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SOME CONSIDERATIONS REGARDING THE COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (EPPO)

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Abstract: *The first draft amendment to the Treaty of 6 August 1976 amended the Treaties establishing the European Communities, thus creating the premises for the adoption of common rules on the criminal protection of financial interests, and general regulations on administrative measures and sanctions for breaches of Union law were adopted. The premises were thus created for the adoption of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO), which regulates through its provisions the conduct of criminal prosecution in the event of crimes against the financial interests of the European Union.*

Keywords: *criminal trial; criminal prosecution; jurisdiction; European Public Prosecutor; European Public Prosecutor's Office (EPPO)*

1. General Considerations

According to the provisions of Council Regulation (EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, the general budget of the European Union is financed by own resources and is managed by the Commission within the limits of the authorized appropriations[2].

To protect the financial interests of the European Union, the Convention on the protection of the European Union's financial interests was adopted in 1995, which in its article 1 distinctly defines fraud in matters of revenue and expenditure[3].

Also in this regard, Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the European Union's financial interests by means of criminal law was adopted, which established rules on the definition of criminal offences

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[2] G. Negruț (2014), Confiscation measure in case of corruption crimes, Universul Juridic Publishing House, Bucharest, p. 276-277.

[3] Document available online at www.antifrauda.gov.ro.

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and sanctions in the field of fraud affecting the financial interests of the European Union, as a result of the fact that, in many cases, fraud affecting the Union's revenue and expenditure is not limited to a single country, being committed by organised criminal networks, requiring criminal prosecution on the territory of several European states.

Moreover, the preamble to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO) refers to the fact that "these crimes are not always sufficiently investigated and prosecuted by national criminal justice authorities, and the Treaty on the Functioning of the European Union (TFEU), in the title on the area of freedom, security and justice, provides for the possibility of establishing the European Public Prosecutor's Office (EPPO)".

The provisions of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the financial interests of the European Union criminalise the crime of fraud affecting the financial interests of the European Union, the material element of which is represented by "any action or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or from budgets managed by or on behalf of the Union; failure to disclose information, in breach of a specific obligation, having the same effect; the improper use of such funds or assets for purposes other than those for which they were initially granted".

Also, regarding expenditure related to procurement, "any action or inaction is criminalized regarding: the use or presentation of false, incorrect or incomplete declarations or documents, having as its effect the misappropriation or improper retention of funds or assets from the Union budget or from budgets managed by or on behalf of the Union; the improper use of such funds or assets for purposes other than those for which they were initially granted, which is detrimental to the financial interests of the European Union".

Also criminalized are "actions or inactions of a cross-border nature committed within the framework of fraudulent schemes regarding revenues obtained from VAT own resources committed by: using or presenting false, incorrect or incomplete VAT declarations or documents, having the effect of diminishing the resources of the Union budget; presenting correct VAT declarations in order to fraudulently mask non-payment or the establishment of undue rights to VAT refunds"[1].

[1] A. Boroi, M. Gorunescu, I. A. Barbu, B. Vârjan (2016), Criminal Law of Business, 6th revised and added edition, C. H. Beck Publishing House, Bucharest, p. 345.

2. Principles Governing the Work of the European Public Prosecutor's Office

According to the provisions of Article 3 of Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) is established as a body of the European Union, with legal personality, which cooperates with Eurojust for the purpose of carrying out criminal prosecution in the event of crimes against the financial interests of the European Union, being able to exercise public action within the competent courts of the Member States of the European Union until the completion of the criminal investigation.

In carrying out these tasks, the European Public Prosecutor's Office shall carry out its activity in accordance with the following principles:

a) Principle of legality

As a guarantee of compliance with the law, in accordance with the provisions of art. 5 paragraph 3, the European Public Prosecutor's Office (EPPO) shall exercise its powers under the provisions of the Regulation, its activity being limited to judicial activities, representing the general interests of the European Union. Also in this regard, according to the provisions of point 66 of the preamble to the Regulation, it is provided that "the EPPO shall strictly apply the rules laid down in this Regulation, in particular as regards competence, the conduct of criminal prosecution activities and simplified criminal prosecution procedures".

b) The principle of impartiality

This principle stems from the principles of legality and the obligation of criminal proceedings.

In accordance with the principle of impartiality, "the European Prosecutor is obliged to act in the same way towards all those who have violated the provisions criminalizing the commission of fraud against the financial interests of the European Union, which will ensure the great procedural guarantees derived from fundamental human rights to which contemporary criminal procedure in all states governed by the rule of law is aligned".

c) Principle of hierarchical control

Hierarchical control arises from the need for hierarchical subordination, the provisions of superior bodies being binding on subordinates.

In this regard, according to the provisions of point 21 of the preamble to the Regulation, "The European Public Prosecutor's Office (EPPO) must be an indivisible body of the Union which shall function as a single public prosecutor's office, consisting of the European Chief Prosecutor, who is also the Head of the EPPO, a College of European Prosecutors and European prosecutors, the decentralised level being made up of European Delegated Prosecutors located in the Member States of the Union".

This control consists of verifying managerial efficiency, the way in which prosecutors perform their duties and the way in which service relationships with litigants and other persons involved in the work within the competence of the EPPO are carried out.

