THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE IN THE INSTITUTIONAL ARCHITECTURE OF THE EUROPEAN UNION

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Abstract

EPPO research and analysis are necessary, useful and opportune, given its involvement in achieving EU objectives. The approach will be continuous, but different. The statement is based on the fact that, at present, we do not have enough data / information to highlight the experience gained in the field. Its activity is only at the beginning, but in time, the details of such an effort will, certainly, increase, contributing thus to the improvement of the field.

Keywords: *European Public Prosecutor's Office (EPPO); legal grounds; Regulation (EU) 2017/1939; competences; complementary law.*

1. General aspects

The indisputable reality of the permanence of the institutional reform[1] within the European Union has determined us to place the establishment of the European Public Prosecutor's Office (EPPO[2]) among the decision makers' preoccupations, regarding this process of adjusting the Union institutional system to the evolutions of the contemporary society. The concern is major and essential, given the role of the European Public Prosecutor's Office in the protection of the European Union's financial interests. This role conferred upon by the Member States, through the Treaty on the Functioning of the European Union (TFEU) states in art. 86 para. (1) that: "in order to combat offences affecting the financial interests of the Union, the Council, acting by means of regulations in accordance with a special legislative procedure[3], may establish a European Public Prosecutor's Office, starting from Eurojust"[4]. Thus, "more than 10 years after upbringing the Green Paper [on the criminal protection of the Community's financial interests and the establishment of a European Public Prosecutor] to debate, in 2013, the European Commission relaunched the proposal of establishing a body specific to the European Union, which would protect taxpayers' money against fraud"[5].

It is necessary to analyse the setting out of the European Public Prosecutor's Office, from the perspective of the opportunity given by such an institutional construction, considering the grounds on which such an effort is based (historical and legal).

a. *The historical and legal reasons for the establishment of the EPPO* through a fundamental legal basis, such as the TFEU, are certainly highlighted by a number of value judgments which are logically and fairly harmonized with the EU's objectives and values[6]. There are reasons based on a series of truths existentially established, not yet codified though, but jurisprudentially and objectively validated, insofar as

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[1] See: Augustin Fuerea, *Permanenţa actualităţii reformei sistemului jurisdicţional al Uniunii Europene*, in Dreptul no. 4/2017, pp. 155-168 (article mentioned in the current References, Part A (Documents on EU integration, cataloged by the ECJ), no. 10/2017 of the Court of Justice of the European Communities); Augustin Fuerea, *Permanenţa procesului de reformă instituţională în cadrul UE*, Romanian Journal of Community Law no. 2/2003, pp. 9-23 (article mentioned in the current References, Part A (Documents on EU integration, cataloged by the ECJ), no. 6/2005 of the Court of Justice of the European Communities); Augustin Fuerea, *Reform carried out within the European Union*, Lex et Scientia, vol. I, no. 7/2000, pp. 116-121.

[2] The abbreviation is, also accepted in the Romanian version (official language of the European Union) of the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing a form of enhanced cooperation in the establishment of the European Public Prosecutor's Office (EPPO), published in OJ L283,10/31/2017.

[3] The special legislative procedure consists of the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament, as opposed to the ordinary procedure, which has several stages, namely: first reading, second reading, conciliation and third reading.

[4] European Union Agency for Criminal Justice Cooperation. Eurojust's role is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious forms of crime, where two or more Member States are affected or which require criminal prosecution on a common basis (art. 2) para. (1) of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Cooperation in Criminal Justice (Eurojust) and replacing and repealing Decision 2002/187/JHA of Council, published in OJ L 295, 11/21/2018).

[5] Roxana-Mariana Popescu, from the *"De la „Cartea Verde privind protecţia penală a intereselor financiare comunitare şi crearea unui Procuror European" la „Propunerea de Regulament de instituire a Parchetului European"*, Bulletin of Legislative Information, no. 1/2015, p. 4.

