Participation in the European Public Prosecutor's Office

Member States' Autonomous Decision or an Obligation?

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Abstract

The aim of the present study is to examine recent developments concerning the European Public Prosecutor's Office (EPPO), focusing on the conflict between the EU and the Member States not participating in the enhanced cooperation setting up the Prosecutor's Office. To provide an overall picture about EPPO's future operational relations, the study first presents the EPPO's future cooperation with other EU bodies and draws some critical conclusions. Based on these reflections, the study aims to discuss the EU's alleged intention and strategy to cope with and solve the problem of non-participating Member States, assessing the probable role of the Prosecutor's Office and other related EU bodies, institutions and legal measures in this struggle, while also considering recent declarations of the leaders of EU institutions.

Keywords: European Public Prosecutor's Office, EPPO, OLAF, European criminal law, Eurojust.

1. Introduction: The Birth of the EPPO, the Dawn of a New Era?

Following a host of regulatory concepts and a legislative procedure marked by many difficulties, Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (Regulation) was finally adopted by the Council on 12 October 2017. This means that after the long and challenging road, we have at last arrived at the establishment of the European Public Prosecutor's Office (Prosecutor's Office or EPPO): the EU's independent prosecuting authority will definitely be set up and according to the EU's current schedule, shall begin its actual operation in the beginning of 2021 at the latest.

However, the new body was not uniformly welcomed throughout the EU: the Member States participating in the enhanced cooperation and the authors supporting the concept, welcomed the Prosecutor's Office as a new *acquis* of

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European integration of utmost importance;[1] while others noted the necessity of prudence and due diligence concerning the practical implementation of the Regulation and the actual operations of the EPPO.[2] Non-participating Member States and those refusing the concept of the EPPO claimed that it is an unnecessary and too complex body with no additional value to the current acquis of the EU, contending in particular the infringement of their national sovereignty.[3] It seems that the EU legislator had also been aware of the fact that the Prosecutor's Office's would not be uniformly welcomed: a study[4] carried out during the preparatory work provided 'early warning' that "it will be the target of criticism, coming both from the supporters of deeper EU integration in criminal matters, and also from those more insistent on maintaining Member States' prerogatives in the field of criminal law."[5]

The study cited above, sensing the Member States' uncertainty surrounding, and rejection of the establishment of a European prosecution authority, also warned that "envisaging enhanced cooperation for an issue that concerns the interests of the EU as a whole appears rather paradoxical."[6]

Further to the above, the EU is well aware that the EPPO's organizational and operational structure is considerably complex which is demonstrated by the fact that the European Parliament's Directorate General for Internal Policies of the Union requested a study on the strategies for coping with the EPPO's complexity.[7] This study also highlighted the issue of non-participating Member States, stating that "Hungarian non-participation can be seen in the context of broader skepticism on the part of the current Hungarian government towards European integration." According to the study's analysis "EPPO negotiations, constitutional reforms in Hungary and the respect of fundamental rights have become issues of conflicts between the Hungarian government and EU institutions", in particular "given the substantial value of EU funds paid to this country and the risks related to corruption" detected by Transparency

1 *See e.g.* Věra Jourová, 'The Cost(s) of Non-Europe in the Area of Freedom, Security and Justice. The European Public Prosecutor's Office as a Guardian of the European Taxpayers' Money', *EUCRIM – The European Criminal Law Associations' Forum*, 2/2016, pp. 94-99; Anna Oriolo, 'The European Public Prosecutor's Office (EPPO): A Revolutionary Step in Fighting Serious Transnational Crimes', *The American Society of International Law's (ASIL) Insights,* Vol. 22, Issue 4, 2018.

2 *See e.g.* Roberto E. Kostoris, 'A European Public Prosecutor Office Against Eur-Financial Crimes: Which Future?', *Journal of Eastern European Criminal Law*, 2015/2, pp. 27-32.

3 *See e.g.* from the Hungarian literature: András Peisch, 'A szubszidiaritás elve győz? – Gondolatok az Európai Ügyészségről szóló Bizottsági Rendelettervezetről', *Jogi tanulmányok*, 2014/1, pp. 189-202; Péter Polt, *Az Eurojust és az Európai Ügyész – Tendenciák, kérdések, alternatívák és lehetőségek*, Habilitation theses, Budapest, 2016.

4 Anne Weyembergh & Chloé Briére, *Towards A European Public Prosecutor's Office (EPPO)*, Study for the LIBE-committee, 2016. *(LIBE study 2016)*.

5 Id. p. 50.

6 Id. p. 46.

7 Hartmut Aden *et al.*, *The European Public Prosecutor's Office: Strategies for Coping With Complexity*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Brussels, 2019, pp. 71. *(DG IPOL study 2019)*.

International's[8] latest survey. Transparency International's survey established that Hungary's CPI[9] index dropped eight points over the last five years which "have seen the sharpest decline in its respective CPI scores in recent years, allowing corruption to worsen". This "significant change also reflects a deterioration of democracy, as well as a rapidly shrinking space for civil society and independent media", while "populist rhetoric is often used to discredit public scrutiny." In light of all the above, the EU's study concluded that "Hungary can be identified as a high-risk non-participating Member State" and its "non-participation constitutes serious risks for the Union's financial interests."

The aim of the present study is to examine the above issue focusing on the EU's alleged intention to solve the problem of non-participating Member States and the role of the Prosecutor's Office and other, related EU bodies in this strategy. Such bodies include the European Commission, with Vera Jourová's declaring[10] that "establishing the European Public Prosecutor's Office will be a real game-changer" and "the Commission will remain a staunch supporter of the collective efforts to fight fraud and corruption in the EU."[11] As a first step of this analysis, the formal system of the EPPO and its external relations as set out in the Regulation will be presented supplemented with some critical reflections on the envisaged cooperation. Next, I analyze the role of other EU bodies, specifically the Commission's Directorate-General for Competition (DG COMP) in promoting the EPPO, including the political background of this stance.

