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*The new anti-fraud institutional and legislative
landscape of the European Union*

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Background paper

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1. Introduction

Fraudulent behaviour affecting the financial interests of the European Union not only entails economic risk and damage but, more fundamentally, undermines the implementation of EU policies – and as a consequence, the confidence of European citizens and the public in the common EU project. According to Article 311 of the Treaty on the Functioning of the European Union (TFEU), the Union's budget is financed almost entirely from its **own resources**, which are to be used for the implementation of common policies, and currently represent 98% of the budget. The objective of the treaties is to provide financial autonomy while requiring budgetary discipline¹.

As stated in Article 325(1) of the TFEU, the responsibility for protecting common financial interests and combating behaviour prejudicial to them, including fraud, is shared between Member States and the European Union². The former is called upon to manage about 74%³ of the European

¹ See ‘Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ L 424, 15 December 2020’, p. 1-10, where implementing measures for the system of own resources of the European Union are laid down.

² In the sense that Article 317 TFEU states that “the Commission shall implement the budget in cooperation with the Member States, on its own responsibility and within the limits of the appropriations allocated, having regard to the principles of sound financial management. The Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.”

³ Report from the Commission to the European Parliament and the Council, Thirty-first Annual Report on the Protection of the European Union's Financial Interests and the Fight against Fraud (2019), COM (2020) 363, 3 September 2020, p. 5.

budget, while the latter plays a fundamental role in controlling expenditure and revenue and setting parameters for which it will then verify compliance. According to the latest “PIF” (Protection of the Union’s Financial Interests) Report, a total of some €461.4 million in fraud – presumed or proven – was reported in 2019. This parameter, sufficient in itself to justify a strong response from the EU and its member states, is not even a direct indicator of the level of fraud against the EU budget, which is potentially higher due to unreported irregularities. The damage to the interests of the European Union is therefore of such a size every year that it threatens the proper functioning of its institutions and programmes. This challenge to address it is all-the-more urgent given that the EU is about to invest unprecedented amounts of money in tackling the crisis resulting from the Covid-19 pandemic through the ‘NextGenerationEU’ recovery plan, as well as – as shown in the PIF Report – in supporting action for environmental sustainability.

The importance of ensuring an effective response to irregularities and criminal behaviour detrimental to the financial interests of the Union is evidenced by the wide range of measures and actions that have been undertaken at all levels since the European Economic Community was given its own resources in the 1970s. Since then, the need for more effective instruments, even criminal ones, has become increasingly evident. Although there are still many challenges, there have been **many positive results in the fight against fraud in Europe in recent years**. The landscape of measures relating to the fight against fraud has undergone considerable development, thanks to legislative and institutional innovations that will be the subject of discussion during the International Conference. Their essential features will be described in the following paragraphs: the new directive on the Protection Of The Union's Financial Interests (the “PIF Directive”)⁴ on the fight against fraud affecting the financial interests of the EU, the adoption of the new Anti-Fraud Strategy of the European Commission (CAFS)⁵, the amendment of the European Anti-Fraud Office (OLAF)⁶ Regulation and, finally, the establishment and commencement of the activities of the European Public

⁴ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law, OJ L 198, 28.7.2017, p. 29-41.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors ‘Commission anti-fraud strategy: stronger action to protect the EU budget’, COM/2019/196, 24 April 2019.

⁶ 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 investigations conducted by the European Anti-Fraud Office, OJ L 437, 28 December 2020, p. 49-73.

Prosecutor's Office (EPPO)⁷. Further advances include the EU directive on the protection of whistleblowers⁸, 'horizontal' provisions on the protection of financial interests contained in all the Commission's multi-annual framework financial proposals, the measures to strengthen the fight against corruption, international cooperation activities with third-country states and supranational organisations (in particular of OLAF), as well as the implementation of the 'Hercule' and Structural Reform Support Programme (SRSP) programmes. Additionally, the jurisprudence of the **Court of Justice of the European Union** has been marked by some important decisions in this field, in particular concerning OLAF's activity and powers⁹.

