Dėl Lietuvos Respublikos teisėsaugos institucijų keitimosi informacija su kitų Europos Sąjungos valstybių narių teisėsaugos institucijomis taisyklių patvirtinimo, *Valstybės žinios*, 30 June 2009, No. 77-3175.

60 Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Official Journal of the European Union, L 386, 29 December 2006, pp. 89–100.

information between law enforcement authorities of the Republic of Lithuania (Lithuanian police, Financial Crimes Investigation Service, Special Investigation Service, and Lithuanian Customs) and law enforcement authorities of other EU Member States, ensuring closer and more effective co-operation with law enforcement authorities of other EU Member States, in addition to the simplified exchange of information in the course of pre-trial investigations or criminal intelligence. In addition, the Lithuanian Criminal Police Bureau was designated as the contact point of the Republic of Lithuania, to which law enforcement authorities of other EU Member States may send requests for information in urgent cases in accordance with the aforementioned Framework Decision.

3.2 Analysis of the practice of cooperation

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinion of experts, allows the conclusion that, in general, cooperation between national law enforcement authorities and their counterparts from other EU Member States may be considered to be effective. However, it also allows the specific identification of the strengths and particular issues related to legal regulation, and the organisational and institutional aspects of practical implementation of the cooperation between national law enforcement authorities and their counterparts from other EU Member States.

The doctrine of the mutual legal assistance in criminal matters noted that, in the context of the evolving crime threat in a border-less Europe, international cooperation of law enforcement institutions will become more important than ever before, thus requiring appropriate regulatory support across the whole community.[61] In the intervening period, the opinion of the majority of experts and the doctrine of the mutual legal assistance in criminal matters highlighted a number of negative aspects of cooperation in criminal matters: (a) significant differences in national legal regulation, particularly of the means and grounds of criminal intelligence,[62] (b) different national legal regulation on material competence of the same law enforcement institutions in different EU Member States, and (c) a lack of mutual trust between law enforcement institutions and their criminal intelligence units, which results in almost no exchange of criminal intelligence information, etc.

As a beneficial aspect of the cooperation between national law enforcement authorities and their counterparts from other EU Member States,

61 K. Krassowski, Regulatory Framework Enabling International Police Cooperation in the European Union, in G. Juodkaitė-Granskienė (ed.), *XI Criminalistics and Forensic Sciences: Science, Studies, Practice*, Vilnius: Lietuvos teismo ekpertizės centras, 2015, p. 61.

62 G. Švedas, Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania, in C. Nowak (ed.), *Combatting Illicit Trade on the EU Border: A Comparative Perspective*, Cham: Springer, 2021, pp. 139–140.

experts mentioned the possibility of the direct submission of the request, in addition to the possibility of involving the national members of Eurojust in this process, which assists in addressing the problematic aspects of the request, the possible forms of mutual legal assistance in concrete criminal case, and the deadlines.

As highlighted in the opinion of experts, a key problematic aspect of fraud or organised fraud cases, is the aim of locating misappropriated money, which moves more rapidly than requests for mutual legal assistance. Currently, the mechanisms of criminal acts are more sophisticated and intelligent. If at least a part of the criminal act is committed abroad (also, in cyberspace or using a variety of electronic data), access to the necessary information automatically becomes more complicated.

In the opinion of experts, cooperation in criminal cases takes place mainly via the system and procedures of the European Investigation Order, and there are no fundamental problems with the application of this measure. Conversely, the efficiency of this measure also depends on the position of the Member State of the European Union, since some of them (for example, Latvia) fulfil such requests fairly rapidly, whilst from others it was difficult to obtain any requested data. Moreover, experts noted that the most commonly used argument when the requested information is not provided to another EU Member State is that it will "undermine the success of the investigation in that State". This situation mainly concerns corruption cases and cases involving criminal intelligence. There is no doubt that such an attitude and the refusal to provide the requested information confirms the lack of mutual trust between law enforcement institutions of the individual EU Member States.

One more problematic aspect of cooperation is the importance of the concrete criminal case (or crime under the investigation), which varies among EU Member States. What is a priority in one EU Member State may be less important in another. As a result of this, it becomes more difficult to conduct effective cooperation between national law enforcement authorities of the EU Member States. As mentioned by experts, there are specific, systemic criminal acts which, from the point of view of one of the EU Member State, may be deemed a serious crime, whereas in other EU Member States it may be related to cultural aspects and not even considered a criminal act. These differences also have an impact on the efficient exchange of information necessary for pre-trial investigation and prosecution.

Finally, experts (prosecutors) also drew attention to the fact that smooth cooperation in combating fraud and organised fraud in the European Union may be weakened by the decisions of Poland and Hungary to opt out of the EPPO. Whilst Poland and Hungary remain non-members of the EPPO, the rate at which cooperation occurs between Lithuania and these countries is reduced. As a result, the success of the pre-trial investigation and prosecution itself is less guaranteed.

3.3. Recommendation for improvement

Recommendations for the improvement of cooperation between national law enforcement authorities and their counterparts from other EU Member States may relate to the improvement of the legal framework, organisational, and institutional aspects of the practical implementation of cooperation between national law enforcement institutions and their counterparts from other EU Member States.

The main directions of the improvement of the legal framework would be as follows:

(a) to assess the efficiency of the Council Framework Decision, 2006/960/JHA of 18 December 2006, on the simplification of the exchange of information and intelligence between law enforcement authorities of the EU Member States and (if needed) to make corrections for the legal framework within the EU for a more effective exchange of the information (including information of criminal intelligence) between national law enforcement institutions of the EU Member States.

The main directions of the improvement of the organisational and institutional aspects of practical cooperation would be as follows:

(a) to encourage (in various ways; for example, by training, joint seminars, and exchange of "good practice") law enforcement institutions and their criminal intelligence units of the EU Member States cooperation, which should include the exchange of criminal intelligence information.

4. Cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States

4.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member States

The main principle for the mutual legal assistance in criminal matters in Lithuania is valid legal basis, which for mutual legal assistance in criminal matters between Lithuania and other states of the EU is the Lithuanian international treaties for mutual legal assistance in criminal matters and the Council of Europe and United Nations conventions, agreements, and protocols. In addition to the international treaties of the Republic of Lithuania, the procedure for mutual legal co-operation with foreign law enforcement institutions and courts, in addition to international organisations is established by Chapter IV of the CCP and the Criminal Code.

The Republic of Lithuania has concluded (signed and ratified) bilateral international treaties on mutual, legal assistance in criminal matters; for example,

with Ukraine,[63] Belarus,[64] Moldova,[65] Kazakhstan,[66] Uzbekistan,[67] China,[68] the USA,[69] Azerbaijan,[70] and Armenia.[71] Moreover, the Republic of Lithuania has concluded bilateral international treaties on extradition, for example, with China,[72] the USA,[73] and India.[74] In addition, bilateral international treaties on extradition and mutual legal assistance in criminal matters were signed with the United Arab Emirates in 2022.

The Republic of Lithuania has ratified these conventions on mutual legal assistance in criminal matters (including extradition): the European Convention on Extradition and its additional protocols,[75] the European convention on Mutual Assistance in Criminal Matters and its additional protocols,[76] the European Agreement on the Transmission of Applications for Legal Aid and its additional protocol,[77] the European Convention on the Transfer of Proceedings

63 Lietuvos Respublikos ir Ukrainos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 25 November 1994, No. 91-1767.

64 Lietuvos Respublikos ir Baltarusijos Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 8 June 1994, No. 43-779.

65 Lietuvos Respublikos ir Moldovos Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 3 March 1995, No. 19-440.

66 Lietuvos Respublikos ir Kazachstano Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 3 June 1998, No. 51-1399.

67 Lietuvos Respublikos ir Uzbekistano Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 7 November 1997, No. 101-2552.

68 Lietuvos Respublikos ir Kinijos Liaudies Respublikos sutartis dėl teisinės pagalbos civilinėse ir baudžiamosiose bylose, *Valstybės žinios*, 31 August 2001, No. 75-2642.

69 Protokolas dėl Europos Sąjungos ir Jungtinių Amerikos Valstijų susitarimo dėl savitarpio teisinės pagalbos taikymo Lietuvos Respublikos Vyriausybės ir Jungtinių Amerikos Valstijų Vyriausybės sutarčiai dėl savitarpio teisinės pagalbos baudžiamosiose bylose, *Valstybės žinios*, 11 May 2006, No. 51-1861.

70 Lietuvos Respublikos ir Azerbaidžano Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 26 July 2002, No. 75-3217.

71 Lietuvos Respublikos ir Armėnijos Respublikos sutartis dėl teisinės pagalbos ir teisinių santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 18 January 2005, No. 7-189.

72 Lietuvos Respublikos ir Kinijos Liaudies Respublikos ekstradicijos sutartis, *Valstybės žinios*, 4 December 2002, No. 115-5134.

73 Protokolas dėl Susitarimo tarp Europos Sąjungos ir Jungtinių Amerikos Valstijų dėl ekstradicijos taikymo Lietuvos Respublikos Vyriausybės ir Jungtinių Amerikos Valstijų Vyriausybės ekstradicijos sutarčiai, *Valstybės žinios*, 11 May 2006, No. 51-1860.

74 Lietuvos Respublikos ir Indijos Respublikos sutartis dėl ekstradicijos, *TAR*, 12 October 2018, No. 16158.

75 1957 m. gruodžio 13 d. Europos konvencija dėl ekstradicijos ir papildomi protokolai, *Valstybės žinios*, 26 April 1995, No. 34-819; *TAR*, 3 October 2016, No. 24427.

76 1959 m. Europos konvencija dėl savitarpio pagalbos baudžiamosiose bylose ir papildomi protokolai, *Valstybės žinios*, 21 April 1995, No. 33-762; 1996, No. 100-2278; 2004, No. 42-1370.

77 Europos sutartis dėl teisinės pagalbos prašymų perdavimo ir papildomas protokolas, *Valstybės žinios*, 28 February 1996, No. 18-459; 14 May 2004, No. 80-2837.

in Criminal Matters,[78] the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,[79] the Agreement on Illicit Traffic by Sea, the Implementation of Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[80] the United Nations Convention against Transnational Organised Crime and its additional protocols,[81] and the United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances.[82]

Art. 66 of the Code of Criminal Procedure states that requests from the courts and the prosecutor's office of the Republic of Lithuania to the competent institutions of foreign states are transmitted through the Ministry of Justice of the Republic of Lithuania or the Prosecutor's General Office of the Republic of Lithuania. In the cases provided for in the international treaties of the Republic of Lithuania, the courts and the prosecutor's office of the Republic of Lithuania may transmit their requests directly to appropriate law enforcement authorities of foreign states. It should be noted that a court or prosecutor's office of the Republic of Lithuania shall execute a request received directly from a law enforcement authority of a foreign state or international organisation only with the permission of the Ministry of Justice of the Republic of Lithuania or the Prosecutor General's Office of the Republic of Lithuania.

As foreseen in Art. 67 of the Code of Criminal Procedure, in carrying out requests for institutions of foreign law enforcement authorities and courts, the prosecutors and pre-trial investigation institutions of the Republic of Lithuania may take procedural coercion measures and investigative actions set out in the Code of Criminal Procedure. Despite this, procedural coercion measures and investigative actions, which are not specified in the Code of Criminal Procedure, may also be taken. However, this is permissible only if this does not contravene the Constitution and the laws of the Republic of Lithuania in addition to the fundamental principles of the criminal procedure of Lithuania. It is noteworthy that, in accordance with Art. 67 of the Code of Criminal Procedure, officers of the courts, the prosecution and pre-trial investigation institutions of the International Criminal Court are permitted to take procedural coercion measures and investigative actions in the territory of the Republic of Lithuania only in cases provided for in an international treaty, to which the

78 1972 m. Europos konvencija dėl baudžiamojo proceso perdavimo, *Valstybės žinios*, 30 January 1998, No. 10-241.

79 Europos konvencija dėl pinigų išplovimo ir nusikalstamu būdu įgytų pajamų paieškos, arešto bei konfiskavimo, *Valstybės žinios*, 8 February 1995, No. 12-263.

80 1995 m. Susitarimas dėl neteisėtos prekybos jūra, įgyvendinantis Jungtinių Tautų konvencijos dėl kovos su neteisėta narkotinių ir psichotropinių medžiagų apyvarta 17 straipsnį, *Valstybės žinios*, 28 August 2002, No. 83-3553.

81 2000 m. Jungtinių Tautų konvencija prieš tarptautinį organizuotą nusikalstamumą ir papildomi protokolai, *Valstybės žinio*s, 22 May 2002, No. 51-1933.

82 1988 m. Jungtinių Tautų konvencija dėl kovos su neteisėta narkotinių ir psichotropinių medžiagų apyvarta, *Valstybės žinios*, 22 April 1998, No. 38-1004.

Republic of Lithuania is a party and with the participation of the officers of the Republic of Lithuania. According to Art. 67 of the Code of Criminal Procedure, in the cases provided for in the international treaties of the Republic of Lithuania, the courts and the prosecutor's office of the Republic of Lithuania may transmit their replies to the requests directly to appropriate law enforcement authorities of foreign states or international organisations.

4.2 Analysis of the practice of cooperation

The analysis of the legal regulation and the opinion of experts allows for the conclusion that, in general, cooperation between national law enforcement authorities and law enforcement authorities of foreign states may be considered to be traditional. It also allows the specific identification of the strengths and particular issues of the practical implementation of the cooperation between national law enforcement authorities and law enforcement authorities of foreign states.

In the opinion of experts, there is no doubt that cooperation with non-EU Member States is not as effective as cooperation between the EU Member States. There are objective reasons for that: for example, when the rules of cooperation are not detailed or the grounds for the refusal to provide the mutual legal assistance in criminal cases (requested information) are very broad. Moreover, in many cases cooperation is not direct, since the transmission of the requests and replies to the executed requests must be forwarded via the central institutions, the Ministries of Justice, and General Prosecutor's Office. However, such restrictive provisions of international treaties on mutual legal assistance in criminal matters are understandable, as they ensure the protection of the interests of states and their citizens. In addition, such international treaties are concluded between very different countries, so the need to cooperate and achieve common goals is often not as important or as clear as they are at a European Union level.

The most frequently mentioned problems of cooperation, indicated by experts, are the overly extended periods of the execution of requests, the inadequate quality of the replies to the requests (for example, from Belarus), or, in some cases, no response is received at all (for example, from the Virgin Islands and Israel). Additionally, experts noted that frequently other states (e.g., Belarus and Israel) do not provide legal assistance, if the request for legal assistance in any way affects (or may affect) the interests of that state. It should be noted that Lithuania also refuses to provide legal assistance when the execution of the request for legal assistance may infringe on the interests of Lithuania or violate human rights and freedoms.

4.3 Recommendation for improvement

Recommendations for the improvement of cooperation between national law enforcement authorities and their counterparts from non-EU Member States

may be linked to the identification of a common need and interest for more effective cooperation in a specific area with concrete countries and the involvement of Eurojust, which may sign cooperation agreements with third countries in order to address such issues at a European level.

5. Conclusions, general recommendations

In summary, the following essential conclusions can be drawn:

General assessment allows the statement that the legal framework related to the cooperation of the national law enforcement authorities, cooperation between national law enforcement authorities and EU institutions (*Europol*, Eurojust, OLAF, and EPPO), and cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States is sufficiently smooth and effective and that there are no fundamental problems regarding its legal framework. Concurrently, cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States can be defined as traditional and assessed as adequate depending on the relations between Lithuania and other countries, with which there is a need for mutual legal assistance.

The main recommendations for the improvement of cooperation on a national level are:

- to unify (or harmonise) the legal framework for the national law enforcement institutions to provide information (including information of criminal intelligence) to other state institutions and promote (in various ways; for example, by training, joint seminars, exchange of "good practice") law enforcement institutions and the cooperation of their criminal intelligence units, which should include the exchange of criminal intelligence information;
- to check and (if needed) to make the necessary corrections to the legal acts regulating the national system of whistle-blowing and whistle-blower protection, criminal intelligence activity, and questions of lifting the national or international privilege or immunity from criminal jurisdiction, which shall allow the European Prosecutor and the European Delegated Prosecutors to perform their functions properly;

Main recommendations for the improvement of cooperation on the European Union level are:

- to monitor and assess the possible disparities or competition between EPPO competence and the competence of national prosecution systems, in addition to the competence of specific EU institutions; for example, Eurojust and OLAF;
- to assess the efficiency of the Council Framework Decision 2006/960/JHA of 18 December 2006 on the simplification of the exchange of information

and intelligence between law enforcement authorities of the EU Member States and (if needed) to make the corrections the legal framework within the EU for a more effective exchange of the information (including information of criminal intelligence) between national law enforcement institutions of the EU Member States.

Main recommendations for the improvement of cooperation on both European Union and national level are:

- to monitor, analyse, identify, and summarise trends of fraud and organised fraud related to EU funds in separate EU Member States and across the European Union, and, on the basis of these findings, to create further strategies and actions for the prevention of organised fraud, in addition to the preparation of recommendations for their investigation and prosecution for each EU Member State and in a coordinated way at the EU level;
- to encourage the cooperation of law enforcement institutions and their criminal intelligence units of the EU Member States which should include the exchange of criminal intelligence information.

Lithuanian experts believe that, if the EPPO succeeds in gaining its leadership and implementing its competences, it will be an achievement for overall cooperation in combating organised fraud in the EU. It is obvious that the benefits would be even greater if those countries that are currently opting out became part of the European Public Prosecutor's Office.

4 Vertical and horizontal cooperation in combatting organized fraud in the EU

German perspective

Marc Engelhart

1. Cooperation of the national law enforcement authorities

1.1 Presentation of national network of law enforcement authorities responsible for combatting organized fraud

1.1.1 Overview

In Germany, the fight against organized fraud in general follows the same pattern as any other criminal investigation.[1] There is no specific legal mechanism provided for organized crime groups or for serious fraud investigations. This means that the "normal" institutions responsible for investigating and prosecuting crimes are also responsible for investigating and prosecuting organized fraud. Nonetheless, in practice there are a number of specialized agencies or structures within agencies in order to either concentrate investigations to a certain extent or to build up structures with a specific expertise in the area. The latest development, and in the context of investigating and prosecuting the PIF offenses the most important one, has been the creation of the EPPO that has led to additional structures for criminal proceedings of the PIF offenses. As the European Delegated Prosecutor (EDP) and also the German European Prosecutor (EP) basically have the same rights and duties as German prosecutors, the "normal" structures will be dealt with first, before (infra section 2) the system of the EPPO (and the cooperation with other European institutions) will be dealt with.

In Germany, due to the federal structure, various federal and state authorities are involved in criminal investigations concerning organized fraud. This includes first of all the sixteen state prosecution services as the main authorities responsible for the investigation and the prosecution of

1 See for details on German Criminal Procedure, e.g. C. Roxin and B. Schünemann, *Strafverfahrensrecht*, 30th edn., München: Beck, 2022, pp. 32 ff.; see also for a depiction including police and intelligence agencies M. Engelhart, *Strafrechtspflege: Das deutsche Strafprozesssystem einschließlich des Polizei- und Geheimdienstrechts*, Max-Planck-Gesellschaft, 2019, p. 32, https://doi.org/10.30709/archis-2019-5.

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a criminal case. In single cases, the Federal Prosecutor General might also be involved when there is a connection to the serious crimes (against the state) for which his office is responsible. On the side of the police as the authority with the main resources for investigating criminal cases, the number of offices involved is even larger. In addition to the sixteen state police authorities (with various specialized offices such as State Criminal Police Offices – Landeskriminalämter), the Federal Police (Bundespolizei) and the Federal Criminal Police Office (Bundeskriminalamt) can be involved as well as the financial authorities, in particular the tax offices and the customs offices, as they have a specific competence for investigations into tax and custom offenses.

The prosecution service (with offices at each regional court) is the central authority in the investigation phase where it has the formal responsibility for the case. The prosecution has the power to decide on the respective investigation measures and also has oversight over the police assisting in the investigations. The prosecution also decides at the end of the investigation phase if the case goes to court and, if so, prepares the indictment or, if not, settles or terminates the case. If an indictment is issued, the responsibility for the case goes over to the court and the prosecution from this point on has the obligation to represent the state in the judicial proceedings.

The police authorities with their large human and technical capacities assist the prosecution services in the investigation phase. In practise, it is not uncommon that the police are the first state authority that gains knowledge about a criminal offense and then starts investigating. In minor offenses such investigations are only then referred to the prosecution when the case is more or less fully investigated by the police on their own. In cases of more serious offenses, especially in organized crime cases, the police contact the prosecution at an early stage and then the prosecution together with the police coordinates the case.

1.1.2 Federal criminal police office

Among the police offices, the Federal Criminal Police Office is of special importance for organized crime investigations. It compiles the "federal situation report on organized crime"[2] every year in cooperation with the state criminal police offices, the federal police and the Customs Criminal Police Office (Zollkriminalamt) that depicts the results of police prosecution activities in the field of organized crime and helps highlight the dangers of organized crimes

2 See the latest report Bundeskriminalamt, *Bundeslagebild Organisierte Kriminalität 2024*, 24 October 2025, https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/OrganisierteKriminalitaet/organisiertekriminalitaet_node.html.

for state and society.[3] Organized crime is understood in this context as the planned commission of criminal offenses determined by the pursuit of profit or power, which are individually or collectively of considerable importance if more than two participants share the work for a longer or indefinite period using commercial or business-like structures, using force or other appropriate means of intimidation or work together while influencing politics, the media, public administration, the judiciary or the economy.[4]

Within the Federal Criminal Police Office, a Serious and Organized Crime Unit (SO) exists that especially addresses serious and internationally organized crime in the following areas: violent and serious crime, property crime, drug crime, economic and financial crime. The work includes not only investigations (according to sect. 4 BKAG) but also an intensive international and national cooperation (mirroring the central office function of the BKA) as well as criminal policy advice on legislative projects. As the BKA hosts central and important databases it provides essential information in many cases. An important aspect is also tracking down and confiscating illegally obtained assets in order to deprive criminals of the fruits of their crimes. The BKA is the national central office for Interpol and coordinates the responsible authorities in Germany and abroad.

1.1.3 Tax and customs offices

Special attention in the context of investigation organized fraud has to be paid to the financial/tax and customs authorities. These authorities do not only have special powers to investigate illicit markets when tax and custom offenses are concerned. Also, in many cases of illicit trade, they are the first authorities to obtain information as part of their tax and custom duties and responsibilities. But unlike the role of the police, its investigative capabilities in this field of tax and custom criminal law are hardly noticed by the public and politicians.[5]

As tax criminal law is according to German understanding criminal law the normal criminal (procedure rules) apply, apart from some specialties mainly in

3 In order to intensify the fight against organized crime in 2015/2016 a "Coordination Office OC" (KOST OK) was set up in the Serious and Organized Crime Unit (SO). Its goal is to provide a realistic depiction of organized crime with its dangers for state and society and the early identification of trends. "KOST OK" organizes, among other things, the joint priorities of the federal and state governments in the fight against serious and organized crime and acts, and is a link between regional/national and European/international cooperation partners.

4 This definition was developed in May 1990 by a nationwide joint justice/police working group (bundesweite Gemeinsame Arbeitsgruppe Justiz/Polize – GAG). See for the use and the history of the term organized crime: K. von Lampe, Geschichte und Bedeutung des Begriffs "organisierte Kriminalität", in M. Tzanetakis and H. Stöver (eds.), *Drogen, Darknet und Organisierte Kriminalität*, Baden-Baden: Nomos, 2019, pp. 23–49.

5 See, e.g., A. Sinn, *Wirtschaftsmacht Organisierte Kriminalität*, Springer, 2018, p. 83.

regard to custom duties.[6] As custom duties are an exclusive legislative competence of the federal government (Art. 105 (1) GG), all fiscal authorities in the customs area (so-called customs administration) are federal authorities that are assigned to the Federal Ministry of Finance.[7] The customs administration is under the umbrella of the General Customs Directorate (Generalzolldirektion) as the supreme authority being responsible for forty-one main customs offices (Hauptzollamt) and the eight customs investigation offices (Zollfahndungsamt).[8] Within the General Customs Directorate a special position (being formally one of ten directorates) has the Customs Criminal Investigation Office (Zollkriminalamt – ZKA); it is the central office of the Customs Investigation Offices. Another important directorate for investigations in regard to organized crime is the Financial Intelligence Unit. The directorate of the ZKA and the customs investigation offices have a considerable number of staff.[9]

The main customs offices are tasked besides the prosecution services with the investigation of and partly the prosecution of criminal and administrative customs offenses.[10] The customs offices are responsible if the case only involves customs offenses. If not, the prosecution is responsible (but can ask the custom offices for assistance, which is usually the case in practice). The customs authorities have a similar power as the tax authorities in regard to taxes: to that extent they can independently conduct a customs criminal procedure, and, like the tax authorities, have individual public prosecutorial powers.[11] Particularities arise from the extensive competences in preliminary investigations at

6 See for details U. Pflaum, 21. Kapitel. Steuerstrafrecht, in Heinz-Bernd Wabnitz, Thomas Janovsky and Lothar Schmitt (eds.), *Handbuch des Wirtschafts- und Steuerstrafrechts*, 5th edn., Beck, 2020, Kap. 21, para. 1 ff.; B. Küchenhoff, 23. Kapitel. Zollstraftaten, in Heinz-Bernd Wabnitz, Thomas Janovsky and Lothar Schmitt (eds.), *Handbuch des Wirtschafts- und Steuerstrafrechts*, 5th edn., Beck, 2020, Kap. 23, para. 1 ff.; D. Bohnert and André-M. Szesny, § 33 Das Verfahren in Steuerstrafsachen, in Klaus Volk and Stephan Beukelmann (eds.), *Münchener Anwalts-Handbuch Verteidigung in Wirtschafts- und Steuerstrafsachen*, 3rd edn., Beck, 2020, § 34 para. 1 ff.; Daniel M. Krause and R. Stein, § 34 Zollstrafrecht, in Klaus Volk and Stephan Beukelmann (eds.), *Münchener Anwalts-Handbuch Verteidigung in Wirtschafts- und Steuerstrafsachen*, 3rd edn., Beck 2020, § 34, para. 1 ff.; see also M. Engelhart, Between Taxes, Criminal Law and Health Care: The Fight Against Illicit Tobacco Trade in Germany, in C. Nowak (ed.), *Combatting Illicit Trade on the EU Border: A Comparative Perspective*, Springer, 2020, pp. 29–80.

7 See sect. 1 Gesetz über die Finanzverwaltung (FVG).

8 See the Website of the Customs Offices, https://www.zoll.de/DE/Der-Zoll/Struktur-des-Zolls/struktur-des-zolls_node.html.

9 In 2022 the ZKA employed 1022 persons and the eight customs investigation offices 2472 persons, see Generalzolldirektion, Zolljahresstatistik, p. 21, https://www.zoll.de/DE/Presse/Zolljahresstatistik_2022/zolljahresstatistik_2022_node.html.

10 See sect. 386 Abs. 1 AO.

11 See, e.g., Daniel M. Krause and R. Stein, § 34 Zollstrafrecht, in Klaus Volk and Stephan Beukelmann (eds.), *Münchener Anwalts-Handbuch Verteidigung in Wirtschafts- und Steuerstrafsachen*, 3rd edn., Beck, 2020, § 34, para. 162 ff.

the borders, where, in principle, the investigations are carried out by border customs officers assigned to the main customs offices.[12] In these cases, controls without suspicion are possible as part of the regular customs supervision and can lead to criminal proceedings (for example, due to customs offenses or money laundering).

An example of the powers at the borders is sect. 12e (1) ZollVG, which allows the seizure (Sicherstellung) of excise goods and raw materials (e.g. tobacco), machinery suitable for their manufacture, as well as the associated containers and enclosures until the end of the fifth working day after their discovery.[13] These measures are intended to verify the lawfulness of the use of the goods. The only requirement is that an assumption has to be established that these goods are transferred with the intention of committing a tax offence under sect. 369 AO. This makes it possible to temporarily stop such goods at the border, without regard to the threshold of an initial suspicion in normal criminal proceedings.[14]

The customs investigation service, which includes the ZKA and the customs investigation offices (sect. 1 ZFdG), also has its own special investigative powers. Even though the customs investigation offices are not law enforcement agencies on their own, in practice the facts (also including crimes beyond custom offenses) are regularly completely determined by them and then sent to the main customs office for a decision (similar to tax investigations, where the tax investigation department, the Steuerfahndung, often collects the facts).[15] The Customs Criminal Office takes over the investigation only in exceptional cases and mainly supports the work of the customs investigation offices by providing information and by coordinating the case.[16] The customs investigation has police powers (such as the Steuerfahndung) in the customs area under the AO and StPO.[17]

Like the Steuerfahndung, the customs investigation offices have the competence to conduct preliminary investigations in customs procedures which it also has to carry out.[18] To that extent, in addition to prosecution tasks, it is assigned

12 See J.-C. Wirth, *Verdachtslose Ermittlungen nach Zollverwaltungsgesetz*, Frankfurt a.M.: Peter Lang, 2006, para. 31 ff.

13 C. Weerth, Bekämpfung des Verbrauchsteuerschmuggels mit § 12e ZollVG, *BDZ-Fachteil*, 2018, pp. F19–F20, https://www.econstor.eu/bitstream/10419/177388/1/Weerth_Verbrauchsteuerschmuggel_BDZ-Fachteil_4_2018.pdf.

14 P. Häberle, § 12e ZollVG, in P. Häberle (ed.), *Strafrechtliche Nebengesetze 221. Ergänzungslieferung: Rechtsstand*, 1st edn., C.H. Beck, August 2018, p. 1.

15 Daniel M. Krause and R. Stein, § 34 Zollstrafrecht, in Klaus Volk and Stephan Beukelmann (eds.), *Münchener Anwalts-Handbuch Verteidigung in Wirtschafts- und Steuerstrafsachen*, 3rd edn., Beck, 2020, § 34, para. 167.

16 See on the tasks sect. 3 f. ZFdG and H.-D. Linke, *Das Zollkriminalamt: Eine geheimnisvolle, unsichtbare und mächtige Strafverfolgungsbehörde?* Frankfurt a.M.: Peter Lang, 2004, pp. 143 ff.

17 B. Küchenhoff, 23. Kapitel. Zollstraftaten, in Heinz-Bernd Wabnitz, Thomas Janovsky and Lothar Schmitt (eds.), *Handbuch des Wirtschafts- und Steuerstrafrechts*, 5th edn., Beck 2020, Kap. 23, para. 22 ff.

18 See sect. 26–70 ZFdG.

extensive preventive tasks and has in this regard numerous powers, in particular for information acquisition and processing. Prevention and repression go hand in hand as "preventing and prosecuting crimes and offenses", as well as "uncovering unknown crimes" and "preparing for future criminal cases".[19]

The ZKA manages an extensive collection of data.[20] In that regard, the ZKA is similar to the Federal Criminal Police Office (Bundeskriminalamt – BKA) in terms of the breadth of tasks and the nature of an information administration office. The collection includes both preventive and repressive data. This preventive aspect is of special importance as the ZKA has specific preventive policing powers, e.g., it may preventively monitor telecommunication in the event of suspicion of the preparation of certain serious crimes, mainly the smuggling of weapons.[21] This data may in principle be used for both preventive and repressive purposes, although the use for criminal investigations is limited to certain serious crimes including a number of organized crime constellations, but in general not financial crimes such as organized fraud.[22] But nonetheless, such information may lead to further investigations and the "discovery" of additional evidence.

Besides these aforementioned examples of specific investigation measures, "normal" investigation measures can also be referred to by the ZKA. Pursuant to sect. 100a (2) No. 2 a, b, c StPO it is possible to monitor electronic communications of suspects in the case of serious tax crimes (especially in gang cases or where a commercial conduct is given).[23] Furthermore, investigative measures may include long-term observation ("controlled transport") according to sect. 163f StPO or the use of undercover investigators under sect. 110a (1) No. 3, 4 StPO. Of particular importance for organized crime investigations is the provision of sect. 100g StPO for obtaining information on telecommunications connections.

The overview shows that a substantial number of federal and state law enforcement authorities deal with combatting organized fraud.

1.2 Analysis of the practice of cooperation of national law enforcement authorities (good and bad practices and experiences)

As the mere number of authorities involved in dealing with organized crime shows, close cooperation between the authorities is the key element for successfully combatting organized fraud. This, e.g., means that the customs offices at

19 See sect. 5(2) ZFdG.

20 See sect. 8–25 ZFdG.

21 See sect. 72 ff. ZFdG (covering offenses against the German Weapons Control Act etc.).

22 See sect. 76 ZFdG enumerating the offenses (such as murder, terrorist acts etc.) for which data stemming from a secret telecommunication surveillance measure under sect. 72 ff. ZFdG can be used.

23 See, e.g., F. Bittmann, Telefonüberwachung im Steuerstrafrecht und Steuerhinterziehung als Vortat der Geldwäsche seit dem 1-1-2008, *Wistra*, 2010, p. 125.

the borders discovering a substantial number of cases and the customs investigation service have to work closely together. As the customs administration is under the roof of the General Customs Directorate, structures exist in order to enable effective cooperation between the administrative customs offices and the law enforcement branch of the customs investigation service.

The large number of authorities involved in combatting organized fraud yet are not embedded into a larger and coherent structure but exist next to another. A close cooperation between these authorities (such as the state and federal police offices and prosecution services) is especially enabled by the legal institution of administrative assistance. This institution shall enable the efficient handling of cases where tasks and powers have been distributed among different authorities. Specific aspects, especially the exchange of information, are regulated explicitly in the respective legislation (e.g. sect. 25 BKAG provides for a special authorization for the Federal Criminal Police Office to transfer information to other police and law enforcement authorities in Germany). These rules amend the basic regulation in the constitution and in the administrative procedure acts.[24] There exist also special data banks such as the custom investigation information system (Zollfahndungsinformationssystem, see sect. 15 ZFdG), enabling a central storage of vital information for investigations. In general, authorities questioned to provide information or help have an obligation to cooperate with the requesting authority.