2. The Relationship Between the EPPO and Its Partners as Envisaged by the Regulation and Some Practical Reflections

First, it is worth briefly considering the provisions of the Treaties' as the legal basis of the EPPO which also determine the frame of its operation, including its relations with other bodies and institutions. Article 325(1) TFEU stipulates in general that "the Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union", while according to Article 325(2)-(3) the Member States shall "take the same measures […] as they take to counter fraud affecting their own financial interests" and "coordinate their action aimed at protecting the financial interests of the Union against fraud." In addition to these general provisions Article 86(1) constitutes the concrete legal basis for establishing the EPPO, according to which

> "in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special

8 *See* at www.transparency.org/news/feature/cpi2018-western-europe-eu-regional-analysis.
9 Corruption Perception Index.
10 Joint Statement by Commissioner Günther H. Oettinger and Commissioner Věra Jourová on the Council's agreement to set up the European Public Prosecutor, Brussels, 12 October 2017, STATEMENT/17/3864.
11 *See* at https://ec.europa.eu/commission/presscorner/detail/en/statement_19_5769.

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> legislative procedure, may establish a European Public Prosecutor's Office from Eurojust."

The TFEU sets forth both the fundamental aim of the Prosecutor's Office and the rules governing its organizational structure. As far as the subject of the present study is concerned, it is worth noting the provision's wording, according to which the EPPO may be established from Eurojust. This clearly reflects the privileged relationship between the two bodies.

Moreover, in respect of the EPPO's external relations it was essential that in lack of its uniform acceptance by the Member States, the Prosecutor's Office was deemed to be established in the framework of enhanced cooperation[12] pursuant to Article 86(1)-(3) TFEU. This was hardly a surprise, as a representative of the Council already made it clear[13] at the meeting of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE-committee) held on 29 November 2016 that in case less than 20 Member States support the establishment of enhanced cooperation, it will hardly be accepted. This approach could also be deduced from several work documents.[14] As a result of further conciliations and the last amendments made to the proposal,[15] by June 2017, 20 Member States[16] made a stand for the EPPO which made the adoption[17] of the Regulation (also referred to as a 'phoenix'[18]) on 12 October 2017 possible. At present, 22 Member States are participating in the enhanced cooperation, while two groups can be distinguished from among the 'outsider' Member States. On the one hand, Denmark, Ireland and the UK have specific opt-out and opt-in arrangements for Justice and Home Affairs (JHA) policies that preclude their

12 Articles 326-334 TFEU.

13 The referred comment and the whole debate are available at www.europarl.europa.eu/ep-live/en/committees/video?event=20161129-0900-COMMITTEE-LIBE.

14 *See* No. 5445/17. work document titled *Proposal for a Regulation on the Establishment of the European Public Prosecutor's Office – General Approach*, 31 January 2017; No. 9896/17. work document titled *Draft Regulation Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office – General Approach*, 8 June 2017. It is worth noting that upon the adoption of the first amended proposal, on 3 April 2017, only 16 Member States indicated their intention to participate in an enhanced cooperation, therefore, the final approval of the proposal was uncertain.

15 *See* No. 9896/17. work document titled *Draft Regulation Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office – General Approach*, 8 June 2017.

16 Member States participating in the enhanced cooperation: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain.

17 Subsequent to the approval of the Regulation, an additional two Member States, the Netherlands and Malta indicated their intention to participate in the enhanced and finally joined the EPPO. *See e.g.* at https://eu2018bg.bg/en/news/284.

18 Regarding the metaphor of the EPPO being a 'phoenix' *see* lecture of Sabine Gless titled *European Public Prosecutor, Eurojust & OLAF – Current State of Affairs & Constitutional Issues*, held at the Expert Meeting on The European Prosecution Service at the Maastricht University, 23 April 2008.

participation in the EPPO.[19] These specific opt-out arrangements – mainly based on national constitutional grounds and/or obstacles hindering the adoption of Community *acquis* – seem to substantiate and make the affected Member States' stay-away from the EPPO understandable. This is particularly the case for the UK, where Brexit means the gradual development a whole new, challenging legal environment. On the other hand, Hungary, Poland and Sweden are the only other three Member States that have not joined the EPPO so far for internal political reasons, despite the fact that there are no general constitutional hurdles or opt-outs that would prevent them from joining.

As for Sweden, the national parliament adopted a reasoned opinion concerning the participation in the EPPO in 2013 right after the Commission's proposal on the EPPO. Following several subsequent debates on the national level, and the Commission's recent intention to extend the EPPO's remit to terrorism, the Swedish Prime Minister put forward a proposal to the national parliament to join the EPPO in April 2019. As a result, a debate was held in the *Riksdad*'s (Swedish Parliament) Committee on Justice, which however, upheld its earlier position.[20] The committee concluded that on one hand, the far-reaching scope of the EPPO would result in relinquishing their right of national prosecution for certain offences to a European prosecutor with special powers, which is unnecessary and would not provide sufficient added value for Sweden, given that prosecutions of that type work well in the state. Moreover, according

19 As for the specific opt-out arrangements: *(i)* in the case of Denmark: according to Article 2 of Protocol (No. 22) on the position of Denmark "none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure or any measure amended or amendable pursuant to that Title shall be binding upon or applicable in Denmark [...] in particular, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended shall continue to be binding upon and applicable to Denmark unchanged." Therefore, Danish participation in the EPPO would only be possible after a general revision of the JHA opt-outs by referendum. *(ii)* In the case of the UK and Ireland: pursuant to Article 2 of Protocol (No. 21) on The Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice "none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States." Therefore, from Ireland's side participation in the EPPO would rest on the decision of the Irish government. However, arguably, the Irish government did not opt-in to the EPPO for a number of reasons. One of these reasons is that the Irish Director of Public Prosecution is completely independent of government and their perception may have been that joining the EPPO would undermine this independence. Moreover, it may be the case that the common law system applicable to the UK and Ireland render any future synergies between investigation and prosecution bodies at the EU level unlikely.

20 Riksdad, Justitieutskottets utlåtande, *An EU That Protects: An Initiative to Extend the Powers of the European Public Prosecutor to Also Cross-Border Terrorism*, 4 April 2019, at https://data.riksdagen.se/fil/22DAC7B2-39BB-4186-AD70-8D256911F5E2.