In the light of these developments and of the increasing risks posed by major investments planned over the coming years, it is necessary to enhance awareness and knowledge of the actors involved in this field, particularly in the world of justice, and to facilitate the exchange of information and experience. In this respect the international conference entitled '*The new anti-fraud institutional and legislative landscape of the European Union*' – organised by the Lelio e Lisli Basso Foundation, to be held in Rome from 7 to 8 October 2021 – aims to take stock of the new institutional and legislative developments in the anti-fraud field at a European level, as well as its challenges. In this context, this background paper aims to illustrate the current state of play in this field, and to provide a common knowledgebase for participants, in order to stimulate discussion on the complex issues that will be addressed during the event.

2. The adoption of the PIF Directive

The PIF Directive on the fight against fraud to the detriment of the Union's financial interests by means of criminal law was adopted on 5 July 2017 with the aim of strengthening the protection of the Union's financial interests and combating criminal activities that threaten them, achieved by setting common standards in this field for the criminal law of EU member states. However, its effectiveness depends on the way in which member states transpose it into their own legislation: the stronger the implementation at national level, the stronger the protection provided. The **second session** of the Conference will assess the extent to which Member States have complied with this obligation, and the implications of its adoption for the EPPO.

⁷ Established by Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO'), OJ L 283, 31 October 2017, p. 1-71

⁸ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of individuals who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

⁹ T-617/17, *Vialto Consulting Kft. v. European Commission*; C-615/19 P, *John Dalli v. European Commission*.

The need to adopt a new legal instrument emerged as early as 2004, when the European Commission noted that the 1995 PIF Convention had not effectively met the “specific need for criminal-law protection of the EC’s financial interests”, and that an innovative directive and the European Public Prosecutor’s Office itself, were therefore needed¹⁰. The first proposal for a directive, presented by the Commission in 2012, was significantly weakened during the negotiations in the Council; in 2014 it was up to the European Parliament to propose a version similar to the original one, but with a **legal basis** identified in Art. 83, par. 2, TFEU (and not in Art. 325) in line with the position of the Council.

As article 1 of the Directive makes clear, it contains ‘minimum rules with regard to the definition of criminal offences and sanctions in the fight against fraud and other illegal activities affecting the financial interests of the Union, in order to enhance the protection against criminal offences affecting those financial interests’, where financial interests are defined as, per art. 2(1)(a): ‘all revenue, expenditure and assets which are covered or acquired by, or payable out of: (i) the budget of the Union; (ii) the budgets of the institutions, bodies, offices and agencies of the Union established by virtue of the Treaties or budgets managed and controlled directly or indirectly by them’. The text goes on to identify, in articles 3 and 4, the **offences affecting the financial interests of the Union**, which Member States are required to ensure are criminalised. As will be seen below, these conducts – all characterized by intent – constitute the main core of the offences subject to the material competence of the EPPO, by virtue of the reference made to the PIF Directive (article 22 of the EPPO Regulation). In summary, these are the offences of:

- **Fraud (Art. 3)** - In line with the 1995 Convention, the rule distinguishes between expenditure fraud and revenue fraud. The Directive adds a further distinction between procurement and non-procurement fraud. On the revenue side, VAT fraud is introduced, which is the result of a compromise reached during negotiations. The Council considered that VAT fraud was a matter of purely national interest. The stalemate resulting from the Council's position was overcome by the Court of Justice of the European Union (CJEU) in the *Taricco*¹¹ case, which confirmed the Commission's view that such offences should also be included in the definition of fraud provided by the PIF Convention. The solution reached foresees that not all VAT fraud is covered by the definition provided by the PIF Directive,

¹⁰ Report from the Commission, Application by the Member States of the Convention on the Protection of the European Communities' Financial Interests and its Protocols - Article 10 of the Convention, p. 8.

¹¹ C-105/14, *Ivo Taricco and others*.

but only ‘serious’ fraud, i.e. connected to the territory of two or more EU Member States (the transnational element) and creating total damage of at least €10M¹².

