



## Potential Cooperation between the European Public Prosecutor's Office and Europol

### EUROPOL'S AND THE EPPO'S RESPECTIVE COMPETENCES:

1. Following the entry into force of the Lisbon Treaty, the new Article 86 of the Treaty on the Functioning of the EU (TFEU) provides for the possible establishment of the EPPO from Eurojust by means of regulation(s). Europol's role is foreseen in Article 86(2) as it states that the EPPO would "be responsible for investigating, prosecuting and bringing to judgement, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests".

2. The EPPO will be exclusively competent for crimes against the financial interests of the Union, also referred to as PIF crimes (from the French *protection des intérêts financiers*), but this type of crime has yet to be legally defined under EU legislation. The draft Directive defining PIF crimes is currently going through the EU legislative process. In the absence of an agreed legislative definition of PIF crimes, the exact focus of the EPPO is still unclear. The interaction between the EPPO and Europol will depend on the clarification of the EPPO's mandate in terms of specific crime areas. It is still uncertain, therefore, in which areas Europol and the EPPO will cooperate. In regards to offences which are not technically defined as PIF but are closely linked to PIF, any potential conflict of competences will need to be resolved between the EPPO and the Member States.

3. Though the protection of the financial interests of the Union is not explicitly mentioned in Europol's mandate, there are other related crime areas where Europol has competences and is operationally active. Europol's mandate lists the following offences which are closely linked to PIF crimes: swindling and fraud, corruption, forgery of administrative documents and trafficking herein, illegal money-laundering activities, and forgery of money and means of payment. Therefore, Europol's operational work has a direct or indirect role in the protection of the financial interests of the EU in the following criminal activities: tobacco fraud, fraud related to intellectual property rights, VAT fraud (e.g. MTIC fraud) and currency counterfeiting.

4. Article 86(4) of the TFEU states that the European Council may "extend the powers of the EPPO to include serious crime having a cross-border dimension" and "serious crimes affecting more than one Member State". The current EPPO proposal does not include the scope of serious crime but it does state that any extension of its competence would require a unanimous decision by the European Council. If this is the case, this would require renewed clarification of the interaction and complementarity between Europol and the EPPO.

## Europol Public Information

### **MODALITIES FOR COOPERATION:**

5. According to the draft EPPO Regulation, under the principle of loyal cooperation, Europol is obliged to actively support the investigations of the EPPO. Article 58(1) regarding the relations with Union institutions, agencies and other bodies states that the EPPO "shall develop a special relationship with Europol". Whereas agencies' legal frameworks typically include explicit provisions for the establishment of cooperation agreements with partner agencies, and while Article 58 includes such provisions with regard to Eurojust, OLAF and Third Countries, no such provision is included foreseeing a cooperation agreement between the EPPO and Europol. From Europol's perspective, it is possible to envisage three modalities for cooperation: 1) investigations, 2) requests for information, and 3) cooperation with Europol's Analysis Work Files.

#### ⇒ **INVESTIGATIONS**

6. The EPPO will have the competence to conduct investigations of PIF crimes. As it is Europol's general mandate to support and coordinate the investigations of Member States, the EPPO could engage with Europol during its investigations. Europol could have a particularly active role in investigations involving Member States that are not part of the EPPO but who are members of Europol, as well as investigations involving third countries with which Europol has established cooperation agreements. Europol could support and coordinate cooperation with police, customs and any other competent law enforcement authority.

#### ⇒ **REQUESTS FOR INFORMATION**

7. According to Article 21(1), for the purposes of an investigation, the EPPO "shall obtain, at its request" from Europol, "any relevant information concerning an offence within its competence". The EPPO "may also ask Europol to provide analytical support to a specific investigation conducted by the EPPO". This means that Europol will play a supportive role during the EPPO's investigations by providing information and analytical support. In addition, Article 21(2) establishes a general obligation to provide assistance and information to the EPPO upon its request.

8. Article 58(2) states that the cooperation between the EPPO and Europol "shall entail the exchange of information, including personal data". This is subject to certain conditions: 1) the data exchanged shall only be used for the purposes for which it was provided; any other usage shall only be allowed in as far as such usage falls within the mandate of the body receiving the data; 2) it is subject to the prior authorisation of the body which provided the data (generally a Member State law enforcement agency). Exchange of data is a sensitive issue for Member States and Europol, which requires additional protective measures to manage the transmission of information such as 'handling codes' and secure channels for transmission. The nature of such measures put in place by the EPPO would either allow or restrict further dissemination of information within the conditions and assessment established by the original provider.

9. It would be useful to link Articles 21 and 58 as the former establishes the obligation of cooperation with the EPPO and the latter the conditions for cooperation. Europol would have to provide personal data in regards to violations of the financial interests of the EU but also, under certain conditions, personal data relating to other criminal activities.

## Europol Public Information

### ⇒ COOPERATION WITH EUROPOL'S ANALYSIS WORK FILES

10. The EPPO shall establish a Case Management System composed of temporary work files and of an index, which includes personal and non-personal data. According to the proposal, the data processing system of the EPPO should build on the Case Management System of Eurojust, although its temporary files should be considered case-files from the time the investigation is initiated.

11. Europol has an extensive, reliable and thoroughly audited system of Analysis Work Files (AWFs) on organised and serious crime. For the exchange and processing of case-related data, it would therefore be possible to envisage an association or connection of the European Public Prosecutor and/or the European Delegated Prosecutors to Europol's AWFs. Under the current legal framework, Eurojust is associated to the majority of Europol's files, and steps are being taken to arrange for the association of OLAF to the most relevant files.

### **CONCLUSION:**

12. Taking into account its areas of competence, expertise, and mechanisms for cooperation, Europol is well positioned to support the EPPO. In principle, complementarity should exist in the functioning of Europol and the EPPO. The EPPO is an EU body directly responsible for investigations in its area of competence, while Europol has a broad mandate to facilitate the exchange of information and coordinate national investigations but is not entitled to conduct investigations. This means that Europol's role will not overlap or conflict with the EPPO's investigative competence but it will be complementary.

13. It will be the responsibility of the European Delegated Prosecutors to act for the EPPO from their respective Member States and in accordance with their legislation during investigations. Europol would be involved in such investigations as it supports the investigations of Member States. Currently, when it comes to tackling fraud across the EU, the level of protection and performance is very uneven. The success rate of prosecutions of offences against the EU budget varies considerably from one Member State to another. The EPPO would be specialised to protect the financial interests of the EU which would in turn support the fight against transnational crime, the core of Europol's mission.