If a case requires the cooperation of several different police authorities because of its importance or complexity, a Joint Special Commission is often set up, consisting of officers from the various departments. Such a special commission can be set up not only across departments within a state, but also across states. In cross-state cases, the state criminal investigation departments (Landeskriminalämter) are often involved or take over the establishment of the commission. The Federal Criminal Police Office (BKA) is also usually involved in these cases, as it is responsible for coordinating criminal prosecution in accordance with its legal mandate.[25] The special commission is often divided into a central investigative group and regional investigative groups that take over the investigative work on site.

For the cooperation between police and prosecution special rules exist. As the criminal prosecution authority, the public prosecutor's office leads the investigations in criminal proceedings.[26] The initial purpose of the investigation is to determine whether there is sufficient suspicion of a crime against

24 See Article 35, para. 1 GG (administrative assistance between federal and state authorities) as well as sect. 4 of the federal administrative procedure act (Bundesverwaltungsverfahrensgesetz) and the similar regulations in the state administrative procedure acts (Landesverwaltungsverfahrensgesetze).

25 See sect. 18 BKAG, according to which the BKA can assign law enforcement tasks to a state, with the state criminal investigation departments then being responsible for carrying out the tasks.

26 sect. 160 StPO; No. 1 RiStBV.

a particular person and, if so, to collect the evidence necessary for a conviction. The public prosecutor's office must therefore determine whether it is justifiable under the rule of law for a person to be brought before a court and subjected to everything that a public trial means for a citizen. Even in cases where police authorities are authorized to conduct investigations, the public prosecutor's office is in charge of the proceedings.[27] The police act only as an extension of the public prosecutor's office. Due to this position of the public prosecutor's office, it has the authority to manage the case and to issue instructions to the police officers involved. As far as it concerns investigators of the public prosecutor's office ("Ermittlungspersonen der Staatsanwaltschaft"),[28] the prosecutor may instruct the officers directly. In the case of other police officers and as long as a specific police officer has not yet been determined, the request is addressed to the authority as such. In practice, however, the public prosecutor's office often addresses the police officer directly, regardless of whether the officer is an investigator for the public prosecutor's office or not. This direct contact (often with regular meetings, e.g., once a week) helps investigate the cases efficiently and effectively.

The exercise of the right to issue instructions presupposes, of course, that the public prosecutor's office learns of the case in the first place. Particularly in cases of minor crime, the public prosecutor's office only becomes aware of the case when the police submit the final report. The reasons for this long-standing practice are manifold and are rooted in the strong legal position of the police as an independent investigative authority, which dates back to the early days of the Code of Criminal Procedure: The police are usually closer to the scene (due to the large number of police stations) and are thus more quickly informed about facts relevant to criminal law. Most criminal offenses first come to the attention of the investigating authorities through private reports, and these reports are filed predominantly with the police and not with the public prosecutor's office. However, the type of crime is decisive: for example, in road traffic offenses, the investigation is almost predominantly initiated by the police, whereas in economic offenses, this is done in more than two-thirds of cases by the public prosecutor's office.[29] This specific situation in the case of economic offenses is often due to the fact that the prosecution receives information by specialized administrative authorities (that were in lead of administrative proceedings and then suspected the commission of a crime).

One main reason for the strong position of the police is the investigative capabilities at their disposal. This applies to both human and material

27 sect. 161 Abs. 1 StPO; No. 3 Abs. 2 RiStBV; the authority to direct exists irrespective of which police authority (federal or state) may act.

28 See sect. 152 GVG. Further state and federal legislation determine which police officers are "Ermittlungspersonen der Staatsanwaltschaft". Regularly these are police officers with several years of experience.

29 See the comparison by type of offense at *Kerner/Stierle/Tiedtke*, Kriminalistik, 2006, pp. 292, 294.

resources. For example, all forensic technology, including positions for specialists, is located with the police and not with the public prosecutor's office. Specialization is much more advanced in the police than in the public prosecutor's office, where the principle of the generalist prevails. The technical equipment of the police also exceeds the possibilities available to the public prosecutor's office. The strong position of the police can be clearly seen on the federal level where the federal police authorities have been constantly enlarged and endowed with more tasks and powers in recent decades. These federal offices exist in addition to the already existing police forces on the state level.

The police's investigations are also facilitated by the fact that it is easier for them to obtain information than for the prosecution. This is due, on the one hand, to organizational links with national police authorities, such as the state or Federal Criminal Police Office, and international police authorities, such as Interpol and Europol. On the other hand, due to the increasing number of central data collections and data networking, there is the possibility of accessing numerous police data banks. In addition, the police can also access data from the public prosecutor's procedural register. The public prosecutor's office, on the other hand, has neither organizational nor informational structures that correspond to those of the police; nor does the public prosecutor's office generally have access to police databases; neither in particular does it have access to the police information system (INPOL).

Due to the late involvement of the public prosecutor's office, instructions in cases of minor crime are usually only issued in the form of follow-up investigations. However, since an in-depth legal assessment of the case takes place for the first time at the public prosecutor's office, it is quite possible that certain facts were not investigated by the police and that this still has to be done before a procedural decision is made by the public prosecutor's office.

But even in cases where the public prosecutor's office is called in at an early stage, formal instructions are rather unusual; rather, the public prosecutor's office usually turns to the police "with the request to . . .".[30] The investigation order to the police should be as precise as possible, because only then is there real guidance. The occasional practice of sending the files to the police with "the request for further clarification" does not meet these requirements.[31] In areas where the police have more expertise (e.g. in forensic technology and tactics), however, concrete guidance is often difficult or not really possible. The police's informational edge can also make it difficult for the prosecution to comprehensively exercise its factual guidance authority.

30 S. Schemer, *Kooperation trotz Statusunterschied?* Wiesbaden, 2007, p. 149.

31 See No. 11 RiStBV (Richtlinien für das Strafverfahren und das Bußgeldverfahren), that explicitly asks prosecutors not to refer to such general requests.

In practice, the police often proceed in cases of greater importance in such a way that the officer acting at the scene of the crime contacts the public prosecutor's office (by telephone) and makes investigative proposals. The further procedure and also the extent of the involvement of the public prosecutor's office are then discussed in this informal way. Likewise, the clarification if the preconditions for taking investigative measures are taken (e.g. doing a search as there is an imminent danger that evidence might be destroyed etc.) is often discussed with the public prosecutor's office, even without there being a mandatory legal requirement. Cooperation is characterized more by a cooperative working atmosphere than by adherence to hierarchical structures.[32] For the most part, therefore, the cooperation between the two institutions is rated as predominantly good.[33]

1.3 Recommendation for improvement

From these considerations of the German criminal justice system, several premises for a more effective system can be derived. One aspect concerns the distribution of tasks and powers. The development of police competencies in Germany in recent decades has shown that when it comes to dealing with complex tasks (such as combating organized crime or terrorism), there is a clear tendency to deal with them through centralization. Centralization has been fostered rather than mitigated by fuzzy terminology (e.g., neither organized crime nor terrorism are clearly defined legal categories as such and therefore leave much room for interpretation). Yet, there is no proof that centralization is actually the better choice over greater cooperation between the individual German states.

As a consequence of the centralization of tasks and powers, new structures on the federal level have been established that add to the already-existing state police structures; also, federal tax and customs offices have been built up and strengthened in order to combat organized fraud etc. The consequence of this development is that no clear distribution of responsibilities is given anymore. There is an increasing intermingling of preventive police and law enforcement tasks (the expansion of the intelligence agencies could be added here, too) in an increasing number of authorities. This creates the danger of duplication or even multiplication of responsibilities and thus leads to conflicts of competence. Therefore, further reforms should put more emphasis on a clear distribution between tasks and powers among the authorities and reconsider the ongoing centralization.

32 See, e.g., the analysis of interviews with police officers and public prosecutors by S. A. Doka, *Die Kontrolle von Vertrauenspersonen im Strafprozess*, Dr. Kovac Hamburg, 2008, pp. 347 ff.

33 See S. Kröniger, "Neue" Formen der Zusammenarbeit zwischen Polizei und Staatsanwaltschaft, *Kriminalistik*, 2004, 613–614; C. Schäfer and L. Paoli, *Drogenkonsum und Strafverfolgungspraxis*, Berlin: Duncker & Humblot, 2006, p. 231.

In that regard it should be avoided that in individual cases a kind of forum shopping could take place as the authority with the best investigative powers and resources (as the powers and the resources of the different authorities differ) takes the lead. It must especially be ensured that a circumvention of criminal procedural standards is prevented just because preventive and administrative offices are involved early and are better equipped than the criminal investigation units. An example: In practice, especially the tax and custom authorities with vast preventive (and administrative) powers collect a substantial amount of data during their preventive activities that can then be introduced as evidence into criminal proceedings without a sufficient further threshold for this different usage of the data (this is also the case if intelligence data is transmitted to the public prosecutor's office without regard to the normal criminal procedure threshold of requiring an initial suspicion).

Concerning the relationship between the police and the public prosecutor's office, there is little to be said against the German solution of formally transferring the management of investigations to the public prosecutor's office, while the police carry out the actual investigative work but have no decision-making powers over the course of proceedings. However, in order to counterbalance the strong police preponderance in practice, the public prosecutor's office must be put in a position, above all in terms of personnel, to be able to exercise effective control over the police and thus perform its management task. In this context, the establishment of formalized information and cooperation channels could be a means of ensuring effective guidance. In this context, the digitalization of the investigative phase and establishing a working IT platform for police and prosecution for communication as well as for the file management is important.

2. Cooperation between national law enforcement authorities and EU institutions

2.1 National legal framework related to cooperation between national law enforcement authorities and EU institutions (Europol, Eurojust, and EPPO, administrative and criminal authorities' cooperation with OLAF)

For the investigation with of serious and organized crime, international cooperation is of upmost importance as such organized crime groups are regularly networked and active internationally. Cooperation in the European area – especially with Europol – is of outstanding importance for the German police forces.[34]

34 See e.g. H. Ahlbrecht, Europäische und internationale Ermittlungsbehörden, in H. Ahlbrecht, K. M. Böhm, R. Esser and F. Eckelmann (eds.), *Internationales Strafrecht*, 2nd edn., Heidelberg: C.F. Müller, 2018, para. 1472 ff., p. 548.

2.1.1 Cooperation with Europol

For the cooperation with Europol, the Federal Criminal Police Office (BKA) is the most important authority as the office is the formal contact point according to Art. 7 (2) Europol Regulation (EU) 2016/794. The Serious and Organized Crime Unit of the BKA participates in most of Europol's (AP) analysis projects and is for example also actively involved in the "European Multidisciplinary Platform Against Criminal Threats" (EMPACT). Europol hosts an important database with the Europol Information System (EIS). As the BKA is the national liaison body for access to the database, it is the vital cooperation body for all German law enforcement authorities needing information from Europol's database. Besides the EIS, the Schengen Information System (SIS) is of great importance for the national law enforcement authorities. The BKA is the national unit for "Supplementary information request on a national entry" (SIRENE). Access to the SIS system is yet not granted exclusively to the BKA but is possible for all German police authorities, as the SIS can be accessed via the German INPOL-System.

Special cooperation structures exist if Europol and German police officers take part in a joint investigation team (see Art. 5 Europol Regulation (EU) 2016/794). In this case, the national police officers can stem from the BKA, but participation is not limited in that regard (so that other local police officers dealing with the case can participate).

2.1.2 Cooperation with Eurojust/European Judicial Network

Eurojust plays another important role for dealing with cross-border cases. Germany has "implemented" Regulation (EU) 2018/1727 concerning Eurojust in specific legislation, the Eurojust-Gesetz (EJG) – dealing also with the European Judicial Network – [35] which is amended by a national regulation concerning the cooperation with Eurojust[36] and a national regulation concerning the national cooperation partner in terrorist cases.[37] The main correspondents for Eurojust in the meaning of Art. 20 (1) Regulation (EU) 2018/1727 are the Federal Office for Justice (Bundesamt für Justiz), the Federal Prosecutor General and further by the German states named contact points.[38] The contact points in the German states are regularly located at the general prosecutor's offices (Generalstaatsanwaltschaften). These correspondents also serve as the

35 Gesetz über Eurojust und das Europäische Justizielle Netz in Strafsachen (Eurojust-Gesetz – EJG) of 9 December 2019 (BGBl. I S. 2010).

36 Eurojust-Koordinierungs-Verordnung (EJKoV) of 26 September 2012 (BGBl. I S. 2093), last changed by Article 3(3) of the law of 9 December 2019 (BGBl. I S. 2010).

37 Eurojust-Anlaufstellen-Verordnung of 17 December 2004 (BGBl. I S. 3520), last changed by Article 3(2) of the law of 9 December 2019 (BGBl. I S. 2010).

38 See sect. 2 EJKoV.

main partners for the European Judicial Network.[39] As contact partner in the meaning of Art. 20 (3) (e) Regulation (EU) 2018/1727 mainly serves the Federal Office for Justice.[40] The Eurojust national coordination system is organized by the correspondents for Eurojust, so that the Federal Office for Justice, the Federal Prosecutor General and the responsible contacts in the German states together organize the system that comprises federal and state authorities.[41]

The main communication with Eurojust is still done through the national member and its staff. In principle, any public prosecutor's office, court or police authority that has questions in connection to the handling of a criminal case with an international dimension can contact the German table directly. This might still be an easy way to clarify by a telephone call whether and how Eurojust could become active and which documents may be needed. Yet, with the national contact points (within the Eurojust national coordination system), access to information is now easier and more structured so that this way of communication is the first choice. An example for instructive organization and help is the Central Unit Organized Crime and Corruption (Zentrale Stelle Organisierte Kriminalität und Korruption) in Celle being part of the general prosecutor's office in Celle (Lower Saxony), which coordinates complex organized crime cases and is a contact point for the European Judicial Network.[42]

2.1.3 Cooperation with the EPPO

The creation of the European Public Prosecutor's Office under Regulation (EU) 2017/1939 ("EPPO-Regulation") has not only been a milestone of setting up European criminal justice structures but has also led to a completely new approach for combating organized fraud in Germany. This system applies to cases and offenses that fall under the jurisdiction of the EPPO, mainly PIF crimes as set out in Art. 4 EPPO-Regulation in conjunction with Directive (EU) 2017/1371. Germany has notified the EPPO (Notification of 18 June 2021) according to Art. 117 (5) and Art. 30 (3) of the EPPO-Regulation about the national criminal offences that cover the offences under Directive (EU) 2017/1371 (as well as under the Framework Decision 2008/841/JHA concerning the participation in a criminal organization that also fall under the jurisdiction of the EPPO),[43] so that it is clear to German

39 See sect. 2 EJKoV in conjunction with sect. 12 EJG.

40 See sect. 3 EJKoV.

41 See sect. 4(2) EJKoV.

42 See the website for further information, https://generalstaatsanwaltschaft-celle.niedersachsen.de/startseite/wir_uber_uns/zentrale_stelle_organisierte_kriminalitat_und_korruption_zok/zentrale-stelle-organisierte-kriminalitaet-und-korruption-zok-151356.html.

43 The notification can be found, e.g., in H.-H. Herrnfeld and R. Esser (eds.), *Europäische Staatsanwaltschaft: Handbuch*, Nomos, 2022, pp. 495–498.

authorities which crimes could be potential "EPPO crimes". This is not self-evident, as the crimes under Directive (EU) 2017/1371 are not mirrored one to one in German law but are covered, e.g., by general fraud or tax offences. In order to close some gaps, in 2019 Germany introduced separate legislation covering certain crimes with a specific EU context that amend the already existing crimes (mainly in the StGB[44] or the AO).[45] [46] For implementing the EPPO-Regulation, Germany has again introduced special legislation (the Europäische-Staatsanwaltschaft-Gesetz – EUStAG) and adjusted some existing legislation, the first covering – in addition to the directly effective parts of the EPPO-Regulation – further aspects needed for an effective organization and working legal framework under German law.[47]

The central aspect of the EPPO-Regulation is that the national European Delegated Prosecutor (EDP) is integrated into the national German system but at the same time part of the EPPO and is solely responsible for the investigation of the EPPO crimes. The cornerstone under German law to enable the EDP to conduct such proceedings (and to provide him with the necessary powers to do so) is the new provision in sect. 142b GVG[48] stating that the office of a prosecutor in the cases where the EPPO is responsible is conducted by an EDP. This rule modifies the standard responsibility of the prosecution according to sec. 142 GVG. To the extent the EDP is responsible according to sect. 142b GVG, he is regarded in the same way as a "normal" German prosecutor and has all the powers "normal" German prosecutors have. This includes undertaking the investigations, carrying out acts on behalf of the prosecution and exercising the rights of the prosecution in national court proceedings until a final decision is reached. As the equalization of the EDP with "normal" prosecutors in sect. 142b GVG would also include the enforcement of the punishment (as this belongs to the tasks of the prosecution), sect. 10 (1) EUSTAG provides for an exception that the enforcement is not within the tasks of the EDP. The enforcement rests with the "normal" prosecution service. However, sect. 10 (2) EUSTAG provides that the EDP has the right to be heard in the most important enforcement decisions. This exception is in

44 Strafgesetzbuch as of 13 November 1998 (BGBl. I S. 3322), last changed by Article 2(2) of the law of 7 November 2025 (BGBl. I S. 351).

45 Abgabenordnung as of 23 January 2025 (BGBl. I S. 25).

46 See the EU-Finanzschutzstärkungsgesetz of 19 June 2019 (BGBl. I S. 844).

47 See the Europäische-Staatsanwaltschaft-Gesetz (EUStAG) vom 10. Juli 2020 (BGBl. I S. 1648); Act on the European Public Prosecutor's Office published on 10 July 2020 (Federal Law Gazette I, p. 1648), https://www.gesetze-im-internet.de/eustag/BJNR164810020.html (last accessed on 8 July 2024).

48 Gerichtsverfassungsgesetz vom 9. Mai 1975 (BGBl. I S. 1077), das zuletzt durch Artikel 14 des Gesetzes vom 27 Dezember 2024 (BGBl. I S. 438) geändert worden ist/ Courts Constitution Act published on 9 May 1975 (Federal Law Gazette I, p. 1077), as last amended by Article 14 of the Act of 27 December 2024 (Federal Law Gazette I, p. 438), https://www.gesetze-im-internet.de/gvg/BJNR005130950.html (last accessed on 5 December 2025).

line with the Art. 4 of the EPPO-Regulation as the tasks of the EDP do not include enforcement matters.

The aforementioned tasks and powers of the EDP also apply to the European Prosecutor (EP) when acting under the exceptional circumstances provided for in Art. 28 (4) of the EPPO-Regulation. Sec. 1 (2) 2 EUStAG makes this explicitly clear as it provides that in such an Art. 28 (4)-constellation, an EP has the same powers as an EDP. Sec. 142b (1) 3 GVG clarifies that in such a case the EP is the responsible prosecutor.

Germany has, besides the acting EP, eleven EDPs in five different locations (Berlin, Hamburg, Frankfurt, Cologne and Munich). According to sect. 3 (3) EUStAG, these locations count as the seat of the competent authority in cases where measures in the Code of Criminal Procedure (StPO) etc. are linked to a specific location. Nonetheless, the legislator has provided that an EDP is not restricted in his work to the location of the seat: sect. 143 (6) GVG provides that an EDP can act in the whole German territory. This does not exclude possible agreements of the German justice institutions and the European Chief Prosecutor to make functional and territorial divisions of the competences. Vice versa, sect. 143 (6) GVG creates the possibility (in derogation from the normal rules where prosecutors are "bound" to act within the respective area of the seat) that such divisions are possible and flexible (in order to be adjusted to the respective needs in the future) and do not conflict with the "normal" German structure.

Sect. 142b GVG states that the EDP has the competence to deal with the cases according to Art. 22, 23 of the EPPO-Regulation. To that extent the material, territorial and personal competences follow the EPPO-Regulation. In order to guarantee that the EDP is responsible in tax cases, sect. 7 EUStAG clarifies that the EPPO is responsible when exercising their competence under Article 25 of the EPPO-Regulation and not the financial institutions as provided in Sect. 386 Fiscal Code (AO) the financial institutions (who have a special criminal power to investigate the case).

Sect. 11 EUStAG clarifies that the power of the EPPO also refers to administrative offences (Ordnungswidrigkeiten) that are connected to the respective crimes. This follows the general approach under German law that the prosecution (and not an administrative authority) is responsible when administrative offences are closely linked to a crime. This is especially relevant for corporate fines under sect. 30 OWiG, as the corporate responsibility builds on the crime (or administrative offense) of an individual. To that extent sect. 11 (2) EUStAG clarifies the responsibility of the EPPO in such a case.

The material competence of the EPPO is regulated in art. 22 EPPO-Regulation. Although the general structure is clear when the EPPO is responsible, this does not apply to all cases. E.g. in practice, the application of Art. 22(1) is very challenging as major questions are not clear: e.g. how is the damage (of at least EUR 10 Million) calculated or how can the offences be applied to new constellations (e.g. VAT-Fraud in the e-gaming industry where players buy tokens online but the providers from outside Europe do not pay

VAT)? This does not only create uncertainty about the competence of the EPPO, but also raises the question of what the consequences are if the EPPO does incorrectly assume its competence.

The provision in Art. 25 (1) EPPO-Regulation about the exercise of the competence of the EPPO clearly sets out the conditions under which the EPPO acts with the consequence that national authorities refrain from (further) taking up the case. For tax authorities, Art. 7 EUStAG clarifies that the competence of the EPPO also applies in tax cases where tax authorities normally have special investigative powers. Yet, the application of Art. 22(3) in connection with Art. 25(3) provides major problems: The EPPO shall refrain from certain cases and refer them to the national authorities, e.g., when the maximum sanction provided for by national law for an EPPO-offence is equal to or less severe than the maximum sanction for an inextricably linked offence as referred to in Article 22(3). This provision rarely leaves room for a competence of the EPPO, as the maximum sanctions under German law are in general the same as for damages to EU funds and other national funds. In practice, the EPPO therefore cannot investigate cases, although many national authorities would be glad if the EPPO could take over the case.

In the case of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the competence of the EPPO, Art. 25 (6) EPPO-Regulation leaves it to a national authority to solve the dispute. The new sect. 142b (2) GVG tasks the Federal Public Prosecutor General with deciding on disagreements under Art. 25 (6). Sect. 142b(2) GVG also provides in sentence 2 for the possibility of judicial review of the decision of the Federal Public Prosecutor General before the Federal Court of Justice (Bundesgerichtshof). This possibility of a two-step procedure (which already exists for other competence conflicts under German law and insofar takes up an established construction) goes beyond the requirements of the Regulation.

In substance, the Federal Public Prosecutor General takes a more administrative decision, whereas the final decision is left to the Federal Court of Justice. This has consequences for further judicial review at the EU level. The Federal Public Prosecutor General cannot be regarded as a "court/tribunal" within the meaning of Article 267 TFEU as it is not an independent institution. This also means that Federal Prosecutor General cannot request the Court of Justice to issue a preliminary ruling for the interpretation of Articles 22 and 25 of the EPPO-Regulation in case of conflict of competences. But such a possibility remains with the Federal Court of Justice that has to request the ECJ as it is the only and final court to decide on the case. Although the German interpretation of the "national authority" includes a two-step approach, this is perfectly in line with the EPPO-Regulation as it allows the parties to challenge the decision of the national authority before a national court which is able to request the Court of Justice to issue a preliminary ruling on the matter and therefore provides for a "European" solution to a conflict of competences.

Whereas Art. 25 (6) EPPO-Regulation provides for a solution of "positive" conflict of competences (meaning that two authorities want the case), there is no solution for a "negative" conflict of competences: yet it is not unlikely in practice (especially in an overloaded criminal justice system) that neither the EDP nor the national authorities are too keen to take over a case.

Concerning the cooperation between national authorities and the EPPO, art. 24 (1) EPPO-Regulation, being directly applicable, makes clear that any German authority is obliged to inform the EPPO about possible offences falling under the tasks of the EPPO. This means irrespective of whether the police, the prosecution, a tax or custom office or any other administrative authority is obliged to inform the EPPO. This guarantees that the authority dealing with a case first can really inform the EPPO at the earliest possible moment.

As there are no specific requirements how the EPPO shall be informed, information may be given to a German EDP or directly to the central EPPO office. These two possibilities (by taking up recital 52 of the Regulation) are also mentioned in the explanatory memorandum to the German 2020 European Public Prosecutor Act,[49] although the legislator has not chosen a specific way. In practice, communication almost exclusively takes place with the EDPs as the central office is "too far away". The same applies to law enforcement authorities that report to the EDPs.

Similar to the obligation to inform the EPPO about cases, Art. 24(2) provides that every judicial or law enforcement authority has the obligation to inform the EPPO if it initiates proceedings falling under Art. 24 (2). This also applies in tax cases where tax authorities normally investigate and are provided with special investigative powers (see Art. 7 EUStAG extending the reporting etc. obligation to tax authorities). These rules are supplemented by the provision in Art. 24 (3) that every judicial or law enforcement authority has the obligation to inform the EPPO in cases where they assume that an investigation in respect of a criminal offence does not fall under the scope of Article 22 and can thus not be dealt with by the EPPO. Again, Art. 7 EUStAG clarifies that this also applies in tax cases where tax authorities normally have special investigative powers.

In cases where an offense may be an "EPPO-offense", art. 26 (1) EPPO-Regulation provides that the EDP shall initiate investigations and shall note this in the case management system. In order to enable an effective flow of information, sect. 12 (1) EUStAG regulates that such a notification under art. 26 (1) is to be fulfilled by reporting the relevant data pursuant to Section 492 (2) sentence 1 StPO to the Central Prosecutorial Proceedings Register (ZStV) at the Federal Office of Justice. This guarantees that all German prosecutors can have knowledge about an ongoing proceeding. In addition, sect. 12(2)

49 Explanatory Memorandum to the EUStAG of 16 March 2020 by the Federal Government, Deutscher Bundestag (Federal Parliament) printed matter, BT-Drs. 19/17963, pp. 21–22.

EUStAG stipulates that in the case of the initiation of preliminary proceedings pursuant to Art. 26 (1) a notification of the otherwise competent national public prosecutor's office is required, in order to prevent this public prosecutor's office from initiating preliminary proceedings in the same case without being aware that the EDP also has initiated proceedings in the same matter.

The power of the EPPO to cooperate with other authorities and to refer to coercive measure is important for successfully conducting investigations. To that extent, Art. 28 (1) EPPO-Regulation provides that the EDP under national law either has the power to decide on investigative measures or to instruct other responsible authorities. As the German EDPs have the same powers as national prosecutors, they have all necessary powers required by the EPPO-Regulation. E.g. sect. 161 (1) StPO provides for the possibility to instruct any public authority to provide information, to conduct investigations or to ask the police to investigate; also, the police are obliged to carry out ordered investigations according to sect. 152 GVG. These rules also apply in tax cases (see sect. 402, 404 AO). The prosecution, and therefore the EDP/EP, is always in the lead of the investigations even if special authorization (such as for a court warrant) is needed.

According to sect. 9 EUStAG the EDP can also task a senior judicial officer (Rechtspfleger, being an official with certain judicial powers) to execute the tasks mentioned in sect. 9 EUStAG in conjunction with sect. 31(1) Rechtspfleger Act assigned to him by the prosecutor. Normally, a Rechtspfleger would be automatically responsible for the tasks mentioned in sect. 31(1) of the Rechtspfleger Act. However, as the proceedings shall be completely in the hand of the EDP, sect. 9 EUStAG provides that no automatic responsibility exists, yet the EDP can task the Rechtspfleger in individual cases.

As the EDPs act instead of the German prosecutors, they cannot ask German prosecutors to assist in a case under sect. 161 (1) StPO. The German legislator has, therefore, introduced in sect. 13 EUStAG the possibility for EDPs to ask German prosecutors for administrative assistance in a case which details the general obligation for loyal cooperation under Art. 5(6) of the EPPO-Regulation. Sect. 13 EUStAG by relating to sect. 142(1) no. 2 and 3 (but not to no. 1) GVG only allows requests directed at state prosecution services but not at the Federal Prosecutor General. The legislator in his explanation to the EUStAG gives no reasoning for this omission. The main reason is probably that the crimes the Federal Prosecutor General is able to investigate are limited to serious offenses against the state/the public interest that do not fall under the responsibility of the EPPO. Nonetheless, an EDP can ask the Federal Prosecutor General for assistance under Art. 5(6) of the Regulation (so that sect. 13 EUStAG is more of a declaratory nature).

For cooperation with other prosecution offices, sect. 161a StPO provides for a specific rule. If the EDP requests other prosecution offices examine a witness or an expert, the requested office is also allowed to apply certain coercive measures (in order to speed up and ease proceedings). In such a case the EDP as the main responsible authority has the right to ask the requested authority

to take up or refrain from the respective coercive measures, so that the EDP is also in such a case in the lead of the investigation.

Art. 28 (4) EPPO-Regulation describes sufficiently clearly (and is hence directly applicable) the circumstances and the procedure for the European Prosecutor to take over the case and conduct investigations. Sec. 142b (1) 3 GVG clarifies that in such a case the European Prosecutor is the responsible prosecutor and consequently has all the powers an EDP and a "normal" German prosecutor has. Sec. 1 (2) 2 EUStAG additionally clarifies that in this case the rules of the EUStAG also apply to the EP so that the EP has the same powers as a Delegated European Prosecutor. There are no specific German provisions on the procedure and the circumstances, so that in practice the EP could exercise his right under Art. 28 (4) EPPO-Regulation without further problems. Yet, it seems not to be a very likely option due to practical obstacles, such as being rather distant to the investigating police etc. (as contact in person is still important) and the lack of a staffed bureau for conducting the investigations.

As the idea of the EPPO is to ease organized fraud cases, there is only limited room for the "normal" rules for judicial assistance in cross-border cases. Therefore, Art. 31 (1) EPPO-Regulation, being directly applicable and providing for the assignment of necessary measures to an EDP from the state where the measure shall take place, has the consequence that the usual instruments for mutual legal assistance in cross-border cases (mainly the regulations in the "Gesetz über die internationale Rechtshilfe in Strafsachen – IRG") should not be applicable. Sect. 6 (1) Sentence 1 EUStAG, therefore, declares the "Gesetz über die internationale Rechtshilfe in Strafsachen" to be inapplicable (apart from the special case regulated in Art. 31 (6)). Art. 31 (6) EPPO-Regulation provides that the EDP may exceptionally also refer to the measures of mutual legal assistance etc., if no national measure exists. In this case, the rules of the "Gesetz über die internationale Rechtshilfe in Strafsachen" (IRG) apply. Yet, the overall solution in Art. 31 EPPO-Regulation is rather a rudimentary framework that needs further development as many questions remain open, so that at the moment it cannot compete with the established working mechanism of the European Investigation Order (and other working methods of mutual assistance).

Insofar as an EDP is authorized, in accordance with Art. 31(6) EPPO-Regulation, in agreement with the supervising German European Public Prosecutor, to address requests for mutual legal assistance in line with the IRG to authorities in a Member State participating in the establishment of the EPPO, the standard decision-making power of German authorities otherwise resulting from sect. 74(1) and (2) IRG cannot apply. Therefore, sect. 6 (1) sentence 2 EUStAG declares sect. 74(1) and (2) IRG as inapplicable. This applies according to sect. 6 (1) sentence 4 EUStAG mutatis mutandis to decisions on incoming requests for mutual legal assistance under Art. 31(6) EPPO-Regulation, provided that the European Public Prosecutor's Office is responsible for providing mutual legal assistance. Sect. 6 (1) sentence 3

EUStAG clarifies that in the event that the authorities of the requested Member State attach conditions to the provision of mutual legal assistance or make it dependent on the submission of assurances, about which the European Delegated Prosecutor cannot decide alone (e.g. as they have to be observed by German authorities according to sect. 72 IRG), the EDP decides on the acceptance of the conditions and the submission of assurances in agreement with the competent German judicial authorities. Altogether, the provisions in sect. 6 (1) guarantee that the EPPO can effectively make use of the traditional instruments of mutual legal assistance.

Also, sect. 6 (2) sentence 1 EUStAG declares sect. 74(1) and (2) IRG not to be applicable when a European Arrest Warrant shall be obtained, so that the EDP and no other German authorities decide. Likewise, the obligation of the German Federal government to inform the Council of the European Union according to sec. 83i IRG cannot apply, so that sect. 6 (2) sentence 1 EUStAG declares sec. 83i IRG to also be inapplicable. Sect. 6 (2) sentence 2 EUStAG clarifies that the handling EDP is responsible for the decision on the European Arrest Warrant. Sect. 6 (2) sentence 3 EUStAG clarifies that this includes decisions on the acceptance of conditions and the giving of assurances in agreement with the competent German judicial authorities.

2.1.4 Cooperation with OLAF

In organized fraud cases, the cooperation of national authorities with OLAF has been of great importance in the past.[50] In many cases, OLAF has provided essential information and also conducted valuable investigations. With the transfer of criminal investigations to OLAF this role has changed. But even when Art. 101 EPPO-Regulation provides that OLAF shall only support or complement the EPPO's activity in criminal cases and also refrain from opening parallel administrative investigations in the same case OLAF will remain a key partner for investigations.[51] First of all, a clear separation of cases will not be possible in practice so that overlaps are unavoidable.[52] Also, the administrative investigation powers are not to be underestimated, especially in the organized fraud context. Many cases start with administrative proceedings on the national level, e.g., within the tax or custom offices. To that extent, national authorities asking OLAF for assistance or, vice versa, OLAF informing national authorities about possible cases will remain an essential part of the investigation. OLAF, with its comprehensive experience in organized fraud

50 See, e.g., A. Weyembergh and C. Brière, The Future Cooperation Between OLAF and the European Public Prosecutor's Office, *New Journal of European Criminal Law*, Volume 9, 2018, p. 62 ff.

51 See F. Meyer, Aufgaben der EUStA – Rolle im System Europäischer Strafverfolgung, in H.-H. Herrnfeld and R. Esser (eds.), *Europäische Staatsanwaltschaft: Handbuch*, Nomos 2022, pp. 49, 66 ff.