- **“Ancillary” offences (article 4)** - The Directive also confirms the EU *acquis* of the PIF Convention, making some improvements and introducing the offence of misappropriation. Article 4(1) requires the criminalisation of conduct constituting **money laundering**, based on the definition in article 3 of the AML Directive¹³. The definition of the offence of **active and passive bribery** (article 4[2]) has been brought into line with the definition adopted internationally by the United Nations Convention Against Corruption (UNCAC), by not requiring – in contrast to the previous Convention – that the conduct be “in breach of official duties”. The new provision of the offence of **misappropriation** is found in Article 4(3) and is defined as the action of a public official, entrusted with the management of funds or assets, that is “intended to commit or disburse funds or appropriate assets or use them for a purpose other than that for which they were intended, which damages the financial interests of the Union”. Finally, the Directive updates the notion of a **public official** (common to corruption and misappropriation cases) as an EU or national official, or any other private individual “assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries”.¹⁴

Article 5, while not providing a definition, leaves it to Member States to criminalise instigation, aiding and abetting, and attempted offenses. Other **general provisions** concern the liability of entities (article 6), penalties for natural persons (article 7) and legal entities (article 9), aggravating circumstances in the case of PIF offences committed within the framework of a criminal organisation (article 8), freezing and confiscation of the proceeds of offences (article 10), jurisdiction (article 11), and limitation periods (article 12).

¹² Art. 2(2) of the PIF Directive.

¹³ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by means of criminal law, OJ L 284, 12.11.2018, p. 22-30. The specific provisions dictated by the PIF Directive, as *lex specialis*, prevail over any conflicting provisions contained in the AML Directive, as confirmed by Recital 10, Directive (EU) 2018/1673.

¹⁴ Art. 3(4) of the PIF Directive.

The date for the transposition of the Directive into national law was set for July 2019, a deadline that was met by 12 countries. At the time of writing¹⁵, 25 countries have notified the Commission of the measures they have taken to implement the Directive¹⁶. The measures adopted by Member States cover the following areas: increasing transparency; combating corruption and conflict of interest in public procurement; transposing EU legislation into national law; combating financial and organised crime; strengthening cooperation with OLAF.

3. The European Commission's new anti-fraud strategy

The protection of the European Union's financial interests also counters fraud, corruption, other intentional irregularities, and the risk of serious wrongdoing within EU institutions and bodies. In this respect anti-fraud mechanisms were strengthened in 2019, with the adoption of the new European Commission Anti-Fraud Strategy (CAFS)¹⁷. The aim of enhancing these measures was to provide the Commission with stronger analytical capabilities, aimed at prevention and detection, and to create a more centralised control system. The **first session of the Conference** will focus on the status of the new strategy, and the importance of other actors such as OLAF, for its implementation. Since 2013, the Commission has been reporting on the implementation of its 2011 anti-fraud strategy¹⁸ through its “PIF reports”¹⁹, assessing the strategy’s “relevance, effectiveness, efficiency and coherence”²⁰. It found that while still valid, the strategy needed to be **adapted to a different context** that contains novel financing systems, increased technological progress, and new criminal trends. Taking into account the innovations represented by the adoption of the PIF Directive and the Regulation on the

¹⁵ July 2021.

¹⁶ The status of transpositions and the measures communicated by the Member States can be reviewed at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32017L1371>.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors: “Commission anti-fraud strategy: enhanced action to protect the EU budget”, COM/2019/196, 24 April 2019.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors on the Commission Anti-Fraud Strategy, COM/2011/0376, 24 June 2011, which set out three objectives: the introduction of anti-fraud measures in the Commission's proposals for expenditure programmes under the 2014-2020 multiannual financial framework, the development of anti-fraud strategies at Commission services level, and the revision of public procurement directives.

¹⁹ Latest report: Report from the Commission to the European Parliament and the Council, Thirty-first Annual Report on the Protection of the European Union's Financial Interests and the Fight against Fraud (2019), COM (2020) 363, 3 September 2020.

²⁰ COM/2019/196, p. 7.

establishment of the European Public Prosecutor's Office (EPPO), the Commission felt that not only did it have to support such positive developments on the legislative and institutional front, but it also needed to cope with the new generation of expenditure programmes in the context of the Multiannual Financial Framework (MFF) 2021-2027. The adoption of the new plan is also part of a process of improved governance that began in 2018²¹, first with reinforcing the role of the Commission's Corporate Management Board (CMB) in the fight against fraud and, at the end of 2019, with the strengthening of the Prevention and Investigation Network (FPDNet) within which sub-groups were created around particular themes.