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to the committee "any extension of EPPO powers is so far-reaching that one can question whether the measures go beyond what is necessary to achieve the goal of the initiative." Furthermore, "it is untimely, given that the EPPO has not even become operational yet." Nevertheless, the Swedish committee also recalled that Sweden could join the EPPO at any point in the future. Hungary's and Poland's non-participation is a complex issue which is of solely political nature. It is worth mentioning that the Prosecutors Generals of the so-called Visegrad Group (Hungary, Poland, Slovakia, Czech Republic) had made several joint declarations[21] regarding the concept of the EPPO. The first joint declaration concerning the issue of the EPPO was adopted in 2014 in Balatonlelle. Pursuant to this declaration the prosecutor generals agreed that:

> "By all means, the EPPO regulation should be in line with Article 67 TFEU providing that within the area of freedom, security and justice different legal systems and traditions of the Member States are respected. In this context the Prosecutors General of the Visegrad Group would like to stress the importance of maximum procedural autonomy of European Delegated Prosecutors as Article 86 TFEU does not provide for the establishment of a unified criminal jurisdiction of the EU and – as a consequence – all the EPPO cases are to be tried by national court [and] the structure and the decision making process of the EPPO should be as simple as possible in order to guarantee prompt actions of European Delegated Prosecutors working in the firstline."[22]

In this vein, according to the Declaration concluded in Sopot in 2015, it seemed that the general prosecutors agreed on rejecting the Commission's proposal on the Prosecutor's Office and that they jointly support another concept, the so-called 'Network Model' developed by the Hungarian prosecutor general. The Kroměříž Declaration in 2017 did not contain specific statements regarding the EPPO and focused on the close cooperation between the Visegrad Group members. One of the central subjects of the Visegrad Declaration of 2018 was the establishment of the EPPO. According to the declaration the members agreed that the concept of the EPPO is welcomed, but it should not result to the weakening of the already existing instruments and bodies, moreover "there are several questions which are still waiting to be answered." The declaration also stated that the prosecutor generals

> "encourage the European Public Prosecutor's Office and the Member States of the European Union which do not participate in the European Public Prosecutor's Office to find a way of cooperation which complies with the

21 Prague (2013), Balatonlelle (2014), Sopot (2015), Kroměříž (2017), Visegrad (2018), Warsaw (2019) Declarations of Prosecutors General of the Visegrad Group.

22 Balaton Declaration on the Establishment of the European Public Prosecutor's Office, Balatonlelle, 17 May 2014, para. 5.

> fundamental principles of the European Union, the common objectives of judicial authorities and the constitutional principles of the Member States."[23]

The above statement seems rather controversial, considering that half of the Visegrád Group (Czech Republic, Slovakia) joined the enhanced cooperation of the EPPO, while Hungary and Poland remained 'outsiders'. In addition, in the most recent Warsaw Declaration of 2019, the prosecutor generals agreed that the new challenging tendencies of crime can only be tackled properly through an even closer cooperation, and adequate control mechanisms. Yet the members could speak with one voice concerning participation in the EPPO – it being the most topical and relevant issue of mutual legal cooperation in criminal matters within the EU. It seems that for internal political reasons, Poland's and Hungary's staunch skepticism against the EU overrode their earlier moderate support for the concept of the EPPO, even though this resulted a clear conflict with other group members and practically undermined the unity of the Visegrad Group.

The above illustrates well that the Prosecutor's Office is a source of division between the Member States, seemingly hindering the development of united European integration. Therefore, as far as the operation of the body is concerned, a clear and sharp line should be drawn between cooperation with participating, and non-participating Member States.

Accordingly, it is of utmost importance from the aspect of non-participating Member States how the EPPO would cooperate with other bodies of the EU and the so-called 'schismatic' Member States. Pursuant to Article 99, the EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the Union, with the authorities of non-participating member states, but also with the authorities of third countries and international organizations. For the realization of its purpose, the EPPO may conclude technical and/or operational working agreements with these partners – which however would not have legally binding effects on either the Union, or the Member States. The Regulation contains specific provisions governing the Prosecutor's Office's relationship with *(i)* Eurojust, *(ii)* Europol, *(iii)* OLAF, *(iv)* other bodies of the Union, *(v)* third countries and international organizations, and *(vi)* finally, with non-participating Member States. Considering the subject of the present study, I will refrain from presenting the EPPO's relationship with third countries and international organizations.

2.1. Eurojust

In accordance with Article 86(1) TFEU, Eurojust shall be a privileged partner of the EPPO: they shall establish and maintain a close relationship based on mutual cooperation and on the development of operational, administrative and management links. Furthermore, to uphold and develop these close ties, the European Chief Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern. The Prosecutor's Office will also be

23 Joint Declaration of the Prosecutors Generals of the Visegrad Group, Visegrad, 5 September 2018, para. 1.

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entitled to cooperate with Eurojust concerning cross-border cases, specifically: *(i)* by sharing information; *(ii)* inviting Eurojust or its competent national member to provide support in the transmission of the EPPO's decisions or requests for mutual legal assistance in case of Member States that are members of Eurojust but do not take part in the enhanced cooperation, as well as third countries. *(iii)* indirect access to information in the Eurojust's case management system on the basis of a hit/no-hit system will also be granted to the EPPO. Furthermore, the EPPO may rely on the support and resources of the administration of Eurojust, but the details of this issue will be settled in a future arrangement concluded by the two bodies. One cannot but wonder however, whether this regulation really and absolutely complies with the cited provision of the TFEU's wording that the EPPO may be established from Eurojust. The additional question arises whether how and to what extent the revision of Eurojust[24] will involve adapting it to the provisions of the Regulation, and will any further measures enhancing close cooperation be introduced? Furthermore, how will the true role of those Member States' prosecution authorities be construed which only participate in Eurojust, but refused the enhanced cooperation in the EPPO? DG IPOL's recent study asserted that "the shape of these bilateral relations is still undefined",[25] yet certain authors consider that

> "in the absence of clear rules [governing inter-body coordination] may lead, in practice, to a situation where prosecutions may be impeded in practice by possible conflicts of jurisdiction – both positive and negative ones."[26]

The cited study also stated that notwithstanding the revision of Eurojust by Council Regulation (EU) 2018/1727[27] which was meant to transform Eurojust into a fully-fledged EU Agency for Criminal Justice (EUACJC), on the EPPO's side, bilateral relations remained based on the cryptic expression of 'close cooperation based on mutual cooperation', whose exact meaning is uncertain and different from the language used in respect of other partners of the EPPO.[28]

2.2. Europol

Concerning the role of Europol, the Regulation remains rather laconic and briefly stipulates that they shall conclude a working arrangement setting out the modalities of their cooperation. The Regulation therefore only notes in general that the EPPO shall have the right to obtain information from the Europol

24 Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), COM(2013) 535 final.

