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Structural Deficiencies of the Hybrid Model of the European Public Prosecutor's Office

Abstract: *The establishment of the European Public Prosecutor's Office (EPPO) in 2017 was accompanied by strong resistance and deep disputes among the Member States, resulting in numerous compromises regarding the status of this body. Nevertheless, this marked a significant breakthrough in the history of European integration, as an autonomous supranational body was created, specialized in combating criminal offenses directed against the financial interests of the European Union, and a transition was achieved from horizontal cooperation in the field of criminal justice to vertical integration. The EPPO was established on the basis of enhanced cooperation among Member States (not all Member States participate in its work), which has left its institutional and operational reach limited. Taking into account the significant achievements in its work to date (the number of investigations and convictions, asset recovery), the EPPO faces numerous challenges arising from systemic shortcomings of the hybrid model and legal fragmentation. The aim of this paper is, through an analysis of the normative framework, academic and professional literature, and reports of EU bodies, to identify the most significant structural and functional barriers to the operation of the EPPO. The combination of factors (the normative framework, constitutional constraints, fragmentation of law, and the sovereignty of Member States in the field of criminal justice) that give rise to systemic barriers in the work of the EPPO may undermine the rule of law as one of the fundamental values of the Euro-*

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pean Union and trigger a domino effect of further erosion of the legal system. The author concludes that, despite the results achieved, the existing hybrid model of the EPPO will remain permanently unsustainable without substantial changes to the normative framework governing its operation, which today largely depends on political will.

Keywords: *European Public Prosecutor's Office (EPPO), hybrid model, legal fragmentation, prosecutorial independence, conflict of jurisdiction, Regulation (EU) 2017/1939*

Introduction

The Lisbon Treaty marked a new chapter for the European Union in the field of judicial and police cooperation, which became part of the broader context of the Area of Freedom, Security and Justice. Already established EU bodies and agencies (Europol, Eurojust) were significantly strengthened, while the possibility was also created to complete the criminal law framework through the establishment of the European Public Prosecutor's Office (EPPO) (Treaty on European Union, Article 86). According to some authors, however, this step was more reactive and fragmented than proactive and systematically designed (Harding & Öberg, 2021). As integration processes in the European Union largely depend on political will at a given moment — most often during periods of crisis — negotiations on the establishment of the EPPO were prolonged, which was caused by deep differences in the positions of the Member States regarding its future status. The Member States insisted on retaining the subjective right to punish (*ius puniendi*) for criminal offences regulated by national legislation, with the exception of international criminal law, while practical realities necessitated the establishment of a supranational institution as an imperative, in line with the achieved level of integration within the European Union.

By Council Regulation (EU) 2017/1939, the European Public Prosecutor's Office was established as the first institution to transcend the previous model of EU integration, shifting from horizontal to vertical integration with regard to fraudulent conduct and criminal offences affecting the financial interests of the European Union. Prior to the establishment of the EPPO, the only supranational body dealing with investigations of fraudulent activities detrimental to the EU budget was OLAF, with comparatively modest results. Given its legal nature and competences within the EU's institutional framework, OLAF's powers are predominantly administrative,

as it does not possess prosecutorial authority (Stanković & Reko, 2024). With the establishment of the EPPO, the Union moved from administrative oversight to the full domain of criminal prosecution, empowering it to investigate, prosecute, and bring before the courts the perpetrators of criminal offences affecting the financial interests of the EU (EPPO Regulation, Article 4). This step should also be understood as a necessary “spillover” into other areas, given that the level of economic integration is far more advanced and that the national borders of the Member States have become an insurmountable obstacle to the effective protection of the EU’s financial interests.