Adopted on **29 April 2019**, the new CAFS is an internal policy document on the fight against fraud and corruption affecting the financial interests of the European Union, which binds and guides “the Commission, its departments and its executive agencies in the exercise of their legal, political and managerial responsibilities respectively for the protection of the EU budget.”²² Member States are not directly involved in the implementation of the CAFS, but the Commission requires them to take appropriate measures with the aim of preventing, detecting, and correcting fraud against the EU's interests in accordance with the Treaties, with the support and supervision of responsible Commission services and OLAF. The new strategy is accompanied by an action plan and a risk assessment document that analyses different types of fraud. The **scope** of the CAFS comprises: (i) fraud (including VAT fraud), corruption and misappropriation affecting the Union's financial interests as defined in Articles 3 and 4 of the PIF Directive, as well as other crimes affecting the Union's financial interests; (ii) irregularities, as defined in Article 1(2) of Regulation (EC, Euratom) no. 2988/9523 (provided they are intentional and are not covered by the aforementioned offenses); (iii) serious professional misconduct by staff or members of Union institutions and bodies.

The Commission services have carried out a fraud **risk assessment**, to be used as a guideline for the review, identifying two main systemic vulnerabilities: “(i) insufficient analysis of fraud data, which limits the Commission's ability to understand fraud, and (ii) certain weaknesses in the

²¹ See Communication to the Commission: 'Streamlining and strengthening corporate *governance* within the European Commission', C(2018)7704 final, 21 November 2018.

²² COM/2019/196, p. 6.

Commission's supervision of fraud risk management at service level.”²³ CAFS has the central objective of making improvements in the following areas²⁴:

- The **collection and analysis of fraud data**, in relation to which further improvements are required to the understanding of fraud types, fraudsters’ profiles, and systemic vulnerabilities in relation to fraud affecting the EU budget.
- **Cooperation and coordination between Commission departments** to optimise coordination, cooperation and workflows concerning the fight against fraud, in particular between Commission departments and executive agencies.

The **first session** of the Conference will therefore focus on the state of implementation of the new CAFS and the relevance of collaboration with OLAF and other partners in its implementation.

4. The amendment of the OLAF Regulation

The European Anti-Fraud Office (OLAF) was established in 1999 by the European Commission to investigate fraud, corruption and any other illegal activity affecting the financial interests of the European Union, offering support to member states in preventing and combating this²⁵. Proposed by the Commission in 2018, and then coming into force on **17 January 2021**, the amendment of the OLAF Regulation²⁶ aims, on one hand, to bring OLAF into line with the establishment of the EPPO and, on the other, to address the shortcomings that emerged at the end of the evaluation carried out by the Commission²⁷. Hence the start of a **legislative amendment process** which has developed through the following stages:

²³ COM/2019/196, p. 4.

²⁴ The CAFS and, more specifically, the Annex and the Action Plan, outline further objectives relating to the multiple themes of integrity and compliance, skills and equipment, transparency, legal framework, and the fight against revenue fraud.

²⁵ See Regulation no. 883/2013 (EU, Euratom) 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, OJ L 248, 18 September 2013, p. 1-22.

²⁶ Regulation 2020/2223 (EU, Euratom) of the European Parliament and of the Council of 23 December 2020 amending Regulation no. 883/2013 (EU, Euratom) regarding cooperation with the European Public Prosecutor's Office and the effectiveness of investigations conducted by the European Anti-Fraud Office, OJ L 437, 28 December 2020, p. 49-73.

²⁷ Report from the Commission to the European Parliament and the Council, Evaluation of the application of Regulation no. 883/2013 (EU, Euratom) 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

- November 2017: Roadmap for a proposal to amend Regulation 883/2013.
- November 2017 - January 2018: Stakeholder consultation and comments.
- January - May 2018: In line with the principles of the Better Regulation Programme, evaluation of the Commission in order to develop a proposal for amending the Regulation.
- 23 May 2018: the Commission adopted the proposal to amend the OLAF Regulation.
- 26 June 2020: the negotiations between the Commission, the European Parliament and the Council, which started in September 2019, were concluded. On 4 December 2020, the Council adopted its position at first reading. On 8 December 2020, the Commission communicated its support for the agreement, following the position adopted by the Council.
- 17 December 2020: the European Parliament adopted the new Regulation.

As the Commission has pointed out, one of the reasons for amending the OLAF Regulation is the need to adapt the Agency's operations to the **establishment of EPPO** in order to ensure consistency between the actions of the two offices. OLAF and EPPO will carry out activities of a different nature but in close cooperation, aimed at protecting the financial interests of the European Union. The changes to the OLAF Regulation draw a close relationship between the two bodies based on reciprocity, exchange of information, and non-duplication of activities. Where the Anti-Fraud Office implements supporting measures at the request of EPPO, to protect the admissibility of evidence as well as fundamental rights and procedural guarantees, EPPO and OLAF, acting in close cooperation, should ensure that the applicable procedural guarantees set out in Regulation (EU) 2017/1939 are respected.