25 *DG IPOL study 2019*, p. 81.

26 Costanza Di Francesco Maesa, *Repercussions of the Establishment of the EPPO via Enhanced Cooperation*, EUCRIM, 2017, p. 159.

27 Council Regulation (EU) 2018/1727 of 14 October 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA. The new Regulation is to be applied from 12 December 2019, in accordance with Article 82(2) of Regulation (EU) 2018/1727.

28 *DG IPOL study 2019,* p. 84.

concerning any offence falling within the Prosecutor's Office's competence. As far as concrete investigations are concerned, the EPPO may also ask that Europol provide analytical support. However, principally it should be considered that Europol is devoid of autonomous investigating powers and its operational powers are limited to its coordinating functions over competent authorities, unless exercised in the framework of a joint investigation team. Consequently, Europol cannot undertake typical policing activities such as tracking subjects, searches and seizures, or wire-tapping, and coercive measures are explicitly excluded from its competence. As a result, this body exclusively serves coordinative purposes to the extent that it cannot help the EPPO as a 'real' European investigative authority. Thus, the EPPO is reliant on the assistance of national investigative authorities.

2.3. OLAF

By contrast, it is clear from the wording of the Regulation that the EPPO has another important partner, OLAF.[29] The two bodies shall establish and maintain a close relationship mainly based on information exchange aiming "to ensure that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO."[30] In light of the complementary nature of the bodies, the Regulation stipulates that where the EPPO conducts a criminal investigation, OLAF shall not open a parallel administrative investigation. On the other hand, the Prosecutor's Office may request that OLAF support or complement its activities, specifically by *(i)* providing information, analyses (including forensic analyses), expertise and operational support; *(ii)* facilitating the coordination of specific, administrative actions of either national authorities or the bodies of the Union; finally, *(iii)* conducting administrative investigations. In line with the principle of mutual co-operation, the Prosecutor's Office may also provide relevant information to OLAF in cases where the EPPO has decided not to conduct an investigation or dismissed a case.

The relationship between the EPPO and OLAF apparently presupposes a closer and deeper co-operation as compared to other (administrative) bodies of the Union. Among others a study[31] ('OLAF-study') prepared in 2017 by the Directorate General for Internal Policies of the Union on the future cooperation between the two bodies also proves this standpoint stating that "it is undeniable that OLAF constitutes the privileged partner of the EPPO",[32] although the

29 *See* Directorate General for Internal Policies of the Union Policy Department for Budgetary Affairs, *In-Depth Analysis for the CONT Committee of the EP: The Future Cooperation Between OLAF and the European Public Prosecutor's Office*, No. PE 603.789, Brussels, 2017, p. 27. *(OLAF study 2017)*.

30 Pursuant to Article 101(1) the EPPO shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange. The relationship shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO.

31 *OLAF study 2017*.

32 Id. p. 27.

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complementary nature of OLAF's activities is also emphasized. This specific nature of the two bodies will be of utmost relevance when "risks of overlap and competition among EU bodies become even more real than before."[33] Moreover, even the OLAF-study admits that in absence of the revision of the regulation defining the frame of OLAF's operation, the future cooperation between the two bodies may become "particularly complex [...] in a rather 'unsettled context.'"[34] Therefore, the revision of OLAF's operation and concluding work arrangements determining the details of such cooperation seem crucial. Regarding the complementarity of the two bodies the study declares that

> "The co-existence of OLAF and the EPPO will allow to determine on a case-by-case basis which proceedings – administrative or criminal – are best suited to pursue a specific behavior [...] [therefore] their cooperation will be essential to foster new synergies and improve the efficiency of PIF."[35]

In accordance with the Regulation, the study distinguishes the following three main dimensions of the future cooperation: *(i)* avoiding simultaneous administrative and criminal investigations into the same facts; *(ii)* mutual exchange of information; *(iii)* further supporting activities of OLAF. However, the study highlights that the current rules of the Regulation are rather general, therefore more detailed provisions will be necessary. Furthermore, apparently the following question has still not been decided: what future role will be granted to OLAF by the Union? Basically, two visions emerged in this respect: according to one of the concepts, OLAF would become the chief operational supporting partner of the Prosecutor's Office, meaning that it would be transformed in the "EPPO's investigatory arm",[36] as an authentic and absolute investigative authority, yet bound to obey the EPPO's orders. This solution would raise OLAF above the sphere of administrative criminal law[37] and create a supranational investigative authority. OLAF has always been challenged by the fact that at the end of its procedure the Bureau could 'only' lodge a recommendation to national authorities. As such, it could only monitor and follow-up the development of the investigation allegedly initiated by competent national authorities, but it could not participate in the criminal proceedings on the merits. On the other hand, the other concept envisages that OLAF remain one of the closest – if not the closest[38] –, but independent administrative partner of the EPPO, preserving its current legal status in this respect. In my view, the first vision would be clearly incompatible with the Union's rule of law principle, furthermore, Article 86 TFEU

33 Valsamis Mitsilegas & Fabio Giuffrida, 'Raising the Bar? Thoughts on the Establishment of the European Public Prosecutor's Office', *CEPS Policy Insights*, No. 2017/39, 30 November 2017, p. 17.

34 *OLAF study 2017,* p. 5.

35 Id.

36 Id. p. 21.

37 Ádám Békés, *Nemzetek feletti büntetőjog az Európai Unióban*, HVG-ORAC, Budapest, 2015, pp. 164 and 260-275.