52 Ibidem, pp. 49, 67.

cases, can also provide operative resources and intelligence analysis that does not extend (at least not to the extent OLAF has resources) to the national level. Last but not least, OLAF will be in the lead when criminal cases are not adjudicated, but sanctions will be left to an administrative proceeding (which is not so unusual on the national level, as administrative sanctions can also be harsh and often very effective in breaking up organized crime structures.

2.1.5 Further important cooperation mechanisms

The aforementioned cooperation of German authorities with European institutions has already mirrored important aspects for investigating organized fraud and other serious cross-border cases. Yet, cooperation in practice is even more complex, especially as the tax and custom offices involved in the investigation can rely on their own international network. E.g., international ccooperation in customs matters is concentrated at the Customs Criminal Investigation Office. This central office can rely on international cooperation by way of administrative assistance. This international cooperation between customs authorities/the customs investigation services and the police and other authorities is very complex.[53] Various international treaties or laws regulate such cooperation. Among the most important legal bases for the exchange of information within the framework of customs cooperation are the Customs Assistance Regulation (EC) No 515/97 of 13 March 1997[54] and the Naples II Convention of 18.12.1997.[55] The Customs Assistance Regulation, as directly applicable Union law, takes precedence over the Naples Convention pursuant to Article 288 TFEU.

These legal acts, having partly overlapping provisions, take a comprehensive approach for combatting infringements of customs regulations as they seek to prevent and to detect as well as to prosecute violations of customs laws. The Customs Assistance Regulation only regulates cooperation in the field of customs. The Naples II Convention covers all cooperation in prosecuting

53 See B. Küchenhoff, 23. Kapitel. Zollstraftaten, in Heinz-Bernd Wabnitz, Thomas Janovsky and Lothar Schmitt (eds.), *Handbuch des Wirtschafts- und Steuerstrafrechts*, 5th edn., Beck, 2020, Kap. 23, para. 34 ff.; A. Sinn, *Wirtschaftsmacht und Organisierte Kriminalität*, Springer, 2018, p. 110.

54 Council Regulation (EC) No. 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, Official Journal of the European Union, L 82, 22 March 1997, pp. 1–15.

55 See the Council Act of 18 December 1997 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations – Declarations, Official Journal of the European Communities, C 24, 23 January 1998, p. 1; Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations, Official Journal of the European Communities, C 24, 23 January 1998, p. 2.

violations of customs laws and restrictions on the cross-border movement of goods.

These two important regulations are accompanied by a variety of other agreements, allowing tax authorities in Germany to use and provide intergovernmental and legal administrative assistance. With regard to the scope of administrative assistance permitted under the relevant bilateral and multilateral customs assistance treaties, there is some uncertainty as to whether administrative assistance can be provided only for the purposes of taxation proceedings or, in addition, also for criminal prosecution.[56] However, the relevant legal acts regularly do not provide for such a limitation, but rather have in mind an overall prosecution of infringements:[57] The Naples II Convention, for example, covers all violations of customs regulations, including violations of procurement law, foreign trade and the trade of war weapons. The Customs Assistance Ordinance also identifies the detection and prosecution of and violations of customs laws as the scope of mutual assistance.

These broad possibilities of administrative assistance raise the question of how this type of information exchange relates to judicial mutual legal assistance. From Art. 3 of the Naples II Convention, one can conclude that mutual assistance under the provisions of the German international mutual legal assistance act (Gesetz über die Internationale Rechtshilfe – IRG) should stand alongside the possibilities of mutual assistance provided under the Naples II Convention. Thus, Art. 3(2) explicitly states that in cases of criminal investigations, a judicial authority is to determine whether related requests for mutual assistance or cooperation will be submitted on the basis of the applicable provisions on mutual assistance in criminal matters or on the basis of the Convention. This means that there is a right to choose.[58] Referring to administrative cooperation is often regarded as the faster and easier way of cooperation, although this possibility is not so much used in practice by the prosecution offices.[59]

2.2 Analysis of the practice of cooperation

In organized fraud cases, as in many other organized crime cases, perpetrators act not within one country but operate in several states. In that regard, cooperation is a key factor. To enable such cooperation with foreign

56 In favor of a limitation to the taxation procedure T. Janovsky, *Ermittlungen in Wirtschaftsstrafsachen*, Kriminalistik, 1998, Teil 2, pp. 331, 335.

57 M. Harder, 22. Kapitel. Zoll, in Heinz-Bernd Wabnitz and Thomas Janovsky (eds.), *Handbuch des Wirtschafts- und Steuerstrafrechts*, 4th edn., Beck, 2014, Kap. 22, paras. 205, 207–208; A. Sinn, *Wirtschaftsmacht und Organisierte Kriminalität*, Springer, 2018, pp. 111–112.

58 Ibidem.

59 Ibidem.

countries, international institutions, mainly the European ones, have become indispensable:[60] Europol, Eurojust and up to now OLAF (and now the EPPO) are of particular importance for anti-trafficking cases.[61] Without the logistical support and often the information provided or made accessible through these institutions, a successful fight against organized crime would not be possible.

Cooperation between national authorities and EU institutions in practice is very different depending on the national authorities involved. It works well where authorities such as the Federal Criminal Police Office are the main "access point" to the European institutions, because then the legal framework and the possibilities are well-known. The further away a police office is, the less knowledge about these cooperation possibilities exists. The same applies for the prosecution offices. In recent years, large efforts have been undertaken in order to instruct law enforcement authorities about the possibilities European institutions offer, especially in the context of the reforms that came along with implementing the EPPO regulation. But it is still an ongoing task to implement it into every day so that authorities make use of the possibilities at an early stage of the investigation when they can profit most. One of the problems in that regard is often the not completely clear scope of the tasks and powers of the European institutions, with the EPPO being the latest example. Such lack of clarity, especially in detail, makes it difficult to determine, e.g., if a case really falls under the competence of the EPPO. Another example is the question of when to contact Eurojust or the EJN in a certain case. These ambiguities pose a hurdle to contacting the European institutions.

Besides schooling and education about the European institutions, more profane problems exist. Weaknesses in practice are, for example, in the areas of resources, communication, organization and technology.[62] Mobilization of personnel (in due time) is often a problem in larger investigations (especially in regard to complex organized crime cases), and it is worsened if disputes among the authorities over competencies exist.[63] Communication is often not fast or comprehensive enough, and sometimes includes problems because of differing technical equipment or technical standards.

2.3 Recommendation for improvement

An improvement for the cooperation of national authorities with the European institutions would be clear and precise legislation that leaves no ambiguities

60 See, e.g., concerning the smuggling of cigarettes, M. Koziolek, *Zigarettenschmuggel und Organisierte Kriminalität*, Kriminalistik, 2015, p. 719.

61 M. Koziolek, *Zigarettenschmuggel*, Kriminalistik, 2015, p. 211.

62 M. Hoser, *Bekämpfung der Organisierten Kriminalität: Unter besonderer Berücksichtigung der Rolle des Zigarettenschmuggels' (Tagungsbericht, Bildungszentrum Wildbad Kreuth 13. bis 15 November 2013)*, p. 8, https://www.hss.de/fileadmin/media/downloads/Berichte/131113_TB_Kriminalitaet.pdf (last accessed on 8 July 2024).

63 Ibidem, p. 8.

about the tasks and the powers of the European institutions and the way of cooperation with national authorities. Yet, this is often not possible in the complex European law drafting procedure where ambiguous regulations might be the political acceptable compromise. Therefore, for the work in practice any substantiation and specification of the existing legal rules are of great importance. An additional help for such problems would be having some – even informal – guidance for how certain aspects of EU law and the work of the European institutions in detail should be understood, especially in the context of the national law. This could provide clear (or at least clearer) guidance to German authorities and would lower the threshold to work together with European institutions.

A second aspect that would ease communication is a working digital infrastructure that enables the different national authorities to communicate with the EU institutions, to easily share/access information relevant to a case (and at the same time comply with data protection regulations). Such an infrastructure partly exists and is also partly already in the making, but communication between police authorities and prosecutions services, different justice institutions nationally and on the EU level is still not harmonized. Having common EU standards for electronic case files could especially enable easy exchange and storage of case relevant information between different national systems (also via the EU channels).

3. Cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States

3.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from other EU Member States

The cooperation with other states follows the rules of international mutual legal assistance (see for more details infra under 4). This applies to EU and non-EU member states. Within the EU, cooperation is yet much easier as in recent decades the traditional instruments of mutual legal assistance have been amended by EU instruments such as the European Arrest Warrant.[64]

The relevant legal basis for international cooperation in criminal matters is to be found in Germany in the Gesetz über die internationale Rechtshilfe in Strafsachen (IRG – International Mutual Assistance Act).[65] The rules of the IRG take up or are to be read in connection with the relevant European legal

64 See for the evolution of the law in the EU, S. Haggenmüller, *Der Europäische Haftbefehl und die Verhältnismäßigkeit seiner Anwendung*, Baden-Baden: Nomos, 2018, pp. 20 ff.

65 Gesetz über die internationale Rechtshilfe in Strafsachen in der Fassung der Bekanntmachung v. 27. Juni 1994 (BGBl. I S. 1537), das zuletzt durch Artikel 21 des Gesetzes v. 12. Juli 2024 (BGBl. I S. 234) geändert worden ist; International Mutual Assistance Act in the version

framework. The European framework for example comprises the following important legislation for cross-border cases:

- Convention established by the Council in accordance with Art. 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197 of 12.7.2000, p. 3);
- Framework Decision 2006/960/JHA of 18 December 2006 on the Simplifying the Exchange of Information and Intelligence between Law Enforcement Authorities of the MS of the EU;
- Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130 of 1.5.2014, p. 1) ("EIO Directive").

In the case of international mutual legal assistance, a distinction must be made between judicial and police assistance. Judicial assistance concerns all aspects in relation to (foreign) judicial decisions and judgments, as well as decisions of the law enforcement authorities for the purpose of conducting and furthering criminal proceedings. This form of assistance is regularly the main or sole aspect in the mutual assistance agreements.

In contrast, "police mutual legal assistance" is limited to an international exchange of information among police authorities. It often concerns personal data that already exists and can be obtained without coercion and is of use for the prosecution of criminal offenses in a foreign state so that a need for the exchange exists. This aspect of police assistance is regulated to a much lower extent and is only partly covered by mutual assistance agreements.

International mutual assistance in criminal matters is to be distinguished from intergovernmental administrative assistance. This plays an important role, for example in tax matters. Administrative assistance in tax matters exists if authorities and courts exchange information for purposes of the taxation procedure, in particular for the determination of the tax-relevant relevant facts and bases of taxation. This aspect is partly regulated in intergovernmental agreements.[66] Such cooperation is important as often information for criminal proceedings stems from tax investigations.

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published on 27 June 1994 (Federal Law Gazette I, p. 1537), as last amended by Article 21 of the Act of 12 July 2024 (Federal Law Gazette I, p. 234).

66 See, e.g., for further information the "Merkblatt zur zwischennstaatlichen Amtshilfe in Steuersachen durch Auskunftsaustausch in Steuersachen" (intergovernmental Administrative Assistance through Exchange of Information in Tax Matters) of 29 May 2019 (BStBl 2019 I S. 480), https://www.bzst.de/SharedDocs/Downloads/DE/intern_amtshilfe/merkblatt_zwischenstaatliche_amtshilfe.pdf?__blob=publicationFile&v=10.

3.2 Analysis of the practice of cooperation

For transborder criminal investigations, prosecutions and also the enforcement of judgments nowadays a comprehensive system has evolved that provides a legal framework for the field of mutual legal assistance. The European system is thereby based on the principle of mutual trust and mutual recognition includes a far-reaching waiver of a control of other MS decisions.[67] Although this principle mainly applies to final and binding decisions,[68] it is often also applied during the investigation phase.[69]

The rules for mutual assistance can play a role for the admissibility of evidence in individual cases when restrictions on mutual legal assistance and requirements for the transfer of evidence also serve to protect the individual.[70] This has been different in the past when the understanding of mutual legal assistance as a primarily intergovernmental matter prevailed for a long time and no special protection of the individual concerned was envisaged in this phase. It meant that restrictions on mutual legal assistance served primarily to protect the interests of the states involved.

This approach, however, does not prevail any longer in the light of defendant and fundamental rights. For example, the German Federal Court of Justice has considered it possible to prohibit the use of evidence on the grounds of a violation of Art. 4 (1) (standardization of the principle of "forum regit actum") of the EU Mutual Assistance Convention of 2000:[71] In the case at hand, it was doubtful whether the accused's right to confrontation with witnesses, which exists in Germany, had been observed during a questioning in France.[72]

A problem in this context is, that the rules on legal assistance do traditionally not provide for detailed rules on outgoing requests. But it is generally accepted that the request must refer to a specific investigation measure and must respect the general principle of law, especially the principle of proportionality.[73] Hence, these requirements for outgoing request serve also to

67 This is stressed by G. Pauli, *Zur Verwertbarkeit der Erkenntnisse ausländischer Ermittlungsbehörden – EncroChat*, NStZ, 2021, pp. 146, 148.

68 See ECJ, Decision of 22 December 2008-C 491/07 (Vladimir Turansky); also see F. P. Schuster, *Verwertbarkeit von Beweismitteln bei grenzüberschreitender Strafverfolgung*, ZIS, 2015, pp. 564, 572.

69 See e.g. G. Pauli, *Zur Verwertbarkeit der Erkenntnisse ausländischer Ermittlungsbehörden – EncroChat*, NStZ, 2021, pp. 146, 148.

70 BGHSt 58, 32 (para. 23); G. Pauli, *Zur Verwertbarkeit der Erkenntnisse ausländischer Ermittlungsbehörden – EncroChat*, NStZ, 2021, pp. 146–147; F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 178.

71 BGH NStZ, 2007, p. 417.

72 In the end the court had not to decide on the question as the first instance judgement was not based on this alleged violation.

73 M. Böse, *Die Verwertung im Ausland gewonnener Beweismittel im deutschen Strafverfahren*, ZStW, 2002, pp. 114, 148, 154; F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 179.

protect the individual, what makes these rules a relevant criterion for considering the admissibility of evidence. This approach is taken by Art. 6 (1) (a) of the EIO Directive stating that the measure has to be proportionate and the rights of the accused are to be respected. It means that these (national) aspects of the protection of the accused are also part of EU law. This provision "activates" European fundamental and procedural rights (especially considering and weighing the values of the EU Charter of Fundamental Rights within the decision on the proportionality of the measure) when issuing an EIO and means that the ECJ is ultimately responsible for clarifying any doubts in this regard.[74] In addition, Art. 6 (1) (b) EIO Directive makes clear that the EIO must refer to an investigative measure that could have been also ordered under domestic law.

Another problematic aspect in the context of the European instruments concerns the question how specific requests have to be. For example, in the much-discussed EncroChat case[75] the most prominent feature was that the original investigation measure and the first requests/information exchange were not in regard to a criminal proceeding against a specific (maybe still unknown) suspect for a definable alleged crime. It was rather directed at an unknown multitude of perpetrators (and non-perpetrators) and unspecified, concerning facts (time, location etc.) and the respective crimes. In the German EIO request sent by the prosecution office (the Generalstaatsanwaltschaft Frankfurt) to France was merely stated that serious crimes were allegedly committed in Germany using EncroChat devices,[76] so that the prosecution office just generally requested France to allow the use of all information transferred in German criminal proceedings.

This general approach does conflict with the preconditions set out in EIO Directive. Although Art. 1 (1) of the EIO directive only states that an investigation request must serve "to obtain evidence", Art. 4 (a) of the EIO Directive states that an EIO may be issued "in respect of criminal proceedings instituted by a judicial authority for an offence punishable under the national law of the issuing State". Pursuant to Art. 5(1)(d) of the EIO Directive, the form for the order must also contain "a description of the offence which is the subject of the investigation or proceedings". Articles 4 and 5 do not only show that an EIO requires the prior initiation of specific criminal proceedings in the issuing

74 F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 179.

75 See on the facts U. Sommer, *Encro Chat – ein Kapitel in der Geschichte des zerbröselnden europäischen Strafprozesses*, StV, 2021, pp. 67 f; see also also M.-O. Sandner, *Operation "Emma" – Eine Europäische Erfolgsgeschichte?* Duncker & Humblot: Berlin, 2026, pp. 25 ff.; T. Wahl, *Verwertung von im Ausland überwachter Chatnachrichten im Strafverfahren*, ZIS, 2021, pp. 452 f.; F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173 f.

76 OLG Karlsruhe, Beschluss v. 10 November 2021, 2 Ws 261/21, para. 20.

state but also that the EIO must relate to the clarification of a specific events.[77] Recital 10 to the EIO Directive also assumes that the issuing authority already has some detailed knowledge of the facts to be investigated. And, only if there are specific proceedings in the "requesting" state, the acting state can examine if there are grounds for refusal (immunities, privileges, protection of professional secrets and last but not least if a case has already been adjudicated) as provided for in Art. 11 of the Directive.[78] From a rule of law perspective only in specific cases it is possible to determine if measures are in accordance with human rights and are not (grossly) disproportionate.[79] Even as these grounds for refusal are optional it must be guaranteed that it is at least possible to make such a determination requiring a minimum of clear facts.

Yet, this view has not been shared by German courts[80] and, e.g., also not by the English High Court.[81] The courts assume that the reading of the directive does not exclude the exchange of data beyond specified single cases; the High Court even assumes that only a broad interpretation is appropriate in order to give effect to that purpose of the Directive which is to Directive is to enable mutual cooperation to assist investigations.[82] The view of the High Court especially completely neglects the individual aspect, that the rules of the Directive also serve to protect suspects. Altogether, this approach leaves no room for an individual proportionality test.

The aforementioned discussion is typical for the use of the European instruments that are often not clear in their scope and therefore tend to be understood by the law enforcement authorities (and often the courts) in a rather broad manner. One aspect that is often not completely clear is the question how police cooperation and legal (judicial) assistance are related to. This raises questions such as the following: The Framework Decision 2006/960/JHA on information exchange is the relevant basis for spontaneous transmission of information between law enforcement agencies. Police authorities can therefore provide information to police authorities in other states, which raises the question of whether such information can be used as evidence in criminal proceedings. In principle, however, Framework Decision 2006/960/JHA is not primarily intended for the handing over of evidence as its Art. 1 (2) states that the Framework Decision does not affect the traditional instruments of

77 See T. Wahl, *Verwertung von im Ausland überwachter Chatnachrichten im Strafverfahren*, ZIS, 2021, pp. 452, 460; F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, p. 173.

78 F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 180.

79 For details on the proportionality principle see M. Wortmann, *Die Europäische Ermittlungsanordnung in Strafsachen*, Baden-Baden: Nomos, 2020, pp. 90 ff.

80 Brandenburgisches OLG, Beschluss v. 9 August 2021, 2 Ws 113/21 (S); BGH, Beschluss v. 2 March 2022, 5 StR 457/21, paras. 56–57.

81 R (C) v. Director of Public Prosecutions & Others [2020] EWHC 2967 (Admin), para. 53 ff.

82 Ibidem, para. 57.

mutual assistance and mutual recognition. But as the Framework Decision deals with information and intelligence relevant for criminal proceedings it has a similar goal as the mutual assistance regulations. According to its Art. 7(1), law enforcement authorities may share information with the authorities of other Member States without being requested to do so if there are "concrete reasons to believe that this information and intelligence could help to solve certain criminal offences" (referring to the crimes listed in Art. 2 (2) of the European Arrest Warrant Framework Decision 2002/584/JHA). This wording of Art. 7 "certain criminal offenses" very much indicates that it is to be read that a concrete suspicion in regard to a specific offense is necessary in this constellation.[83]

Art. 7 (2) of the Framework Decision 2006/960/JHA also states that the "provision of information and intelligence shall be limited to what is deemed relevant and necessary for the successful detection, prevention or investigation of the crime or criminal activity in question". It implies that Member States are not free to share information even without reference to individual cases. Therefore, it is very questionable if the transfer of complete data packages such as in the EncroChat investigations to the foreign authorities was compatible with Art. 7 of Framework Decision 2006/960/JHA. Such a broad transfer of information under the Framework Decision is not in line with the traditional procedure that allows for the spontaneous transmission of information for a specific case where the receiving authority later requests consent to use it as evidence. This way also circumvents the stricter requirements, e.g., arising from the EIO Directive (such as the obligation to comply with the limits on use in the recipient state under Art. 6(1)(b)).[84] To that extent a mechanism is used where the (scarce) protection mechanism for the rights of individual are further undermined. The ECJ has partly recognized this situation in its EncroChat Decision of April 2024, when it clarified several aspects of the EIO Directive and especially emphasized Art. 14(7) and the right of the defense to examine evidence and

> that national criminal courts are required to disregard information and evidence if that person [the accused] is not in a position to comment effectively on that information and on that evidence and the said information and evidence are likely to have a preponderant influence on the findings of fact.[85]

83 See F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 183.

84 See also T. Wahl, *Verwertung von im Ausland überwachter Chatnachrichten im Strafverfahren*, ZIS, 2021, pp. 452, 460; F. Zimmermann, *Die Verwertbarkeit von Auslandsbeweisen im Lichte der EncroChat-Ermittlungen*, ZfIStW, 2022, pp. 173, 183.

85 See ECJ, Decision of 30 April 2024-C-670/22 (M.N. (EncroChat)), ECLI:EU:C:2024:372 and H. Meyer-Mews, *EncroChat: Spiel, Satz und Sieg für das LG Berlin*, HRRS, 2024, p. 191.

From a legal perspective, a frequent problem is that investigations in cross-border cases only partly capture the picture and thus create problems for criminal prosecutions. For example, in custom offense cases the determination of the course of the transport process is particularly important for the distinction between sect. 370, 373 AO (tax evasion in the context of professional, violent or organized smuggling) on the one hand and the less serious offense of sect. 374 AO (Receiving, holding or selling goods obtained by tax evasion) on the other during the investigation procedure. The question of whether an import operation (from a non-EU-country) has already been completed at the time of participation is especially decisive for the question of criminal liability. This is important in regard to perpetrators, who obtain tobacco products which have previously been imported into the EU by third parties in another EU Member State for the purpose of further transfer to the Federal Republic of Germany. Then, the offences of evasion of import duties or the evasion of tobacco tax is only completed when the tobacco goods have been brought to safety and "come to rest".[86] Yet, in practice in many cases, the smuggled goods are only seized and secured by customs authorities in Germany without investigating the question of how long the imported goods had already been (temporarily) stored in the other EU member state. This is unfortunate if it is ascertainable that the import procedure was already completed in the other EU member state because the persons involved in the onward transport to Germany would also be liable tax fraud with regard to import duties (in accordance with sect. 374 AO) in addition to the evasion of the German tobacco tax (sect. 370, 373 AO).[87]

Altogether, dealing with cross-border organized fraud cases requires formidable resources since the costs for personnel deployment and especially technical investigation measures such as telephone surveillance are already enormous in a national context and especially in cross-border investigations. Such investigation resource inadequacies are taken advantage of by perpetrators in a targeted manner.

3.3 Recommendation for improvement

The European framework for cooperation in criminal matters is a great advantage compared to traditional ways of international mutual assistance. It has improved the situation by introducing much more specific mechanisms and helped speeding up procedures substantially. One problem in practice is the often-unclear construction of the legal acts that leave many questions open or take a rather broad approach (raising, e.g, questions in regard to the due

86 BGH, 14 October 2015, 1 StR 521/14, Wistra, 2016, p. 74.

87 C. Bauer, *Praktische Fragen im Zusammenhang mit dem organisierten "Schmuggel" von Tabakwaren*, NZWiSt (Neue Zeitschrift für Wirtschafts-Steuer- und Unternehmensstrafrecht), 2018, p. 85.

consideration of fundamental rights etc.). Such uncertainties make the application difficult. Also, the legal European instruments do not systematically interact or build on each other. The field of police investigations and the separately dealt with field of judicial cooperation are not from one cast (in addition one can add the field of intelligence cooperation that is hardly regulated, but were a substantial amount of information for criminal proceedings stems from). This creates a substantial threat that rights of persons affected (mainly the potential perpetrator but also other persons that are targeted/affected, e.g., by secret surveillance measures) are not sufficiently clear or respected in the investigation context. Last but not least, these uncertainties can create problems for the use of evidence in criminal proceedings if the legality of foreign cooperation measure is in doubt. The ECJ's approach in the EncroChat decision is therefore to be welcomed, namely that if it is not possible to influence the decision to gather evidence (such as a secret technical surveillance measure), then at least subsequent control must be possible in criminal proceedings if findings from these surveillance measures are to be used as evidence.[88]

Beyond these legal problems, the main obstacles in practice are the lack of resources as well as the administrative and technical difficulties in working together. Again, as with the cooperation of national authorities with European institutions an effective and efficient digital infrastructure would be of great help. Common and safe digital communication channels, easy exchange of relevant documents, case files etc. would substantially help investigations and prosecutions and at least would counterbalance a bit the professional digital infrastructure of organized crime groups. This would also help connecting the large number of possible investigative authorities comprising police, prosecution service, tax and custom authorities as well as other administrative authorities.

4. Cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States

4.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member States

Cooperation with non-EU member states follows the way of traditional international mutual assistance.[89] In this regard, cooperation very much depends on bi- or multilateral agreements with the respective country. If no such agreement exists, the only way is a case-by-case request to such a foreign state

88 See ECJ, Decision of 30 April 2024, C-670/22 (M.N. (EncroChat)), ECLI:EU:C:2024:372.

89 For an instructive overview see K. M. Böhm and H. Ahlbrecht, Das Rechtshilfeverfahren, in H. Ahlbrecht, K. M. Böhm, R. Esser and F. Eckelmann (eds.), *Internationales Strafrecht*, 2nd edn., Heidelberg: C.F. Müller, 2018, para. 696 ff., pp. 192 ff.

where the cooperation then depends more or less on the sole discretion of the receiving state. To that extent, the evolution of EU legislation has the effect that there can be substantial differences between legal assistance within the EU and with non-EU countries such as the US. Yet, there is another decisive division in the legal landscape beyond EU and non-EU countries, namely if the respective state is a member of the various agreements by the Council of Europe (CoE).[90] These CoE agreements address various aspects of mutual legal assistance in criminal matters and are therefore important instruments for the cooperation with other member states. Among the most important agreements are:

- European Convention on Extradition of 13 December 1957, CETS No. 24;
- European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, ETS No. 30;
- Convention on the Transfer of sentenced Persons of 21 March 1983, CETS No. 112.

To that extent cooperation with states being member of these CoE agreements follows by now (as these agreements exist for a long time and a lot of experience could be gained) a relatively clear and reliable path.

For countries that are neither EU states nor members of the CoE agreements, the relevant legal acts are much more often to be found in bilateral agreements. Yet, the situation is often still complex, even when mutual assistance agreements exist. For example, the cooperation of Germany with the United States of America is governed by several agreements. In order to establish an EU-wide and coherent system, the EU has entered into agreements with the US. Among these, the most relevant acts are:

- Agreement on mutual legal assistance between the European Union and the United States of America (OJ L 181 19.7.2003 p. 34);
- Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences (OJ L 336 10.12.2016 p. 3).

Yet, Germany in addition still has bilateral agreements with the US, such as:

- Treaty of 14 October 2003 between Germany and the USA on Mutual Legal Assistance in Criminal Matters;[91]

90 Cooperation among EU countries, even when they are also members of Council of Europe agreements, follows EU rules, that take precedence over Council of Europe agreements.

91 See BGBl. 2007 II 1618.

- Agreement of 1 October 2008 between Germany and the US on enhancing cooperation in preventing and combating serious crime.[92]

As with international cooperation with EU states, the relevant legal basis for international cooperation in criminal matters with non-EU states is to be found in Germany in the Gesetz über die internationale Rechtshilfe in Strafsachen (IRG – International Mutual Assistance Act).[93] In addition, the various bi- and multilateral agreements apply. The IRG still – following a traditional division in international mutual assistance – differs between three different kinds of cooperation: extradition, enforcement assistance and other legal assistance. In extradition cases the request by a foreign state is dealt with in a two-step examination. The request (which can stem from diplomatic, ministerial or consular channels or be directly communicated to a judicial authority) is dealt with mostly by specially designated authorities (as the prosecutor general) in the states, as the responsible Federal Ministry of Justice has delegated the tasks to the sixteen German states (see sect. 74 IRG). The legal decision on the admissibility of the request (see sect. 13, 14 IRG) is taken by a higher regional court (Oberlandesgericht). The final decision on the enforcement of the request is again in the hands of the state authorities (mostly the prosecutor general), as this part of the procedure has also been delegated by the Federal Ministry of Justice to the states. Enforcement assistance is a bit less complex. Incoming requests are decided by the regional court (Landgericht) that – if the request is approved – "converts" the requested measure into a formal German court order (so-called Exequaturentscheidung, see sect. 48 ff. IRG). Outgoing requests are decided by a higher regional court (Oberlandesgericht, see sect. 71 (4) IRG). For other legal assistance in general – depending on the individual measure –the prosecution office that deals with the case is responsible. To that extent, no overall responsibility of one specific authority for mutual legal assistance exists, but the responsibilities are split up between a number of institutions depending on the individual measure.

4.2 Analysis of the practice of cooperation

Cooperation with non-EU states is in general a formal and slow process differing very much among the states. With states such as the US, this cooperation works well, although the complex legal framework and the formal way of cooperation make an exchange much more difficult than within the EU area.

92 See BGBl. 2009 II 1010.

93 Gesetz über die internationale Rechtshilfe in Strafsachen in der Fassung der Bekanntmachung v. 27 Juni 1994 (BGBl. I S. 1537), das zuletzt durch Artikel 21 des Gesetzes v. 12 Juli 2024 (BGBl. I S. 234) geändert worden ist; International Mutual Assistance Act in the version published on 27 June 1994 (Federal Law Gazette I, p. 1537), as last amended by Article 21 of the Act of 12 July 2024 (Federal Law Gazette I, p. 234).

Depending on the political climate, often cooperation requests are not dealt with at all or are only partly fulfilled.

An important role in international cooperation has the Federal Office of Justice (Bundesamt für Justiz) that performs important tasks for the Federal Ministry of Justice in the field of international mutual legal assistance in criminal matters. Insofar as responsibility has not been transferred to the federal states, the Federal Office of Justice is responsible in particular for deciding on the approval of incoming and outgoing criminal law requests for extradition, enforcement assistance or other legal assistance. With regard to requests within the jurisdiction of the Federal Public Prosecutor General, there are far-reaching approval powers, as well as with regard to cooperation with international or internationalized criminal courts. In addition, the Federal Office of Justice is involved in worldwide cooperation in individual cases of criminal legal assistance whenever diplomatic channels or channels to foreign ministries of justice are open. The office also participates in consultations with other states at home and abroad and is responsible for both case-related meetings with foreign colleagues and other working meetings, for example with future liaison officers of the Federal Criminal Police Office. To that extent the office has an important networking task.

One of the main tasks of the Federal Office of Justice in the area of international mutual legal assistance in criminal matters is the examination of international search requests. Following submission by the Federal Criminal Police Office, the Federal Office of Justice, in consultation with the Federal Foreign Office, decides, among other things, whether persons wanted by foreign states or international criminal courts can be entered into the German search system. Besides being a Eurojust contact point, the office also serves as a judicial contact point for other countries such as Switzerland. In addition to the annual extradition statistics, the Federal Office of Justice is responsible for an important tool for practitioners: the country section of the Guidelines for Dealings with Foreign Countries in Criminal Matters (RiVASt).[94] There, country-specific information can be found, among other things, on applicable legal bases, the course of business, the competent authorities abroad, the language regime and special formal requirements. Furthermore, the country section contains references to electronic forms and information materials provided by other countries.

For international cooperation concerning investigations in non-EU countries, Interpol plays a vital role for German authorities. The BKA is the contact point in Germany for Interpol and also supports projects and initiatives in this context, e.g. in the areas of drug trafficking, motor vehicle crime and

94 See Bekanntmachung der Neufassung der Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten (RiVASt) – Länderteil, Stand, September 2023, http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_01012017_IIB6935088.htm.

organized crime, where the office actively accompanies the project and supports them professionally and personally.

4.3 Recommendation for improvement

As mutual legal assistance with non-EU states, especially with states that are not part of a CoE agreement, is a highly complex process, split up among various institutions involved, two aspects would very much improve the situation. The first one is setting up central offices that are at least responsible for providing relevant information on mutual assistance but much better would serve as a channel for incoming and outgoing requests. These would help building up expertise on foreign jurisdictions, current developments (influencing the request for legal assistance) as well as the relevant foreign rules in questions and also allow for a coherent approach. With the Federal Office of Justice or the BKA such offices in part exist, yet the majority of judicial cases still are handled in the sixteen German states with different structures.

In the field of organized fraud, to the extent the EPPO is responsible, some centralization now exists as the German EDPs are the responsible steering partners for possible cooperation with third states (within the framework of the EPPO-Regulation). As there are only six EDPs, the traditional state borders (of the sixteen German states) do not play a major role anymore. For the cooperation with non-EU states, a structure similar to the Europeans Judicial Network (concentrating on mutual legal assistance in criminal matters) would also be of great help as information on foreign legal systems (e.g. for checks if the criterion of double criminality is fulfilled) is often scarce or difficult to obtain. Setting up digital structures could also help for speeding up the slow procedure.

The second aspect would be the improvement of the legal framework. Although bilateral agreements are better than no agreements, the example of the EU and the CoE show that a coherent international framework has great advantages. To that extent, the EU should foster its strategy to close agreements of the EU with non-EU states in order to harmonize the European landscape and also to replace the still existing (numerous) bilateral agreements. Simplifying and speeding up procedures would be one major advantage multilateral agreements could achieve. With a number of states the EU approach of building on mutual trust and mutual recognition will not work due to the lack of a rule of law-based legal system and the due respect for human rights in the non-EU country, but there are still a number of non-EU states that share the same EU values and where some of these principles of mutual trust and recognition or some comparable structures for single measures would be possible and would help build a more detailed framework for mutual cooperation.

A connected aspect concerning the legal framework would be the improvement of the legal system itself. It is a scattered system, with numerous legal acts, often restricted to a single measure. It should be an overall aim to adjust the measures to another and to integrate them into a wider approach where

mechanisms, (judicial) control and the respect of due rights for the persons affected build on each other. This is also true for the up-to-now separate systems of police cooperation, administrative cooperation and judicial cooperation.