[6] Art. 2 TFEU: "The Union shall be based on values of respect for human dignity, liberty, democracy, equality, the rule of law and the observance of human rights, including the rights of individuals belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men."

the subjective side, more or less present or outlined, cannot be ignored.

The doctrine[7] of the field highlights, by emphasizing the academic approach, the fact that "the paradigm shift in criminal justice (...) [occurred] with the operationalization of the first institution of the European Union with powers of criminal investigation body, to take or propose precautionary or preventive measures and to order the prosecution of defendants who committed crimes within its competence".

If on the date of entry into force[8] of Regulation (EU) 2017/1939, 22 EU Member States[9] agreed to become parties to that legislative process, previously, when the issue of enhanced cooperation was raised, there were just 16 participating States[10].

"The purpose of this Prosecutor's Office is not to get exclusive competence to protect the financial interests of the Union, but to create a system of shared competences, linking the efforts of national authorities to those of EPPO in this field."[11]

b. So, what's the reason for taking into consideration *the reasons of legal nature, too*? The explanations are relatively simple. They can be found, above all, in the fact that the experience gained over time has quite frequently revealed, that the approaches to such an "institutional appearance" can have multiple dimensions, as the following: political, philosophical, theological, sociological, psychological, economic, financial, historical and, last but not least, legal. We can easily see that the above dimensions can be analysed separately, either independently or sometimes within some correlations, the interference being inevitable.

Our approach, in this process, is intended to correlate the legal and historical perspectives. We have added the historical dimension, to the legal dimension, also because the "establishment" of the EPPO can only be envisioned in close connection to the developments of the European Communities and the European Union, from 1950 to the present. These evolutions have necessarily been followed by consistent developments in the objectives and values pursued and defended, at one stage or another, and to the materialization of which, the institutional system (decisively involved in the adoption of European Community and European Union legislation) contributed in an overwhelming manner.

Without insisting on the historical evolutions, we have noticed that, since 1950, some stages have had a special impact on our field of analysis. Thus, we cannot ignore those highly relevant aspects, registered after 1990, with the entry into force of the Maastricht Treaty[12]. This legal instrument is important both in terms of the legislative openings it offers to the states of Central and Eastern Europe, and in terms of the fact that the same treaty lays the foundations of the European Union as a *sui generis* entity which from the beginning has been supported on three pillars, namely: the European Communities - pillar I, community[13] and integration; Common foreign and security policy - pillar II and pillar III - Justice and home affairs[14]. This construction of the EU on three pillars anticipated the consolidation of some economic objectives (e.g. the achievement of the Monetary Economic Union, including the concrete establishment of the transition stages to the single European currency - Euro), but also the specific component of the third pillar - Justice and home affairs, a pillar which, unlike the first pillar (integration), aimed at the cooperation of the EU Member States, remaining at the same level, despite all the substantial changes that took place.

We appreciate that the establishment of the European Public Prosecutor's Office is closely related to the economic-financial dimension of the community / European construction.

Renaming the third pillar, from Justice and Home Affairs to Judicial and Police Cooperation in criminal matters, was the consequence of transferring two important fields, migration and asylum[15], from the cooperation pillar (III) to the integration pillar (I).

Without ignoring the contributions / merits of another EU Treaty, the Treaty of Nice[16], we shall bring to discussion the relevance of the Treaty of Lisbon[17] in

[7] Adrian Șandru, Mihai Morar, Dorel Herinean, Ovidiu Predescu, *Parchetul European. Reglementare. Controverse. Explicații*, Universul Juridic Publishing House, Bucharest, 2021, p. 9.

[8] 20 November 2017.

[9] Austria, Belgium, Bulgaria, Cyprus, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia, Spain and the Netherlands.

[10] Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain.

[11] Adrian Șandru, Mihai Morar, Dorel Herinean, Ovidiu Predescu, *op. cit.*, p. 19.

[12] Signed in 1992, entered into force in 1993.

[13] European Coal and Steel Community; The European Economic Community (hereinafter referred to as the European Community, after the Maastricht Treaty) and the European Atomic Energy Community. All Communities have been established as subjects derived from international law, with their own legal personality.