The difference between their tasks lies in the different nature of their roles. The EPPO will conduct **criminal investigations** to investigate, prosecute and bring to justice perpetrators and accomplices of offences against the financial interests of the Union. OLAF – the administrative body – will continue to carry out **administrative investigations** which may culminate in ‘recommendations’ to competent authorities – both EU and national – to take appropriate action. Administrative enquiries will therefore focus on the measures necessary to recover fraudulent amounts, or the measures required to protect the budget against fraud. OLAF will also continue to carry out its own investigations in those Member States not participating in the EPPO. The general principles governing the relationship between the two offices are set out in the new paragraph 4a of Article 1 of

the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, COM/2017/0589 final, 2 October 2017.

the OLAF Regulation: “mutual cooperation, exchange of information, complementarity and avoidance of duplication”. These principles are reflected in the operational provisions of the Working Agreement between the two offices signed on 5 July 2021²⁸.

The second objective set by the amendment of the OLAF Regulation is to **strengthen the effectiveness of investigative functions – external and internal** – through measures such as:

- new rules on carrying out on-the-spot checks and inspections;
- access to information on bank accounts;
- the establishment of a controller for procedural guarantees;
- access to the final report by the person concerned;
- strengthening the role of anti-fraud coordination services in EU countries;
- new rules to improve the follow-up of investigations.

The fourth session of the **Conference** will focus on the changes already made to the OLAF Regulation and briefly outlined here, as well as on further possibilities for reform.

²⁸ Working Arrangement between the European Anti-Fraud Office and the European Public Prosecutor's Office, 5 July 2021.

5. The establishment of the European Public Prosecutor's Office and commencement of its activities

The new European Public Prosecutor's Office (EPPO) officially started activity on 1 June 2021, a date which represents the culmination of a legislative and political process spanning more than 20 years²⁹ and, ultimately, the conclusion of intensive preparatory work: the appointment of the members of the 'College of the European Public Prosecutor' was followed by many key decisions to set up the European Public Prosecutor's Office, the recruitment of staff at central level, the establishment of a fully operational case-management system, the adoption of working agreements with relevant stakeholders (the most recent having been co-signed with the European Commission on 18 June 2021), and as the selection of the European Delegated Prosecutors (EDPs)³⁰. The **third session** of the Conference will address the challenges that arose during the set-up and start-up phases, as well as the issue of cooperation with Member States and other agencies in investigations.

The EPPO Regulation³¹, adopted on the basis of Article 86 TFEU and having come into force on 20 November 2017, establishes the European Public Prosecutor's Office – in the context of **enhanced cooperation** – and lays down the rules for its functioning. Twenty-two Member States are currently³² participating³³. The European Public Prosecutor's Office is the first European criminal investigation office, independent of the other institutions and competent to **investigate and prosecute crimes against the EU budget**³⁴. This should make it possible to overcome the difficulties encountered by

²⁹ The idea of creating a European Public Prosecutor's Office was first developed in the *Corpus Juris* project, "*Corpus Juris*" portant dispositions pénales pour la protection des intérêts financiers de l'Union européenne, edited by M. DELMAS-MARTY, Paris, 1997.

³⁰ On 12 October 2020, the College of the European Public Prosecutor adopted its Rules of Procedure, in accordance with Article 21 of the EPPO Rules, which were published in the Official Journal on 21 January 2021 (OJ C 22/4). In accordance with Article 15 of the Rules of Procedure, on 25 November 2020, the College then adopted a decision on the establishment of Permanent Chambers. Additionally, working agreements were signed with Eurojust (on 15 February 2021), Europol (on 18 January 2021), OLAF (on 5 July 2021), and the government of Hungary (on 6 April 2021). On 21 April 2021, the College issued its decision adopting the operational guidelines on investigation, transfer of cases, and referral of cases.

³¹ See footnote 7.