According to the EPPO activity reports for 2023 and 2024, as well as individual press releases on specific investigations, the EPPO’s “two-tier” concept has confirmed the rationale for establishing such a supranational criminal prosecution body through demonstrable practical effectiveness. During the negotiations on the establishment of the EPPO, it was assumed that the Office’s specific focus on a limited number of criminal offences would not, in practice, require the mobilization of extensive human and material resources, and that it concerned a relatively small number of fraudulent activities affecting the EU’s financial interests. However, as stated by the European Chief Prosecutor, Laura Kövesi, after three years of the EPPO’s operation it became apparent that a “new area of criminal activity has been uncovered” and that there had “always been more criminal offences affecting the financial interests of the European Union than was known to the public” (EPPO Annual Report, 2024). The large number of investigations conducted, the gathering of evidence, the necessity of coordination with national authorities, and the issuance of judgments have revealed the existence of certain problems that are not merely technical in nature, but are also caused by the very institutional organization of the EPPO. In this context, procedural rules encompass the investigation of circumstances indicating the existence of a criminal offense or perpetrator, through a system of measures and detection actions using formal and informal procedures (Otašević et al., 2021).

The aim of this paper is not to challenge the existence of such a supranational body within the EU, but rather to, through an analysis of academic and professional literature as well as the normative framework governing the operation of the EPPO, point out certain structural and functional barriers.

Legal nature and position of the European Public Prosecutor's Office

The Treaty on the Functioning of the European Union (TFEU) explicitly provides that a European Public Prosecutor's Office may be established from Eurojust in order to combat criminal offences affecting the financial interests of the European Union, and it envisages the possibility for the European Council to extend the EPPO's competence to other criminal offences with a cross-border dimension (TFEU, Article 86). Although the national legislations of the EU Member States have defined offences affecting the EU's financial interests as specific criminal offences, it has rightly been observed that national criminal prosecution authorities have not attached sufficient importance to them and have investigated and initiated criminal proceedings for such offences to an inadequate extent (EPPO Regulation). In practice, this provision has not been fully realized, as the EPPO was established on the basis of enhanced cooperation among 22 Member States (Poland and Sweden joined somewhat later, while Hungary, Denmark, and Ireland did not), due to the opposition of certain states based on concerns about the EPPO's impact on sovereignty (Ligeti & Marletta, 2016). By Council Regulation (EU) 2017/1939, the European Public Prosecutor's Office was established in 2017 with the aim of combating offences affecting the EU's financial interests. The EPPO's operation is based on synchronized action between the central level, headquartered in Luxembourg, and the decentralized level, located within the Member States, with the underlying idea of preserving the procedural autonomy of the Member States on the one hand, and meeting the functional needs of the European Union on the other (Ligeti, 2020).

The organizational structure at the central level consists of a complex framework comprising the European Chief Prosecutor, European Prosecutors (seconded from the participating Member States), an Administrative Director, and supporting staff. Delegated European Prosecutors operate within the Member States; they formally belong to national prosecution services, yet their activities are directed toward the interests of the Union and they act on the instructions of the EPPO when handling cases falling within the EPPO's competence (Bugarski & Pisarić, 2019). This dual position of Delegated European Prosecutors represents one of the key elements of the EPPO's hybrid model, which is at the same time normatively innovative and institutionally controversial (Wade, 2021).

With regard to procedural rules, the Regulation does not derogate from national procedural law and does not contain provisions on the existence of a single European criminal procedure; instead, it establishes a mechanism whereby perpetrators of criminal offences are prosecuted at the supranational level while relying on national procedural rules. Compared to existing federal systems, the EPPO constitutes a specific *sui generis* form of organization: it is neither a federal prosecution service nor an international criminal forum. The EPPO combines elements of an international model (lacking its own executive enforcement capacities) with elements of a federal model that possesses its own procedural instruments (Diez & Herlin-Karnell, 2018).

The European Public Prosecutor's Office between supranational jurisdiction and national limitations

The primary cause of the structural limitations faced by the European Public Prosecutor's Office lies in the specific nature of the EU's institutional mechanism in the field of criminal law. Namely, the European Union does not possess an original constitutional competence to punish (*ius puniendi*), such as those existing in unitary states or classical federal systems, since the normative domain of criminal law policy remains firmly tied to the national sovereignty of the Member States. Although the concept of sovereignty in this context should not be understood in absolute terms—given that its content has evolved over time in line with the development of international cooperation and integration processes (Stanić, 2021) — the resulting hybrid model of the EPPO generates a series of structural shortcomings that directly affect its effectiveness.