[14] The name is changed to "Judicial and police cooperation in criminal matters" by the Treaty of Amsterdam (signed in 1997, entered into force in 1999).

[15] Along with two other areas: visas and other policies referring to people.

[16] Signed in 2001, entered into force in 2003. Also, we cannot ignore the Treaty establishing a Constitution for Europe, which was not ratified by France and the Netherlands, but which lays the foundations of the Treaty of Lisbon.

[17] Signed in 2007, entered into force in 2009.

this area. In addition to the fact that the Treaty of Lisbon conferred for the first time, legal personality upon the European Union[18], it also settled, in an unequivocal manner, the issue of competences[19]. The issues related to the establishment of the EPPO are in the scope of second level competences, which are shared competences (art. 4 TFEU) between the EU and the Member States. Among the areas falling within the shared competences, we find the one related to the "space of freedom and security, and justice"[20]. More specifically, it is about "justice" in this area.

Just like the achievement of the economic and financial objectives was followed, after 1990, by the establishment of institutions able to contribute to their achievement (*e.g.* the Court of Auditors and the European Central Bank, preceded by the Monetary Committee and the European Monetary Institute, respectively), in the field of justice, the institutions with specific powers were set up gradually: the Court of Justice, the Court of First Instance (current Tribunal) and the Civil Service Tribunal (until 2016), followed in a specific logic manner by EPPO in close cooperation and starting from Eurojust[21], also with OLAF and Europol.

The analysis focuses on the status of the European Union as subject of international law, with institutions, bodies, offices and agencies that are likely to consolidate this status, along with the regulatory system and EU diplomacy, which is special, bringing together characteristics of both states and international organizations, differing equally from the two categories of subjects of international law.

Gradually, historically, but also legally, there has been a strengthening of the EU's institutional structure, also through the establishment of the EPPO, based on the three powers: legislative (bicameral: European Parliament and Council; according to special and ordinary legislative procedures); executive (European Commission) and judicial (Court of Justice of the European Union, to which, we appreciate, the European Public Prosecutor's Office is added under certain conditions).

EPPO, starting with Eurojust - a pre-existing entity (according to art. 85 (1) TFEU), has the role of "supporting and strengthening coordination and cooperation between national investigating and prosecuting authorities in relation to serious forms of crime affecting two or more Member States or which impose criminal prosecution on a common basis, through operations undertaken by the authorities of the Member States and Europol and through information provided by them".

In summary, we appreciate that the institutional reform at EU level is closely linked to developments at domestic, European and international level. This is a diverse, continuous, complex and multidimensional reform. Its achievement takes into account both the horizontal and vertical planes, being stimulated by the pandemic, but also by the technological evolutions, all being drawn in an unprecedented dynamic.

It is the field that has certainly generated among the deepest and most diverse reflections, raising many questions, and revealing even more answers. One of these questions, to which we will try to find an answer, refers to the status of the EPPO: institution, body, office or agency? The question originates in the different formulations that we have found in the theory and practice of the field.

2. The fundamental legal basis for the establishment of the European Public Prosecutor's Office

In this regard, too, the rule has been observed that EU Member States, as the main subjects of international law, are the ones who decide on the establishment / dissolution of institutional entities, through the agreement of free will, based on their sovereignty, through treaties, as primary sources of EU law. In this case, it is the Treaty on the Functioning of the European Union (after the Lisbon moment), which, in art. 86 para. (1), provides for the establishment of the European Public Prosecutor's Office. Further explanations require the determination of Member States to set up the EPPO, choosing between the ordinary and the special legislative procedure. The option expressed by choosing the special legislative procedure[22] is showing the desire to complete this approach quickly. Why? Because, while the ordinary legislative procedure is involving the institutional decision-making triangle (Commission, the European Parliament and the Council), the special legislative procedure, being faster, is employing only the two legislative institutions, namely the Council and the

[18] Art. 47 TEU.

[19] Art. 3-6 TFEU.