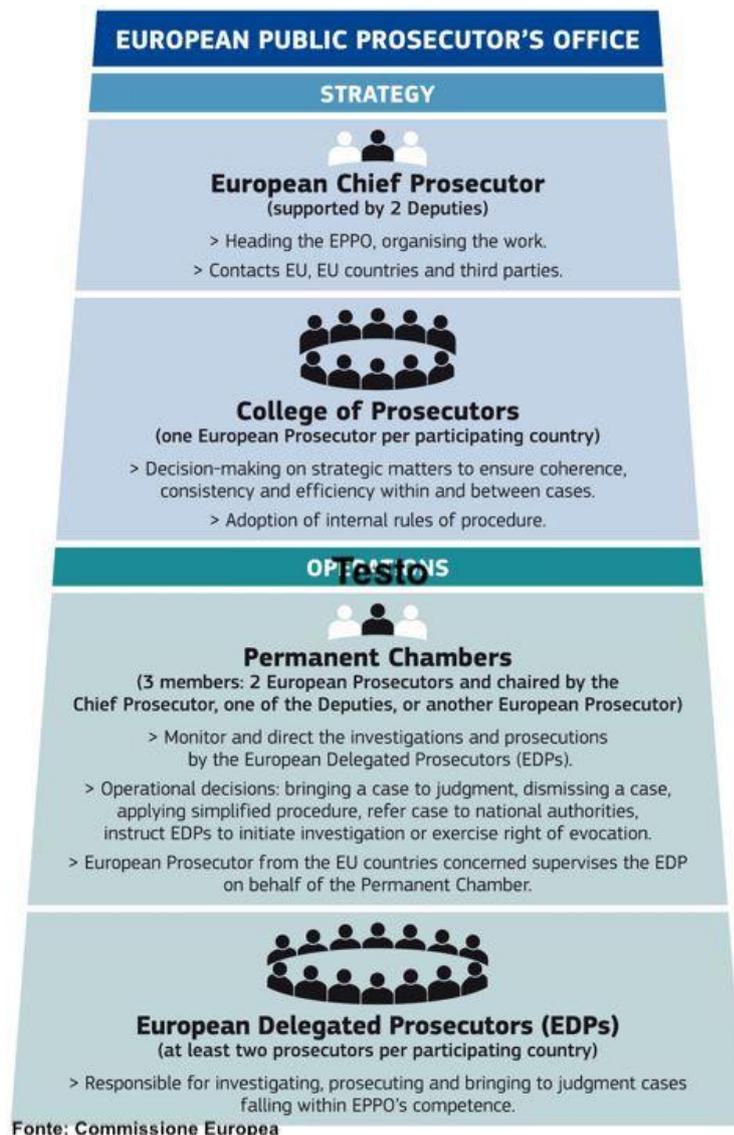
³² July 2021.

³³ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovenia, Slovakia, Spain. Hungary, Poland, Sweden are not part of the enhanced cooperation. Denmark and Ireland do not participate by virtue of the *opt-out* regime with respect to the area of Police and Judicial Cooperation in Criminal Matters (JHA).

³⁴ Art. 4 of the EPPO Regulations.

national authorities in the fight against large-scale cross-border financial crime, due to limited national or cooperative tools, which have led to investigations that have proven ineffective, or have even failed to begin. It should also be recalled that the existing EU bodies (i.e. OLAF and Eurojust) cannot initiate investigations or prosecutions in Member States.

According to Article 8 of the EPPO Regulation, the European Public Prosecutor's Office is “an



indivisible Union body operating as one single Office with a decentralised structure”³⁵. The Office is structured according to a **collegiate model**, which differs from the monocratic and hierarchical model originally proposed by the Commission³⁶. The European Chief Prosecutor and the College of Prosecutors³⁷ constitute the *strategic* level, responsible for management of the EPPO, organising of its work, and decision-making on strategic issues. At the *operational*

³⁵ “The central level consists of a central office in the EPPO headquarters. The central office consists of the College, the permanent chambers, the Chief European Public Prosecutor, the Deputy Chief European Public Prosecutors, the European Public Prosecutors and the Administrative Director. The decentralised level consists of the Deputy European Public Prosecutors based in the Member States”, Article 8(3) and (4) of the EPPO Regulation.

³⁶ Proposal for a Council Regulation establishing the European Public Prosecutor's Office, COM/2013/0534 final.