38 *OLAF study 2017*, p. 16.

does not grant such authorization. Over and above, the regulation governing OLAF is far removed from properly ensuring the fundamental criminal procedural rights of those 'suspected' (the persons concerned) by the Bureau. Nor does it guarantee the contemporaneous control of its activities: by the court or the defense counsel. It is reassuring, that the Regulation seems to have followed the second vision as the basis for its provisions. According to the draft revised OLAF Regulation published by the European Commission in May 2018[39] OLAF will principally remain an administrative body. However, the Regulation is not finalized yet, the European Parliament made numerous amendments[40] to the text in April 2019, even though the amended OLAF Regulation is expected to enter into force before the EPPO takes up work.

From a practical aspect, at least two further issues emerge concerning the cooperation of EPPO and OLAF. Pursuant to the Regulation, the detailed rules shall be clarified in work arrangements:

> "However, one can wonder whether it is a good option to leave the details to a working arrangement. In the past, bilateral arrangements between EU agencies and bodies have proven to be delicate to negotiate, and sometimes remained dead letters.[41] Moreover, this entails the risk of a lack of transparency and democratic deficit."[42]

In addition, it seems worrisome that the complementary operation of the two bodies, the mutual exchange of information is not regulated in detail, since the Regulation does not contain any specific rule concerning the admissibility of evidence collected by one body and then forwarded to and used by the other. Therefore, based on the Regulation it seems possible that a given case is initiated by the EPPO, but based on the circumstances explored, it is then transferred to OLAF, or vice versa. Moreover, ad absurdum it could happen that OLAF starts the investigation in a case, then the EPPO takes it over, but finally the Prosecutor's Office requests OLAF to conduct an administrative investigation to support its operation.[43]

39 COM(2018) 338 final, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No. 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations.

40 European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No. 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations [COM(2018) 0338 – C8-0214/2018 – 2018/0170(COD)].

41 Anne Weyembergh *et al.*, *The Interagency Cooperation and Future Architecture of the EU Criminal Justice and Law Enforcement Area*, Study for the LIBE Committee, 2014, p. 15.

42 *OLAF study 2017*, p. 20.

43 This may lead to an 'administrativization' of criminal proceedings. *See* in this regard Anne Weyembergh & Francesca Galli (eds.), *Do Labels Still Matter? Blurring Boundaries Between Administrative and Criminal Law. The Influence of the EU,* Brussels, 2014.

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In addition to the above, it is worth considering the DG IPOL's recent study which concludes that despite "OLAF's legal authority in the Member States not participating in the EPPO will remain basically unchanged", but "OLAF's responsibility for the non-participating Member States will de facto increase." According to the study,

> "If the expectation becomes reality that the establishment of the EPPO might lead to the detection of many more criminal offences in the participating Member States, leaving criminal offences affecting the Union's interests undiscovered in the non-participating Member States, it would create a situation of considerable injustice. Therefore, OLAF would be better to concentrate its work on the Member States that do not take part in the EPPO, especially Hungary and Poland, identified as particularly risk-prone [...] for as long as these Member States do not join the EPPO."[44]

It is clear from the above that the EU intends to use OLAF as an instrument to impose additional pressure on non-participating Member States to join the EPPO. However, it is truly controversial whether this intention could in principle be legally justified with due respect to the independent Member States' sovereignty, or whether it can only be based on political considerations. Furthermore, it is also doubtful whether OLAF as an administrative body lacking real investigative competence could even fulfill this purpose, or whether 'strengthening' its role will only result in a load of administrative cases ending without substantial results.

2.4. Other Bodies of the EU

As far as other bodies of the Union are concerned, the EPPO shall maintain a cooperative relationship with the Commission as set out in their specific, future agreement. On the other hand, when it comes to the role of other bodies of the Union affected by a criminal procedure dealt with by the EPPO, the Prosecutor's Office may provide sufficient information to them to an extent that enables them to take (even precautionary) measures facilitating the administrative recovery of sums owed to the Union budget, to take disciplinary action and to intervene as a civil party in the proceedings. Regarding precautionary measures, the EPPO will be entitled to recommend specific measures as well. Other aspects of the future cooperation will be discussed in the next chapter.

2.5. Non-Participating Member States

At last, the Regulation seems to be rather laconic concerning the issue of the relationship between the EPPO and non-participating Member States: the EPPO may endeavor to establish working arrangements with these Member States aiming at the exchange of strategic information, the secondment of liaison officers to the EPPO, and if possible the designation of contact points. It is crucial that in the absence of a legal instrument governing cooperation in criminal matters and surrender between the EPPO and non-participating Member States,

44 *DG IPOL study 2019*, p. 77.

all other, participating Member States shall notify the EPPO as a competent authority for the purpose of implementing Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO, in their relations with non-participating Member States. This has the result that

> "A literal interpretation of this paragraph would mean that once recognized as a competent authority by the participating Member States the EPPO would autonomously rely on EU instruments to cooperate with non-participating Member States."[45]

Consequently, once recognized as a competent authority, the EPPO may theoretically rely on all EU instruments, in order to issue or request the issuing of European Arrest Warrants or European Investigation Orders. This regulation – at least when there is a real cooperation with non-participating Member States – seems to guarantee effective cooperation.[46] Some authors even note that at least in this regard the EPPO "should act as a truly European body relying on European laws without any mediation of national legislation."[47] It should however be mentioned, that effective cooperation may only be ensured in case EPPO requests are implemented by the non-participating Member States. This is a duty of the Member States concerned, deriving not only from the Regulation and the provisions of the given instrument, but from the Treaties as well. On the one hand, it can be deduced from the principle of sincere cooperation as defined in Article 4(3) TEU, on the other hand, Article 325 TFEU provides a general obligation for all Member States to take the necessary measures to effectively counter fraud and all other illegal activities affecting the financial interests of the Union. When it comes to enhanced cooperation, although Article 327 TFEU states that any enhanced cooperation shall respect the competences, rights and obligations of the non-participating Member States, it will also "oblige those Member States not to impede its implementation by the participating Member States." Given these provisions, it is hard to make a sharp distinction between participants and non-participants, because essentially, they allow for the EPPO to operate in non-participating Member States as well.