One of the key deficiencies is reflected in the so-called “double-hat” status of the European Delegated Prosecutors (EDPs). Under the EPPO Regulation, they act on behalf of the EPPO in specific investigations and are functionally accountable to the European Chief Prosecutor, while at the same time remaining institutionally and employment-wise integrated into the national judicial system. Such a position creates the risk of potential pressure from national authorities, particularly those responsible for deciding on the prosecutor's career advancement after the expiration of their EPPO mandate. The lack of procedural guarantees that an individual will retain the same status or advance within the national hierarchy after the

end of the mandate gives rise to problems of career insecurity and the so-called “return problem”.

An additional complication is introduced by Article 13 of the Regulation, which allows a European Delegated Prosecutor to simultaneously perform the function of a national prosecutor, provided that this does not interfere with their obligations toward the EPPO. This solution introduces a legally indeterminate category, as in practice it is difficult to precisely determine which scope of national cases does “not interfere” with work on European cases, thereby opening space for excessive workload and conflicts of priorities.

Finally, a further problem that the EPPO encounters in practice, caused by the fragmentation of the legal framework, is the de facto lack of uniformity in the normative conditions under which EDPs operate in different Member States. Given the existence of multiple sovereignties, uneven economic development, differing levels of material resources available to prosecution services, as well as divergences in the number of available financial forensic experts and specialists, operational asymmetry emerges. This may result in a situation where, hypothetically, an identical case in one Member State would be prosecuted efficiently, while in another it would remain undiscovered or inadequately investigated.

Procedural fragmentation and challenges of applying national law in the work of the European Public Prosecutor's Office

The application of national procedural rules poses a significant challenge for the work of the centralised level of the European Public Prosecutor's Office, as it requires simultaneous and detailed knowledge of the specifics of all the legal systems of the Member States. The situation is further complicated in cases involving foreign elements (cross-border criminal activities). Divergence of national regulations in cases involving two or more States may lead to different outcomes of the proceedings, depending on which State the EPPO decides to establish jurisdiction in. Consequently, the final outcome of the proceedings is characterised by legal inequality, given that the level of the sentence imposed, as well as the scope of procedural guarantees for the defence, depend on the national legislation of the State in which the proceedings are conducted, and not on uniform Union standards. This structural possibility of forum selection leads to what Mitsilegas calls an “inequality of arms”, emphasizing that the supranational

prosecutor's reliance on national procedural rules creates legal uncertainty and fragmentation of the single EU legal space, where the level of protection of the rights of the defence varies from state to state (Mitsilegas, 2021).

The implementation of single investigations by the EPPO under different national rules also results in operational differences in the application of procedural instruments. Although the normative framework of the EPPO obliges Member States to establish a mechanism that enables European Delegated Prosecutors to order or request certain investigative measures, if not in full capacity, at least for those criminal offences for which a minimum prison sentence of at least four years is provided, the conditions for the use of these powers are not very clearly defined and by their nature represent a "grey area".

When we talk about search powers, we distinguish between countries where the prosecutor independently issues a search warrant and those where the warrant is issued by the judge for the preliminary proceedings (investigating judge) within the time limit prescribed by law, which creates unequal efficiency within the same body, with different implications for EU citizens who are searched, even though they are *de lege* prosecuted by a prosecutor from Luxembourg. The complexity of searches is particularly evident in cases with a cross-border element, as the judge in the country where the proceedings are conducted does not have the right to issue a search warrant in another country, while the judge acting abroad often acts automatically without a comprehensive view of the case file, which seriously undermines the rule of law and the right to review the legality of acts (Tavassi, 2024).

Additionally, the basis for the application of special evidentiary actions (secret surveillance) is uneven; in some countries, their scope is limited exclusively for the most serious crimes (e.g. terrorism), which makes the rules inapplicable for investigations under the jurisdiction of the EPPO. The unequal application of the rules of secret surveillance conditions the unequal efficiency and outcome of the procedure. When it comes to cross-border investigations, the normative framework arranged in this way leaves the possibility for the EPPO to direct its investigations to those countries with lower criteria for their approval, but at the same time it provides the possibility for criminal groups to operate in those countries that have set a higher threshold for its application.