[20] Art. 4 para. (2) letter j) TFEU. "The area of freedom, security and justice is made of: policies on border control, asylum and immigration (art. 77-80 TFEU); judicial cooperation in civil matters (Article 81 TFEU); judicial cooperation in criminal matters (art. 82-86 TFEU); police cooperation (art. 87-86 TFEU)" (Alina Mihaela Conea, *Politicile Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2019, p. 84.

[21] Under art. 86 para. (1) TFEU.

[22] Art. 289 para. (2): "In specific cases provided for in the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament shall constitute a special legislative procedure".

European Parliament. Specifically, "the Council shall act unanimously after obtaining the consent of the European Parliament"[23].

The second paragraph of art. 86 para. (1), which has also been applied, states that, "in the absence of unanimity, a group of at least nine Member States may request that the draft Regulation be referred to the European Council. In that case, the proceedings in the Council shall be suspended. After debating, in the event of a consensus being reached, the European Council shall, within four months from the suspension, resubmit the draft to the Council for adoption". Furthermore, it is necessary to clarify that the EU legislator, "in case of disagreement and if at least nine Member States wish to establish a form of enhanced cooperation (also known in this matter) based on the draft Regulation, they shall inform the European Parliament, the Council and the Commission accordingly". This is the reason why, applying art. 20 para. (2) TEU and art. 329 para. 1, the authorization to set a form of enhanced cooperation shall be deemed to be granted by TFEU in accordance with all provisions relating to forms of enhanced cooperation.

The role of the European Public Prosecutor's Office is established, also by the Member States, through TFEU para. (2) art. 86, in the sense that it "has the power to investigate, prosecute and send to court, where appropriate in collaboration with Europol, the perpetrators and co-perpetrators of offences affecting the financial interests of the Union (...). The European Public Prosecutor's Office shall bring an action before the competent courts of the Member States in connection with such offences".

The Statute of the European Public Prosecutor's Office was established in the application of para. (1) in art. 86 TFEU by Regulation (EU) 2017/1939 implementing a form of enhanced cooperation in the setting up of the European Public Prosecutor's Office.

Subject to regulations such as the above are, also those aspects relating to the conditions for the exercise of EPPO's powers, as well as the rules governing the admissibility of evidence and the rules applicable to the judicial review of procedural acts adopted in the exercise of its powers.

There are important concerns about the extent of EPPO's tasks, too. Provided that they concern the financial interests of the EU, they inevitably include those of the Member States as well, and the tasks performed cover the offences committed in the Member States, with regard to the EU budget, but also to the budgets of the Member States, knowing the interdependence between them. In practice, the size of the EU budget (consisting of withdrawals from national budgets) inevitably depends on the amounts of Member States' budgets. What really arouses interest is the provision of para. (4) in art. 86 TFEU, according to which "the European Council may adopt, at the same time or subsequently, a decision amending paragraph (1) for the purpose of extending the powers of the EPPO, in order for them to include the fight against serious crime of cross-border dimension, for the purpose of the corresponding amendment to para. (2) in respect of perpetrators and co-perpetrators of serious offences affecting more than one Member State".

A fundamental legal basis affecting the latest Directive (EU) 2017/1371[24], adopted in the matter, is represented by art. 83 para. (1) TFEU, which refers to the fact that "the European Parliament and the Council, acting by directives (...) may lay down minimum rules on the definition of offences and sanctions in areas of particularly high cross-border crime arising from the nature or impact of such offences or from the special need to fight them on a common basis". The areas covered by the EU bicameral legislation are: terrorism, trafficking in human beings and the sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, cybercrime and organized crime.

Considering the dynamics of developments in the field, the same treaty regulates, at art. 83 para. (1) subparagraph 3, that, "depending on the crime evolution, the Council may adopt a decision identifying other areas of crime".

The criminal field has long been considered the exclusive prerogative of states, including of those of the European Union. The Amsterdam Treaty, evoked as one of the most known developments in the field, brings into question, in the scope of the freedom, security and justice areas within the EU, the direct issue of combating crimes against financial interests, judicial cooperation in criminal matters, considerably strengthened by The Treaty of Lisbon, "covering" such a component of the EU financial circuit.