5. Conclusions, general recommendations

A look at the structures of international mutual legal assistance in criminal matters shows that the system the EU has built up is an outstanding improvement compared to the situation still existing with non-EU countries (especially the ones that are also not part of CoE agreements). This is true despite the existing weaknesses and also the only limited scope of the EU measures. The EPPO structures are especially enabled to conduct investigations beyond the German territory without having to refer to a rather complex and slow mechanism. For a federal system such as Germany the limited centralization aspect that the EPPO structures have brought with them is not to be underestimated, as in the field of organized fraud a large number of different authorities are responsible for detecting and also investigating (and partly also prosecuting) these crimes. With the EDP and the central EPPO office, now an institution exists where German efforts and foreign investigations can come together and are bundled. This means that the EU example shows on the one hand the advantages of having one legal instrument instead of many bilateral ones and also on the other hand the value of common joint institutions helping in practice from providing information on foreign systems to getting a necessary investigation measure etc. done.

Traditionally, the international mutual assistance instruments in criminal matters have very much concentrated on judicial assistance. Yet, in many legal systems information and also evidence do stem from preventive police measures or administrative measures (and also on the basis of intelligence measures) and are exchanged not on the basis of criminal law-related instruments. Such information often becomes evidence in criminal cases, sometimes the only evidence available. In addition, the traditional instruments very much concentrate on or are restricted to assistance in single cases. In practice, due to the increasing technical (surveillance) possibilities, the exchange of bulk information has become more common, such as in the EncroChat case. Yet the exchange of bulk information, where only some of the information is relevant for criminal cases, and where often neither perpetrators nor possible offenses are clear, is quite different to assistance in a specific case on a specific measure. To that extent, legal instruments and rules are necessary that specifically regulate the exchange of such information, the use of such information in criminal proceedings and especially provide for rules for the protection of the individual as regularly not only possible perpetrators are affected but – due to the large scope of mass surveillance measures – a large number of innocent persons.

5 Vertical and horizontal cooperation in combatting organised fraud in Slovakia

Libor Klimek

1. Cooperation of the national law enforcement authorities

1.1 Presentation of national network of law enforcement authorities responsible for combatting organised fraud

In Slovak criminal law, according to the Act No. 301/2005 Coll. Criminal Proceedings Code[1] (hereinafter the "Criminal Proceedings Code"), law enforcement authorities are the *prosecutor*[2] and the *police officer*.[3] If the case concerns matter falling within the competence of the European Public Prosecutor's Office,[4] the term *prosecutor* shall mean also the chief European prosecutor, the European prosecutor, the European delegated prosecutor and the permanent chamber.[5] The basic task of law enforcement authorities is investigative, which in the pre-trial part of the proceedings consists of the detection of criminal acts and the detection of their perpetrators.

1 Act of the National Council of the Slovak Republic No. 301/2005 Coll. Criminal Proceedings Code as amended by later legislation. Details see: J. Čentéš et al., *Trestný poriadok: Veľký komentár*, 5th edn., Bratislava: Eurokódex, 2022, 1112 pages; J. Čentéš et al., *Trestný poriadok: Komentár – I. zväzok*, Bratislava: C. H. Beck, 2021, 1216 pages.

2 Special provisions are stipulated by, in particular, the Act of the National Council of the Slovak Republic No. 153/2001 Coll. on the Prosecutor's Office as amended by later legislation and the Act of the National Council of the Slovak Republic No. 154/2001 Coll. on Prosecutors and Prosecutor Candidates as amended by later legislation.

3 Special provisions are stipulated by, in particular, the Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Force as amended by later legislation.

4 Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. Official Journal of the European Union, L 283/1 of 31 October 2017.

5 Article 10(1) of the Criminal Proceedings Code.

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On the other hand, law enforcement authorities do not include courts[6] (neither national nor European).[7] The main role of the courts, as arbitrators of the dispute between the prosecution and the defence, is decision-making, i.e. only the court has the right to decide on guilt and sanction. The Criminal Proceedings Code regulated criminal proceedings as adversarial proceedings of equal parties to criminal proceedings – prosecution and defence. Parties in criminal proceedings actively present and conduct evidence. The primary task of the court is to assess the proposed and executed evidence and decide the matter. The Criminal Proceedings Code allows the activity of the court by allowing the court to conduct evidence not proposed by the parties. The court also decides on other issues, for example, proper remedies, restrictions on fundamental rights and freedoms, complaints against the prosecutor's resolution, etc.[8]

1.1.1 Prosecution office and prosecutor(s)

According to the Constitution of the Slovak Republic, the Prosecutor's Office of the Slovak Republic protects the rights and legally protected interests of natural and legal persons and of the State within its jurisdiction. It is headed by the Prosecutor General, who is appointed and dismissed by the President of the Slovak Republic on the proposal of the National Council of the Slovak Republic.[9] The Prosecutor's Office is defined as independent, hierarchically organised unified system of State bodies headed by the Prosecutor General, in which prosecutors operate in relationships of subordination and superiority.[10]

6 Special provisions are stipulated by, in particular, the Constitution of the Slovak Republic No. 460/1992 Coll. as amended by later legislation, the Act of the National Council of the Slovak Republic No. 757/2004 Coll. on Courts as amended by later legislation, the Act of the National Council of the Slovak Republic No. 385/2000 Coll. on Judges and Lay Judges as amended by later legislation, the Act of the National Council of the Slovak Republic No. 549/2003 Coll. on Court Clerks as amended by later legislation and the Act of the National Council of the Slovak Republic No. 291/2009 Coll. on Specialised Criminal Court as amended by later legislation.

7 J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Všeobecná časť*, 2nd edn., Bratislava: Wolters Kluwer, 2021, p. 136; J. Čentéš et al., *Trestné právo procesné – Všeobecná časť*, 2nd edn., Šamorín: Heuréka, 2017, p. 102.

8 J. Ivor and P. Polák and J. Záhora, *Trestné právo procesné I – Všeobecná časť*, 2nd edn., Bratislava: Wolters Kluwer, 2021, pp. 137–139.

9 Articles 150 and 151 of the Constitution No. 460/1992 Coll. See, for example: J. Drgonec, *Ústava Slovenskej republiky: Komentár*, 2nd edn., Bratislava: C. H. Beck, 2019, 1792 pages; L. Orosz et al., *Ústava Slovenskej republiky: Komentár – Zväzok 2*, Bratislava: Wolters Kluwer, 840 pages.

10 Article 2 of the Act No. 153/2001 Coll. on the Prosecutor's Office. Details see: B. Šramel, Ústavné postavenie prokuratúry SR a niektoré otázky týkajúce sa jej nezávislosti, *Justučná*

The organisational structure of the Prosecutor's Office of the Slovak Republic consists of (*i*) General Prosecutor's Office of the Slovak Republic, of which the Office of the Special Prosecutor's Office is a special part with jurisdiction over the entire territory of the Slovak Republic, (*ii*) Regional Prosecutor's Offices and (*iii*) District prosecutor's offices. The highest authority in the hierarchy of the prosecutor's office is the *General Prosecutor's Office*, headed by the Prosecutor General. In relation to other bodies of the prosecutor's office, it is in a relationship of superiority. The entire system of authorities of the Prosecutor's Office of the Slovak Republic is subordinate to the Prosecutor General. In relation to the subordinate bodies of the prosecutor's office, (s)he performs management, organisational, control and supervisory activities.[11]

As regards the performance of tasks, the General Prosecutor's Office is divided into special departments. For purposes of fraud and organised fraud (also involving their international dimension), the most important tasks are performed by the *criminal department* and the *international department*. First, the *criminal department* supervises the activities of prosecutors from the point of view of the legality of their activities in pre-trial proceedings and proceedings before courts, or other actions performed by prosecutors in criminal proceedings. Second, international cooperation in criminal matters is coordinated by the *international department*. The scope of this department includes the agenda of legal relations with foreign countries and judicial cooperation in criminal matters on the basis of mutual recognition within the European Union. The international department carries out tasks related to the coordination of the prosecution and police authorities, international organisations and judicial authorities of foreign countries.

It should be noted that a separate organisational part of the General Prosecutor's Office, which should not be overlooked in this context, is the *Special Prosecutor's Office*, which is headed by a so-called Special Prosecutor. Through the Special Prosecutor's Office, the Prosecutor General directs the activities of the Special Prosecutor's Office, and the Special Prosecutor is obliged to answer to the Prosecutor General for the performance of his/her duties. On the other hand, the Special Prosecutor's Office has an independent position in relation to the general prosecutor in matters that fall under its exclusive power. It is reflected in the fact that the general prosecutor is not authorised to influence the activities of the special prosecutor, for example, cannot order that no prosecution be instituted, no indictment be brought, no petition for remand be filed, and he cannot act as a special prosecutor. Moreover, the Office of the Special Prosecutor's Office was established in order to exercise

revue, Volume 64, Issue 1, 2012, pp. 11–25; B. Šramel, *Orgány ochrany práva a ich miesto vo verejnej správe*, Trnava: Univerzita sv. Cyrila a Metoda v Trnave, 2016, 292 pages; J. Čollák, *Organizácia súdov a prokuratúry SR: Štruktúra, postavenie a úlohy orgánov ochrany práva*, Plzeň: Aleš Čeněk, 2017, 316 pages.

11 J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Všeobecná časť*, 2nd edn., Bratislava: Wolters Kluwer, 2021, pp. 179–180.

active prosecutorial supervision over the detection, investigation and prosecution of the most serious forms of criminal activity, which include violent crime, corruption, economic crime, as well as crimes against the financial interests of the European Union. The Office of the Special Prosecutor's Office has territorial power over the entire territory of the Slovak Republic and power over matters that fall under the specific jurisdiction of the Specialised Criminal Court.[12]

The Office of the Special Prosecutor's Office is carried out in the form of prosecutorial supervision without external influence and with the specialisation of prosecutors according to individual types of crime, so that it is possible to carry out high-quality prosecutorial supervision in preliminary proceedings, as well as to represent the prosecution in court proceedings in a qualified manner. This Office is also the seat of the European Delegated Prosecutors. It should be noted that the prosecution authorities, including the Special Prosecutor's Office, are classified as repressive authorities whose entry into criminal proceedings is conditional only on a justified suspicion of the commission of a crime. The Act on the Prosecutor's Office does not grant it the authorisation, nor the procedural, personnel and material conditions for detecting criminal activity. Detection of criminal activity falls exclusively within the competence of the Police Force and its operative components.[13]

The position of the prosecutor, as an authority in criminal proceedings, is differentiated according to the stage of the criminal proceedings. While in the preliminary proceedings he is referred to as the lord of the dispute (*dominus litis*), this dominant role is limited to the stage of proceedings before the court, where he becomes a party to the dispute. In this context, it can be said that as his status changes within the individual stages of criminal proceedings, so do the powers resulting from him. In the preliminary proceedings, the prosecutor supervises the observance of the lawfulness of the procedure and activities of the police.[14]

For this purpose, the law grants him the right to participate in the performance of the actions of a police officer. In addition, the prosecutor can carry out individual actions as well as the entire investigation or abbreviated investigation in person and issue a decision in any matter,[15] or even cancel an illegal or unjustified decision of a police officer and can replace it with his own decisions.[16] As already mentioned, at the main hearing and in the proceedings before the court, the prosecutor loses the position of the mead of the dispute

12 Ibidem, pp. 190, 195.

13 Report of the Special Prosecutor on the Activities of the Office of the Special Prosecutor and Findings of the Office of the Special Prosecutor on the State of Legality in Year 2020, https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=607.

14 J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Priebeh trestného konania*, 2nd edn., Bratislava: Wolters Kluwer, 2021, p. 20.

15 Article 230(2)(c) of the Criminal Proceedings Code.

16 Article 230(2)(e) of the Criminal Proceedings Code.

and his/her position is limited to representing the prosecution before the court. Criminal prosecution before a court is possible only on the basis of a motion or indictment filed by a prosecutor who represents the indictment or motion in the proceedings before the court.[17]

1.1.2 Co-operation between national prosecution offices and the European Public Prosecutor's Office

The Prosecutor's Office of the Slovak Republic shall provide co-operation to the European Prosecutor's Office in fulfilling its tasks under the Regulation (EU) 2017/1939 on the European Public Prosecutor's Office.[18]

During the three-year preparatory period the Slovak Republic adopted several legislative measures necessary to prepare national law (legal order) in compliance with the objectives and the content of the Regulation (EU) 2017/1939 on the European Public Prosecutor's Office.[19] The national legislator – the National Council of the Slovak Republic – adopted necessary amendments of the national law by amendments of, in particular, the Criminal Code No. 300/2005[20] Coll., the Criminal Proceedings Code No. 301/2005[21] Coll., the Act No. 153/2001 Coll. on the Prosecutor's Office[22] and the Act No. 154/2001 Coll. on Prosecutors and Prosecutor Candidates.

As regards the Criminal Code No. 300/2005 Coll., its novelisation was focused on "full" implementation of the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law.[23] Since this Directive, in principle, replaced the European Union Convention on the protection of the financial interests of 1995[24] the content of national legislation of which was harmonised in the Slovak Republic, a large part of the requirements arising from the Directive were already fulfilled. The Criminal Code defines a set of criminal offenses entitled '*Damaging of the Financial*

17 Article 2(15) of the Criminal Proceedings Code.

18 Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. Official Journal of the European Union, L 283/1 of 31 October 2017.

19 See: Article 120(2) of the Regulation (EU) 2017/1939 on the European Public Prosecutor's Office.

20 Act of the National Council of the Slovak Republic No. 300/2005 Coll. Criminal Code as amended by later legislation.

21 Act of the National Council of the Slovak Republic No. 301/2005 Coll. Criminal Proceedings Code as amended by later legislation.

22 Act of the National Council of the Slovak Republic No. 153/2001 Coll. on the Prosecutor's Office as amended by later legislation.

23 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. Official Journal of the European Union, L 198/29 of 28 July 2017.

24 Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests. Official Journal of the European Communities, C 316/49 of 27 November 1995.

Interests of the European Union'.[25] These provisions are the basis for criminal prosecution for related criminal offences.

As regards the Criminal Proceedings Code No. 301/2005 Coll., a new law enforcement authority was introduced – European Prosecutor. It stipulates that law enforcement authorities are the *prosecutor* and the *police officer* and European prosecutor; if the case concerns matters falling within the competence of the European Public Prosecutor's Office, the term *prosecutor* shall mean also the chief European prosecutor, the European prosecutor, the European delegated prosecutor and the permanent chamber.[26] The objective of this legislative amendment was to achieve a situation where, for criminal law matters, the competence of the European Public Prosecutor's Office is directly regulated by national criminal legislation. This amendment was implemented by the Act No. 312/2020 Coll. on the Enforcement of Decisions on Seizure and on Administration of Seized Property,[27] which was a part of the implementation measures needed for application of the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders.[28] Both the Regulation (EU) 2017/1939 on the European Public Prosecutor's Office and the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders represent a tool for combatting criminal activity that harms the financial interests of the European Union through the confiscation of the proceeds of criminal activity. According to the explanatory memorandum to the draft Act No. 312/2020 Coll., it practically makes the national system in connection with the seizure, confiscation and management of seized and confiscated property *more efficient*.[29]

As a consequence, the investigation, the prosecution and filing of indictments in relevant criminal matters relating to damaging of financial interests of the EU, that fall within the exclusive competence of the European Public Prosecutor's Office (and which would *otherwise* fall within the competence of the bodies of the Prosecutor's Office of the Slovak Republic), were excluded from the competence of the Prosecutor's Office of the Slovak Republic based on the Regulation (EU) 2017/1939 on the European Public Prosecutor's Office. Under the Act No. 153/2001 Coll. on the Prosecutor's Office the Chief European Prosecutor, the European Prosecutor and the European Delegated Prosecutor are responsible for proceedings before all domestic courts competent for proceedings in criminal matters falling within the competence

25 Articles 261–263 of the Criminal Code.

26 Article 10(1) of the Criminal Proceedings Code.

27 Act of the National Council of the Slovak Republic No. 312/2020 Coll. on the Enforcement of Decisions on Seizure and on Administration of Seized Property.

28 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. Official Journal of the European Union, L 303, of 28 November 2018.

29 Explanatory Memorandum to the Proposal of the Act No. 312/2020 Coll. on the enforcement of decisions on seizure of and administration of seized property.

of the European Public Prosecutor's Office.[30] The Slovak Republic is currently represented by Mr. Juraj Novocký in the capacity of European Prosecutor;[31] six delegated European prosecutors operate on the territory of the Slovak Republic.

1.1.3 The Police Force and police officer(s)

The competence of the Police Force of the Slovak Republic is carried out through the *units* of the Police Force, which are (*i*) the Presidium of the Police Force, (*ii*) units with jurisdiction over the entire territory of the Slovak Republic and (*iii*) units with local jurisdiction; (*iv*) special units of the Police Force are established by the Minister of the Interior of the Slovak Republic at the proposal of the President of the Police Force (see following).[32]

As regards criminal proceedings, besides the prosecutor and European prosecutor, the other law enforcement authority in the Slovak Republic is *police officer*. Under the Criminal Proceedings Code, the term *police officer* shall mean:[33]

- an investigator of the Police Force of the Slovak Republic,
- an investigator of the Police Force of the Slovak Republic assigned to the Office of the Inspection Service, if the case concerns criminal offence(s) by members of the armed security forces, as well as criminal offences by customs officers,
- an investigator of the Financial Administration of the Slovak Republic, if the case concerns criminal offence(s) committed in connection with the violation of customs regulations or tax regulations in the area of value added tax on imports and consumption taxes,
- an authorised member of the Police Force of the Slovak Republic,
- an authorised member of the military police of the Slovak Republic in proceedings on criminal offense(s) of members of the armed forces,
- an authorised member of the Prison and Court Guard Service in proceedings on criminal offence(s) of persons serving a custodial sentence or of persons in custody,

30 Article 46(10) of the Act No. 153/2001 Coll. on the Prosecutor's Office.

31 Slovakia: European Prosecutor, https://www.eppo.europa.eu/en/slovakia.

32 Article 4(2)(3) of the Act. No. 171/1993 Coll. on Police Force. Details see: M. Vrabko et al., *Správne právo hmotné: Osobitmá časť*, 3rd edn., Bratislava: Wolters Kluwer, 2017, 344 pages; B. Cepek et al., *Správne právo hmotné: Osobitmá časť*, 3rd edn., Bratislava: Wolters Kluwer, 2017, 476 pages.

33 Article 10(7) of the Criminal Proceedings Code. Details see, for example: J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Všeobecná časť*, 2nd edn., Bratislava: Wolters Kluwer, 2021, p. 208; J. Čentéš et al., *Trestné právo procesné – Všeobecná časť*, 2nd edn., Šamorín: Heuréka, 2017, p. 195.

- an authorised employee of the Financial Administration of the Slovak Republic, if the case concerns criminal offence(s) committed in connection with the violation of customs regulations or tax regulations in the area of value added tax on imports and consumption taxes,
- a commander of a naval ship in proceedings on criminal offense(s) committed on that ship.

In principle, as regards criminal cases, the most important are the investigator of the Police Force of the Slovak Republic and the authorised member of the Police Force of the Slovak Republic. It should be noted that there is also extensive understanding of the term *police officer*. Besides the aforementioned list, under the Criminal Proceedings Code the police officer is also a representative of the competent authority of another State, an authority of the European Union or an authority created jointly by the Member States of the European Union, which is included in a joint investigation team.[34]

Police officers are authorised to perform all actions independently and personally before the initiation of criminal prosecution and during the pre-trial proceedings; the exception is an action in which the law presupposes the decision or consent of the judge for pre-trial proceedings or the prosecutor. The police officer is procedurally independent during the investigation. This means that s(he) is bound only by the Constitution of the Slovak Republic, constitutional laws, national laws and generally binding legislative laws by which the Slovak Republic is bound. On top of that, s(he) is bound also by the instructions of the prosecutor and of the court.

As regards matters of organised forms of crime and international forms of crime, which result from the international obligations of the Slovak Republic, they are performed by the Police Force of the Slovak Republic according to Act No. 171/1993 Coll. on Police Force.[35]

Among the specialised units of the Police Force of the Slovak Republic in national dimension is the *National Criminal Agency of the Presidium of the Police Force* (Slovak: *Národná kriminálna agentúra Prezídia Policajného zboru*; in Slovakia known as "NAKA"). It is responsible for criminal offences falling within the jurisdiction of the Specialised Criminal Court,[36] which includes, among others, the criminal offence entitled "*Damaging of the Financial Interests of the European Union*".[37] It should be noted that this Agency also investigates corruption criminal offences and machinations in public procurement, which are closely connected to damaging the financial

34 Article 10(8) of the Criminal Proceedings Code. Details see, for example: J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Všeobecná časť*, 2nd edn., Bratislava: Wolters Kluwer, 2021, p. 208; J. Čentéš et al., *Trestné právo procesné – Všeobecná časť*, 2nd edn., Šamorín: Heuréka, 2017, p. 203.

35 Article 1(1) of the Act. No. 171/1993 Coll. on Police Force.

36 Article 14 of the Criminal Proceedings Code.

37 Articles 261–263 of the Criminal Code.

interests of the European Union.[38] Police officers, including officers working for the National Criminal Agency of the Presidium of the Police Force, cooperate in the investigation of criminal offences damaging the financial interests of the European Union with administration bodies of the Slovak Republic, for example, the Economic Payment Agency [Slovak: *Pôdohospodárska platobná agentúra*].[39] The Agency performs administrative activities related to the provision of support and subsidies in agricultural and rural development.[40] It has the authority to impose administrative sanctions for violations of the recipients' financial discipline when handling European Union funds and State budget funds for financing joint programs of the Slovak Republic and the European Union, which are provided by the European Agricultural Fund for Rural Development and the European Agricultural Guarantee Fund. The Agency shall provide full cooperation to the National Criminal Agency of the Presidium of the Police Force, the Police Force and the prosecutor offices, in particular provide information necessary for the investigation.[41] In order to prevent corrupt practices to protect the funds of both the national and the European budget, in March 2022 the Agricultural Agency and the Financial Administration of the Slovak Republic signed the Memorandum on Cooperation.[42]

1.2 Analysis of the practice of cooperation of national law enforcement authorities (good and bad practices and experiences)

As seen, the activities of the National Criminal Agency of the Presidium of the Police Force are focused on criminal offence entitled "Damaging of the Financial Interests of the European Union" in pre-trial criminal proceedings. In 2021 this Agency registered 80 initiations of criminal investigations, of which 65 were brought against natural persons and legal entities in connection with criminal offences focused on damage to the financial interests of the European Union. The amount of the financial damages was calculated at 5,381,266 EUR.[43]

38 Report of the Special Prosecutor on the Activities of the Office of the Special Prosecutor and Findings of the Office of the Special Prosecutor on the State of Legality in Year 2020, https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=607.

39 Legal basis of the Economic Payment Agency is the Act No. 280/2017 Coll. on the Providing the Support and Subsidies in Agriculture and Rural Development.

40 Article 9(1) of the Act No. 280/2017 Coll. on Providing Support and Subsidies in Agriculture and Rural Development.

41 The PPA Provides Full Co-operation to the NAKA, the Police and the Prosecutor's Office, https://www.apa.sk/tlacove-spravy/ppa-poskytuje-plnu-sucinnost-naka-policii-a-prokurature/10747.

42 Co-operation Between the Financial Administration and the PPA Will Be Deepened, https://www.financnasprava.sk/_img/pfsedit/Dokumenty_PFS/Pre_media/Tlacove_spravy/Rok_2022/2022.03.25_TS_PPA.pdf (version of 31 August 2022).

43 Annual Report on Activities of Network Partners in the Field of Protection of EU Financial Interests in the Slovak Republic in Year 2021, https://www.vlada.gov.sk/vyrocna-sprava-

In 2020 for the criminal offence damaging of the financial interests of the European Union 59 persons were prosecuted in the Slovak Republic (34 persons in 2019). The most common way of committing this criminal activity was to pretend to fulfil the conditions by which the perpetrators achieved the provision and unauthorised payment of funds from the European Union. For this purpose, the perpetrators submitted documents that did not correspond to the reality of the use of the provided funds or falsely documented the use of the funds, which they used for a purpose other than the intended one. Another, relatively frequent way in which funds from the European Union are misused are cases where funds are provided to self-governing units for construction work, while invoicing for the work performed does not correspond to reality. In one such criminal case the damage committed to the European Union funds was at least 495,017.92 EUR.[44]

Despite the increasing trend of corruption and economic criminal cases, the number of their investigations is still low. One of the reasons is the problem of financial investigation and analytical activity in the criminal prosecution of organised groups. Already in the initial stages of criminal proceedings, analytical activity plays a significant role in connection with the analysis of financial operations and the analysis of the connection of personnel and property activities between suspected persons. The aim of these analyses is to determine whether the persons who decide on the contract could benefit from the suspicious operation. The detection and investigation of corruption schemes in public procurement or handling subsidies from the European Union budget cannot be effectively carried out without the team of investigators being strengthened by analysts, operatives and investigators.

1.3 Recommendation for improvement

There is a need for better organisation and specialisation of the investigators of the Slovak Police Force, which could contribute to a more effective investigation. For example, there are 14 investigations per investigator of the National Criminal Agency of the Presidium of the Police Force, whose scope includes investigation of corruption criminal offenses, machinations in public procurement and damaging of the financial interests of the European Union. It is therefore difficult for such an investigator, who has 14 cases open at the same time, to be able to work precisely on each investigation with the required quality. The solution to this situation and making the investigation more efficient would therefore be to reduce the number of cases for investigators, to divide

o-aktivitach-sietovych-partnerov-v-oblasti-ochrany-financnych-zaujmov-eu-v-slovenskej-republike-za-rok-2021.

44 Report of the Special Prosecutor on the Activities of the Office of the Special Prosecutor and Findings of the Office of the Special Prosecutor on the State of Legality in Year 2020, https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=607.

the relevant agenda and, with that, more rigorous specialisation of investigators for a specific criminal activity. In addition, the investigators would be assisted in their work by administrative staff who would assist the investigators with administrative work – for example, copying files.[45] The European prosecutor representing the Slovak Republic, Juraj Novocký, also pointed out the problem of understaffing of the relevant specialised units, and is leaning towards the solution of establishing specialised police units that would conduct investigations only in those cases that fall within the scope of the European Public Prosecutor's Office. On the other hand, he assesses the cooperation with law enforcement authorities as adequate with regard to the short period of time of operation of the European Public Prosecutor's Office as such.

As seen, the detection and investigation of corruption schemes in public procurement or handling subsidies from the European Union budget cannot be effectively carried out without the team of investigators being strengthened by analysts, operatives and investigators. Indeed, the creation of a separate analytical department within the Police Force of the Slovak Republic is needed. It would provide acting investigators with complete analyses, including the evaluation of so-called cover financial transfers and property transfers to related persons in an attempt to avoid the penalty of asset forfeiture. The special prosecutor's office also points out that this system is commonly used in most States of the European Union and is considered the only effective system.

2. Cooperation between national law enforcement authorities and EU institutions

2.1 National legal framework related to cooperation between national law enforcement authorities and EU institutions (Europol and Eurojust, future cooperation with EPPO, administrative and criminal authorities cooperation with OLAF)

National Headquarters of Europol

As a prerequisite for the performance of direct operational activities and cooperation with the Europol headquarters, Europol member States and other entities cooperating with Europol, the *National Headquarters of Europol* [Slovak: Národná ústredňa Europolu] was established in the Slovak Republic. It is part of the Office of International Police Cooperation of the Presidium of the Police Force of the Slovak Republic.[46]

The legal basis for cooperation with Europol is the Regulation of the Minister of the Interior of the Slovak Republic on International Police Cooperation Carried Out Through the National Headquarters of Europol[47] of 2012.

45 Ibidem.

46 National Headquarter EUROPOL, https://www.minv.sk/?europol.

47 Regulation of the Minister of the Interior of the Slovak Republic of 16 January 2012 on International Police Cooperation Carried Out Through the National Headquarters of Europol. See

To strengthen cooperation in the fight against serious forms of international criminal activity between the Slovak Republic and the Member States of the European Union through Europol, the *Agreement on Cooperation between the Slovak Republic and Europol*[48] was signed in 2003. For the purposes of this Agreement the competent authorities responsible for the prevention and fight against criminal activity are, for example, the authorities of the Slovak Police Force, the Ministry of the Interior of the Slovak Republic, the Ministry of Justice of the Slovak Republic and the Prosecutor's Office.

National Member of Eurojust

In order to ensure the effective participation of the Slovak Republic in Eurojust, Act No. 383/2011 Coll. on the Representation of the Slovak Republic in Eurojust was adopted in 2011.[49] By this Act was implemented the Decision 2009/426/JHA on the strengthening of Eurojust[50] [replaced and repealed by the Regulation (EU) 2018/1727 on the European Union Agency for Criminal Justice Cooperation (Eurojust)].[51] According to this Act, the Slovak Republic is represented in Eurojust by a national member. The national member is a *prosecutor* who is appointed by the Minister of Justice of the Slovak Republic after negotiations with the Prosecutor General of the Slovak Republic and has at least 10 years of experience in the field of criminal law and possesses professional and language knowledge and the necessary experience. Assistance and support in the performance of Eurojust's tasks are provided to the national member by law enforcement authorities, courts or other State authorities.[52]

To ensure the coordination of tasks between national authorities that perform or cooperate in the performance of Eurojust's tasks and Eurojust, a *national coordination system* was established. It is made up of national reporters, which are: the national reporter for Eurojust from the General Prosecutor's Office, the national reporter for Eurojust from the Ministry of Justice, and in the capacity of national reporter for Eurojust for matters of terrorism, there is also a prosecutor

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also: Prehľad platných interných predpisov Ministerstva vnútra Slovenskej republiky, https://www.minv.sk/swift_data/source/images/prehlad-platnych-predpisov-mvsr.pdf.

48 Agreement between the Slovak Republic and the European Police Office on Cooperation. Available as Announcement of the Ministry of Foreign Affairs of the Slovak Republic No. 299/2004 Coll.

49 Act of the National Council of the Slovak Republic No. 383/2011 Coll. on Representation of the Slovak Republic in Eurojust.

50 Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime. Official Journal of the European Union, L 138/14 of 4 June 2009.

51 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. Official Journal of the European Union, L 295/138 of 21 November 2018.

52 Article 13(1)(2) of the Act No. 383/2011 Coll. on Representation of the Slovak Republic in Eurojust.

from the Special Prosecutor's Office. Furthermore, the national coordination system consists of at most three contact points of the European Judicial Network and members or contact points, which are the contact person for the fight against corruption (representative of the Office for the Fight Against Corruption of the Presidium of the Police Force), a network of joint investigation teams and networks of cooperation at European Union level. The national coordination system cooperates with the national member in conveying information to Eurojust that is necessary for the performance of its tasks, helps to determine whether the case falls within the competence of Eurojust or the European Judicial Network and it assists the national member to determine the jurisdiction of the authorities for handling requests for judicial cooperation.[53]

Department National Office for OLAF

The protection of the financial interests of the European Union in the Slovak Republic is ensured and coordinated by the Office of the Government of the Slovak Republic – according to the Act No. 575/2001 Coll. on the Organisation of Government Activities and the Organisation of the Central State Administration,[54] the Act No. 528/2008 Coll. on Aid and Support Provided from European Community Funds,[55] and the Act No. 292/2014 Coll. on the Contribution Provided from the European Structural and Investment Funds.[56]

As part of the Government Office of the Slovak Republic, the mentioned tasks are delegated to the inspection section, whose organisational unit is the *Department National Office for OLAF*. Its task is to ensure the protection of the financial interests of the European Union through legislative, administrative and operational activities and cooperation with the relevant state and public administration bodies participating in the protection. Cooperating authorities at the national level together belong to the AFCOS network (Anti-Fraud Coordination Structure). The network partners are the authorities and institutions that are responsible for the management, control and audit of the expenditure and income of the European Union budget, as well as with the authorities and institutions responsible for the recovery procedures, the imposition of sanctions and the punishment of the perpetrators of illegal activities related to the damage to the financial interests of the EU.[57]

53 Article 9 of the Act No. 383/2011 Coll. on Representation of the Slovak Republic in Eurojust.

54 Act of the National Council of the Slovak Republic No. 575/2001 Coll. on the Organisation of Government Activities and the Organisation of the Central State Administration as amended later.

55 Act of the National Council of the Slovak Republic No. 528/2008 Coll. on Aid and Support Provided from European Community Funds as amended by later legislation.

56 Act of the National Council of the Slovak Republic No. 292/2014 Coll. on the Contribution Provided from the European Structural and Investment Funds as amended by later legislation.

57 Department National Office for OLAF, https://www.olaf.vlada.gov.sk/odbor-narodny-urad-pre-olaf/?csrt=13798750721902963566.

To coordinate the active cooperation of the partners of the AFCOS network, the *Managing Committee for the Protection of the Financial Interests of the European Union in the Slovak Republic* was established. The Managing Committee supervises the implementation of the national strategy for the protection of the financial interests of the European Union in the Slovak Republic, the objective of which is to adopt the measures for protection against frauds damaging the financial interests of the European Union. The Managing Committee is also responsible for coordinating network partners in the area of protecting the financial interests of the European Union,[58] as well as ensuring cooperation between network partners in the area of fraud risk analysis. The Managing Committee establishes working groups that present the results of their activities in the form of opinions and recommendations to the Committee.[59]

As far as network partners are concerned, for example, the Public Procurement Office participated in a systemic reform to ensure the acceleration and simplification of public procurement, which shall be in accordance with European law and the principles of the rule of law. The Ministry of Finance of the Slovak Republic actively participates in the fight against corruption and fraud as a network partner involved in the system for the protection of European Union financial interests in cooperation with OLAF.[60]

2.2 Analysis of the practice of cooperation

In general, the cooperation between Slovak national law enforcement authorities and Eurojust is assessed positively and there are no serious legal or practical problems. The prosecutors of the Slovak Republic process foreign requests promptly and within one month, while the average period is four months.