Furthermore, the collection and exchange of evidence are hampered by different privacy standards and admissibility criteria before national

courts. Although the normative framework of the EPPO establishes a general rule on the admissibility of evidence from another country, it nevertheless leaves sufficient scope for the court to freely assess the evidence (EPPO Regulation, Article 37). This leaves sufficient scope for the exclusion of evidence by the national court, a position shared by Mazza, who in his analysis points out that the “laconic regulation” of evidence in the Regulation fails to override the application of national law, thus maintaining legal uncertainty regarding the admissibility of evidence in cross-border proceedings (Mazza, 2024).

Furthermore, the conditions for the temporary seizure of assets perhaps most clearly reflect the differences in national laws; while in some countries the prosecutor has the authority to freeze assets immediately due to urgency, in others this is the exclusive jurisdiction of the court, subject to the provision of solid evidence. In concrete terms, this allows a group or individual operating across borders to localize their financial assets in those countries where the freezing conditions are stricter, thus providing them with a system of rapid action and new allocations if freezing proceedings are initiated. A certain group of authors criticizes the complexity of the asset freezing procedure, risking the destruction of evidence and the confiscation of assets, undermining the effectiveness of the EPPO. Thus, Dorel Herinean and others, from a prosecutorial perspective, believe that the role of the EPPO would be reduced to a mere formality if the rapid freezing of assets was not enabled (Herinean, 2024). Another group of authors explains that the existing non-harmonized legal framework is characterized by the absence of an adequate system for reviewing the legality of asset freezing decisions, that national regulations do not provide sufficient guarantees against intrusion into the suspect's private sphere (Tavassi, 2024), and that investigative actions must be fully in accordance with the EU Charter of Fundamental Rights (Salazar, 2024). Certain gaps in national systems and their unification are expected with the implementation of Directive (EU) 2024/1260 on the recovery and confiscation of assets, the full implementation of which will be carried out by the end of November 2026.

The application of different procedural rules in the Member States, conditioned by the hybrid structure of the EPPO, leads to the fact that the rules and outcome of the procedure, as well as the degree of protection of the accused, depend on the geographical location, and not on the gravity of the offence, which poses a serious threat to the rule of law in such a fragmented European area. A single normative regulation of the work of

a supranational body that relies on fragmented national procedural rules generally generates systemic inequality in a single European legal area. Although the Regulation itself attempted, in a rather “shy” way, to unify the minimum standards of investigative and other measures that would enable the EPPO to work effectively, especially in cross-border investigations, in practice there was almost no deviation from the national normative framework.

Independence of the European Public Prosecutor’s Office and political pressures

The hybrid structure of the European Public Prosecutor’s Office (EPPO), as a model for organizing supranational action through national resources, does not stem from a primary doctrinal belief in the effectiveness of such a solution. It is primarily a consequence of the political compromise of the Member States and their unwillingness to delegate sovereignty to a supranational body (Stanković & Otašević, 2024). Contrary to the original proposal that envisaged a centralized and strictly hierarchical structure, the EPPO was established by the founding act as a collegial and decentralized body. In this process, operational speed and efficiency partially gave way to the protection of the sovereign rights of the Member States through the strengthening of their legal and political control mechanisms. States, although aware of the risk of harm to financial interests in areas financed by the EU (agriculture, regional development, social policy, etc.), have failed to establish a criminal justice system of protection that, in the author’s opinion, would necessarily have to accompany policy areas that have reached a higher level of integration: investigations, indictments and sentencing can be legally and politically controlled and directed by national authorities.

Although the strategic intention of the legislator, expressed through the normative framework, defined the EPPO as an independent body, the Regulation in functional terms contains a number of provisions that allow for the return of state control, especially in politically sensitive cases. Given that the protection of the EU’s financial interests is inseparable from related criminal offences under national law (such as forgery of documents, abuse of office, money laundering or tax fraud), the key issue remains the precise demarcation of jurisdiction between “European” and “national” crime. The Regulation resolves this issue with a seemingly simple criterion: the na-

tional authority retains jurisdiction if the damage caused to the national budget is greater than the damage caused to the EU budget, or if the related criminal offence is punishable by a more severe penalty under national law (Article 25 of the EPPO Regulation).