According to the provisions of Article 8 of the Regulation, the European Public Prosecutor's Office (EPPO) is an indivisible body of the European Union, which functions as a single public prosecutor's office with a decentralised structure, being organised at central and decentralised levels.

The central level of the EPPO is represented by "a central public prosecutor's office which is composed of the College, the permanent chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director, while the decentralised level is composed of the European Delegated Prosecutors located in the Member States of the European Union".

In exercising its powers, the European Public Prosecutor's Office has material and territorial competence, as well as personal competence[1].

In terms of material competence, according to the provisions of Article 22 of the Regulation, "The European Public Prosecutor's Office shall conduct criminal prosecutions in respect of offences affecting the financial interests of the European Union, as set out in Directive (EU) 2017/1371, regardless of whether the material element of such offences can be classified as another type of offence under the criminal law of the Member States. For the offences set out in Article 3(2)(d) of Directive (EU) 2017/1371, the EPPO shall have jurisdiction only where the actions or omissions of such offences have caused a total damage of at least EUR 10 million".

The EPPO is also competent for offences relating to participation in a criminal organisation, as defined in Framework Decision 2008/841/JHA, for the purpose of committing offences against the financial interests of the European Union. In terms of territorial and personal jurisdiction, the EPPO is competent to prosecute where offences against the financial interests of the European Union have been committed:

- in whole or in part within the territory of one or more Member States;
- by a national of a Member State, provided that a Member State has jurisdiction over such offences when they are committed outside its territory;
- outside the territories of the Member States by a person who is subject to the Staff Regulations or the Conditions of Employment applicable at the time the offence is committed, provided that a Member State has jurisdiction over such offences when they are committed outside its territory.

[1] G. Negruț, A. Boroi (2025), Criminal procedural law, 4th edition, Hamangiu Publishing House, Bucharest, p. 167.

3. Conduct of the Prosecution Procedure Within the European Public Prosecutor's Office (EPPO)

Where, in accordance with applicable national law, there are reasonable grounds to believe that an offence falling within the scope of the EPPO is or has been committed, a European Delegated Prosecutor from a Member State which, in accordance with its national law, is competent for the offence in question shall initiate an investigation and record this in the case management system.

He shall have the power either to take investigative measures or to instruct the competent authorities of his Member State to conduct criminal proceedings, and may order or request the preventive arrest of the suspect or accused person in accordance with national law applicable in similar domestic cases.

When the European Delegated Prosecutor considers, on the basis of the evidence in the file, that the investigation is complete, he shall send the supervising European Prosecutor a report containing a summary of the case and a draft decision on whether to initiate criminal proceedings before a national court, to refer the case to the national authorities, to discontinue the case or to proceed with a simplified criminal prosecution procedure.

According to the provisions of art. 36 of the Regulation, if "the European Delegated Prosecutor transmits a draft decision proposing referral to court, the Permanent Chamber is obliged to rule within 21 days, and if the Permanent Chamber does not take a decision within 21 days, the decision proposed by the European Delegated Prosecutor shall be deemed to be accepted. After a decision has been taken on the Member State in which the criminal proceedings may be initiated, the national court competent to try the case shall be determined on the basis of national law".

At the same time, if the national legislation on criminal procedure provides for a simplified criminal prosecution procedure, then the European Delegated Prosecutor handling the case may propose to the competent Permanent Chamber to apply the respective procedure in accordance with the provisions laid down in national law[1].

If the following situations arise during the investigations carried out: death of the suspect or accused person or liquidation of a suspected or accused legal person; mental alienation of the accused person; amnesty granted to the accused person; immunity granted to the suspect or accused person; expiry of the national limitation period for initiating criminal proceedings or in case of finding irrelevant evidence in a case, then the Permanent Chamber shall decide, on the basis of a report submitted by the European Delegated Prosecutor handling the case, to close the criminal prosecution against the suspect or accused person.

[1] G. Negruț (2018), ,,Some considerations on the powers of the European Public Prosecutors Office (The EPPO)", article published in the volume of the International Scientific Conference, 7th Edition, with the theme "Challenges and Strategies in Public Safety and Order", Bucharest, between December 6-7, 2018, Sitech Craiova Publishing House, ISSN 2559-3277, p. 175.

4. Conclusions

For crimes against the financial interests of the Union, the competence to carry out criminal prosecution belongs to the authorities of the Member States of the European Union. However, it was noted that this objective has not always been sufficiently achieved, it was decided that, in accordance with the provisions of Article 86 of the TFEU, a European Public Prosecutor's Office (EPPO) could be established, which would have the competence to prosecute and bring to justice those who have committed crimes against the financial interests of the European Union, any extension of this competence to include other serious crimes with a cross-border dimension requiring a unanimous decision of the European Council.

It is thus noted that, in accordance with the principle of proportionality, the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO), establish the procedure for the organisation and functioning of the European Public Prosecutor's Office (EPPO), a body established for the purpose of prosecuting offences against the financial interests of the European Union, but which, through its powers, does not prejudice the legal systems and institutional structures of the Member States of the European Union.

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