In 2021, cooperation took place between the Department National Office for OLAF and OLAF in 29 cases. The cooperation and coordination provided mainly regarding the provision of information and documentation by the

58 The network partners in the field of protection of the financial interests of the European Union in the Slovak Republic, who cooperate within the Managing Committee, include: the Office of the Government of the Slovak Republic, the Ministry of Finance, the Ministry of Transport and Construction, the Ministry of Economy, the Ministry of Agriculture and Rural Development, the Ministry of the Interior, the Ministry of Justice, the Ministry of the Environment, the Ministry of Culture, the Ministry of Labour, Social Affairs and Family, the Ministry of Education, Science, Research and Sports, the Ministry of Health, the Financial Directorate, the Office for Public Procurement, the Supreme Audit Office, the General Prosecutor's Office, the National Bank of Slovakia, the Slovak Information Service, the Bratislava self-governing region, the Antimonopoly Office, the Ministry of Investments, Regional Development and Informatisation.

59 Article 3 of the Statute of the Managing Committee for the Protection of the Financial Interests of the European Union in the Slovak Republic.

60 Department Central Contact Unit for OLAF, https://www.mfsr.sk/sk/media/tlacove-spravy/odbor-centralny-kontaktny-utvar-olaf.htm.

Department National Office for OLAF necessary for the administrative investigation, and the implementation of on-site inspections as part of the administrative investigation carried out by OLAF. Of the 29 investigation cases, 19 of them related to an administrative investigation and 10 cases related to the verification of information necessary to decide whether an administrative investigation will be carried out.

Representatives of the Department National Office for OLAF are part of the European Union Council's Anti-Fraud Working Group and the Advisory Committee of the European Commission for the Coordination of Fraud Prevention (COCOLAF). They regularly participate at its meetings. The Department National Office for OLAF has an obligation to OLAF to report irregularities at the national level. In the Slovak Republic, a system for reporting irregularities has been created for this purpose, where criminal prosecutions are conducted in connection with the commission of any of the criminal acts damaging the financial interests of the EU.[61]

Within the framework of mutual cooperation, the individual partners of AFCOS are obliged to fulfil the tasks arising from the Action Plan for the national strategy for the protection of the financial interests of the European union in the Slovak Republic. These tasks are differentiated into individual areas and are aimed at the prevention, detection, investigation and prosecution of fraud and the subsequent recovery of illegally obtained funds of the European Union and the imposition of sanctions in the Slovak Republic.[62]

In some cases, the Slovak Republic faces problems with obtaining information within the framework of the provision of legal assistance from certain States, which they were unable to obtain even in cooperation with Eurojust.

2.3 Recommendation for improvement

Even though the Slovak Republic has implemented the European Union requirements on Eurojust into national law, in some cases, such as direct communication between prosecutors and foreign judicial authorities, it remains only in the theoretical framework and has not been able to be bridged into everyday practice. Regarding the problem of insufficient utilisation of the office of the national member of Eurojust, it would be a positive contribution if the activity of the national member of Eurojust was perceived as an "everyday option", not only as a "last possible alternative". The Slovak Republic should also consider the role of the General Prosecutor's Office, which is in a central position between the Slovak judicial authorities and the national

61 Annual Report on Activities of Network Partners in the Field of Protection of EU Financial Interests in the Slovak Republic in Year 2021, https://www.vlada.gov.sk/vyrocna-sprava-o-aktivitach-sietovych-partnerov-v-oblasti-ochrany-financnych-zaujmov-eu-v-slovenskej-republike-za-rok-2021.

62 Action Plan for the National Strategy for the Protection of the Financial Interests of the European Union in the Slovak Republic of 4 June 2019.

member of Eurojust. Instead of processing the request through the General Prosecutor's Office, prosecutors should make more use of the possibility of direct contact with Eurojust, which would increase the efficiency, speed and clarity of processing requests, as well as the efficiency of Eurojust's activities, while the coordinating role of the Prosecutor's Office would remain preserved.

3. Cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States

3.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from other EU Member States

The fundamental legal framework governing international judicial cooperation in criminal matters, including judicial cooperation in criminal matters based on mutual recognition, include: bilateral international agreements and multilateral international agreements, Part V of Slovak Criminal Proceedings Code entitled "*Legal Relations with Foreign Countries*", and National acts implementing secondary legislation of the European Union, i.e. its framework decisions and directives.

Under Slovak Criminal Proceedings Code an international agreement shall mean only an international agreement to which the Slovak Republic is bound.[63] It means that not all international agreements are applicable in criminal matters, in particular cross-border cases. Applicable are, for example: the Agreement with Bulgaria on Legal Assistance and Regulation of Legal Relations in Civil, Family and Criminal Matters[64] of 1976, the Agreement with the Czech Republic on Legal Assistance and on Certain Legal Relations in Civil and Criminal Matters[65] of 1992, the Agreement with Poland on Legal Assistance in Civil, Family, Labour and Criminal Matters[66] of 1987, and the Agreement with Austria on Police Co-operation[67] of 2004.

Slovak Criminal Proceedings Code regulates itself so-called *subsidiary jurisdiction*, i.e. the situations where it shall be applied if the international

63 Article 447(a) of the Criminal Proceedings Code.

64 Agreement between the Socialist Republic of Czechoslovakia and the People's Republic of Bulgaria on Legal Assistance and Regulation of Legal Relations in Civil, Family and Criminal Matters of 25 November 1976.

65 Agreement Between the Slovak Republic and the Czech Republic on Legal Assistance Provided by Judicial Authorities and the Regulation of Certain Legal Relations in Civil and Criminal Matters with the Final Protocol of 29 October 1992.

66 Agreement Between the Czechoslovak Socialist Republic and the Polish People's Republic on Legal Assistance on the regulation of Legal Relations in Civil, Family, Labour and Criminal Matters of 21 December 1987.

67 Agreement Between the Slovak Republic and the Republic of Austria on Police Co-Operation of 13 February 2004.

agreement does not stipulate specific situation and therefore it is applicable to extend the international agreements, since they are not applicable.[68] These situations are, for example:[69] e*xtradition* cases (extradition proceedings and issuing an international arrest warrant; extradition of a person to a foreign state and requesting a person from a foreign state), *legal assistance* (providing legal assistance to foreign authorities of a foreign state and requesting legal assistance in a foreign state), *cross-border cases* (transfer of criminal case to a foreign state; taking over a criminal case from a foreign state), *foreign criminal decisions* (recognition and enforcement of decisions issued by foreign courts, transfer of decision enforcement to a foreign state); taking over and handing over a convicted person to serve a custodial sentence (imprisonment); taking over and handing over the execution of a suspended custodial sentence with supervision.

As regards national acts implementing secondary legislation of the European Union, the most important national acts in the area of mutual recognition[70] (part of the judicial co-operation in criminal matters in the European Union) are:[71]

- the *Act No. 154/2010 Coll. on the European Arrest Warrant*[72] implementing the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States,[73] which introduced the European arrest warrant and regulates surrender proceedings at the European Union level;
- the *Act No. 650/2005 Coll. on the Execution of Order Freezing Property or Evidence in the European Union*[74] implementing the Framework Decision 2003/577/JHA on the execution of orders freezing property or

68 Article 478 of the Criminal Proceedings Code.

69 M. Kordík, *Právny styk s cudzinou*, Bratislava: Nakladatelství C. H. Beck, 2017, p. 17; J. Ivor, P. Polák and J. Záhora, *Trestné právo procesné I – Priebeh trestného konania*, 2nd edn., Bratislava: Wolters Kluwer, 2021, p. 372 et seq.

70 Details see: L. Klimek, *Mutual Recognition of Judicial Decisions in European Criminal Law*, Cham: Springer, 2017, 742 pages.

71 L. Klimek, J. Klátik, Ľ. Saktorová and M. Mihók, *Recognition of Foreign Criminal Sanctions*, Prague: Leges, 2021, p. 23 et seq.; L. Klimek, *Zákon o európskom zatýkacom rozkaze: Komentár*, Bratislava: Wolters Kluwer, 2019, p. 53 et seq.; L. Klimek, *Zákon o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii. Komentár*, Bratislava: Wolters Kluwer, 2022, p. 19 et seq.

72 Act of the National Council of the Slovak Republic of 9 March 2010, No. 154/2010 Coll. on the European Arrest Warrant as Amended by Later Legislation.

73 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Communities, L 190/1 of 18 July 2002.

74 Act of the National Council of the Slovak Republic of 13 December 2005, No. 650/2005 Coll. on the Execution of Order Freezing Property or Evidence in the European Union as Amended by Later Legislation.

evidence[75] – the main objective of the Framework Decision is to establish the rules under which a Member State of the European Union shall recognise and execute in its territory an Order freezing property or evidence issued by a judicial authority of another Member State in the context of criminal proceedings;

- the *Act No. 183/2011 Coll. on Recognition and Execution of Financial Penalties in the European Union*[76] implementing the Framework Decision 2005/214/JHA on the mutual recognition of financial penalties[77] – it applies the principle of mutual recognition to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating enforcement of such penalties in a Member State other than the one in which the penalties were imposed;
- the *Act No. 549/2011 Coll. on the Recognition and Enforcement of Decisions Imposing Criminal Sanction Involving Deprivation of Liberty in the European Union*[78] implementing the Framework Decision 2008/909/JHA on the mutual recognition of custodial sentences and deprivation of liberty[79] – its objective is to extend the principle of mutual recognition between Member States of the European Union to judgements in criminal matters that impose a custodial sentence or a measure involving the deprivation of liberty;
- the *Act No. 533/2011 Coll. on the Recognition and Enforcement of Judgments Imposing Penal Sanction Not Involving Deprivation of Liberty or Probation Measures with a View to the Supervision in the European Union*[80] implementing the Framework Decision 2008/947/JHA on

75 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. Official Journal of the European Union, L 195/45 of 2 August 2003.

76 Act of the National Council of the Slovak Republic of 1 June 2011, No. 183/2011 Coll. on Recognition and Execution of Financial Penalties in the European Union as Amended by Later Legislation.

77 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 76/16 of 22 March 2005.

78 Act of the National Council of the Slovak Republic of 2 December 2011, No. 549/2011 Coll. on the Recognition and Enforcement of Decisions Imposing Criminal Sanction Involving Deprivation of Liberty in the European Union as Amended by Later Legislation.

79 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 327/27 of 5 December 2008.

80 Act of the National Council of the Slovak Republic of 2 December 2011, No. 533/2011 Coll. on the Recognition and Enforcement of Judgments Imposing Penal Sanction Not Involving Deprivation of Liberty or Probation Measures with a View to the Supervision in the European Union as Amended by Later Legislation.

mutual recognition of probation measures and alternative sanctions[81] – it lays down rules under which a Member State of the EU, other than the Member State in which the person concerned has been sentenced, recognises judgments and probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment;

- the *Act No. 161/2013 Coll. on the Transmission, Recognition and Enforcement of Decisions on Supervision Measures as an Alternative to Detention in the European Union*[82] implementing the Framework Decision 2009/829/JHA on the European supervision order[83] – it lays down rules according to which one Member State of the European Union recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures;
- the *Act No. 398/2015 Coll. on the European Protection Order in Criminal Matters*[84] implementing the Directive 2011/99/EU on the European protection order[85] – it sets out rules allowing a judicial or equivalent authority in a Member State of the EU, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger their life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State;

81 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 337/102 of 16 December 2008.

82 Act of the National Council of the Slovak Republic of 22 May 2013, No. 161/2013 Coll. on the Transmission, Recognition and Enforcement of Decisions on Supervision Measures as an Alternative to Detention in the European Union as Amended by Later Legislation.

83 Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Official Journal of the European Union, L 294/20 of 11 November 2009.

84 Act of the National Council of the Slovak Republic of 12 November 2015, No. 398/2015 Coll. on the European Protection Order in Criminal Matters.

85 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. Official Journal of the European Union, L 338/2 of 21 December 2011.

- the *Act No. 236/2017 Coll. on the European Investigation Order in Criminal Matters*[86] implementing the Directive 2014/41/EU on the European investigation order,[87] which introduced the European investigation order as a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State to obtain evidence;

It should be noted that in the area of mutual recognition Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders was also adopted;[88] this regulation lays down the rules under which a Member State of the European Union recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters. Since it is regulation adopted by the EU, no implementation is needed in the Slovak Republic.

The agenda of legal relations with foreign countries and judicial co-operation in criminal matters is generally carried out by prosecutors and courts. As regards prosecutors, it is executed by prosecutors at the General Prosecutor's Office, at regional prosecutors' offices and at district prosecutors' offices – they are specialists based on the Instruction of the Prosecutor General of the Slovak Republic No. 8/2015 on the Specialisation of Prosecutors for Legal Relations with Foreign Countries.[89] As regards courts, the agenda is executed by judges at competent courts – the Supreme Court of the Slovak Republic, regional courts and district courts.

3.2 Analysis of the practice of cooperation

In principle, the agenda of legal relations with foreign countries works, but it is not perfect. For example, the extradition procedure is common for all competent authorities. On the contrary, the area of judicial cooperation in criminal matters, introduced by the European Union, has shortcomings.

86 Act of the National Council of the Slovak Republic of 6 September 2017, No. 236/2017 Coll. on the European Investigation Order in Criminal Matters.

87 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European investigation order in criminal matters. Official Journal of the European Union, L 130/1 of 1 May 2014.

88 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. Official Journal of the European Union, L 303/1 of 28 November 2018.

89 Instruction of the Prosecutor General of the Slovak Republic No. 8/2015 of 20 October 2015 on the Establishment of the Specialisation of Prosecutors for Legal Relations with Foreign Countries and International Judicial Cooperation in Criminal Matters. See also: Report of the Prosecutor General of the Slovak Republic on the Activities of the Prosecutor's Office in Year 2020 and on the Knowledge of the Prosecutor's Office on the State of Legality in the Slovak Republic, https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=606.

As regards joint investigation teams introduced by the European Union, Slovak national legislation regulating their establishment sets out an overly formalised procedure. According to this procedure, the representative of the law enforcement authority, as the head of intended joint investigation team, has the obligation to conclude an agreement on its creation and to discuss it with the Minister of Justice of the Slovak Republic. In practice, this has the effect of prolonging the process and thus also "defeating" the purpose of the joint investigation team; in the worst cases, it leads to the failure of criminal proceedings in individual matter. This fact was also pointed out by Jaromír Čižnár, former Prosecutor General of the Slovak Republic, during his statement on the investigation into the murder of a well-known Slovak journalist and his girlfriend. In his statement, he said, "In a record short time, within a few weeks, while *it usually takes half a year*, it was possible to establish an international investigation team. I personally participated in its creation in negotiations with foreign partners at Eurojust" (emphasis added).[90] Moreover, a serious practical problem of joint investigation teams is that members of such teams do not have language skills – particularly in English; precise criminal law terminology skills are also far from fluent.

As regards mutual recognition of judicial decisions, the European Arrest Warrant is considered a successful tool. In practice, the European Arrest Warrant is a successful instrument of mutual recognition. The time for handing over requested persons to another State of the European Union has been shortened compared to extradition. On the contrary, as regards the concept of the free movement of evidence in criminal matters, which the European Union has been trying to introduce in recent past, the instruments of mutual recognition – the order freezing property or evidence in the European union and the European evidence warrant – have definitely not improved it, since they have made cooperation very complicated. They should be replaced by the European Investigation Order.[91] The mechanism of mutual recognition of confiscation orders also appears to be ineffective.

It should be noted that national authorities, or their representatives, in many cases have minimal or no knowledge of European Union law. On the one hand, this is logical, since many of them do not have a legal education; if they have it, in the past, European Union law was not taught at law universities as it is these days. These are mainly states that joined the European Union later – including the Slovak Republic. On the other hand, the younger generation of lawyers is not very interested in knowing European Union law. These

90 His Statement About Hell Has Been Made Common: Čižnár Regrets How It Is Interpreted, https://www.ta3.com/clanok/1167295/jeho-vyrok-o-pekle-zludovel-ciznaramrzi-ako-ho-interpretuju.html.

91 L. Klimek, *Zákon o európskom zatýkacom rozkaze: Komentár*, Bratislava: Wolters Kluwer, 2019, p. 66 et seq.; L. Klimek, *Zákon o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii. Komentár*, Bratislava: Wolters Kluwer, 2022, p. 38 et seq.

circumstances have caused many national authorities to have poor knowledge of European Union law.[92]

3.3 Recommendation for improvement

As seen, the mechanism of mutual recognition of judicial decisions in the European Union at the level of the national legal order of the Slovak Republic is regulated by special laws. These are special laws in relation to the Criminal Proceedings Code. We are of the opinion that the adoption of special laws for the purposes of mutual recognition of judicial decisions in criminal matters, as is the case in Slovakia, is not the most suitable method for introducing instruments of mutual recognition. Our argumentation is based on the main idea that all the instruments of this mechanism should be regulated by one comprehensive law of the nature of the code.[93]

To support our opinion the tradition of Slovak criminal law as a codified branch of law in codes can be illustrated. In addition to that, the most important thing is the impact on application practice. The main codes of Slovak criminal law are the Criminal Code and the Criminal Proceedings Code. Although in the national legal order a considerable number of other laws regulating criminal law issues can be found, the most fundamental and key codes are still Criminal Code and the Criminal Proceedings Code, as the law enforcement authorities work primarily with these laws. In the area of procedural law, the Criminal Proceedings Code is dominant. With the gradual adoption of procedural instruments of mutual recognition of judicial decisions, the standards of procedural law are fragmented, which makes criminal proceedings unclear. It is desirable to accept the fact that criminal proceedings are currently influenced by European elements, which are the instruments of mutual recognition of judicial decisions. Currently, special mutual recognition laws are perceived as "secondary laws" in addition to the Criminal Proceedings Code. However, this is not an appropriate perception. Thus, there should be two procedural codes of criminal law in the Slovak Republic, namely the Criminal Proceedings Code and a law regulating police and judicial cooperation in criminal matters between European Union member states.[94]

The Ministry of Justice of the Slovak Republic presented the idea of preparing a draft law that would comprehensively regulate both the entire area of legal relations with foreign countries regulated by Part V of the Criminal Proceedings Code, as well as the entire cooperation in criminal matters in the EU, including issues related to these areas. After its adoption, it should be a

92 L. Klimek, *Základy trestného práva Európskej únie*, Bratislava: Wolters Kluwer, 2017, p. 52.

93 L. Klimek, *Zákon o európskom zatýkacom rozkaze: Komentár*, Bratislava: Wolters Kluwer, 2019, p. 67; L. Klimek, *Zákon o uznávaní a výkone rozhodnutí, ktorými sa ukladá trestná sankcia spojená s odňatím slobody v Európskej únii. Komentár*, Bratislava: Wolters Kluwer, 2022, p. 41.

94 Ibidem.

law in the form of a code. Considering the fact that the preparation of a law in the form of a code is a time-consuming task, it is unreal to estimate when such a law would be adopted and would come into force. The Ministry of Justice of the Slovak Republic set itself the objective to prepare and introduce the first draft of the "Act on Judicial Cooperation in Criminal Matters" by the end of December 2021. That's what happened. However, we dare to state that the proposed legislation successfully ignores the solution of legislative and practical problems, which have been known for years, have been discussed at conferences for years, and have been published in the literature.

4. Cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States

4.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member States

Cooperation between the Slovak Republic and non-member states of the European Union has been implemented through international agreements. The Slovak Republic (as a State within the former federation with the Czech Republic, i. e. as part of the former Czechoslovakia) has concluded bilateral agreements with such states regarding international cooperation in criminal matters; many such agreements regulate not only criminal issues, but also civil issues. For example: Agreement with Afghanistan on Legal Assistance in Civil and Criminal Matters[95] of 1981, Protocol with Yugoslavia on Legal Relations in Civil, Family and Criminal Matters[96] of 1964, Agreement with Cuba on Mutual Legal Assistance in Civil, Family and Criminal Matters[97] of 1980 or Agreement with Mongolia on Legal Assistance and on Legal Relations in Civil, Family and Criminal Matters[98] of 1976.

The Slovak Republic entered the contractual obligations of the former Czecho-Slovak Federative Republic pursuant to Article 153 of the "new" Constitution of the Slovak Republic, which stipulates that all rights and obligations resulting from international treaties are transferred to the Slovak Republic by which the Czecho-Slovak Federative Republic is bound to the

95 Agreement between the Czechoslovak Socialist Republic and the Afghan Democratic Republic on Legal Assistance in Civil and Criminal Matters of 24 June 1981.

96 Protocol between the Slovak Republic and Montenegro to the Treaty between the Czechoslovak Socialist Republic and the Yugoslav Socialist People's Federative Republic on the Regulation of Legal Relations in Civil, Family and Criminal Matters of 20 January 1964.

97 Agreement between the Czechoslovak Socialist Republic and the Republic of Cuba on Mutual Legal Assistance in Civil, Family and Criminal Matters of 18 April 1980.

98 Agreement between the Czechoslovak Socialist Republic and the Mongolian People's Democratic Republic on the Providing the Legal Assistance and on Legal Relations in Civil, Family and Criminal Matters of 15 October 1976.

extent established by the constitutional law or to the extent agreed between the Slovak Republic and the Czech Republic.[99]

In addition to the mentioned bilateral agreements, legal relations with the non-member States of the European Union are also regulated by international agreements concluded between, on the one hand, the EU, and on the other hand, non-member States within the framework of mutual assistance in criminal matters; this system allows the member States of the EU, including the Slovak Republic, to establish direct contact with such States with a request for assistance.[100] Examples are the Agreement with the United States of America on Mutual Legal Assistance[101] of 2003 and the Agreement with Japan on Mutual Legal Assistance[102] of 2010.[103]

A prerequisite for the establishment of a joint investigation is a bilateral agreement, a multilateral agreement or a national legislation – in the Slovak Republic it is the Criminal Proceedings Code. An example of a bilateral agreement, applicable for Slovak purposes, is the Agreement with the United States of America on Mutual Legal Assistance of 2003, or even the United Nations Convention against Transnational Organised Crime[104] of 2000.

The Slovak Republic establishes cooperation with non-member States of the European Union through Eurojust. In the field of judicial cooperation in criminal matters with third States, a national member, a representative of a national member or an assistant of a national member may be sent by the Eurojust as a liaison representative of Eurojust to a third State. The secondment is subject to the approval of the national member and the approval of the Minister of Justice of the Slovak Republic after prior consultation with the General Prosecutor of the Slovak Republic.[105]

99 Constitutional Act No. 542/1992 Coll. on the Dissolution of the Czech and Slovak Federal Republic.

100 L. Klimek, *Základy trestného práva Európskej Únie*, Bratislava: Wolters Kluwer, 2017, pp. 186, 197–198.

101 Agreement on Mutual Legal Assistance between the European Union and the United States of America. Official Journal of the European Union, L 181/34 of 19 July 2003.

102 Agreement between the European Union and Japan on Mutual Legal Assistance in Criminal Matters. Official Journal of the European Union, L 39/20 of 12 February 2010.

103 See also: Announcement of the Ministry of Foreign Affairs of the Slovak Republic No. 28/2010 Coll. – Legal Instrument between the Slovak Republic and the United States of America Pursuant to Article 3(3) of the Agreement between the European Union and the United States of America on Mutual Legal Assistance of 25 June 2003.

104 J. Záhora and I. Šimovček, *Zákon o európskom vyšetrovacom príkaze v trestných veciach: Komentár*, Bratislava: Wolters Kluwer, 2020, p. 192.

105 Council of the European Union (2018): Evaluation report on the sixth round of mutual evaluation: "Practical implementation and application of Council Decision 2002/187/JHA of 28 February 2002 establishing Eurojust to strengthen the fight against serious crime and Council Decision 2008/976/JHA on the European Judicial Network in Criminal Matters", report on the Slovak Republic of 22 January 2018.

4.2 Analysis of the practice of cooperation

According to the experience of the Slovak Republic, the involvement of Eurojust in cases connected with third States represents an added value. Representatives of the Slovak Republic in Europol has exceptionally good experience, for example, in cooperation with the representatives of Norway and the United States of America;[106] in the past also Croatia (the times when Croatia was not a Member State of the European Union).

5. Conclusions

In principle, the system works, but it is not perfect. On the one hand, the legislative framework to combat organised fraud in the European Union exists. On the other hand, its practical application faces challenges, which need to be resolved.

As seen, there is a need for better organisation and specialisation of the investigators of the Slovak Police Force, which could contribute to a more effective investigation. For example, there are 14 investigations per one investigator of the National Criminal Agency of the Presidium of the Police Force, whose scope includes investigation of corruption criminal offenses, machinations in public procurement and damaging of the financial interests of the European Union. It is therefore difficult for such an investigator, who has 14 cases open at the same time, to be able to work precisely on each investigation with the required quality. The solution to this situation and making the investigation more efficient would therefore be to reduce the number of cases for investigators, to divide the relevant agenda and, with that, more rigorous specialisation of investigators for a specific criminal activity.

Further, even though the Slovak Republic has implemented the European Union requirements on Eurojust into national law, in some cases, such as direct communication between prosecutors and foreign judicial authorities, it remains only in the theoretical framework and has not been able to be bridged into everyday practice. To the problem of insufficient utilisation of the office of the national member of Eurojust, it would be a positive contribution if the activity of the national member of Eurojust was perceived as an "everyday option", not only as a "last possible alternative".

Furthermore, the mechanism of mutual recognition of judicial decisions in the European Union at the level of the national legal order of the Slovak Republic is regulated by special laws. These are special laws in relation to the Criminal Proceedings Code. We are of the opinion that the adoption of special laws for the purposes of mutual recognition of judicial decisions in criminal matters, as is the case in Slovakia, is not the most suitable method for introducing instruments of mutual recognition. Our argumentation is based on the main idea that all the instruments of this mechanism should be regulated by one comprehensive law of the nature of the code.

106 Ibidem.

6 From national to international cooperation in combatting organized fraud

Current situation in Romania

Sergiu Bogdan

1. Cooperation of the national law enforcement authorities

1.1 Presentation of national network of law enforcement authorities responsible for combatting organized fraud

When it comes to combatting organized fraud in Romania, there are a series of authorities responsible for combatting fraud. We will present in the next paragraphs the most important authorities which are implicated in combating the organized fraud phenomenon affecting the financial interests of the Union in Romania.

The European Public Prosecutor's Office is one of the institutions which has responsibility in combatting organized fraud. In accordance with Regulation 2017/1939, at this moment the European Public Prosecutor's Office shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law.

In accordance with Article 15 from Law no. 6/2021, the work carried out by the European Public Prosecutor's Office in Romania shall be actively supported by all the competent national authorities under the EPPO Regulation, in particular by the criminal investigation bodies of the judicial police of the Ministry of the Interior, the Department for the Fight against Fraud, the National Tax Administration Agency, the authorities responsible for the management of European funds and other institutions responsible for the protection of the financial interests of the European Union in Romania, the Ministry of Justice and the Ministry of Finance.

When it comes to the national structure of EPPO, Article 16 from Law no. 6/2021 states that in application of the EPPO Regulation, a Support Structure for European Prosecutors seconded to Romania shall be set up within the National Anticorruption Department, which shall operate with a maximum of 20 posts, including 5 posts for officers and forensic police officers, 8 posts for specialists, 5 posts for specialised auxiliary staff (court clerks) and 2 posts for related staff (drivers). The support structure provided for in the last paragraph

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is composed of a central office, organized within the central structure of the National Anticorruption Department, and 3 territorial offices, organized within the territorial services of the National Anticorruption Department from Cluj, Iași and Timișoara. The staff referred to in the last paragraphs shall work in the central office and in the territorial offices, depending on the workload of the delegated European Public Prosecutors working within these structures.

Regarding the competence of the European Public Prosecutor's Office, according to Article 22 from Regulation no. 2017/1939, the EPPO shall have jurisdiction regarding offences affecting the financial interests of the Union, which are provided for in Directive (EU) 2017/1371 as transposed into national law, regardless of whether the same criminal conduct could be classified as another type of offence under national law. As regards the offences referred to in Article 3(2)(d) of Directive (EU) 2017/1371, as transposed into national law, the EPPO shall have jurisdiction only where the intentional acts or inactions defined in that provision relate to the territory of 2 or more Member States and involve a total damage of at least EUR 10 million. Also, European Public Prosecutor's Office shall also have jurisdiction for offences relating to participation in a criminal organization, as defined in Framework Decision 2008/841/JHA, as implemented into national law, where the main criminal activity of such a criminal organization is to commit any of the offences referred to in paragraph 1. The EPPO shall also have jurisdiction in respect of any other offence which is inextricably linked to criminal conduct falling within the scope of paragraph 1 of this Article. Jurisdiction in respect of such offences may only be exercised in accordance with Article 25 (1).[1]

It is important to mention that according to the second paragraph of the Article 24 from Regulation 2017/1939, where a criminal offence that falls within the scope of Article 22 caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the EPPO may only exercise its competence if the case has repercussions at Union level which require an investigation to be conducted by the EPPO or officials or other servants of the Union, or members of the institutions of the Union could be suspected of having committed the offence.

Another institution which has responsibilities in combatting organized fraud is the National Anticorruption Department. This institution represents a structure with legal personality, within the Prosecutor's Office of the High Court of Cassation and Justice, regulated by Emergency Ordinance no. 43/2002.[2] It is important to mention that the Chief Prosecutor of the Prosecutor's Office of the High Court of Cassation and Justice leads the National Anticorruption Department through the Chief Prosecutor of this Department.

1 See also A. Şandru, M. Morar, D. Herinean and O. Predescu, *Parchetul European. Reglementare. Controverse. Explicații*, București: Ed. Universul Juridic, 2021, pp. 78–88.

2 G. Mateuț, *Procedură penală. Partea generală*, București: Ed. Universul Juridic, 2019, p. 215.

In accordance with Article 6 from Law no. 43/2002, the National Anticorruption Department is staffed with prosecutors, judicial police officers and agents, specialists in the economic, financial, banking, customs, IT and other fields, specialist auxiliary staff, as well as economic and administrative staff, within the limit of the posts provided for in the staff regulations.

Regarding the competence of the National Anticorruption Department, Article 13 from Law no. 43/2002 states that the National Anticorruption Department is responsible for investigating the offences provided in Law no. 78/2000 committed under one of the conditions provided by the same article.[3] In the first case, National Anticorruption Department has competence to investigate the offences provided in Law no. 78/2000 if, regardless of the quality of the persons who committed the offences, a material damage exceeding the equivalent in RON of EUR 200,000 has been caused or if the value of the sum or property forming the object of the corruption offence exceeds the equivalent in RON of EUR 10,000.

In the second case, the National Anticorruption Department is competent if, irrespective of the amount of the material damage or the value of the sum or property forming the object of the corruption offence, they are committed by: Members of Parliament; Senators; Members of the European Parliament from Romania; the member appointed by Romania to the European Commission; members of the Government, Secretaries of State or Undersecretaries of State and their equivalents; advisers to Ministers; judges of the High Court of Cassation and Justice and of the Constitutional Court; other judges and prosecutors; members of the Superior Council of Magistrates; the President of the Legislative Council and his deputy; the People's Advocate and his deputies; presidential advisers and state advisers in the Presidential Administration; state advisers to the Prime Minister; members and external public auditors of the Court of Accounts of Romania and of the county chambers of accounts; the Governor, First Deputy Governor and Deputy Governors of the National Bank of Romania; the President and Vice-President of the Competition Council; officers, admirals, generals and marshals; police officers; presidents and vice-presidents of county councils; mayors and vice-mayors of Bucharest; mayors and vice-mayors of the districts of Bucharest; mayors and vice-mayors of municipalities; county councillors; prefects and sub-prefects; heads of central and local public authorities and institutions and persons with supervisory functions within them, with the exception of heads of public authorities and institutions at the level of towns and communes and persons with supervisory functions within them; lawyers; commissioners of the Financial Guard; customs officers; persons working in managerial positions, including directors, of autonomous state-owned companies, state-owned enterprises, banks and companies in which the State has a majority holding, public institutions

3 D. Ciuncan, *Prevenirea, descoperirea și sancționarea faptelor de corupție. Legea nr. 78 din 8 mai 2000*, 3rd edn., București: Ed. Universul Juridic, 2017, pp. 133–134.

involved in privatisation and central financial-banking units; persons referred to in Art. 293[4] and 294[5] of the Romanian Criminal Code.

It this context, it is important to mention that Law no. 78/2000 provides the offences committed against the European Union interest, transposing therefore Directive (EU) 2017/1371.

In accordance with Article 18[1] from Law no. 78/2000, the use or presentation of false, incorrect or incomplete documents or statements, where the act results in the unlawful obtaining or retention of funds or assets from the budget of the European Union or budgets managed by, or on behalf of the European Union, shall be punishable by a term of imprisonment of 2 to 7 years and a ban on the exercise of certain rights.

The second paragraph from the same article states that with the penalty provided for in the first paragraph shall be punishable the offence of knowingly failing to provide the data required under the legal provisions for obtaining or withholding funds or assets from the budget of the European Union or budgets administered by it or on its behalf if the act results in the unlawful obtaining or withholding of such funds or assets.

Also, in accordance with the first paragraph from Article 18[2] from Law no. 78/2000, any misappropriation of funds or assets obtained or retained from the budget of the European Union or budgets managed by it or on its behalf shall be punishable by imprisonment for a term of 1 to 5 years and disqualification from exercising certain rights.

Second paragraph from the same article states that changing, without complying with the legal provisions, the destination of a legally obtained benefit, if the act results in the unlawful reduction of resources from the budget of the European Union or from the budgets administered by it or on its behalf, shall be punishable by the penalty provided for in the first paragraph.

According to the third paragraph, if the acts referred to in the first and second paragraphs have produced particularly serious consequences, the special punishment limits shall be increased by half. In accordance with Article 183 from the Romanian Criminal Code, serious consequences mean material damage exceeding 2,000,000 lei.

As we mentioned earlier, it is important to take into consideration that, in accordance with Regulation 2017/1939, at this moment the European Public Prosecutor's Office shall be competent in respect of the criminal offences

4 Persons who, based on an arbitration agreement, shall be called upon to issue a ruling with respect to a case entrusted to them for settlement by the parties to that agreement, irrespective whether the arbitration proceedings are carried out based on the Romanian law or based on another law.