Meanwhile, it seems that even the European legislator does not absolutely trust that the aforementioned single provision of the Regulation and other, related norms could effectively ensure smooth cooperation with non-participating Member States. Based on the prior concept of the Commission,[48] the Council invited the Commission with its declaration of 7 June 2017 to submit appropriate proposals to ensure effective judicial cooperation in criminal matters

45 Guiffrida 2017, p. 37; *LIBE study 2016*, p. 47.

46 Id.

47 Mitsilegas & Giuffrida 2017, p. 15.

48 *See* No. 12341/16. work document titled "Discussion paper on cooperation between EPPO and non-participating Member States", 19 September 2016, p. 2.

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between the EPPO and non-participating Member States.[49] These proposals "should in particular concern the rules relating to judicial cooperation in criminal matters and surrender, fully respecting the Union acquis in this field as well as the duty of sincere cooperation." It is obvious from the wording that the Council is not speaking of the principle of sincere cooperation, but literally mentions it as a duty which already foreshadows the logic of the future regulation. In this respect it is be worth citing the following thoughts of Péter Polt, Prosecutor General of Hungary:

> "The establishment of an effective European Prosecutor's Office may in the long term bring about crucial changes, much needed by the EU in the field of combating cross-border crimes. However, thorough preparation is the 'condition sine qua non' of a useful legal instrument."[50]

2.6. Reflections

It is clear from the above overview and related critical observations that the EU would like to rely not 'only' on the Member States' sympathy and willingness to cooperate with the EPPO, but aspires to give the EPPO real powers and develop an effective supranational investigative authority. The compromise in the current operational structure of the EPPO is that in case of participating Member States, the EPPO may lead an investigation, which however will be carried out according to the orders of the EPPO, but by the national investigative authorities. This way, the EU established a supranational criminal investigative authority although its activity and the effectiveness of its measures are limited by and to the Member States' actual willingness to cooperate. However, the controversial nature of this compromise becomes apparent when it comes to the non-participating Member States. In case of non-participating Member States, the EU seems to be lacking even the theoretical possibility to investigate and implement criminal measures against offences even if these substantially threaten the EU's financial interests. This results in a huge gap in European integration which not only threatens the effective protection of EU's (or more precisely, the EU taxpayers') financial interests, but may also generate conflicts between the Member States, as the participating Member States may consider this to be an injustice.[51]

However, currently existing EU bodies cannot provide sufficiently effective assistance to the Prosecutor's Office to help achieve its goals in the non-

49 No. 9896/17 ADD 1 COR 1 work document titled "Proposal for a Regulation on the establishment of the European Public Prosecutor's Office – Discussion paper on cooperation between EPPO and non-participating Member States Draft Council Declarations", para. 2: "Relations with Member States which do not participate in the enhanced cooperation on the establishment of the EPPO", 7 June 2017.

50 Polt 2016, p. 55.

51 According to Barna Miskolczi, the fragmentation of the regulations are down to the duplication of participating and non-participating Member States and the alleged tensions between them "even if we consider the EU's financial interests as integrational interests, an EPPO established in the form of enhanced cooperation may not be assessed as a solution, but rather a source of danger." Barna Miskolczi, *Az európai büntetőjog alternatív értelmezése,* PhD thesis, Pécs, 2018.

participating Member States. Europol and Eurojust fulfill coordinative purposes and lack the competences of a genuine investigative authority. In addition, OLAF contributes to the EPPO's mission more on the merits, *e.g.* with findings/recommendations based on its administrative investigation or with the professional assistance provided to the EPPO. Nevertheless, in regard of the Bureau's role it should be noted that it is not a real investigative authority either. Moreover, OLAF's administrative investigative competence is strictly bound by limitations as compared to a national criminal investigative authority. In addition, an administrative investigation preceding an alleged criminal procedure – regardless of whether it is carried out by EPPO or a national investigative authority – is not the least advantageous from criminal tactical aspects. Practically, this means that such a duplication of 'investigative' procedures may lead to a situation where the alleged perpetrators will already be well-prepared for the subsequent criminal procedure, and the criminal investigative authority will have to face extra challenges (*e.g.* already prepared defense strategy, suspect's and witness statements, possible concealment of evidence, *etc.*).

Therefore, it is indisputable that the set-up of another new, *quasi* investigative authority would substantially facilitate the achievement of the EU's goal regarding the protection of its financial interests and contribute to accomplishing the mission of the EPPO in the non-participating Member States. However, the Treaties do not contain such an authorization for the EU. It was the non-participating Member States' clear goal to safeguard their sovereignty to the degree possible when it comes to criminal matters. Consequently, it seems that the EU must develop a strategy to somehow induce non-participating Member States to join the EPPO.

3. The EU's Strategy to Extend the EPPO's Jurisdiction

Based on the above reflections, the EU seemingly intends to impose pressure on the non-participating Member States to join the EPPO. Based on the latest declarations of the EU's competent officials and studies conducted by EU bodies, furthermore, gleaned from my recent experiences as a criminal defense attorney, the following three main dimensions of the EU's persuasion strategy may be distinguished.

3.1. The Rule of Law Mechanism

As mentioned above, Article 4(3) TEU sets forth the principle of sincere cooperation. In addition, Article 325 TFEU provides a general obligation for all Member States to take the necessary measures to effectively counter fraud and all other illegal activities affecting the financial interests of the Union. Article 327 TFEU obliges "those Member States [not participating in an enhanced cooperation] not to impede its implementation by the participating Member States." As far as the practical implementation of these provisions is concerned, Vera Jourová already stated in 2017 during an interview that she "will be a strong promoter of having EPPO as one of the pre-conditionalities for the future

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financial budget" and in her view "it's very logical that the states that want further massive financial injections should be under [the prosecutor]."[52]

Despite Jourová's declaration, joining the EPPO is not a pre-condition for participating in EU funds as of yet, although it is also true that the issue is still on the EU legislator's agenda. This is well illustrated by the recent open letter[53] and declaration[54] of Johannes Hahn, Commissioner for Budget and Administration in the Commission who underlined that

> "the good compliance and sound financial management, confirmed by the Court of Auditors, should remain a core objective in the next generation of funds, with respect for the rule of law and zero tolerance for fraud as the key underlying principles governing EU spending."