In relation to other institutions and bodies of the Member States and the European Union, the EPPO is conceived as an independent prosecutorial body resistant to any external influence; European and delegated prosecutors may not receive or seek instructions from anyone or any institution outside the EPPO system. The independence of the EPPO can be critically observed through the system of election of European Prosecutors and European Delegated Prosecutors, as well as through the fact that the judge acting in a specific case is an integral part of the national judiciary. The states retain direct insight into the work of the institution: the procedure for proposing candidates for European and delegated prosecutors is the exclusive competence of the Member States, which opens up space for the nomination of politically suitable personnel and indirect influence on the work of the body (according to Articles 16 and 17 of the EPPO Regulation).

As some authors rightly note, the hybrid selection model under Articles 16 and 17 of the Regulation creates the risk of the so-called “institutional capture”, where national filters can undermine the operational autonomy of the EPPO upon nominating candidates, turning formal independence into functional dependence on national power structures (Bacan Zalinski, 2021). Although conceived as an independent body, resistant to pressure from either national or EU institutions, practice has shown that the complexity of the EPPO prosecutor selection process can cause obstruction in its work. Thus, in Slovenia, the selection of delegated prosecutors lasted for several months and was marked by legal and political disputes, and the method of selecting prosecutors itself was characterized as a serious interference in the judiciary, the rule of law and the independence of the prosecutor's office (Rep, 2021).

Political influence on the selection of European prosecutors has also occurred in other countries, such as Bulgaria and Belgium, but a case in Portugal has attracted much more public attention due to the irregularities of the selection process. Namely, the biography of one of the nominated candidates contained information that was not true, which was later justified by the Portuguese Government as an administrative error. The national selection of European and delegated prosecutors, along with the disregard for basic principles in the selection process, calls into question the

independence and impartiality of prosecutors and their influence on their work by the executive or other authorities in the member state. In theory, this is explained by the fact that the selection of, for example, a Portuguese prosecutor could be accompanied by a smaller number of investigations or by the targeting of investigations for certain cases of corruption and fraud, turning formal independence into functional dependence on national power structures (Bacan Zalinski, 2021).

However, despite political resistance, the European integration process has managed to undermine the concept of absolute sovereignty of states in this area, giving a supranational body the authority to initiate proceedings and order the deprivation of liberty of citizens of sovereign states. The European Public Prosecutor's Office was established on the principle of enhanced cooperation of 22 EU member states; in 2024, Sweden and Poland joined, which at the time of writing had not fully implemented the EPPO mechanism. Of the EU member states, Denmark, Hungary and Ireland are still outside the reach of the EPPO, which indicates that sovereignty continues to be an obstacle to the full implementation of the EPPO even when it comes to protecting the financial assets of Union citizens, because if the EU cannot freeze assets in Hungary, Ireland or Denmark, there is no point in cross-border investigations due to mobility and more sophisticated methods of fraud, most often by organized criminal groups. The incomplete territorial jurisdiction of the EPPO in the prosecution of cross-border crimes leads to the fact that criminal activities mostly end in those states that are not members of the EPPO system, so in such circumstances the EPPO relies on instruments of interstate legal assistance, which is why there is a risk of loss of evidence and a longer investigation period. This issue and the problems associated with it are not only of a functional nature, but also a clear position of non-participants in the EPPO system that the transfer of criminal prosecution jurisdiction to a supranational level is unacceptable, so the issue of sovereignty is imposed as a central issue (Čvorović, 2022).

These problems are not of an operational nature, but rather reflect the political resistance of certain Member States to the transfer of jurisdiction in the field of criminal prosecution and the acceptance of an independent supranational prosecution, thus imposing the issue of sovereignty as a central structural barrier in the work of the EPPO.