5 Article 294 mention the following persons, unless the international agreements that Romania is party to provide otherwise: a) officials or persons who carry out their activity based on a labour agreement or other persons with similar duties in an international public organization that Romania is party to; b) members of parliamentary assemblies of international organizations that Romania is party to.

affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law.

In conclusion, at this moment the competence of National Anticorruption Department when it comes to offences regarding the European Union is limited to the following offences:[6] cases concerning offences against the financial interests of the EU committed before 19.11.2017, regardless of the date of the referral, cases concerning offences provided for in Articles 18^1 to 18^4 of Law No. 78/2000 if the damage caused is less than EUR 10.000 or if the damage caused is less than 10.000 euro and the commission of the acts does not involve European component (repercussions at EU level, involvement of officials, etc.) or agents of the EU, according to Article 25 of the Regulation), cases concerning offences under Article 18^5 of Law No 78/2000- offences committed from culpable offences (Article 18^5 provides that is punishable by imprisonment from 6 months to 3 years or a fine the director, manager or person with decision-making or supervisory powers within an economic operator shall be guilty of an intentional breach of an official duty by failing to carry out his duties or by failing to carry them out properly, if the act resulted in the commission by a person under his authority and acting on behalf of that economic operator of one of the offences referred to in Article 2(1)(b) of Directive 2004/109/EC. 18^1 – 18^3 or the commission of an offence of corruption or money laundering in connection with European Union funds).

The National Anticorruption Department has also competence to investigate cases in which, even though the EPPO has jurisdiction (damage greater than 10.000 euro but less than 100.000 euro), they are not evoked by the EPPO according to EPPO's internal rules of procedure which lay down certain criteria relating to the age of the investigation, the relevance of the case, its complexity, how well positioned the EPPO is to continue the investigation, etc.

Also, cases which would fall within the competence of the EPPO, but the Deputy European Public Prosecutor did not raise them within the deadline maximum of 10 days, fall within the competence of the National Anticorruption Department.

The institution is also competent regarding the cases not referred by the EPPO – in cases where the maximum penalty prescribed by law for an offence is greater than or equal to the maximum penalty prescribed for an offence against EU financial interests or the damage caused to a national victim is greater than that caused by European' offence.

It is important to mention that cases in which the EPPO has withdrawn the case because the specific conditions are no longer met for the exercise of

6 Report on the work of the National Anti-Corruption Directorate for 2021, p. 71, http://www.pna.ro/obiect2.jsp?id=535.

its jurisdiction, cases concerning offences which have caused less than EUR 100 000 in damage, and general guidelines drawn up by the College of EPPO have enabled the Permanent Chambers to assess that it is not necessary to investigate a particular case at European level and cases referred by the Permanent Chambers, according to the same general guidelines drawn up by the EPPO College, where the damage caused by an offence against the financial interests of the EU is less than that caused to another victim (national budget) also falls within the competence of the National Anticorruption Department.

The third institution which must be mentioned is the Romanian Public Ministry. The Romanian Public Ministry operates under the principle of hierarchical subordination (functioning therefore in a pyramidal structure) and under the authority of the Ministry of Justice.[7] According to Romanian Criminal Code of Procedure, the prosecution is carried out by the Public Ministry (the prosecutor has to be from Prosecutors' office corresponding to a Tribunal) for money laundering offences and tax evasion offences provided by Article 9 of Law No. 241/2005 on preventing and combating tax evasion. The offences of creation of an organized offense group (Art. 367 Romanian Criminal Code), Illegal monetary gain (Art. 306 Romanian Criminal Code) and Embezzlement (Art. 307 Romanian Criminal Code) must also be investigated by a prosecutor from the Prosecutors' office corresponding to a Tribunal.

It is important to mention that if the scope of the organized offense group is representing by an offence against the budget of the European Union, the competence is attributed to the EPPO by Regulation no. 2017/1939.

Also, when it comes to offences of tax evasion, the EPPO is competent only when the intentional acts or inactions defined in that provision relate to the territory of two or more Member States and involve a total damage of at least EUR 10 million.

When it comes to the money laundering offence, the competence is either attributed to the Public Ministry or to the EPPO (to the latest if the assets which are laundered originate from the commission of offences affecting the financial interests of the European Union).[8]

Another institution which has responsibilities in combating organized fraud is the Romanian liaison body with the European Anti-Fraud Office – OLAF is the Anti-Fraud Department – DLAF, a structure with legal personality within the working apparatus of the Government, coordinated by the Prime Minister.

7 M. Udroiu (coord.), *Codul de procedură penală. Comentariu pe articole*, 3rd edn., București: Ed. C.H. Beck, 2020, p. 155.

8 A. Șandru, M. Morar, D. Herinean and O. Predescu, *Parchetul European. Reglementare. Controverse. Explicații*, București: Ed. Universul Juridic, 2021, pp. 67–70.

The Department fulfils several functions: it coordinates the fight against fraud, detects irregularities, fraud and other illegal activities, elaborates the normative and institutional framework, and represents Romania in advisory committees, working groups and similar bodies in the matter of protection of the financial interests of the European Union.

The Department receives reports from the European Anti-Fraud Office or from other sources or reports ex officio on possible irregularities, fraud or other activities affecting the financial interests of the European Union.

The department carries out administrative investigations, on-the-spot checks, analyses and document reviews.

DLAF is regulated by Law no. 61/2011. In accordance with Article 2 from Law no. 61/2011, the Department shall ensure, support and coordinate, where appropriate, the fulfilment of Romania's obligations relating to the protection of the European Union's financial interests, in accordance with Article 325 of the Treaty on the Functioning of the European Union. Also, the Department shall be the contact institution with the European Anti-Fraud Office – OLAF of the European Commission.

The DLAF has a series of attribution in investigating offences against the budget of European Union. For example, in accordance with Article 10 from Law no. 61/2011, the Department shall act as an investigating authority within the meaning of Article 61 of the Code of Criminal Procedure in respect to acts which may constitute offences against the financial interests of the European Union in Romania. Also, the Department may, at the request of the public prosecutor, carry out checks on compliance with the legal provisions on the protection of the European Union's financial interests.

Also, in accordance with Article 12 from Law no. 61/2011, in order to clarify matters subject to control action, the Department may request financial and fiscal control bodies, specialized bodies of the central public administration or public institutions subordinated to the Government or ministries with competence in specialized administrative control to carry out checks and controls in their field of activity. When drawing up the act of control, the Department may use the acts of the bodies and institutions referred to in the last paragraph.

At the same time, at the request of the Department, the police, gendarmerie or other law enforcement bodies shall be obliged to assist the inspection team in the performance of its duties.

The National Office for Preventing and Combating Money Laundering is another institution which has responsibilities in combating organized fraud. This structure is regulated by Law no. 129/2019. In accordance with Article 34 from Law no. 129/2019, the Office shall analyze and process the information and, where indications of money laundering or terrorist financing are found, shall immediately inform the Public Prosecutor's Office of the High Court of Cassation and Justice. According to the second paragraph, the Office

shall immediately inform the Romanian Intelligence Service of suspected terrorist financing operations. The third paragraph of Article 34 from Law no. 129/2019 states that the Office shall inform the criminal prosecution authorities and, where appropriate, other competent authorities of suspected offences other than money laundering or terrorist financing.[9]

Of course, taking into consideration the subject of the present research, the role of the National Office for Preventing and Combating Money Laundering can be especially important when the money intended to be laundered derived from an offence committed against the Union budget or budgets managed by the Union.

The National Tax Administration Authority can also have a role in the process of identifying crimes of organized fraud.

For example, in accordance with Article 132 from Law no. 207/2015, the tax inspection body shall be obliged to refer to the competent judicial authorities any findings made during the tax inspection which may constitute elements of a criminal offence, under the conditions laid down by criminal law. Also, Law no. 207/2015 states that in the situations referred to in the first paragraph the tax inspection body shall be obliged to draw up a report signed by the tax inspection body and the taxpayer/payer subject to inspection, with or without explanations or objections from the taxpayer/payer. If the person subject to tax inspection refuses to sign the report, the tax inspection body shall record this in the report. In all cases, the taxpayer/payer shall be notified of the report. The report drawn up in accordance with para. (2) shall constitute a report and shall form the basis of the documentation for referral to the prosecuting authorities.

The National Integrity Agency is regulated by Law no. 176/2010, and it also has some responsibilities in combating organized fraud. In accordance with Article 17, integrity inspector's evaluation report shall be communicated within 5 days of its completion to the person who has been the subject of the evaluation activity and, where appropriate, to the tax, criminal prosecution and disciplinary bodies, as well as to the wealth investigation commission provided for in Law no. 115/1996 on the declaration and control of the wealth of dignitaries, magistrates, persons with managerial and control functions and civil servants, with subsequent amendments and additions, as well as those introduced by this Law. The tax and prosecution bodies shall designate persons responsible for relations with the Agency, who shall ensure that specific procedures are initiated urgently and with priority within them.

9 See also M. A. Hotca and E. Hach, *Legea nr. 129/2019 pentru prevenirea și combaterea spălării banilor și finanțării terorismului, precum și pentru modificarea și completarea unor acte normative. Comentariu pe articole*, 2nd edn., București: Ed. Universul Juridic, 2021, pp. 210–213.

1.2 Analysis of the practice of cooperation of national law enforcement authorities (good and bad practices and experiences)

In 2021, DLAF transmitted to DNA/other prosecutors' offices 137 control notes, 82 minutes of referral to the prosecution authorities and 6 information addresses.[10]

A first example of good practice is represented by the existence of the minimum limit of damage (200,000 EURO) that must be met for an offence to attract the investigative competence of the National Anticorruption Department. In this respect, we believe that the regulation is welcome, as the National Anticorruption Department can focus on investigating more serious and complex offences.

Also, in accordance with DLAF's Annual Activity Report for 2021, DLAF is a member of the independent authorities and anti-corruption institutions and, as such, constantly reports the internal anti-corruption mechanisms evolution, shares best practices with the other institutions and participates in the regular meetings of the Cooperation Platform, organized and coordinated by the Ministry of (according to the DLAF's Annual Activity Report for 2021, during the reporting period, electronic consultations were conducted and the Cooperation Platform meetings were held in videoconference format). DLAF also contributed to the drafting of the National Anti-Corruption Strategy (SNA) 2021–2025 (approved by GD No 1269/2021), through specific measures to achieve the general objective: "Strengthening institutional management and administrative capacity for preventing and combating corruption".[11]

On the other hand, during 2021, DLAF was involved in a series of international events in the field of protection of interests and in related areas providing support to the achievement of the institutional functions and objectives of the Department as a means of training anti-fraud training.

For example, DLAF participated to[12] the International seminar within the project "RAISA – Raising awareness and improving working methods of actors involved in the fight against intra-EU procurement fraud affecting the EU budget", implemented by Dolj County Police Inspectorate, funded by the European Anti-Fraud Office, through Hercule programme (held on 29 September – 1 October 2021 in Brasov) and to the online workshop "Fraud case management against EU financial interests – Modern techniques and methods in financial investigation" within the project "Enhancing the effectiveness of investigations in complex fraud and corruption cases against EU financial interests", implemented by the National Anticorruption Directorate, funded by the European Anti-Corruption Office (OLAF). European Anti-Fraud Office through the Hercule Programme (held 9–11 June 2021).

10 DLAF, *Annual Activity Report for 2021*, p. 55, https://antifrauda.gov.ro/w/wp-content/uploads/2022/03/2022_30_03_Raport_de_activitate_DLAF_2021_.pdf.

11 Ibidem, p. 10.

12 Ibidem, pp. 14–18.

Also, DLAF participated to the closing online conference of the project "Capacity Building of the Technical Secretariat of the National Anti-Corruption Strategy 2016–2020 to support implementation of anti-corruption measures", implemented by the Ministry of Justice, through the Programme Operational Programme for Increasing Administrative Capacity on 17 March 2021.

As an example of bad practice, there are situations in national practice where the Public Ministry starts the investigation of certain fraud conducts concerning the European Union budget only after approximatively 3 years after they have been referred by DLAF (Anti-fraud Department).

1.3 Recommendation for improvement

As a first recommendation, the judicial authorities should no longer wait for a long period of time (years) to start investigating the conducts referred to them by DLAF. Except in some particular situations which are justified, the passing of a long period of time between the referral of the case by DLAF and the beginning of the investigation may prejudice the proper administration of justice and the efficiency of the prosecution.

Considering the complexity of the phenomenon of organized fraud (especially concerning funds coming from European Union budgets), we consider that the organizing of seminars to provide continuous training for people working for the institutions involved in the fight against organized fraud would be beneficial for the national authorities.

At the same time, to better coordinate and facilitate communication between national institutions responsible for combating organized fraud, we believe that events should be organized more often for these national institutions. By organizing more conferences and workshops, all the institutions which have a role in investigating organized fraud will have the opportunity to analyze the main problems that exist in terms of communication. By involving as many institutions as possible with such responsibilities in these events, we believe that certain solutions to specific communication problems could be identified faster.

2. Cooperation between national law enforcement authorities and EU institutions

2.1 National legal framework related to cooperation between national law enforcement authorities and EU institutions (Europol and Eurojust, future cooperation with EPPO, administrative and criminal authorities cooperation with OLAF)

In the following, we will analyze the legal framework that applies to all the aforementioned institutions.

When it comes to Europol, the legal framework governing cooperation with Europol is currently provided by Law No. 56/2018, which establishes

the legal regime applicable to cooperation activities between the Romanian authorities and Europol, carried out in accordance with the provisions of Regulation (EU) 2016/794.

In accordance with the provisions of this law, the following Romanian authorities are designated to cooperate with Europol: the Ministry of Internal Affairs (through the Romanian Police, the Romanian Border Police, the General Department for Internal Protection, the General Inspectorate for Immigration, the Romanian Gendarmerie, the General Anti-Corruption Department), the Ministry of Public Finances (through the National Fiscal Administration Agency), the Romanian Intelligence Service, the National Public Prosecutors' Office, the Courts, the National Office for the Prevention and Combating of Money Laundering, the Ministry of the Environment (through the National Environmental Guard) and the Ministry of Justice (through the National Agency for the Management of Seized Goods).

Regarding the cooperation channels with Europol, the Europol National Unit within the General Inspectorate of the Romanian Police – the International Police Cooperation Centre – has been designated as a national unit within the meaning of Art. 7 para. (2) of the Europol Regulation.

The main responsibilities of the National Unit are providing Europol with the information necessary to fulfil the objectives set out in Art. 3 of the Europol Regulation, responding to requests for data, information and advice from Europol, addressing such requests to Europol, exchanging information with liaison officers from other Member States.

As for the Romanian liaison officers, they are police officers appointed by the Minister of Internal Affairs, on the proposal of the General Inspector of the Romanian Police and they represent the interests of the Europol National Unit within Europol, in accordance with Romanian legislation and the provisions applicable to Europol.

The Law also contains provisions on the exchange of information with Europol, which is carried out through the Europol National Unit and the competent Romanian authorities. As a general rule, communication shall take place via the Europol National Unit, except in special situations, determined by the need to ensure the rapid exchange of data and information, when the Romanian authorities shall provide Europol directly with the data and information available at their level.

Finally, the law also regulates the participation of Europol staff in joint investigation teams operating on Romanian territory and the protection of personal data in the framework of cooperation with Europol.

It should also be mentioned that the law in question, adopted in 2018, was not amended to consider the provisions of Regulation (EU) 2022/991 amending Regulation (EU) 2016/794.

When it comes to Eurojust, the cooperation with this structure is regulated by Government Emergency Ordinance no. 123/2007 on certain measures to strengthen judicial cooperation with the Member States of the European Union.

It mainly regulates aspects related to the activity of the Romanian national member in Eurojust, such as the appointment, the termination of the mandate, the main attributions, the possibility to have an assistant, etc. The national member is appointed by order of the Minister of Justice from among prosecutors with experience in combating serious forms of transnational organized crime, corruption or terrorism.

The Minister of Justice also appoints the Eurojust national correspondents for terrorism, organized crime and corruption from among the prosecutors of the Public Prosecutor's Office attached to the High Court of Cassation and Justice.

The same ordinance also regulates the relations between Eurojust and the Romanian authorities, establishing the obligation of all public authorities and institutions to cooperate with Eurojust.

As a rule, Eurojust communicates directly with the competent Romanian judicial body.

Requests for Eurojust to intervene, as well as information on the establishment and operation of joint investigation teams on the territory of Romania and on the existence of criminal cases being investigated in Romania which would have repercussions in the European Union or a Member State, are transmitted through the national member of Eurojust.

Finally, the Regulation lays down the procedure for taking over criminal proceedings initiated in another Member State of the European Union at the request of the Eurojust College or the national member of Eurojust.

In relation to OLAF, the Romanian liaison body with the European Anti-Fraud Office is the Anti-Fraud Department – DLAF, a structure with legal personality within the working apparatus of the Government, coordinated by the Prime Minister.

The Department fulfils several functions: it coordinates the fight against fraud, detects irregularities, fraud and other illegal activities, elaborates the normative and institutional framework and represents Romania in advisory committees, working groups and similar bodies in the matter of protection of the financial interests of the European Union.

We analyzed the DLAF institution in the first section; therefore, we will remind readers that the Department receives reports from the European Anti-Fraud Office or from other sources or reports ex officio on possible irregularities, fraud or other activities affecting the financial interests of the European Union.

In case of detecting irregularities in the obtaining or use of European funds, the Department submits the control act to the authorities responsible for the management of the funds and to the relevant ministries for them to fulfil their obligations.

If the irregularities are of a criminal nature, the Department shall inform the public prosecutor's office and shall submit the control act.

At the request of the public prosecutor, the Department may carry out controls on compliance with the provisions of the law on the protection of the European Union's financial interests.

When it comes to EPPO, Law No. 6 of 18 February 2021 introduces measures for the enforcement of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO").

The normative act regulates the technical aspects necessary for the effective functioning of the European Public Prosecutor's Office in Romania and establishes measures to harmonize the provisions of the internal rules with those of the European Public Prosecutor's Office Regulation, such as those on criminal procedure or those on international cooperation in criminal matters.

The law contains provisions on the judicial procedure for informing the European Public Prosecutor in cases where, during the criminal investigation, the public prosecutor discovers elements relating to an offence under the jurisdiction of the European Public Prosecutor.

The law also includes provisions to facilitate judicial cooperation in criminal matters and provisions on the organization of the European Public Prosecutor's Office in Romania.

The work of the European Public Prosecutor's Office in Romania is actively supported by all the competent national authorities, in accordance with the European Public Prosecutor's Office Regulation, in particular by the criminal investigation departments of the judicial police within the Ministry of Internal Affairs, the Anti-Fraud Department (DLAF), the National Agency for Tax Administration, the managing authorities of European funds and other bodies responsible for protecting the European Union's financial interests in Romania, the Ministry of Justice and the Ministry of Finance.

In accordance with the EPPO Regulation, the Support Structure for the European Public Prosecutors Delegated to Romania has been set up within the National Anti-Corruption Department and is made up of judicial police officers, experts, auxiliary specialists and support staff.

2.2 Analysis of the practice of cooperation

According to EPPO's annual report for the year 2021,[13] the Romanian authorities have submitted 336 reports/complaints to the EPPO. European Public Prosecutor's Office decided to exercise jurisdiction in 60 of the cases. In 291 cases, EPPO decided not to exercise the jurisdiction. As of 01.06.2021, DLAF has forwarded to the European Public Prosecutor's Office 18 EPPO offence reports. Also, in relation to the same reference period, the EPPO European Public Prosecutor's Office has forwarded to the Department a total of 9 referrals.[14]

13 EPPO Annual Activity Report for 2021, p. 50, https://www.eppo.europa.eu/sites/default/files/2022-08/_EPPO-Annual-Report-2021-RO.pdf.

14 DLAF, *Annual Activity Report for 2021*, p. 56, https://antifrauda.gov.ro/w/wp-content/uploads/2022/03/2022_30_03_Raport_de_activitate_DLAF_2021_.pdf.

On the other hand, according to DLAF's Annual Activity Report for 2021,[15] DLAF has acted to put in place the appropriate administrative tools for a prompt response to specific mission of EPPO and the overall objective of protecting the European Union's financial interests, and has taken steps to ensure cooperation with the institutions involved at national level in the coordination, management and control of EU funds, respectively: has put in place administrative arrangements at DLAF level to support interinstitutional dialogue aiming to enable a more rapid exchange of views and best practices in this area and has created a flow of information between the competent national authorities and has updated the cooperation protocols in force.

Regarding the cooperation with Eurojust, in 2021 the Romanian Desk of Eurojust was involved in 520 new cases, 64 coordination meetings, 7 coordination centres, and 46 joint investigation teams.[16]

When it comes to the cooperation with OLAF, as we indicated earlier, the Romanian liaison body with the European Anti-Fraud Office – OLAF is the Anti-Fraud Department (DLAF).

According to the DLAF Report for 2021, in the majority of cases, DLAF – OLAF operational cooperation has been the provision of mutual technical assistance, consisting of the exchange of information and data on suspected irregularities or fraud affecting EU financial interests in Romania, and on the progress of cases controlled by DLAF or the state of criminal investigations.[17]

In 2021, the Anti-Fraud Department has forwarded to the authorities responsible for managing European funds and OLAF a total of 228 Notes to the Financial Regulation control notes and 95 information addresses. In 2021, as the contact institution in Romania, DLAF centralized and sent to OLAF 2890 irregularity-related reports (683 initial reports, 1733 update reports, 79 cases cancelled, 388 cases closed and 7 cases reopened).[18]

As an example of bad practice, according to the OLAF report 2021, under EU law, when requested by OLAF, national judicial authorities must send the office information on any action taken based on its judicial recommendations. According to the report, for OLAF recommendations issued between 2017 and 2021, around 35% of the cases that OLAF has transmitted to national judicial authorities and on which those authorities have already taken a decision have led to indictments. Unfortunately, from the report we can see that Romania has an indictment rate of 42%.[19]

15 Ibidem, p. 13.

16 https://www.eurojust.europa.eu/states-and-partners/member-states/romania.

17 DLAF, *Annual Activity Report for 2021*, p. 60, https://antifrauda.gov.ro/w/wp-content/uploads/2022/03/2022_30_03_Raport_de_activitate_DLAF_2021_.pdf.

18 Ibidem, p. 61.

19 OLAF Annual Activity Report for 2021, p. 51, https://anti-fraud.ec.europa.eu/system/files/2022-09/olaf-report-2021_en.pdf.

When it comes to the relation between DLAF and Eurojust, according to DLAF Report for 2021, the Head of DLAF is an EUROJUST National Correspondent and participated in meetings of the members of the Eurojust National Coordination System to strengthen cooperation with the Member States of the European Union.[20]

Also, as an example of good practice,[21] DLAF participated in the 7th Reunion of the Members of the National Coordination with EUROJUST, organized by DIICOT.

DLAF also participated to the Webinar Coffee Talks EUROPOL – CEPOL "Trends of Serious Organised Crime and Law Enforcement Cooperation", organized by CEPOL in collaboration with Europol.

2.3 Recommendation for improvement

Given the complexity of the phenomenon of organized fraud, especially organized fraud which regards funds from European Union budgets, we believe that the organization of seminars for the continuous training of people involved in these institutions (which fight against organized fraud) would be beneficial for national authorities. We believe that the organization of seminars presenting the tasks of each of these institutions and how they operate and communicate would be useful. At the same time, we believe that workshops should also be organized where all (or most of) these institutions could identify the existent problems regarding the cooperation between the national authorities and the analyzed structures and therefore they could settle action plans for better institutional cooperation.

Also, the second recommendation addresses the need for the legislator to intervene to link the provisions on the competence of the national bodies with the competence of the European Public Prosecutor's Office.

3. Cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States

3.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from other EU Member States

Cooperation in criminal matters between the Romanian authorities and their counterparts in the member states is regulated by Law No. 302/2004. The scope of the law includes forms of cooperation such as the European arrest

20 DLAF, *Annual Activity Report for 2021*, p. 9, https://antifrauda.gov.ro/w/wp-content/uploads/2022/03/2022_30_03_Raport_de_activitate_DLAF_2021_.pdf.

21 Ibidem, pp. 16–17.

warrant, transfer of proceedings in criminal matters, mutual legal assistance in criminal matters, recognition of judgments, transfer of sentenced persons, etc.

Regarding the investigation and prosecution of criminal offences, including organized fraud, Chapter II of Title VIII of the Law, entitled "Provisions on judicial assistance applicable in relations with the Member States of the European Union", contains regulations on the application of several EU instruments.

In relation to the subject of this study, we should take also take into consideration the provisions on the application of Directive 2014/41/EU on the European investigation order in criminal matters, provided for in art. 328 et seq. of the Law.

When Romania is the issuing State, the European investigation order is issued during the criminal proceedings by the prosecutor conducting or supervising the criminal investigation or by the competent judge. When Romania is the executing State, the recognition and execution of a European investigation order are the competence of the prosecutor's office or the court.

The competence to perform the tasks of the central authority is exercised by the Public Prosecutor's Office, through specialized structures in the case of European investigation orders relating to the activity of criminal investigation and prosecution.

The European investigation order is translated and sent directly to the competent authority in the executing State.

The prosecutor and the courts ensure the execution of the order in the same way as if the investigative measure had been ordered by a Romanian authority.

If the European investigation order issued during the criminal investigation phase refers to measures that, according to Romanian law, fall within the competence of the Judge of Rights and Freedoms, the competent Prosecutor's Office will notify the judge in order to recognize the European investigation order.

The Romanian executing authority shall, whenever possible, resort to a measure other than that provided for in the European investigation order if the investigative measure indicated in the European investigation order is not provided for by Romanian law or if the investigative measure could not be ordered in a similar domestic case under Romanian law.

The recognition or execution of the European investigation order may be postponed if its execution could interfere with a criminal investigation or an ongoing criminal trial, or if the objects, documents or data covered by the European investigation order are already being used in other proceedings.

The Regulation also contains special provisions, such as the use of undercover agents and the surveillance of telecommunications.

Law No. 302/2004 contains provisions for the application of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters and its Protocol of 16 October 2001. These provisions enable the Romanian authorities, at the request of the authorities of a Member State, to identify the bank accounts

held in a Romanian bank by a person who is the subject of a criminal investigation, if the investigation concerns, inter alia, offences against the financial interests of the Union.

At the same time, at the request of the authorities of a Member State, the Romanian authorities will provide details of banking operations previously carried out and will monitor banking operations carried out through certain accounts for a specified period.

Last but not least, the Law also includes Provisions on cooperation with the member states of the European Union in the application of Framework Decision 2003/577/JAI on the execution of orders for the non-disposal of goods or evidence and Framework Decision 2006/783/JAI on the application of the principle mutual recognition of confiscation orders. Law no. 302/2004 also regulates the application of Framework Decision 2002/584/JAI on the European arrest warrant, in art. 84 et seq.

In Romania, the courts are designated as the issuing judicial authorities and the Romanian executing judicial authorities are the courts of appeal.

The authorities responsible for receiving the European arrest warrant are the Ministry of Justice and the prosecutor's offices attached to the courts of appeal in whose jurisdiction the requested person was located. In Romania, the central authority is the Ministry of Justice.

At the stage of criminal investigation, the European arrest warrant is issued by the judge of rights and freedoms, ex officio or upon notification of the prosecutor conducting the criminal investigation.

The issuing court may, ex officio or at the request of the competent prosecutor, require the non-disposal and surrender of assets which may serve as material evidence in the criminal proceedings, or which have been acquired by the requested person through the commission of the offence.

When the Romanian authorities execute a European arrest warrant, fraud offences, including those affecting the financial interests of the European Union, will not be subject to verification of the fulfilment of the double criminality condition if they are sanctioned by the law of the issuing State with a penalty or a measure of custodial security whose maximum duration is at least 3 years.

Also, in this context it is important to mention that in accordance with Article 10 of the Department's Rules of Organisation and Functioning Department for the Fight against Fraud – DLAF, approved by GD No 738/2011, the Legal Affairs Directorate of the DLAF, ensures the protection of the EU's financial interests by preventive, legislative or administrative means, such as: promoting legislation or public policies, cooperating and communicating DLAF's position in meetings with other national institutions involved in the protection of interests European Union's financial interests, with OLAF or with other relevant public authorities in other countries Member States of the European Union, formulates opinions on the application of legislation in the field of protection of the European Union's financial interests, at the request of national institutions or European institutions.

At the same time, according to Art. 8 from Law no. 61/2011, in carrying out its functions, the Department shall ensure and facilitate cooperation between the national institutions involved in the protection of the European Union's financial interests in Romania, between them and the European Anti-Fraud Office – OLAF and the relevant public authorities of the other Member States of the European Union or of countries receiving financial assistance from the European Union.

3.2 Analysis of the practice of cooperation

When it comes to the practice of cooperation, as we indicated earlier, according to the DLAF Report for 2021, the Head of DLAF is a EUROJUST National Correspondent and has participated in meetings of the members of the Eurojust National Coordination System to strengthen cooperation with the Member States of the European Union.

Also, DLAF participated on 25 October 2021 in a Conference on "The current state and prospects of the interdependencies of law European Union with the national law of the Member States", organized by the Law and the Union Magazine of Romanian Lawyers (held online).

According to DLAF Report for 2021,[22] a form of cooperation of this institution is made through administrative actions (DLAF participates in meetings organized by OLAF: Annual meeting of the Heads of Anti-Fraud Coordination Services of the Member States of the European Union, the OLAF's Anti-Fraud Communicators Network, the Advisory Committee for the Coordination of Fraud Prevention -COCOLAF and sub-working groups or other such working meetings).

Also, it is important to mention that DLAF is a permanent member of the OLAF Anti-Fraud Communicators Network (OAFCN). The Network is a group formed at the initiative of the European Anti-Fraud Office from members of the communication directorates, press officers, public relations officers, representatives of public prosecutors and economic police from all the national investigation services of the Member States of the European Union. Network representatives meet annually. The SRMMPR exercised its representation function in the field of the protection of the European Union's financial interests by participating in the 30th annual meeting of the OLAF Anti-Fraud Communicators Network – OAFCN.[23]

As we anticipated in the section regarding the legal framework of cooperation between member states, national authorities also cooperate with other member states through Law no. 302/2004.

For example, through Sentence no. 65/2019 of 12 June 2019, Ploiesti Court of Appeal, on the basis of Article 104(6) of Law 302/2004,

22 Ibidem, p. 59.
23 Ibidem, p. 63.

authorized the surrender of the requested person to the Italian judicial authority for the purpose of prosecution for the offences of: participation in an organized criminal group and fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Community's financial interests, as provided for in Article 416 (2) of the Italian Criminal Code and Article 8 of Legislative Decree 74/2000 and Article 5 of Legislative Decree No 74 /2000, which punishes the omitted VAT return if the amount of the tax avoided exceeds the amount of 150,000.00 euro, with respect to the rights conferred by the rule of specialty provided for by art. 115 of Law no. 302/2004, republished, exclusively for those mentioned in the European Arrest Warrant.

Also, through Sentence no. 150/2018 of 10 October 2018, the Cluj Court of Appeal granted the request made by the German judicial authorities regarding the execution of the European Arrest Warrant issued on 27.09.2018 by the Public Prosecutor's Office in Nurnberg, Germany, concerning the requested person and based on Art. 103 para. 5 and 6 of Law 302/2004 republished and amended by Law no. 300/2013 order the surrender to the German judicial authorities, following the European Arrest Warrant issued by the Public Prosecutor's Office of Nurnberg Germany, which was based on the national arrest warrant of the Nurnberg Court, for the purpose of criminal prosecution for the commission of 4 offences of tax evasion, provided for by art. 370 para. 1 and 3 of the German Tax Code, in connection with Art. 25, Art. 53 of the German Criminal Code.

In the content of the prosecution's proposal, it was stated that the referral was based on the European Arrest Warrant issued by the Public Prosecutor's Office in Nurnberg, Germany, following the issuance of a national arrest warrant for the purpose of criminal prosecution, for the commission of 4 offences of tax evasion, provided for in Article 370 (1) and (3) of the Tax Code, with reference to Articles 25, 53 of the German Criminal Code, consisting of the fact that during the period 2014–2017, the person of interest together with another person as partner and administrator of a company, established in Cadolzburg, Germany, on the occasion of commercial transactions for the sale of second-hand cars to buyers in other EU countries, declared in the accounts that these transactions were intra-Community supplies exempt from German VAT, although in reality he was exporting these goods to final buyers in other EU countries, supplies for which he had to pay VAT.

In another case, by a request registered on 13.01.2011, a request for international legal assistance made by the Public Prosecutor's Office of the Timişoara Local Court was transmitted to the Timişoara Local Court, requesting the transfer of the criminal proceedings.

The reasoning stated that on 08.04.2008, the T. Regional Commissariat of the Financial Police referred to the Public Prosecutor's Office of the T. Court the fact that X, a Spanish national, made intra-Community purchases of goods from several companies in the Netherlands, Belgium, Cyprus, the

Czech Republic and Denmark, which were not registered in the accounts, to evade the payment of corporation tax and VAT.

The investigations conducted by the tax control authorities revealed that the aforementioned company did not operate from its declared registered office in Timișoara and that in the period 2007 – December 2008, it supplied goods worth 6116991 lei from a number of seven taxpayers from Belgium, Cyprus, Czech Republic, Denmark and the Netherlands, which was not recorded in the accounting records, with the consequence of prejudicing the consolidated state budget, the amounts due being 1272334 lei corporate tax and 1510897 lei VAT.

Timișoara Local Court, through Decision no. 682/2011 of 28 February 2011, Pursuant to Article 111 paragraph 2 of Law no.302/2004, decided that the proposal of the Public Prosecutor's Office of the Timișoara County Court is accepted. Therefore, the judge ordered the transfer of the criminal proceedings to Spain in respect to the defendant X.

3.3 Recommendation for improvement

Given the complexity of the legal framework, we consider that the organization of trainings on mutual recognition instruments, especially for judges, probation officers, penitentiary personnel as well as court staff and members of other legal professions would be beneficial.