The Commissioner also referred to the establishment of the EPPO as a relevant step and voiced his hope that the Prosecutor's Office's operation will support the EU in taking effective action against offences threatening the EU's financial interests.

From the declarations cited above it is clear that the EU's competent officials emphasize the strong link between participation in EU funds and compliance with the criterion of rule of law, which seems to include the acceptance of the EPPO's jurisdiction, at least the Prosecutor's Office is a key-factor in it. Although the EU has not yet officially decided that participation in the EPPO would become a compulsory criterion for receiving EU funds, the openness towards introducing such a pre-condition is evident.

However, until the official introduction of such an obligation in the medium term – probably within 5 years –, the EU intends to nudge non-participating Member States even in the meantime with every available instrument towards joining the EPPO as soon as possible. One of these instruments could be the rule of law mechanism, since the cited declarations already referred to it. Vera Jourová, who has recently become Vice-President for Values and Transparency of the Commission, made it clear that "the EU is serious in fighting financial crime and in protecting the taxpayers' money"[55] and that "the Commission is and will remain the guardian of the treaties. It is our duty to ensure that the Member States abide by the law." Moreover, although she stated that compliance with the criterion of rule of law and the budgetary conditions for receiving EU funds are of different nature, she also clearly stated that

> "The best thing would be for Poland and Hungary, like the vast majority of EU Members, to participate in the new European Public Prosecutor's Office,

52 *See* at www.politico.eu/article/eus-jourova-wants-funds-linked-to-new-prosecutors-office/.

53 *See* at www.portfolio.hu/en/eu-funds/20191211/its-time-for-the-big-decision-on-the-next-eu-budget-409931.

54 *See* at www.napi.hu/nemzetkozi_gazdasag/europai-unio-tamogatas-korrupcio-csalas.697034.html, Minutes of the European Parliament's sitting of Tuesday, 17 December 2019.

55 *See* at https://ec.europa.eu/commission/presscorner/detail/en/statement_19_5769.

> which will monitor the use of EU funds everywhere. Then the calls for the rule of law mechanism would likely be less strong."[56]

In my view, this statement of the Commission's Vice President reveals the EU's future policy regarding the application of the rule of law mechanism, namely its use as an instrument for putting political pressure on non-participating Member States, specifically on the outlier populist governments.

3.2. The Role of DG COMP: The Trojan Horse?

According to the above statements, the Commission will take all necessary measures to "ensure that the Member States abide by the law." In addition to imposing political pressure on the non-participating Member States under the threat of triggering the rule of law mechanism, one of the Commission's effective instruments could be the broader utilization of the Directorate-General for Competition. Although Articles 101-106 TFEU (and Articles 107-109 TFEU concerning state aid) stipulate the limits of EU competition law and the EC Merger Regulation[57] defines DG COMP as the Commission's competition law authority, it seems that the EU tends to utilize this body as an effective guardian of its financial interests and also a motivational factor to join the EPPO. The relationship between competition law and criminal law, the phenomenon of competition law's quasi-criminal nature is a popular and widely debated issue.[58] However, the real potential of DG COMP as a supranational *quasi* investigative authority and its relationship with the EPPO has not yet been analyzed. Yet based on my recent experiences as a criminal defense attorney, DG COMP may turn out to be even more effective in cooperating with and/or assisting the EPPO than its official privileged partner, OLAF.

At first, alleged infringements, or at least the suspicion of the breach of competitive rules could quite easily be detected due to the following reasons: *(i)* complexity of the EU market, *(ii)* the companies' main ambition to gain utmost profit and *(iii)* the relative flexibility of competition law rules. Although DG COMP principally deals with cases with Community dimensions, national authorities must comply with its decisions. Moreover, it is not hard to imagine that cases with Community dimensions may have a really serious impact on the national market and/or alleged connections with non-participating Member States' governments, political leaders. Therefore, the investigation of such cases certainly catches the attention of the state concerned.

56 *See* at www.spiegel.de/international/europe/eu-commission-vice-president-on-poland-this-is-not-reform-this-is-demolition-a-0af72307-aeac-4d69-9a6c-c6e480bc80d2.

57 Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

58 *See* Peter Whelan, 'Competition Law and Criminal Justice', *in* Jonathan Galloway (ed.), *The Intersections of Antitrust*, Oxford University Press, Oxford, 2017; Donald Slater *et al.*, 'Competition Law Proceedings Before the European Commission and the Right to a Fair Trial: No Need for Reform?', *European Legal Studies, Research Papers in Law*, 5/2008, Bruges, 2018.

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Moreover, DG COMP enjoys broad rights in the course of its inspection,[59] including: *(i)* to enter any premises, land and means of transport of undertakings and associations of undertakings; *(ii)* to examine the books and other records related to the business, irrespective of the medium on which they are stored; *(iii)* to take or obtain in any form copies of or extracts from such books or records; *(iv)* to seal any business premises and books or records for the period and to the extent necessary for the inspection; *(v)* to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers. In addition, the application of these measures and effective inspection are guaranteed by DG COMP's right to apply periodic penalty payments[60] not exceeding 5 percent of the average daily aggregate turnover of the undertaking concerned for each working day of delay in compelling with its measures. The Commission may also impose on the persons or undertakings concerned fines[61] not exceeding 1-10 percent of the aggregate turnover of the undertaking concerned, if they intentionally or negligently attempt to hinder its inspection (both of these measures may be repeatedly imposed). It is evident that these measures have a substantial effect and coercive power to persuade undertakings to cooperate with DG COMP. Finally, the Commission concludes its procedure with a decision based on a fully explored statement of facts and a detailed legal reasoning with a binding resolution – at least from competition law perspective.