Conclusion

The European Public Prosecutor's Office represents a qualitatively new integration model within the legal order of the European Union, and its establishment marked a turning point in the development of EU criminal justice. It emerged as an instrument for the protection of values in those areas in which the Union has reached the highest level of economic integration.

Although the EPPO has recorded significant statistical results, particularly with regard to asset recovery, in practice it faces concrete problems arising from structural deficiencies. These deficiencies are a direct consequence of the institutional framework, which emerged as a political compromise between the functional need for effective protection of the EU's financial interests and the Member States' aspiration to preserve national sovereignty.

The key criticisms advanced in this paper — relating to the hybrid legal nature of the EPPO, the tension between supranational competences and national constraints, procedural fragmentation, and issues of independence — point to the risk of long-term institutional exhaustion and legal uncertainty. In this sense, the EPPO is positioned as a form of organization situated between international cooperation and full judicial integration, without a clearly defined final status.

Given that the European Union builds its integration processes within real political circumstances, the hybrid model of the EPPO represents a product of such a historical process and was established as a pragmatic solution. However, this pragmatism has in practice resulted in legal uncertainty, as the reliance of a supranational prosecutor on fragmented national procedural rules directly affects the outcome of proceedings. This leads to the paradox that, in proceedings before the EPPO, the decisive factor is often related to where the proceedings are conducted, rather than which offence is at issue.

Accordingly, in light of the long-term process of European integration, the EPPO may be viewed in two ways: either as a transitional form toward a higher level of integration, or as the upper limit of currently achievable integration. We take the view that the EPPO emerged as a necessity at a given political moment, and that its current hybrid structure represents only a phase in an evolutionary process toward more comprehensive supranational criminal prosecution.

In conclusion, it may be stated that the EPPO has justified the purpose of its existence through the results achieved and that its future transformation is not only desirable, but necessary. Two key preconditions must be fulfilled for the EPPO to evolve from its current hybrid model into a more integrated form: (1) the establishment of uniform procedural rules (or a significantly higher degree of harmonization) for criminal offences within the EPPO's competence, and (2) the willingness of the Member States to relinquish an additional part of their sovereignty in the field of criminal justice in favor of the European Union.

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Структурни недостаци хибридног модела Европског јавног тужилаштва

Апстракт: Оснивање Европског јавног тужилаштва (European Public Prosecutor's Office – EPPO) 2017. године било је праћено снажним отпором и дубоким споровима међу државама чланицама, што је резултирало бројним компромисима у вези са статусом овог органа. Ипак, тиме је начињен значајан искорак у историји европских интеграција, формирано је самостално наднационално тело, специјализовано за сузбијање кривичних дела усмерених против финансијских интереса Европске уније, и остварен је прелазак са хоризонталне сарадње у области кривичног правосуђа на вертикалну интеграцију. ЕППО је основан по принципу појачане сарадње држава чланица (у његовом раду не учествују све државе чланице), па су његови институционални и оперативни донети остали ограничени. Узимајући у обзир значајне успехе у досадашњем раду (број истрага и осуђујућих пресуда, поврат имовине), ЕППО се суочава са бројним изазовима условљеним системским недостацима хибридног модела и правне фрагментације. Циљ овог рада јесте да се анализом нормативног оквира, научне и стручне литературе и извештаја тела ЕУ укаже на најзначајније структурне и функционалне баријере у раду ЕППО. Комбинација фактора (нормативног оквира, уставних ограничења, фрагментације права и суверенитета држава чланица у области кривичног правосуђа) који узрокују системске баријере у раду овог органа може угрозити владавину права као једну од темељних вредности Европске уније и изазвати домино-ефекат даље ерозије правног система. Аутор закључује да ће, упркос оствареним резултатима, постојећи хибридни модел ЕППО трајно остати неодржив без суштинских промена нормативног оквира деловања, а који данас умногоме зависи од политичке воље.

Кључне речи: Европско јавно тужилаштво (ЕППО), хибридни модел, правна фрагментација, независност тужилаштва, сукоб надлежности, Уредба (ЕУ) 217/1939.