

LAUNCH OF THE OPERATIONAL ACTIVITIES EUROPEAN PUBLIC PROSECUTOR'S OFFICE VICTIMS OR SUSPECT OR ACCUSED PERSON OF CRIMINAL OFFENCES AGAINST EU LAW: WHAT ARE YOUR RIGHTS?

The European Public Prosecutor's Office (EPPO) started its operational activities on 1 June 2021. As an **independent body created through enhanced cooperation** between 22 Member States¹, this new investigative body will drastically reshape the European landscape of investigation and prosecution of criminal offences against the financial interests of the European Union. Victims of such offences, persons concerned by the investigations of the European Public Prosecutor's Office or ordinary citizens, it is in everyone's interest to know how it works in order to assert your rights.

Launch of the European Public Prosecutor's Office: structure and core tasks

With an allocated budget of more than €40 million for 2021, the European Public Prosecutor's Office is responsible for investigating in criminal offences against the Union's financial interests, as listed in Directive (EU) 2017/1371 of 5 July 2017 on the fight against to the Union's financial interests by means of criminal law, the so-called "**PIF Directive**".

The offences prosecuted are mainly cases of **cross-border VAT fraud** amounting to at least EUR 10 million, irregularities, **fraud relating to public procurement and EU funding, corruption or organised crime**. The Directive defines the «financial interests of the Union» as all revenues, expenditure and assets covered by, acquired through, or due to the Union budget and the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them. Both natural and legal persons can be prosecuted, as long as the offence was committed on EU territory or was committed by a European national.

In practice, the European Public Prosecutor's Office will operate at two levels, centralised and decentralised. The centralised level is composed of a **College of European Prosecutors**, chaired by the European Chief Prosecutor (currently Laura Codruța Kövesi, a Romanian national) and one prosecutor per participating Member State. The College then divides into permanent Chambers of three members, which supervise and direct the investigations. The decentralised level is formed by the **European Delegated Prosecutors**: at least two per participating Member State, they work on the ground directly in the participating Member States.

Once investigations are completed, the European Public Prosecutor's Office is **competent to initiate criminal proceedings** and to prosecute the persons concerned before the courts of the Member States, which retain sole jurisdiction in criminal matters.

Complaints to the European Public Prosecutor's Office and the right to information of presumed victims

A priori, the majority of investigations by the European Public Prosecutor's Office will be initiated in response to reports from the EU institutions and bodies or the authorities of the Member States. However, the Prosecutor's Office may also initiate investigations on the basis of other sources, such as possible **complaints from natural or legal persons**, whether or not they consider themselves to be victims.

A dedicated form is already available on the European Public Prosecutor's website:
<https://www.eppo.europa.eu/en/form/eppo-report-a-crime/>

The complaint can be filed by any person (EU or non-EU citizen), in any official language of the Union.

¹ At this stage, all EU Member States are participating, except Hungary, Denmark, Ireland, Poland and Sweden. The seat of the European Public Prosecutor's Office is in Luxembourg.

The European Public Prosecutor's Office then carries out an initial analysis of the complaint before deciding whether to open an investigation, transfer the case to the competent national authority (when the European dimension of the infringement is not qualified) or not to proceed.

The founding regulation of the European Public Prosecutor's Office provides that the **alleged victims of the crime must be informed of the follow-up to their complaint**. However, the information of non-victims who have reported the criminal conduct is not automatic and will depend on the applicable national rules.

When an investigation is opened, the European Public Prosecutor's Office must provide the victim with sufficient information to enable him or her to bring a civil action before the court of the Member State where the prosecution is carried out. National rules on the status and rights of crime victims will then apply, as this matter is not governed by EU law.

The rights of suspects and prosecuted persons

Until now, some cases involving significant criminal activity of a cross-border nature were coordinated by Europol (at the investigation stage) and Eurojust (at the prosecution stage) but remained occasional and entirely managed at national level.

Most investigations into potential offences against the EU's financial interests were carried out by the **European Anti-Fraud Office (OLAF)**, an administrative investigative body linked to the European Commission, without coercive or prosecuting powers. OLAF investigates and draws up a report which can be forwarded to the EU institutions and national criminal authorities for appropriate follow-up.

The administrative nature of OLAF's investigations and its investigative practices have raised many questions and criticisms. Late information of persons concerned by an investigation, no access to the file, no means of appeal against OLAF's actions... Compliance with the rights of the defence is put into question. The recent setting-up of the post of OLAF Controller of procedural guarantees is welcome but will not solve all the problems as it remains an internal and administrative entity within OLAF.

The "handover" to the **European Public Prosecutor's Office**, as far as external investigations are concerned, is welcome. Indeed, the founding Regulation of the European Public Prosecutor's Office expressly provides that its activities shall be carried out in **full respect of the rights of suspects and accused persons** as enshrined in the **Charter of Fundamental Rights of the Union**, in particular the right to a fair trial and the right of defence. Thus, a minimum set of procedural rights should be guaranteed, including the right to interpretation and translation, the right to information and access to documents, the right of access to a lawyer, the right to remain silent and to be presumed innocent and the right to legal aid. The right to present evidence, to request the appointment of experts or an expert opinion and to hear witnesses is also envisaged.

If the European Public Prosecutor's Office works effectively, it will be a real step forward, both for the protection of the Union's interests and for the respect of the rights of the persons concerned by its investigations.

Be careful, however: the creation of the European Public Prosecutor's Office does not mean the abolition of OLAF, Eurojust or Europol. These entities will remain active in parallel, with the risk of creating a legal labyrinth, a possible source of confusion and overlapping competences. The nature of the European Public Prosecutor's Office, created on the basis of the enhanced cooperation mechanism with only some of the Member States of the Union, and the scope of the competences of these bodies, which is broader than that of the European Public Prosecutor's Office, left no other alternative.

To remedy this risk, **one key-principle is the non-duplication of investigations**, i.e., the prevention of parallel investigations. This principle is explicitly laid down in the founding Regulations of the EPPO and OLAF: where the European Public Prosecutor's Office decides to open an investigation or to use its power of evoca-

tion, it has priority and the other European bodies, but also the national authorities, must not take action separately or, if an investigation has been opened, they must pass on the file.

In addition, the relationship between OLAF and the European Public Prosecutor's Office is now framed. On 6 July 2021, the [Working Agreement between the European Public Prosecutor's Office and OLAF](#) entered into force, aiming to implement close cooperation between the two entities in the pursuit of their investigations.

This Working Agreement notably provides that the OLAF and the EPPO will systematically keep each other informed before any decision to open a case is made, via the appointment of contact-points and access to their case management systems. It is also foreseen that OLAF agents will provide the EPPO with operational or logistical support or carry out additional investigations at its request, when necessary. On the other hand, the EPPO also commits to inform OLAF when it decides not to open an investigation, for competence or expediency reasons, but that the facts in question could fall within OLAF's competence (e.g. serious misconduct by European officials and agents, cases involving third countries or Member States that are not part of the enhanced cooperation).

In principle, this should help to prevent situations of overlapping competences, source of legal insecurity for suspected or accused persons. However, it remains to be seen, however, how this agreement will be implemented in practice by these two bodies with their own working methods.

As for the national investigation authorities, the rules on the division of powers have been laid down in [the guidelines](#) on the initiation or evocation of investigations by the European Public Prosecutor's Office and appear to be particularly complex. Caution and vigilance are therefore called for.

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