Also, we must take into consideration the recommendations made by the European Commission when it comes to this subject of judicial cooperation:[24] to enhance institutional cooperation by setting up direct cooperation channels between all relevant national stakeholders, including courts, probation services, lawyers (legal aid offices and bar associations) and to develop practical handbooks for each of the EU Mutual Recognition Instruments: Practical guidance can help promote their correct implementation and application of EU instruments.

4. Cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States

4.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member States

In Romania, the main legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member

24 Fair Trials Report, *Protecting Fundamental Rights in Cross-Border Proceedings: Are Alternatives to the European Arrest Warrant a Solution?* pp. 62–63, https://www.fairtrials.org/app/uploads/2021/11/EAW-ALT_Report-1.pdf.

States is represented by Law no. 302/2004, which regulates in a general manner the cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States. On the other hand, it is important to note that there are cases in which Romania has signed conventions with non-EU states regarding international judicial cooperation.

First, Law no. 302/2004 establishes in Article 10 the central authorities who have competence regarding international cooperation. The Ministry of Justice has competence, through its specialized department, if the requests concern extradition, the European arrest warrant, the transfer of sentenced persons, the freezing order, the confiscation order, the recognition and enforcement of judgments and criminal judicial acts, international letters rogatory, any other form of international legal assistance which relates to the trial activity or to the enforcement phase of criminal judgments, as well as, regardless of the procedural phase, when otherwise provided for by this law or when the request is made under international comity or when the Ministry of Justice is designated as a single central authority under international treaties to which Romania is a party.

The Prosecutor's Office of the High Court of Cassation and Justice has competence regarding international cooperation, through its specialized structures, when international letters rogatory or other forms of international judicial assistance relate to criminal investigation and prosecution activities.

Also, when it comes to the international cooperation regarding the criminal records, the Ministry of Internal Affairs, through the specialized structure, is the competent authority.

In this context, it is important to mention that taking into consideration the introduction of EPPO institution, in accordance with Article 12 from Law no. 6/2021, The European Public Prosecutor's Office is a judicial authority within the meaning of Article 2 (d) of Law No 302/2004 on international judicial cooperation in criminal matters and shall be notified as such to the relevant international legal instruments in the field of international mutual legal assistance in criminal matters to which Romania is a party, as well as in cases where, according to the EPPO Regulation, delegated European Public Prosecutors may carry out international judicial cooperation activities under the applicable treaties.

When it comes to the procedure, Art. 125 establishes, for example, a procedure of exchange of information and consultations with foreign judicial authorities. Therefore, the article states that where parallel proceedings are established, the prosecutor conducting or supervising the prosecution or the competent court shall initiate consultations directly or through Eurojust or, in the case of States which are not members of the European Union, through the central authority competent under Article 10. The purpose of the consultations shall be to reach a consensus on any effective solution aimed at avoiding the negative consequences which may result from such parallel proceedings, which may also lead, where appropriate, to the conduct and continuation of single criminal proceedings either in the Romanian State or in another State.

Article 127 provides the procedure applicable to the transfer of criminal proceedings. The transfer of the criminal proceedings shall be requested based on the decision of the court which would have jurisdiction to deal with the case at first instance, if the proceedings relate to the prosecution of the case, or of the court seized of the case if the proceedings relate to the trial of the case. In this regard, the court shall, on the proposal of the prosecutor conducting or supervising the prosecution or ex officio, if the conditions provided for by law are met, order by reasoned decision the transfer of the criminal proceedings. In the case of transfer of criminal proceedings, the proposal of the prosecutor conducting or supervising the criminal proceedings shall be decided in chambers without summoning the parties. The presence of the prosecutor is mandatory.

The request shall be formulated by the prosecutor conducting or supervising the criminal prosecution or by the court, as the case may be, and shall be sent to the Prosecutor's Office of the High Court of Cassation and Justice or to the Ministry of Justice, according to Article 10, accompanied by certified copies of all procedural documents by a competent Romanian magistrate, unless the foreign State requests the transmission of the original file.

Article 128 states that the Ministry of Justice or the Public Prosecutor's Office of the High Court of Cassation and Justice shall ensure the transmission of the request for transfer of criminal proceedings by one of the means provided for by this Law.

Taking over or instituting criminal proceedings at the request of a foreign State is regulated by the second chapter of the Law. In accordance with Article 131, any request for taking over criminal proceedings addressed to the Romanian prosecutor's offices or courts shall be submitted to the Ministry of Justice or to the Prosecutor's Office of the High Court of Cassation and Justice.

When the offence is committed in the territory of Romania, the requests for taking over the criminal prosecution or trial shall be dealt with by the prosecutor's offices of the courts of appeal or courts of appeal in whose jurisdiction the offence was committed or where the person under investigation or the injured person resides is located. Where the offence has been committed abroad, requests for prosecution or trial shall be dealt with, as appropriate, by the public prosecutor's office of the court of appeal in whose district the offender resides or by the court of appeal. If the offender is neither domiciled nor living in Romania, the Public Prosecutor's Office of the Bucharest Court of Appeal, or the Bucharest Court of Appeal shall be responsible for dealing with the request. Requests for criminal prosecution concerning acts which, according to the law, fall within the competence of the Department for the Investigation of Organised Crime and Terrorism or the National Anti-Corruption Department shall be dealt with by them. The competent public prosecutor or the public prosecutor designated by him shall dispose of the prosecution of the request in accordance with the provisions of the Code of Criminal Procedure.

According to the fourth paragraph, the request to take over the trial shall be forwarded by the Ministry of Justice to the prosecutor's office of the court

of appeal competent to decide on it. The competent public prosecutor shall refer the application to the court of appeal with the proposal to admit or reject the application.

The fifth paragraph provides that once the competent Court of Appeal has been seized of an application to take charge of a case, it shall give a reasoned decision on the admissibility of the application. The decision shall be subject to appeal within 5 days of its delivery. If the application has been deemed admissible, the trial shall continue in accordance with the provisions of the Code of Criminal Procedure. The Public Prosecutor's Office of the High Court of Cassation and Justice or the Ministry of Justice shall inform the authorities of the requesting State whether the request for transfer of criminal proceedings has been admitted or rejected.

Referring to initiation of criminal proceedings upon request by the authorities of a foreign State, Article 132 states that the referral of an offence to the authorities of other states, with a view to the initiation of criminal proceedings by the Romanian state, shall be dealt with by the competent Romanian judicial body, in accordance with the provisions of the Criminal Code and the Code of Criminal Procedure. In the case of an act committed on the territory of Romania, the complaint filed with the competent authorities of the State of which the injured person is a resident shall be received by the Public Prosecutor's Office of the High Court of Cassation and Justice and shall be dealt with by the competent judicial body under Romanian law.

4.2 Analysis of the practice of cooperation

We would like to point out that we have not identified any relevant judgments on international judicial cooperation with non-UE countries in relation to offences under the PIF Directive.

However, in national practice there are decisions on international judicial cooperation related to the transfer of proceedings in order to facilitate the investigation of forms of organized fraud.

For example, Bucharest Court of Appeal, through Decision no. 237/2020 from 3 December 2020 has order the extradition and surrender to the authorities of the United States of America of X, Romanian citizen, for whom indictment and a warrant for his arrest was issued by the United States District Court for the Eastern District of Kentucky on 19.09.2019.

The extraditable person X was wanted internationally for the offenses of conspiracy to commit crimes falling under "RICO" corrupt and racketeering influenced organizations under Title 18 – Section 1962(d) of the United States Criminal Code, conspiracy to commit wire fraud under Title 18 sections 1349 and 1343, conspiracy to commit the crime of money laundering under Title 18 – Section 1956(h) of the United States Criminal Code.

In Judgment no. 473/2016 of 15 November 2016, Timişoara Court of Appeal noted that the person who was the subject of the application had been prosecuted by the judicial authorities of the requesting State for the offence

of "fraud" provided and punishable under Article 249 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina, which corresponded to the offence of deception provided for in Article 244 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina, 1, 2 of the Romanian Criminal Code, the condition of double criminality being fulfilled.

Furthermore, the request of the requesting State to take over the prosecution was not contrary to the principle of non bis in idem, since no final judgment had been handed down for the same acts either in the Federation of Bosnia and Herzegovina or in Romania, based on the criminal record of the person concerned.

As regards the statute of limitations on criminal liability, it had not intervened, since the time limits laid down by the criminal law under Articles 155 and 154 para 1 letter d) of the Criminal Code had not been exceeded, given that the act of which the person under investigation is accused is alleged to have been committed on 23.04.2010, was heard on 17.05.2010 and the indictment was issued on 26.10.2011.

Therefore, Timișoara Court of Appeal admitted the request and ordered the Romanian courts to take over the proceedings.

4.3 Recommendation for improvement

A first problem that should be solved and which also has implications for the institution of international cooperation in criminal matters has to do with the conditions of detention in Romania and prison overcrowding.

From the Fair Trials Report (*Protecting fundamental rights in cross-border proceedings: Are alternatives to the European Arrest Warrant a solution?*), we learn that the European Court of Human Rights (ECtHR) continues to find repeated violations of fundamental rights in relation to detention conditions and prison overcrowding – in April 2019, there were around 12,000 pending applications to the ECtHR, raising issues relating to conditions of detention and indicating the systematic nature of overcrowding issues. In 2020 alone, the ECtHR issued two pilot judgments on inhuman and degrading prison conditions in the EU Member States.[25] As the European Commission stated,

> Without mutual confidence in the area of detention, European Union mutual recognition instruments that have a bearing on detention will not work properly, because a Member State might be reluctant to recognise and enforce the decision taken by another Member State's authorities.[26]

25 Ibidem, pp. 24–25.

26 European Commission, Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM (2011) 327, 14 June 2011 (cited also in the Fair Trials Report, *Protecting Fundamental Rights in Cross-Border Proceedings: Are Alternatives to the European Arrest Warrant a Solution?* p. 25, https://www.fairtrials.org/app/uploads/2021/11/EAW-ALT_Report-1.pdf).

For better international cooperation, Romania should solve the well-known problem of prison overcrowding and poor detention conditions.

On the other hand, one report from the Romanian presidency at the Council of EU[27] states that "the organisation of trainings on mutual recognition instruments, especially for judges, probation officers, penitentiary personnel as well as court staff and members of other legal professions" would be beneficial. Taking into consideration the complexity of the legal framework which exists nowadays when it comes to international cooperation, we totally agree with the organization of trainings on mutual recognition instruments.

5. Conclusions and general recommendations

Romania is part of the EU landscape through the network of institutions that ensure inter-institutional cooperation in the fight against organized fraud at both the national and international levels. However, the complexity of the area under analysis requires the national authorities to constantly adapt to the new international challenges to facilitate effective communication with the whole network of institutions involved in the fight against organized fraud. The national authorities should constantly pay attention to harmonizing national legislation with European legislation in order to ensure effective international judicial cooperation. However, it is important to observe that, even if the fight against organized fraud must be effective, the authorities must always consider respect for human rights.

National authorities should also participate as often as possible in training seminars or workshops on the fight against organized fraud. By participating in these seminars or workshops, they will understand better the mechanism of international cooperation (especially when it comes to investigating and combating organized fraud).

27 Fair Trials Report, *Protecting Fundamental Rights in Cross-Border Proceedings: Are Alternatives to the European Arrest Warrant a Solution?* p. 59, https://www.fairtrials.org/app/uploads/2021/11/EAW-ALT_Report-1.pdf.

7 Protecting EU financial interests in a non-participating member state

The Polish perspective

Anna Rybarczyk and Paweł Dziekański

I. National legal framework in the context of EU fraud

1. Presentation of national law enforcement authorities responsible for combatting organized fraud

The legal basis for cooperation between Member States and EU institutions, at the EU level, is Article 325(3) TFEU. According to this provision, Member States shall coordinate their action to protect the financial interests of the Union against fraud and, to this end, organize with the Commission close and regular cooperation between the competent authorities. In Poland, the institutional system for preventing and combating irregularities to the detriment of the financial interests of the Union is composed of specialized bodies, which perform conceptual and analytical tasks, coordination and ongoing cooperation with OLAF.[1] This system was initially based on the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU,[2] which operated through the Inter-Ministerial Team for Combating Financial Irregularities to the Detriment of the Republic

1 See: G. Stronikowska, *Prokuratura Europejska jako instytucja ochrony interesów finansowych Unii Europejskiej. Problematyka ustrojowa, prawnoprocesowa i karnomaterialna*, Warszawa: C.H. Beck, 2020, p. 57.

2 A Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union was appointed by a decree of the Council of Ministers on 1 July 2003. Initially, it was the Secretary of State or Undersecretary of State at the Ministry of Finance – the Inspector General of Fiscal Control. He performed tasks in cooperation with the Inter-Ministerial Team for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU. Pursuant to Article 160(1)(1) (Official Journal of the Republic of Poland 2016, item 1948), the function of the Inspector General of Fiscal Control was abolished. This was due to the creation of the National Tax Administration, which resulted in the function of the General Inspector of Fiscal Control being taken over by the Head of the National Tax Administration. Finally, the Decree of the Council of Ministers of September 19, 2022, on the abolition of the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union ordered in §1 the abolition of the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the European Union.

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of Poland or the EU (General Anti-Fraud Unit, GAFU)[3] and currently on AFCOS, whose functions were entrusted to the Department of Audit of Public Funds (DAS), i.e. an organizational unit of the National Fiscal Administration in the Ministry of Finance.[4] These institutions have been directly involved in the protection of the EU's financial interests and conducting activities of a purely administrative nature. Such cooperation of an administrative nature lies within the scope of the Supreme Audit Office,[5] the Managing Authorities (the minister in charge of regional development, the minister in charge of agriculture, the minister in charge of fisheries and the regional authorities),[6] the Adjudicatory Commissions in cases of violation of public finance discipline, the Public Procurement Office or the administrative courts. However, administrative aspects of protecting the EU's financial interests do not fall within the scope of this publication, which aims to discuss criminal aspects of the protection of the Union's financial interests, in particular the activities of bodies responsible for investigating and prosecuting crimes in preliminary proceedings, including the police, secret services or national public prosecutors' offices.

As indicated in the doctrine, the institutional boundaries of the fight against fraud should be divided into institutions directly involved in the protection of the financial interests of the Republic of Poland or the European Union, as well as bodies for the protection of state security, security and public order

3 G. Stronikowska, *Prokuratura Europejska*. . ., op. cit., p. 57.

4 Pursuant to Article 3(4) of 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, Member States were obliged to designate a unit (known as the "Anti-Fraud Coordination Unit") to facilitate effective cooperation and exchange of information with the Office, including information of an operational nature. In Poland, the function of AFCOS was performed by the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU. This was the Inspector General of Fiscal Control. As the Head of the National Administration took over this function, currently the role of AFCOS fell to the Department of Audit of Public Funds (DAS) – this is an organizational unit of the National Fiscal Administration (KAS) in the Ministry of Finance.

5 According to Article 202(1) of the Constitution of the Republic of Poland (Official Journal of the Republic of Poland, No. 78, item 483, Article 202), the Supreme Audit Office is the supreme body of state control. Pursuant to Article 203 of the Constitution, the tasks of the Supreme Audit Office include controlling the activities of government administrative bodies, the National Bank of Poland, state legal persons and other state organizational units from the point of view of legality, economy, expediency and reliability; the ability to control the activities of local government bodies, municipal legal persons and other municipal organizational units from the point of view of legality, economy and reliability; the ability to control from the point of view of legality and economy the activities of other organizational units and business entities to the extent to which they use state or municipal property or funds and meet their financial obligations to the state.

6 See: A. Chociej, *Ochrona interesów finansowych Unii Europejskiej przez instytucje unijne i krajowe na przykładzie Polski*, Białystok: INP PAN, 2021, p. 277.

and judicial bodies, which are not directly appointed to protect the financial interests of the European Union,[7] but the scope of their activities is directly related to this protection.

Polish law does not provide a separate criminal procedure for combating the EU crimes, so all Polish law enforcement agencies will be presented, the subject matter of which is organized economic crime, which in turn consists of the crimes indicated in the PIF Directive, i.e. fraud, corruption, money laundering, embezzlement. Pre-trial proceedings are conducted or supervised by the public prosecutor and, to the extent provided by law, by the Police. The powers of the Police are also vested in special services, including the Internal Security Agency and the Central Anti-Corruption Bureau – within the scope of their jurisdiction.

Participation in an organized group or association aimed at committing a crime or fiscal crime is criminalized in the Criminal Code as a separate offense. Participation in an organized group in contact with a crime committed constitutes the so-called real concurrence of crimes, which means that to reflect the content of the unlawfulness, it is impossible to remove in the legal qualification of the act any of the concurring provisions.

The police and the Public Prosecutor's Office are the primary authorities involved in the detection and prosecution of any type of crime. There are specialized units of the Public Prosecutor's Office and the Police dealing with particular types of crimes (in this case, PIF crimes). These are crimes that are considered to be the most harmful in the economic sphere not only at the national, but also at the EU level. The involvement of special services in the investigation of these crimes is justified by the level of intricacy and complexity of the facts, structures and peculiarities of the crimes in question, as well as the size of the criminal activity (organized groups, criminal unions, cross-border cooperation) and the damage caused (property of significant/major value); finally, the type of asset affected – public and European funds. No less important is the level of specialization of services in a specific, narrow area of crime.

Starting with the Police, it is important to point out one of the organizational units of the Police Headquarters, which is the Bureau for Combating Economic Crime. The office has been dealing with economic crime and corruption since 2 January 2023. Previously, for many years, tasks in this area of crime belonged to the Criminal Bureau of the Police Headquarters, which dealt with all serious crimes, including drug crime. The separation of this organizational unit therefore indicates a narrow specialization in the detection and investigation of economic crime only. Currently, according to the newly

7 C. Sońta, Ramy instytucjonalne ochrony interesów finansowych WE w Polsce, in Celina Nowak and Michał Hudzik (eds.), *Instytucje i instrumenty prawne w walce z przestępczością przeciwko interesom finansowym Unii Europejskiej – prawo krajowe i perspektywa europejska*, International Conference – Materials, Warszawa, 4–6 December 2003, Towarzystwo Badawcze Prawa Europejskiego, pp. 211, 221.

added § 15a p. (1) of the Regulation of the Police Headquarters,[8] the Bureau for Combating Economic Crime performs tasks related to creating conditions for effective recognition, prevention and disclosure of economic and corruption crimes and prosecution of their perpetrators. Pursuant to § 15a p. (2) of the Regulation of the Police Headquarters, the tasks include, among others, identifying, monitoring, analyzing and forecasting areas at risk of economic crime and corruption, developing and implementing directions and methods for effective recognition, prevention and disclosure of economic and corruption crimes, or conducting national and international cooperation in the implementation of tasks aimed at combating economic and corruption crimes.

Another specialized police organizational unit of the investigative service is the Central Bureau of Investigation of the Police, which, based on § 15a p. (2) and (6) of the Regulations of the Police Headquarters, cooperates with the aforementioned Bureau for Combating Economic Crime within its jurisdiction. Pursuant to Order No. 54 of the Police Commander-in-Chief dated 7 October 2014 on the organization, material and local scope of activities and rules of interaction of the Central Bureau of Investigation of the Police with other organizational units of the Police,[9] organizational cells are created within the Central Bureau of Investigation of the Police. One of them is a department for combating organized economic crime. According to § 3 of the Order, the substantive scope of the Central Bureau's activities includes, among other things, planning, coordinating and undertaking activities aimed at identifying and combating domestic and international organized crime, particularly of a criminal, narcotics and economic nature, as well as its prevention, or conducting preparatory proceedings in cases involving organized criminal groups. As stated in § 5 para 1 of the Order, in order to carry out its tasks, the Central Bureau of Investigation cooperates with other police organizational units. There is the International Police Cooperation Team operating within the Bureau. Its activities include coordinating operational and non-operational international cooperation in the Central Bureau of Investigation, as well as cooperation with organizational units of the Police and organizational units of the Police Headquarters in obtaining funds from the European Union, as well as funds from other sources, and coordinating projects implemented from these funds and resources.[10]

8 Order No. 2 of the Chief of Police of 1 April 2016 on the Regulations of the Police Headquarters, Official Journal of the KGP.2016.13, as amended.

9 Order No. 54 of the Chief of Police of 7 October 2014 on the organization, material and local scope of activities and principles of cooperation of the Central Bureau of Investigation of the Police with other organizational units of the Police, Official Journal of the KGP.2014.121, as amended.

10 Decision No. 93 of the Commander of the Central Bureau of Investigation of the Police of 28 March 2022 on the division of tasks between the Commander of the Central Bureau of Investigation of the Police and the Deputy Commanders of the Central Bureau of Investigation of the Police, as well as authorization to make decisions on certain matters, https://cbsp.

Concerning the public prosecutors' offices, it is necessary to point to Article 16 of the Act of 28 January 2016 – Public Prosecutor's Office Act,[11] according to which the organizational units of the prosecutor's office are: National Public Prosecutor's Office, provincial public prosecutors' offices, regional public prosecutors' offices and district public prosecutors' offices. Of these, provincial public prosecutor's offices and the National Public Prosecutor's Office are the prosecutor's offices that specialize in prosecuting organized crime that affects the economic interests of the state and the European Union. According to Article 22(2),[12] the basic tasks of the provincial public prosecutor's office include: (1) ensuring the participation of the public prosecutor in proceedings conducted under the law before common courts and provincial administrative courts, (2) conducting and supervising pre-trial proceedings for the prosecution of the most serious financial-economic and fiscal crime and against economic turnover against property of great value, (3) supervising proceedings conducted in regional public prosecutors' offices, and (4) conducting visits to district and regional public prosecutors' offices. The National Public Prosecutor's Office, in turn, conducts and supervises pre-trial proceedings, and exercises instance and service supervision over proceedings conducted in provincial public prosecutor's offices.[13] According to Article 19 (2) of the Public Prosecutor's Office Act, one of the departments in the National Public Prosecutor's Office is the Department for Organized Crime and Corruption, which is responsible for the prosecution of organized crime, the most serious corruption crime and crime of terrorist nature.

Regarding the special services, the legal basis and scope of the Central Anti-Corruption Bureau [hereinafter: "CBA"] are set forth in the Act of June 9, 2006 on the Central Anti-Corruption Bureau[14] [hereinafter: "CBA Act"]. Article 1 of the CBA Act indicates that it is a special service for combating corruption in public and economic life, particularly in state and local government institutions, as well as for combating activities detrimental to the economic interests of the state. The CBA extensively cooperates with other institutions, i.e. government administration bodies, local government bodies and public institutions. Under Article 3 of the CBA Act, these bodies are obliged, within the scope of their activities, to cooperate with the CBA, and in particular to provide assistance in carrying out the CBA's tasks.

In addition, pursuant to Article 29(1) of the CBA Act, the heads of the CBA, the Internal Security Agency, the Military Counterintelligence Service,

bip.policja.gov.pl/CBS/struktura-organizacyjna/8975,Struktura-organizacyjna-CBSP.html (last accessed on 14 July 2024).

11 Act of 28 January 2016, unified text published in the Official Journal of the Republic of Poland 2023, item 1360, as amended, Article 16.

12 Ibidem, Article 22.

13 Ibidem, Article 17.

14 Act of 9 June 2006, unified text published in the Official Journal of the Republic of Poland 2022, item 1900, as amended.

as well as the Chief Commander of the Police, the Chief Commander of the Border Guard, the Chief Commander of the Military Police and the Head of the National Fiscal Administration are obliged to cooperate, within the scope of their competence, in combating corruption in state institutions and local government and public and economic life, as well as activities detrimental to the economic interests of the state. Furthermore, under Article 2(2) of the CBA Act, the Head of the Central Anti-Corruption Bureau, in order to carry out the tasks of the CBA, may undertake cooperation with the competent authorities and services of other countries and with international organizations. In order to identify, prevent and detect crimes, CBA officers perform operational and exploratory activities, investigative activities, control activities and analytical and informational activities.

Another law enforcement agency for economic crimes is the Internal Security Agency [hereinafter: "Agency"]. According to Article 1 of the Act of 24 May 2022 on the Internal Security Agency and the Intelligence Agency,[15] the Agency is competent in matters of protecting the internal security of the state and its constitutional order. Tasks formulated in such a way create a very broad subject matter of the Agency's activities.[16] Analogous to the Central Anti-Corruption Bureau, the provisions of the Act on the Agency provide for cooperation between state bodies and the Agency, but in this case the subject scope is somewhat broader. According to Article 10 of the Act on the Agency, not only government administration bodies, local government bodies and state institutions (as in the case of the CBA) are obliged to cooperate with the Agency, but also entrepreneurs engaged in public utility activities.

According to Article 8(1) of the ABW Act, the Agency, in order to carry out its statutory tasks, may also undertake (with the approval of the Prime Minister) cooperation with the competent authorities and services of other countries. Interestingly, unlike in the case of the CBA, initially the law did not include provisions allowing the ABW to cooperate with international organizations. It was not until an amendment,[17] which came into force on September 23, 2023, that the possibility of ABW's interaction with international organizations was added.

2. Analysis of the practice of cooperation of national law enforcement authorities

As mentioned earlier, the primary entities in charge of prosecuting any type of crime in Poland are the Prosecutor's Office and the Police. Experience shows,

15 Statutory Act of 24 May 2002, unified text published in the Official Journal of the Republic of Poland 2023, item 1136, as amended.

16 See more in details: M. Bożek, Zwalczanie przestępstw jako ustawowe zadanie Agencji Bezpieczeństwa Wewnętrznego. Stan obecny i postulaty de lege ferenda, *Studia Iuridica Lublinensia*, Volume XXIV, Issue 1, 2015.

17 Statutory Act of 17 August 2023, Official Journal of the Republic of Poland 2023, item 1834.

however, that it is the Police who are much more likely to detect criminal behaviour and initiate investigations, subsequently transferring the evidence collected in the case to the prosecutor's office. This is mainly due to the fact that the Police have much more developed forensic facilities, and thus have many more tools to collect and analyze the necessary information.[18] In practice, prosecutors turn to the Police and the special services for information, as these bodies have the widest access to various types of databases.

Given that the special services constitute specialized bodies and prosecute organized economic crime, it is worth pointing out their achievements in this regard. The CBA's undertakings are presented annually in the yearly reports of the Central Anti-Corruption Bureau. The CBA is obliged to prepare and submit them under Article 12 of the CBA Act. For the purposes of this publication, information from recent years, addressing only aspects related to the protection of EU finances, has been reviewed. As part of the information for 2019, it was indicated that CBA officers conducted 34 investigations into the extortion of EU funds. In addition, CBA officers in 2019 conducted 192 inspections, 912 pre-inspection analyses and 1,433 inspection cases, with only 5 pre-inspection analyses and 1 inspection relating to the extortion of EU funds.[19] Also in 2020, there were a number of investigations into the extortion of EU funds involving the forgery and submission of untruthful grant applications that misled grant decision-makers.[20] In 2020, 170 inspections, 911 pre-inspection analyses and 1,307 inspection cases were carried out. Of these, 31 control cases, 36 analyses and 9 inspections were related to defrauding EU funds.[21] In 2021, on the other hand, in addition to further extortion of subsidies, forgery and falsification of documents confirming untruths, there was also a case on the subject of tender rigging and thus extortion of EU subsidies. In 2021, 172 inspections, 892 pre-inspection analyses and 1,195 inspection cases were conducted, and 135 control cases, 116 analyses and 19 inspections were related to extortion of EU funds.[22] In 2022, for example, the CBA conducted a pre-trial investigation into the defrauding of EU funds for vocational activation projects for the unemployed and economically inactive. Investigators were interested in 26 such training projects carried out by 18 entities with a total value exceeding PLN 46 million. 43 people have been charged. A total of 155 inspections, 911 pre-inspection analyses and 1,040 inspection cases were carried out in 2022. Of these, 130 control cases, 137

18 See more about police statistics on crime against EU financial interests in Poland in: C. Nowak, *Ochrona interesów finansowych Unii Europejskiej*, Warszawa: INP PAN, 2023, pp. 235–253.

19 Information on the Performance of the Central Anti-Corruption Bureau in 2019, p. 22, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

20 See more in details: Information on the Performance of the Central Anti-Corruption Bureau in 2020, pp. 13–14, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

21 Ibidem, p. 18.

22 Information on the Performance of the Central Anti-Corruption Bureau in 2021, p. 20, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

analyses and 19 inspections were related to defrauding EU funds.[23] In 2023, on the other hand, there were 143 inspections, 855 pre-inspection analyses and 911 inspection cases, of which 88 inspection cases, 139 analyses and 22 inspections were related to defrauding EU funds.[24]

While the CBA's activities are presented in the annual reports, in the case of the ABW, reports have not been published for some time. At this point, therefore, it is worth referring to the data that was publicly provided by spokesman for the Minister of the Coordinator of Special Services. The spokesman reported that in 2016–2017, the ABW successfully combated VAT irregularities. In particular, in 2016 the ABW conducted 144 pre-trial proceedings relating to tax offenses (VAT fraud, non-payment of excise duty, non-payment of customs duties), in which 122 people were arrested and 273 persons were charged. Proceedings conducted by the ABW related to VAT alone involved crimes amounting to more than PLN 3.3 billion (in all economic crimes under which ABW conducted proceedings, the sum was more than PLN 7 billion). In 2017, ABW conducted 342 investigations (136 investigations were initiated in 2017, while the rest were continued from previous years). As many as 189 investigations conducted by the ABW concerned economic and financial matters. In connection with the actions taken by the Agency in 2017, 625 people heard charges, while 308 people were arrested (262 people were arrested by the ABW; the rest were arrested by other services on behalf of the ABW). The losses incurred by the State Treasury in economic cases handled by ABW in 2017 were estimated at nearly PLN 6.6 billion. In total, in 2016–2017, the ABW's actions concerned crimes that could cause losses to the State Treasury in the total amount of more than PLN 13 billion.[25]

In terms of good practice, it is necessary to point out first of all the multitude of agreements and internal regulations that enable mutual cooperation between national authorities, and in particular the cooperation between the Central Anti-Corruption Bureau and the Internal Security Agency. These services have convergent tasks in the detection and prosecution of crimes in the area of corruption of public officials, which makes the need for efficient cooperation all the more apparent. It is about transferring cases, sharing information collected for the purpose of uncovering and prosecuting criminal acts, sharing experience and providing mutual technical, operational and methodological assistance. This cooperation is regulated by the Agreement between the Head of the Central Anti-Corruption Bureau and the Head of the Internal Security Agency of February 4, 2010 on cooperation between the Central

23 Information on the Performance of the Central Anti-Corruption Bureau in 2022, pp. 6, 15, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

24 Ibidem, p. 12.

25 S. Żaryn, *Imponujące dokonania. ABW w 2017 roku zajmowała się szkodami na kwotę ponad 6 mld zł*, https://www.salon24.pl/u/stanislaw-zaryn/839050,imponujace-dokonania-abw-w-2017-roku-zajmowala-sie-szkoda-skarbu-panstwa-na-kwote-ponad-6-mld-zlotych (last accessed on 31 December 2023).

Anti-Corruption Bureau and the Internal Security Agency[26] [hereinafter: the "Agreement"]. It was concluded pursuant to Article 3 of the CBA Act and Article 10 of the Act on the Agency. According to § 1 p. 1 of the Agreement, the Head of the CBA and the Head of the ABW, within the scope of their statutory tasks, organize cooperation including, in particular: 1) recognition, prevention and combating of crimes; 2) coordination and mutual assistance in the implementation of operational and exploratory activities; 3) transmission of information, analyses and forecasts on the recognition, prevention and detection of crimes and prosecution of their perpetrators, which are of interest to both Parties; 4) implementation through legal assistance of investigative activities; 5) cooperation on the protection of classified information; 6) performance of specialized research; 7) cooperation on professional training of officers of both Parties; 8) exchange of experience resulting from the implementation of the statutory tasks of the Parties. Subsequently, on the basis of § 1 p. 2 and 3 of the Agreement, the Head of the ABW may request the Head of the CBA to carry out inspection activities, and the Head of the CBA may request the Head of the ABW (prior to carrying out an inspection) to carry out checks in the files kept by the ABW. The interaction also includes the use of the parties' logistical facilities, in particular by: 1) providing assistance in the use of means of operational work and technical facilities, in cases justified by the needs of the parties; 2) lending of equipment in their possession; 3) cooperation in telecommunications and information technology (§ 1 p. 4 of the Agreement). According to § 6 of the Agreement, joint groups or teams may be established to carry out specific tasks in order to carry out the interaction. In addition to the cooperation of the Heads of the CBA and ABW, Article 42 of the ABW Act also provides for the Agency's cooperation with the Head of the Military Counterintelligence Service and the Head of the Military Intelligence Service.

3. Discussion

In the case of the Central Anti-Corruption Bureau, recommendations for improvement resound in the CBA's annual performance reports and the final report of the Government Anti-Corruption Program 2018–2020.[27] Also, propositions to undertake legislative work to improve the system for safeguarding against the crime affecting the European funds. The Department of Payment Institutions of the Ministry of Finance informed that the indicated

26 Agreement between the Head of the Central Anti-Corruption Bureau and the Head of the Internal Security Agency of 4 February 2010 on cooperation between the Central Anti-Corruption Bureau and the Internal Security Agency, Official Journal of the Central Anti-Corruption Bureau No. 1, item 40.

27 Final Report on the Implementation of the Government Anti-Corruption Program 2018–2020, Warszawa, April 2021, p. 59, https://cba.gov.pl/ftp/publikacje/Sprawozdanie_koncowe_z_realizacji_Rzadowego_Programu_Przeciwdzialania_Korupcji_na_lata_2018___2020.pdf.

scope will be analyzed and subjected to appropriate consultations to determine the needed changes to the current regulations.[28]

II. Cooperation between national law enforcement authorities and EU institutions

1. Legal framework

As a Member State of the EU, Poland cooperates with all of the European institutions in the area of the cooperation in criminal matters.