In light of the above, it may be concluded that although DG COMP is not entitled to formally perform 'investigations', it is granted such broad and powerful rights, including effective coercive measure to impose fines, that its inspections may be more effective than OLAF's investigations (since the Bureau lacks such powers). Moreover, it is also significant that DG COMP's procedure ends with a binding decision based on properly assembled evidence, while OLAF may only issue a recommendation at the end of its investigation. This difference is essential when it comes to their use in criminal matters: in case DG COMP reveals suspicion of a crime and lodges its decision with the EPPO or even to the national investigative authority, the criminal authorities will receive a fully explored statement of facts substantiated by a wide range of trustworthy evidence. Practically, this will have the result that – contrary to OLAF recommendations – it would be a real challenge for the requested national authority to refuse initiating a criminal procedure or close it due to lack of evidence. In this sense, a more frequent initiation of DG COMP inspections may be a suitable instrument, a so-called Trojan horse for the Commission to impose financial, rather than political pressure on the non-participating Member States and to 'inspire' them to join EPPO in order to avoid further risks of significant fines and their financial, political effects.

59 Pursuant to Article 13(2) of the EC Merger Regulation.
60 Id. Article 15.
61 Id. Article 14.

3.3. The Future Role of ECA

Based on the above, we can say that the EU has at its disposal one rather political motivational factor, the rule of law mechanism, and in the form of DG COMP's inspections a financial instrument to 'inspire' as of yet non-participating Member States to join EPPO. One further relevant body in this struggle could be the European Court of Auditors (ECA). As far as this issue is concerned, the DG IPOL's recent study envisages the cooperation between the EPPO and the ECA in the following scenarios:[62] *(i)* the ECA may trigger an EPPO-led investigation: once auditors come across an instance of fraud by lodging the concerned report with the EPPO;[63] *(ii)* the ECA member or staff becomes the target of an EPPO investigation: the EPPO as another EU body may be best suited to act as an investigative authority if the crime falls under its jurisdiction; *(iii)* the ECA may be requested to second expert staff to the EPPO in a given area; *(iv)* the ECA may be requested by the EPPO to conduct targeted audits in risk areas; *(v)* the EPPO may have access to the ECA's databases; *(vi)* the ECA's reports may be accepted as evidence in judicial proceedings before the CJEU; *(vii)* ECA staff may be called on to provide forensic evidence. ECA auditors may be called on by EDPs to provide forensic audit evidence in the framework of a specific criminal proceeding. They must appear as witnesses before the national court.

The above enumeration demonstrates that if effective cooperation could be developed between the EPPO and the ECA, then the latter body could provide useful assistance to the EPPO, thus the role of OLAF in this regard might lose some of its significance. Moreover, considering the general scope of the ECA's work, it is also perceivable that it may fulfill a role similar to that of DG COMP, as another body placing financial and political pressure on non-participating Member States – specifically concerning the utilization of EU subsidies – in the struggle to persuade all Member States to join the EPPO.

4. Final Conclusions

Based on the above analysis, sooner or later, the step for all Member States to join the EPPO extending the Prosecutor's Office's jurisdiction to the full territory of the EU seems unavoidable. This would comply with the mission of the EPPO as defined in the TFEU and make the Prosecutor's Office a statutory body of the EU, giving the Community fully-fledged, real supranational investigative and

62 *DG IPOL study 2019*, pp. 79-80.

63 However, DG IPOL's recent study also admits that "fraud is generally detected upon police intervention (*e.g.* tapping phones or tracking movements), following up a lead provided by victims or whistle-blowers. 'Fraudulent reports are the most perfect ones' and auditors are ill-equipped to detect fraudulent activities involving some sort of criminal conduct. Fraud can be embedded in forged documents, for which auditors lack detection equipment, and on-the-spot missions are usually the best tool to unearth a mismatch between reported activities and fraudulent reality. The European Court of Auditors will, therefore, not be a privileged counterpart for EPPO on a daily basis; however, there will be occasions for bilateral cooperation, which will be more successful and mutually strengthening if adequate interinstitutional arrangements are in place." Id. p. 78.

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prosecutorial authority whose measures and decisions are to be abided by all Member States.

However, first the EU must face the challenge of non-participating Member States' serious resistance against EPPO. On one hand, based on the literal interpretation of the Treaties the EU seems to be lacking proper legal instruments to deal with this problem. On the other hand, from a practical perspective, we can say that the EU has various instruments at its disposal for tackling this challenge and achieving its goals: these instruments are both of political and financial nature, such as the rule of law mechanism, DG COMP and ECA inspections besides the already well-known OLAF investigations. These may be effective, notwithstanding the fact that none of these leverages are truly meant to be used for such purposes, nor would the EU openly admit their use to pursue such goals. Therefore, the concrete ways of achieving acceptance of the EPPO by all Member States remain unclear and range from a future statutory obligations and 'financial blackmail', rendering participation a pre-condition for receiving EU funds to considerably softer and more sophisticated solutions. In this respect, it would definitely draw a better picture if non-participating Member States would join the EPPO of their own volition and not under the coercive force of a binding obligation – even if such 'autonomous decision' of the Member States would be promoted and highly recommended by the EU.

Finally, it should also be mentioned that despite the clear tendencies analyzed and the EU's apparent enthusiasm surrounding the establishment of the EPPO and its struggle to make it an effectively operating supranational investigative and prosecution authority, the newly appointed European Chief Prosecutor, Laura Codruta Kövesi complained in February 2020 that the Prosecutor's Offices's "preliminary estimate makes the legislative financial framework under which the EPPO regulation has been adopted obsolete' and currently 'has just four staff to tackle 3,000 cases"[64] (although it has to be mentioned that according to the Commission's latest proposal[65] the budget of the EPPO should be revised). With this, I think the Chief Prosecutor brought the most important question regarding the Prosecutor's Office future to the point: "Do we want to have an EPPO just to say we have one, or do we want it to be efficient?"[66]

64 *See* at https://euobserver.com/justice/147386.

65 *See* at www.leadersleague.com/en/news/european-commission-proposes-e75m-in-repatriation-funding-for-eu-nationals.

66 *See* at www.eureporter.co/frontpage/2020/02/07/do-we-want-to-have-an-eppo-just-to-say-we-have-one-or-do-we-want-it-to-be-efficient-kovesi/.