³⁷ Comprising the Chief European Public Prosecutor and one European Public Prosecutor per Member State under Article 9 of the EPPO Regulation.

level, the Permanent Chambers³⁸ monitor and direct investigations, and take operational decisions on investigative activities carried out – and prosecutions initiated by – the EDPs. The appointment of delegated prosecutors by Member States is still ongoing³⁹; despite this the EPPO can still begin its activities, since European Prosecutors from Member States that have not yet appointed the EDPs still have the power to conduct investigations personally, according to Article 28(4) of the EPPO Regulation⁴⁰.

In terms of the EPPO's **material competence**, Article 22 of the EPPO Regulation makes specific reference to the PIF Directive in order to identify the offences covered by it. In addition to the four 'PIF offences' (*see above*), the Regulation extends jurisdiction to two related situations: (i) offences relating to participation in a criminal organisation⁴¹, if the criminal activity of that criminal organisation is centred on the commission of PIF offences; (ii) any other offence inextricably linked to PIF offences⁴². The provision, however, specifies that the EPPO does not have jurisdiction over domestic direct tax offences, nor offences inextricably linked to them. In any event, it is required that PIF offence-related conduct be criminalised in national law: hence the importance of the timely and punctual transposition of the European provisions to a domestic level to ensure the proper functioning of the Prosecutor's Office and the effectiveness of its investigations. Once the criteria of **territorial or personal jurisdiction** provided for in Article 23 have been verified, the EPPO may exercise its competence, provided that the further conditions laid down in Article 25 of the Regulation are met through the commencement of investigations (Article 26) or their revocation (Article 27). In fact, even if all the requirements are met, the EPPO still does not have exclusive competence: the Regulation in fact outlines a system of shared responsibility between the Office and participating

³⁸ For more detail of the composition and functions of the permanent chambers, see Article 10 of the EPPO Rules of Procedure.

³⁹ Based on the Decision of the College of the European Prosecutor of 29 September 2020 laying down the rules for the conditions of employment for European Delegated Prosecutors, College Decision 001/2020. The last State to have appointed its EDPs is Finland; Slovenia has not yet made any appointment, having cancelled the previously-launched selection procedure, see *European Chief Prosecutor expresses grave concerns in letter to Slovenian Minister for Justice*, communication published on 9 July 2021 in the news section of the EPPO website (www.eppo.europa.eu/index.php/en/news).

⁴⁰ As noted in Recital 4 of the Commission's Implementing Decision (EU) 2021/856 of 25 May 2021 setting the date on which the European Public Prosecutor's Office takes up its investigation and prosecution tasks.

⁴¹ As defined in Framework Decision 2008/841/JHA, implemented by national law.

⁴² In this case, however, jurisdiction can only be exercised in accordance with Article 25(3), i.e. in case of *preponderance* of (a) PIF offence(s).

States⁴³. Once **investigations have been undertaken**⁴⁴, the EPPO is called upon to **carry out judicial and prosecutorial functions**⁴⁵ in the competent courts of the participating Member States until the conclusion of the case. Finally, Chapter VI of the EPPO Regulation is dedicated to procedural **guarantees** for accused persons and suspects⁴⁶ or in respect of procedural acts of the EPPO that are subject to judicial review by national courts pursuant to Article 42 of the Regulation. The provision also states that the CJEU – through preliminary rulings or judicial review of EPPO acts – has residual powers to ensure consistent application of EU law.

Just six weeks after the start of operations on 16 July, the EPPO announced that it had already processed more than a thousand complaints of fraud against EU interests, seized €7 million worth of goods and, most importantly, initiated the **first investigation against** four Croatian citizens for corruption and abuse of office⁴⁷. One of the defendants is a member of the Croatian Parliament and as such is protected by immunity; the Croatian Parliament therefore authorised the opening of criminal proceedings against him at the request of the European Chief Prosecutor. This waiving of immunity – as the communication from the prosecutor highlighted – was exclusively aimed at obtaining the authorisation to open a criminal investigation, in full respect of the principle of the presumption of innocence.

⁴³ See Recital 13.

⁴⁴ See Articles 28-33 of the EPPO Regulation.

⁴⁵ See Articles 34-40 of the EPPO Regulation.

⁴⁶ Art. 41 of the EPPO Regulations.

⁴⁷ Both notices were published in the news section of the EPPO website (www.eppo.europa.eu/index.php/en/news) on 16 July 2021.