Article 88(1) TFEU indicates that Europol's task is to support and strengthen the activities of the police authorities and other law enforcement agencies of the Member States, as well as their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime affecting a common interest covered by a Union policy. In the Polish Police, the contact point and the place where all international channels of police information exchange converge – Single Point of Contact (SPOC) – is the Office for International Police Cooperation of the Police Headquarters. This unit coordinates and supervises all activities within the framework of international non-operational, operational and training cooperation.[29] Operational cooperation means the prevention and combating of crime, whereas non-operational cooperation covers lawmaking, networking and exchange of experience. Training cooperation is no less important, as it is through this cooperation that awareness can be expanded, especially with regard to new types of crime. Uniform training increases the effectiveness of the use of particular operational methods.

The basis for the Police Headquarters' activities is Resolution No. 51 of the Council of Ministers of April 28, 2017 on the designation of the Europol National Unit[30] [hereinafter: "the Resolution"] – issued pursuant to Article 7(2) of Regulation (EU) 2016/794.[31] According to the Resolution, the Police Headquarters is designated as the Europol National Unit, with the Police Chief acting as the Head of the Europol National Unit.

While Europol's tasks refer to the pre-trial criminal proceedings (cooperation with law enforcement agencies), Eurojust's activities also concern the judicial stage of criminal proceedings. This is because the agency supports the

28 Information on the Performance of the Central Anti-Corruption Bureau in 2021, p. 24, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

29 https://info.policja.pl/inf/wspolpraca-miedzynarod/72445,Wspolpraca-miedzynarodowa.html.

30 Resolution No. 51 of the Council of Ministers of 28 April 2017, on the designation of the Europol National Unit, Official Journal of the Republic of Poland 2017, item 427.

31 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, Official Journal of the European Union, L 135/53.

coordination of justice and cooperation between national authorities in combating serious organized crime in cases involving more than one EU country. Eurojust ensures the exchange of information between the competent authorities and helps them ensure the highest possible level of coordination and cooperation. To this end, it cooperates with the European Judicial Network, Europol and the European Anti-Fraud Office (OLAF).[32]

As for the cooperation of Polish courts with the national contact points of the European Judicial Network and the national representative at Eurojust, the relevant provisions can be found in the Regulation of the Minister of Justice of 18 June 2019 – Rules of Procedure of Common Courts.[33] The information aimed at facilitating cooperation in criminal matters includes, in particular, information on the law and practice of that country; determination in that country of the authority competent to execute a request for legal assistance or to provide information on the status of execution of that request; determination in that country of the authority competent to execute a European arrest warrant or other judgment subject to mutual recognition or to provide information on the status of execution of that warrant or judgment. If information is needed, the court refers to the national contact point of the European Judicial Network in the Ministry of Justice or in the general organizational units of the public prosecutor's office (§ 370 of the Regulation of 18 June 2019). Also, § 371 of that Regulation stipulates that at the request of the national contact point of the European Judicial Network, the court in question shall provide the information referred to earlier. On the other hand, § 375(1) of the Regulation lists the cases in which the court should immediately provide information to the national representative at Eurojust, as long as it has not been provided in pre-trial proceedings. These situations include: 1) cases of crimes directly involving at least three European Union Member States, when requests for international legal assistance or for the execution of a decision subject to mutual recognition have been forwarded to at least two European Union Member States, if a) the subject of the proceedings is an act punishable by imprisonment of at least 5 years, being an offence of, among other things, forgery and dealing in counterfeit money or other means of payment; bribery and traffic in influence to the detriment of the financial interests of the European Union; participation in an organized group or association aimed at committing a crime or fiscal crime; introduction into financial circulation of property values originating from illegal or undisclosed sources, b) the evidence shows that the crime may cause serious cross-border effects, effects on the European Union or may affect other European Union Member States than those directly involved, 2) cases in which there may be a conflict of jurisdiction, 3) cases in which there are recurrent difficulties in the execution

32 https://e-justice.europa.eu/23/PL/eurojust.

33 Statutory Act of 18 June 2019, Official Journal of the Republic of Poland 2022, item 2514, as amended.

of requests for international legal assistance, execution of a European arrest warrant or other judgment subject to mutual recognition.

Cooperation with OLAF takes place on a permanent basis or *ad hoc*. As mentioned earlier, permanent cooperation is based on two units established for this purpose – AFCOS (Anti-Fraud Coordination Service) and COCOLAF (Advisory Committee for the Coordination of Fraud Prevention). In the case of Poland, the tasks of both these units have been fulfilled by the Department of Audit of Public Funds of the Ministry of Finance, as this is the administrative aspect of the protection of EU financial interests. In the area of criminal law, cooperation takes place *ad hoc* and involves many entities, including the Police and the Public Prosecutor's Office. There are offices in the National Prosecutor's Office and the Police Headquarters responsible for cooperation with OLAF. When conducting investigations, OLAF is also assisted by departments of the Ministry of Finance and the National Tax Administration. Cooperation in the performance of the auditors' activities is also provided by the Supreme Audit Office and the Central Anti-Corruption Bureau.[34]

Police cooperation in Poland is ensured by units within the Police Headquarters designated for contacts and cooperation in international affairs. These units are the Bureau for International Cooperation of the Police and the Criminal Bureau of the Police Headquarters, as well as the Central Bureau of Police Investigation. The rules of the cooperation, in particular the exchange of cooperation, are regulated by the Act of 16 September 2011 on the Exchange of Information with Law Enforcement Agencies of European Union Member States, Third Countries, European Union Agencies and International Organizations[35] [hereinafter: "the Exchange of Information Act"]. Article 1(1) of this Act indicates that the Act sets forth the terms and conditions for the exchange of information with law enforcement agencies of European Union Member States, law enforcement agencies of third countries, European Union agencies, international organizations for the purpose of recognizing, detecting or combating crimes or fiscal offenses, including threats to public security and order and the prevention of such crimes and threats, as well as the prosecution of the perpetrators of crimes or fiscal offenses, and the entities authorized in these matters. In contrast, Article 1(2) of the Exchange of Information Act lists the entities authorized to exchange information with the aforementioned entities. These are the Internal Security Agency, the Central Anti-Corruption Bureau, the Internal Surveillance Bureau, the Internal Inspectorate of the Prison Service, the Police, the National Fiscal Administration, the Border Guard, the Military Police and the State Protection Service (so called "authorized bodies"). Pursuant to Article 4 (1) of the Exchange of Information Act,

34 See: M. Krawczak, *OLAF w systemie kontroli Unii Europejskiej*, Kontrola Państwowa, 2012, No. 6, 36.

35 Act of 16 September 2011, unified text published in the Official Journal of the Republic of Poland 2023, item 783, as amended.

an organizational unit is designated within the structure of the Police Headquarters to serve as a contact point for the exchange of information between authorized entities and EU institutions. The tasks of the contact point include accepting requests for information from EU institutions and responding to those requests; forwarding requests for information from EU institutions, to authorized entities, in accordance with their jurisdiction, to respond to those requests; forwarding to EU institutions, requests for information from authorized entities; forwarding to EU institutions, information in the case referred to in Art. 11(1)(2) of the Exchange of Information Act (situations with a reasonable suspicion that the information will contribute to the detection and apprehension of the perpetrators of crimes or fiscal offenses or the prevention of crime on the territory of a member state of the European Union or third countries); coordinating the exchange of information; processing, including storage, of information exchanged under the Exchange of Information Act.

The Act also provides for situations in which authorized entities may exchange information directly with EU institutions bypassing the contact point. Such situations may occur during joint patrols, operational meetings or other cross-border operations; in the framework of cooperation in border areas, including those implemented by international cooperation centres; in the performance of the tasks of the authorized entity's liaison officer abroad or the liaison officer forming part of the Polish liaison office at the European Union Agency for Law Enforcement Cooperation (Europol).[36] In order to carry out its tasks, the contact point has direct access to national databases: National Police Information System, personal numbers register, central register of vehicles, central register of drivers, national collection of registers, records and list in cases of foreigners, National Criminal Register, National Court Register, National Official Register of National Economic Entities, the Nationwide Register of Issued and Revoked Identity Cards, the Central Register of Issued and Revoked Passport Documents, the Central Database of Persons Deprived of Liberty and data made available through the National Information System and Financial Information System (Art. 6(1)). The Point of Contact exchanges information with these entities through available communication channels used in international police cooperation, particularly those provided by the International Criminal Police Organization – Interpol, the European Union Agency for Law Enforcement Cooperation (Europol) and SIRENE offices.[37]

The European Investigative Order [hereinafter the "EIO"] was incorporated into Polish law as a result of Directive No. 2014/41/EU of 3 April 2014 on the EIO in criminal matters. The Polish Code of Criminal Procedure contains its provisions in Chapter 62c (Articles 589w–589zd). Pursuant to Article 1 of the Directive of 3 April 2014, the EIO is a judicial decision issued

36 Ibidem, Articles 2–3.
37 Ibidem, Article 8.

or approved by a judicial authority of one Member State (the issuing state) to summon another Member State (the executing state) to carry out one or more specified investigative acts. The purpose of the EIO is to obtain evidence. In European legal systems, a judicial authority is understood to include the prosecutor. This is reflected in the provisions of the directive in question. This solution may be used by the proceeding authorities either ex officio or at the request of a party to the proceedings. The regulations of the Directive and the Polish Code of Procedure define the detailed procedure for the EIO. Although there is no space in this chapter to discuss them in detail, a few practical remarks will be noted. It is worth noting that the situations in which the execution of the EIO may be refused are specified and optional. In principle, this is an implementation of Article 11 of the Directive of 3 April 2014. However, the Polish lawmakers also provided for further exceptions (Article 589zj (3–6) of the Code of Criminal Procedure). The shortcoming seems to be that there are no strictly defined positive prerequisites for issuing an order. Article 589w (1) of the Code of Criminal Procedure contains the phrase 'in case of necessity'. On the other hand, one of the negative prerequisites is that the issuance of an EIO is impermissible if the interests of justice do not require it. Admittedly, the correct interpretation of these clauses should correspond with the provisions of the directive on the conditions for issuing an EIO, that is, proportionality and expediency. Nevertheless, I believe that the Polish legislature should more strictly define the prerequisites for issuing or refusing to issue an EIO in such a way that the grounds for application or non-application do not give room for discretion, have recourse to general clauses and apply to justified, specific cases. Another issue of concern is the pre-trial proceedings that require the participation of the court (pre-trial judicial activities). In the practice of Polish institutions, a problem has arisen as to which of the authorities will then be authorized to issue an EIO when a court is authorized to perform certain actions. Examples of such activities may include, for example, controlling and recording telephone conversations and recording other conversations or exchanges of information with technical equipment. The Polish Prosecutor's Office accepts that a court decision is required in such cases, but this position is not justified. Of course, the activities in question should be carried out in accordance with the principles of national law, but in pre-trial proceedings, the competent authority to issue an EIO is nevertheless always the prosecutor.

In any case, the situation described in Article 589w(7) of the Code of Criminal Procedure is an exception, under which, when operational and exploratory activities are carried out on the basis of separate regulations, the EIO shall be issued by the authority conducting such activities after they have agreed with the authority of the executing state on the duration and conditions of these activities. The issuance of an EIO requires the approval of a prosecutor with jurisdiction under separate regulations, unless the admission, obtaining or execution of evidence is reserved to the jurisdiction of the court. In that case, for an EIO to be issued, a court with jurisdiction under separate

regulations must approve it. The EIO is a desirable means of cooperation in criminal matters in the fight against cross-border crime and allows for the effective collection of evidence that is located in another country. It is a milestone compared to previous instruments for legal aid and evidence collection. It is designed to carry out procedures in this area more efficiently. Despite this, it is still a time-consuming solution. As is also evident from these considerations, in practice there are also some procedural obstacles and shortcomings of national regulations. They should be improved. In addition, it is necessary to make efforts to approximate the laws of the Member States on the rules of evidence.

2. The practice of cooperation

The effectiveness and efficiency of cooperation between national law enforcement agencies and EU institutions is evidenced, in particular, by the number of investigations and inspections carried out by the CBA, which eventually become the basis for taking over cases by OLAF. The CBA, through its operational and exploratory activities, collects material that allows it to detect crimes that violate the EU's financial interests, and then transfers cases to OLAF for handling. For example, in 2020, 31 control cases, 36 analyses and 9 inspections were related to fraud of EU funds.[38] One of the audits resulted in the initiation of an investigation by OLAF. The case concerned the awarding of a grant for a project that did not meet all formal and substantive criteria, which led to an act to the detriment of the public interest. The information provided by the CBA to OLAF allowed OLAF to initiate an investigation into alleged irregularities or fraud during the award and implementation of the project.[39] Also, several pre-inspection analyses were successful. For example, as a result of a pre-inspection analysis of the granting of low-interest loans from EU funds by a certain fund, a group of persons was detected which defrauded loans in the amount of PLN 2.6 million (these persons used related companies posing as market activities and repeatedly certified untruths in loan applications). In turn, the analysis of the project implemented since 2016 with EU funds ended with the transmission of findings to OLAF. The total value of the project is PLN 172.9 million, of which EU funding is PLN 161.2 million. Doubts about the links and interrelationships occurring between the project partner and the service contractors, and the impact of these links on the eligibility of expenditures, gave rise to the referral of information to OLAF. In addition, as a result of the activities carried out by the CBA, the beneficiaries made significant changes to the partnership agreements or they were terminated.[40] Undoubtedly, one of

38 Information on the Performance of the Central Anti-Corruption Bureau in 2020, p. 18, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

39 Ibidem, p. 23.

40 Ibidem.

the successes was that on 8 December 2021, OLAF announced the opening of an investigation into irregularities that were detected as a result of the CBA's 2019–2020 pre-inspection analysis. The analysis concerned the preparation and implementation of projects co-financed by the European Social Fund under the regional operational program. The analysis found irregularities occurring at the stage of the project partner's selection of contractors implementing the project. It was established that between the project partner and service contractors there were mutual relationships that affected the eligibility of expenses under the program.[41] The value of potential irregularities amounted to nearly PLN 44.1 million, which is as much as approximately 15% compared to the estimate of total damage to Polish State Treasury property or exposure to such damage in 2021 at nearly PLN 286.8 million.

Not only should direct cooperation in the prosecution of crimes and the transfer of cases between authorities be considered a good practice, but also a great contribution to education, prevention or joint projects. An example of awareness-raising and experience-sharing is the platform with anti-corruption training, which was established within the framework of the project "Development of an anti-corruption training system", financed in 2013–2015 with a grant from the European Commission. Since the beginning of the CBA's anti-corruption e-learning platform, users have completed a total of more than 354,000 training courses, which means an increase in interest in this form of training in 2021 by more than 110,000 compared to 2020.[42] The popularity and educational attractiveness of the platform is confirmed by the fact that in 2019, as a result of talks with the Lithuanian Special Investigation Service (STT), it was agreed that the CBA will donate a virtual machine with online anti-corruption training to the STT. The CBA's anti-corruption e-learning platform has also become a model for the training platform created in 2019 by the National Anti-Corruption Unit of Slovakia (NAKA). Another service interested in the CBA training platform is the Federal Police of Mexico, which at the same time asked to study the possibility of supporting the Mexican government, whose priority is the fight against corruption.[43]

CBA was a beneficiary of several projects financed or co-financed by the EU, such as for instance the project entitled "Development of the Anti-Corruption Training System" (AC Project) within the framework of the Prevention and Suppression of Crime (ISEC) Program, implemented in 2013–2015, or S4ACA (Siena For Anti-Corruption Authorities) aimed primarily at promoting and developing cooperation between law enforcement agencies, other anti-corruption authorities and Europol. Connecting CBA to this application

41 Information on the Performance of the Central Anti-Corruption Bureau in 2021, p. 34, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

42 Ibidem, p. 46.

43 Information on the Performance of the Central Anti-Corruption Bureau in 2019, p. 43, https://www.cba.gov.pl/pl/o-nas/informacja-o-wynikach.

in 2016 enabled direct exchange of information – through the Europol channel – with foreign partners and is a valuable tool used by officers of all divisions of the Bureau.[44] CBA also implemented a project funded through the Hercule III Program (2014–2020). The premise of the project was the development of technical facilities for implementing the integration process and modernization of IT networks to increase the potential and capabilities of electronic data collection, processing and exchange.[45] CBA also benefits from the Norwegian Financial Mechanism 2014–2021 to implement a project entitled "Strengthening the competence of law enforcement agencies and the judiciary in the area of analysis: criminal and strategic, supporting the process of identifying, combating and preventing corruption and economic crime". The main objective of the project is to strengthen international cooperation and promote best practices and solutions in the field of criminal and strategic analysis to prevent and combat corruption and economic crime by means of training courses on criminal and strategic analysis in the context of new technologies, as well as a criminal and strategic analysis conference. It will also include setting up a modern training laboratory for criminal analysis.[46]

3. Poland and the EPPO

Given that the cooperation of national law enforcement agencies with Europol, Eurojust and OLAF is quite efficient and effective, and certainly progressive, it remains to be seen how the cooperation between the Polish law enforcement authorities and the European Public Prosecutor's Office will go.

Poland was one of the Member States which initially decided not to join the enhanced cooperation. According to media reports of June 2022, Poland refused to provide legal assistance to the European Public Prosecutor's Office, and it rejected 23 requests from the EPPO for assistance in investigations. However, the National Public Prosecutor claimed that Delegated European Prosecutors sent only 7 requests to the National Prosecutor's Office for assistance in the EPPO's ongoing cases of crimes against the EU financial interests, including 5 European Investigation Orders and 2 requests for information, and that in order for Polish prosecutors and courts to be able to cooperate with the European Prosecutor's Office, it was necessary to amend the Code of Criminal Procedure.[47]

44 https://www.cba.gov.pl/pl/projekty/s4aca/3357,SIENA-dla-Organow-Antykorupcyjnych-S4ACA.html.

45 https://www.cba.gov.pl/pl/projekty/hercule-iii-programme/4656,Hercule-III-Programme-2014-2020.html.

46 https://www.cba.gov.pl/pl/projekty/norweski-mechanizm-fina/4640,Norweski-Mechanizm-Finansowy.html.

47 G. Zawadka, *Prokurator Krajowy: Jesteśmy otwarci na współpracę z Prokuraturą Europejską*, 1 June 2022, https://www.rp.pl/polityka/art36434761-prokurator-krajowy-jestesmy-otwarci-na-wspolprace-z-prokuratura-europejska.

The Polish government argued that the regulation of 12 October 2017[48] was not binding on Poland and therefore it could not have provided a direct basis for cooperation with the European Public Prosecutor's Office. For that reason, as the government maintained, it was necessary to introduce provisions to regulate this issue in national law. With the Act of 27 October 2022 amending the Code of Criminal Procedure and the Act on the Public Prosecutor's Office, Art. 615a was added to the Code of Criminal Procedure, which stipulated that the provisions of Chapters 62 (Legal aid and service in criminal matters), 62c (Requesting a Member State of the European Union to carry out investigative actions on the basis of an EIO), 62d (Requesting a Member State of the European Union to carry out investigative actions on the basis of an EIO), 63 (Interception and transfer of criminal prosecution), 65b (Request by a Member State of the European Union to transfer a person prosecuted on the basis of a European Arrest Warrant), 65d (Request by a Member State of the European Union to transfer a person prosecuted on the basis of a European Arrest Warrant) and 67 (Provisions relating to all or more than one institution governed by the section of the Code of Criminal Procedure on proceedings in criminal cases from international relations) applied mutatis mutandis to cooperation between courts, prosecutors and other procedural authorities and the European Public Prosecutor's Office. The new provision omitted Chapters 62a and 62b of the Code of Criminal Procedure, as the regulations contained therein referred to the seizure of evidence and the securing of property in the EU, which was covered by the Regulation of 14 November 2018.[49] Moreover, the cited provision stipulated that contact between prosecutors and the European Public Prosecutor's Office, including the transmission of letters or information, was to be made through the National Public Prosecutor's Office, and that if the requested action or the provision of information were to be contrary to the principles of the legal order of the Republic of Poland or to violate its sovereignty, the court or prosecutor was obliged to refuse to perform the action or provide information. The drawbacks of this regulation were obvious: the cooperation with the EPPO was centralized and any action might have been refused based on a highly abstract general clause that was in fact at the discretion of the Polish authorities. These solutions contradicted the essence of the functions to be performed by the European Public Prosecutor's Office.

Yet, a serious discussion about Poland joining the enhanced cooperation within the framework of the established European Public Prosecutor's Office was only possible after the parliamentary elections in October 2023 and the

48 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation in the establishment of the European Public Prosecutor's Office, Official Journal of the European Union, L 283/1.

49 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders (Official Journal of the European Union, L 303/1).

change of the government. On 13 December 2023, in turn, a new Minister of Justice submitted a request to the Prime Minister of the Republic for Poland to join the European Public Prosecutor's Office. On January 5, 2024, Poland submitted a notification document to the European Commission and the Council of the European Union regarding its accession to the European Commission. The European Commission has made a decision confirming Poland's participation in the EPPO. The procedure for selecting the European Prosecutor from Poland and integrating Poland into the work of the European Public Prosecutor's Office (EPPO) concluded, and in December 2024 the European Prosecutor from Poland was nominated.

Effective cooperation of the Polish authorities with the EPPO requires a series of legislative amendments. Relevant draft law was submitted to the Parliament in December 2024 and was adopted on 24 January 2025. It will come into effect on 27 March 2025.

III. Cooperation between national law enforcement agencies and the law enforcement agencies of other non-EU countries

The question of cooperation between national law enforcement agencies and the law enforcement agencies of other non-EU Member States is a completely different issue than the one raised in the previous section. Unique mechanisms have been developed for combating cross-border crime within the European Union, and as they evolve – and international criminal groups simultaneously expand – new challenges and needs emerge. Instruments operating in the EU are not applicable in other countries. Therefore, the cooperation of states is based on the traditional model of state cooperation in criminal matters. Of course, organized crime directed against the financial interests of the EU is also of a slightly different nature. Nevertheless, it cannot be ruled out that criminal groups from the Member States cooperate with such organizations from outside the Community or transfer profits to such countries. Members of the groups seek refuge there due to the functioning of the European Arrest Warrant, which, although not discussed earlier, is also relevant to the subject of the study. In international practice, there are bilateral and multilateral agreements for cooperating in criminal matters. Poland has entered into more than a dozen such agreements, but their nature varies. Their object is not to combat fraud against the financial interests of the EU, but more general issues which include the fight against organized crime. However, it should be noted that some of them are not even agreements relating to organized crime as a whole, but deal with specific crimes, e.g. drugs or human trafficking. The most important act of international law that sets the framework for cooperation between states in the fight against organized crime is the United Nations Convention against Transnational Organized Crime, which came into force on 29 September 2003, and the protocols (three protocols, to be precise) supplementing it, or the Palermo Convention. The Convention points out

the need to criminalize certain acts, defines concepts, indicates measures to combat organized crime, obliges states to fight transnational organized crime, commits to cooperation in training and technical assistance, normalizes issues relating to the protection and assistance of victims and witnesses and contains provisions on the prevention of organized crime. Regardless of this, what is needed in terms of effectively combating cross-border organized crime is not only general multilateral regulations, but also specific actions and real cooperation of states at the operational level. The author believes that such solutions should be developed in the United Nations forum, in such a way as to create comprehensive regulations covering the widest possible group of countries. Poland's neighbours are member countries and cooperation with them is carried out under Community mechanisms. However, Poland also borders with countries outside the EU: Russia, Belarus and Ukraine. Cooperation in criminal matters is also conditioned by the political situation in these countries, and currently also by the war that Russia is waging against Ukraine with the involvement of Belarus. Thus, cooperation with countries outside the European Union is not only conditioned by less regulation, but also by other factors. Consequently, it is impossible to conclude that cooperation in combating organized crime with non-EU countries is comprehensive and effective within the necessary parameters.

Recommendations for improvement

The scope of activities of the Polish law enforcement authorities overlap. Also, it happens that the tasks of these authorities are expressed in such general terms that it is not possible to establish a catalogue of crimes subject to their competence. For example, two different special services (CBA and ABW) are involved in tackling corruption and broadly defined economic crimes detrimental to the interests and security of the state. Therefore, it is necessary to limit the scope of each authority's activities by eliminating duplicated tasks, while ensuring exclusivity in the detection and prosecution of a given type of crime. However, cooperation in technical, operational and methodological support should not be excluded. This would naturally prevent disputes over competence and unnecessary procedural chaos. Merging some of these services could also be beneficial. The current government has submitted a proposal to abolish the Central Anti-Corruption Bureau and transfer its tasks to the Police, but this has not yet been accepted.

Regarding EU institutions such as Europol, Eurojust and OLAF, national law enforcement agencies cooperate efficiently and effectively. It remains to be seen how cooperation with the European Public Prosecutor's Office will develop.

8 In lieu of conclusions

Paweł Dziekański and Celina Nowak

State of the art

The protection of the European Union's financial interests has been a significant concern for both the Union and its Member States since the 1990s. However, the legal framework in this area has developed slowly and faced numerous challenges. Frustration with the Third Pillar legal instruments adopted in the mid-1990s was reflected in the *Corpus Juris* project, which took a maximalist approach by proposing the unification of national provisions related to the protection of the Union's budget. Although never enacted, *Corpus Juris* – which included a proposal to establish a European Public Prosecutor's Office to investigate and prosecute PIF crimes across the EU – planted a seed that endured. Two decades later, this idea materialized into concrete legal acts.

Indeed, the adoption of 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 through criminal law, and Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO, marked a milestone in combating crimes affecting the EU's financial interests. However, challenges remain, particularly in the practical implementation of these legislative measures.

The deadline for transposition of the Directive into national law expired on 6 July 2019.[1] As of today, the Commission has presented two reports on the implementation of the PIF Directive, identifying ongoing loopholes in national legislation – especially regarding the definitions of criminal offences,

1 Report on the implementation of 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, 6 September 2021 (COM(2021) 536 final) and Second report on the implementation of 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, 16 September 2022 (COM/2022/466 final).

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the liability of and sanctions for legal and natural persons, the exercise of jurisdiction, and limitation periods.[2]

Procedurally, the establishment of the EPPO is a significant achievement for generations of EU policymakers and lawyers responsible for the protection of the EU financial interest, both on the Union level and in the Member States. The final shape of the EPPO reflects a political compromise among the Member States and differs considerably from the Commission's 2013 proposal for a centralized Union body. Instead, the EPPO was created as a decentralized Union body, with a key role played by national prosecutors.

The EPPO became operational in mid–2021. Currently, 24 EU Member States participate in enhanced cooperation, with Denmark, Ireland, and Hungary still opting out. As of 31 December 2024, the EPPO had conducted 2,666 active investigations involving an estimated €24.8 billion in damages. VAT fraud accounted for more than 53% of the total estimated damage at the end of 2024, amounting to €13.15 billion.[3]

The creation of the EPPO represents a significant shift in the institutional framework for protecting the Union's financial interests. However, its effective operation depends on the implementation of necessary legislative changes in the Member States and practical adjustments in the national law enforcement administrations to incorporate the EPPO as a new counterpart for the already existing institutions and bodies.

Recommendations

This collection of studies offers a first insight into the practical realities of cooperation in combating PIF crimes – especially organized fraud – within Member States following the establishment of the EPPO. While the evolution of cooperation in this new institutional landscape is ongoing, several conclusions can already be drawn.

The fight against fraud and other offences affecting the EU's financial interests occurs on multiple fronts – chiefly legislative and institutional. This collection focuses on the institutional framework. Indeed, numerous national and EU institutions are involved in protecting the EU's financial interests, and they must function as part of a coherent, effective system that ensures adequate control over EU funds. When criminal irregularities are detected, effective, proportionate, and dissuasive sanctions must follow.

This institutional protection system has several layers, all addressed in this book. Cooperation among national law enforcement institutions goes first. Secondly, we have vertical cooperation between national authorities and EU institutions, such as Europol, Eurojust, EPPO, and, to some extent, OLAF.

2 Second report on the implementation of Directive (EU) 2017/1371, 11.

3 See EPPO Report for 2024, https://www.eppo.europa.eu/assets/annual-report-2024/index.html.

Then, horizontal cooperation among Member States' national law enforcement bodies. Finally, cooperation between EU Member States' and non-EU law enforcement authorities.

The cooperation of the national law enforcement institutions is the foundation for effective investigation of PIF crimes. Yet, as shown in the studies in this book, all the examined Member States face similar challenges – particularly the competition between multiple national agencies with overlapping responsibilities. While centralizing these functions is unrealistic, their cooperation must improve. As highlighted by Švedas (Lithuania) and Bogdan (Romania), agencies should exchange information (including criminal intelligence information) and best practices (for example, through joint training and seminars). Klimek (Slovakia) stresses the need for sufficient resources to ensure effectiveness. Additionally, national legal frameworks must effectively implement EU legislation, including the EPPO Regulation, PIF Directive, and the Whistleblowing Directive, to provide effective cooperation on the national level.

Vertical cooperation between national authorities and institutions like Europol, Eurojust, and the EPPO is currently functional but requires strengthening.

As noted by Nicolicchia (Italy), effective implementation of the EPPO framework by Member States is vital. Without an actual harmonization of relevant national provisions of the European Prosecutor and the European Delegated Prosecutors in the Member States, they will not be able to carry out their tasks. Harmonization of national provisions must be thorough and continuously evaluated. Švedas also underlines the need to monitor how EPPO's jurisdiction is exercised to avoid overlaps.

Thirdly, good cooperation is contingent upon an effective exchange of information (including criminal intelligence), which should be improved but also closely monitored to protect human rights – especially when data originates from preventive police measures or administrative measures rather than criminal investigations (as emphasized by Engelhart, citing Germany's experience).

Moreover, the personal dimension of cooperation must not be overlooked. Trust, communication, and mutual respect between the EPPO and European Delegated Prosecutors and national law enforcement officials are crucial for an efficient European prosecution model.

The institutional framework relevant for combating organized fraud is not composed with just the EPPO, although, as has been mentioned on many occasions here, it is certainly a welcome addition to the already-existing system. There are two other EU agencies also responsible for cooperation between Member States in criminal matters. The first is the European Union Agency for the Cooperation of Law Enforcement Agencies (Europol) and the second is the European Union Agency for Justice Cooperation (Eurojust). These agencies facilitate cooperation and coordination in cross-border crime, supporting investigations and prosecution across Member States. Their involvement in PIF crime cases should continue.

The aforementioned recommendations should also be applied with regard to the horizontal cooperation amongst national law enforcement authorities of different EU Member States, which constitute a third layer of institutional cooperation.

As Engelhart notes, the EU's system represents a significant improvement over traditional forms of cooperation in criminal matters among states, which is often slow, fragmented, and overly discretionary. The principle of state sovereignty, as far as criminal matters were concerned, meant that any foreign jurisdiction was excluded in any country. Accordingly, whether or not to provide legal assistance to another state was essentially a discretionary decision by the state in question. Under such circumstances, effective prosecution – especially of organized cross-border crime – was basically impossible.

In order to overcome these deficiencies of the traditional international legal framework, the cooperation of EU Member States in criminal matters has been based on the principle of mutual trust in the legal systems of Member States and on mutual recognition of judicial decisions issued in those states.

Although the principle of mutual trust is not explicitly enshrined in the Treaties, "it has become an essential building block of the Union legal system and, in the meanwhile, has been assigned the status of a principle, arguably a structural principle of EU constitutional law", as S. Prechal argues.[4] On the other hand, the principle of mutual recognition of judgments delivered in those states is anchored in the Treaty. Pursuant to Article 67(3) TFEU, the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism, and xenophobia, and through measures for the coordination and cooperation of police and judicial authorities and other competent authorities, as well as through the mutual recognition of judicial decisions in criminal matters and, where necessary, through the approximation of criminal laws.

However, mutual trust depends on Member States maintaining an independent judiciary and safeguarding fundamental rights. Any erosion in these areas undermines the entire cooperation framework.[5] Therefore, Member States – especially Poland and Romania, which have been the subject of particular scrutiny in this context – should strive to maintain an adequate level of safeguards for individuals so that the principle of mutual trust remains valid.

The fourth layer – cooperation between EU and non-EU authorities – remains the most complex. It is still governed by traditional judicial cooperation frameworks, heavily reliant on goodwill and political decisions of the

4 S. Prechal, Mutual Trust Before the Court of Justice of the European Union, *European Papers*, Volume 2, Issue 1, 2017, p. 76.

5 See A. Sakowicz, Erosion of the Principle of Mutual Recognition. European Arrest Warrant and the Principle of Mutual Recognition in the Light of the Recent CJEU Rulings, *Review of European and Comparative Law*, Volume 54, Issue 3, 2023, pp. 11–50, https://doi.org/10.31743/recl.16209.

states concerned. This dimension requires considerable effort to improve and modernize.

The outlook for the future

This collection of studies focuses on selected institutional aspects of the fight against (organized) crime affecting the EU's financial interests. Yet the effectiveness of this fight also depends on the activities of public administration authorities. Institutions involved in the disbursement of EU funds must cooperate – both horizontally and vertically – with law enforcement agencies, as they are often the first to detect financial crimes. Preventive measures play a critical role as well.

Fighting cross-border organized crime, including crime against the EU budget, requires not only legal harmonization of national laws but also new forms of cooperation. For example, recognizing evidence operations conducted by other Member States and enhancing data-sharing mechanisms are vital.

In this context, the Council Recommendation (EU) 2022/915 of 9 June 2022 on operational law enforcement cooperation[6] is particularly relevant. It highlights desirable practices regarding operational law enforcement cooperation between law enforcement authorities, where law enforcement authorities of a Member State operate in the territory of another Member State, such as cross-border hot pursuit, surveillance, joint patrols, or other joint operations. A legal framework to support these practices should be developed.

Furthermore, informal cooperation – through personal networks and exchanges – is essential. Personal relationships between national and EU-level law enforcement officers significantly enhance the day-to-day implementation of formal cooperation mechanisms.

Although this collection focuses on protecting the EU's financial interests, particularly combating organized fraud, future cooperation may evolve in new directions. Under Article 86(4) TFEU, the European Council may unanimously decide to extend the EPPO's powers to other serious cross-border crimes. Thus, cooperation among law enforcement bodies will continue to evolve.

6 Official Journal of the European Union, L 158, pp. 53–64.

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