3. Derivative and complementary law of the European Union incidental to the establishment of the European Public Prosecutor's Office

The efforts have not exclusively been focused on the field of treaties, but also on other regulations, such as conventions and directives. This concerns, first of all, the Convention drawn up under art. K.3 of the Treaty on European Union, on the protection of the

[23] Art. 86 para. (1) final thesis.

[24] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union by means of criminal law, published in OJ L 198, 7/28/2017.

European Communities' financial interests[25] (hereinafter referred to as the Convention on the protection of the European Communities' financial interests). A while later, a legal act of derivative law was added to the Convention, namely Directive (EU) 2017/1371 on combating fraud against the financial interests of the Union by means of criminal law[26]. From that perspective, steps had been taken under the dome of the third pillar on which the EU had grounded its existence until the Treaty of Lisbon. This is why, given the developments over time, "in the field of substantive criminal law, devoted to this area", there is "a propensity for Union law towards harmonization (in the form of the adoption of common minimum rules)"[27].

Thus, the Convention on the protection of the European Communities' financial interests has been seeking to ensure the effective contribution of the criminal law of Member States to the protection of the European Communities' financial interests. The purpose of this goal is to state that fraud affecting Community revenue and expenditure (at that time!; of the Union, at present) is not limited in many cases to a single Member State or non-Member State, but is often committed by organized international networks.

The Convention envisages a reality aimed at protecting the financial interests of the European Communities, by imposing criminal prosecution for any fraudulent conduct which is prejudicial to the interests in question, up to and including commitments on competences, extradition and cooperation, qualifying, on the basis of common meanings of the concepts used, the conduct in question as criminal offences, which may be punishable by effective, proportionate and dissuasive criminal penalties, without prejudice to the application of other sanctions in certain appropriate cases, and to provide for custodial sentences that can lead to extradition. All this is in full agreement with the situation, recognized by the States Parties to the Convention, in which undertakings play an important role in the fields financed by the European Communities, and people having decision-making power in undertakings should not be exempted from criminal liability[28], under certain circumstances.

The gradual regulation of this field, at EU level has been highlighted by the important steps taken since the Convention, as a complementary source[29] of EU law, to EU legal acts, as derived/secondary sources, according to art. 288 TFEU. At this level, too, we are witnessing developments, in terms of legal effects, of the obligation of those to whom it is addressed, *i.e.*, from the directive to the regulation[30]. From this perspective, the focus on the EU's financial interests is in line with the primary law adopted by the Member States. It is about consolidating the status of an EU subject of international law, by acquiring legal personality, after the Lisbon moment. This is Directive (EU) 2017/1371 on combating fraud against the financial interests of the Union by means of criminal law. The Directive is a natural continuation of previous regulatory approaches, taking into account the Convention (with its Protocols of 26 September 1996 and 29 November 1996) adopted more than 20 years ago (1995-2017!) by the European Communities which at the time numbered 15 Member States after the accession of Austria, Finland and Sweden in 1995, and in 2017 the EU had 28 Member States, almost the double, which justifies, among other things, the multiplication of efforts in this area.

An important step in the field was the adoption of Regulation (EC/Euratom) no. 2988/95 on the protection of the European Communities' financial interests[31]. The Regulation established general rules on uniform controls, measures and administrative sanctions for infringements of Union law, as well as sectoral rules in this area, fraudulent conduct, as defined in the Convention, and the application of criminal law and criminal proceedings of the Member States.

Among the harmonization measures that pertain to the Union's policy in the protection field of its financial interests, this regulation is important for ensuring the implementation of the Union's policy in this area, and it is essential to continue the approach of criminal law of Member States, by completing the protection of the Union's financial interests through

[25] Published in OJ C 316, 11/27/1995.

[26] In the practice of the field, it is known under the abbreviation "PIF".

[27] Anca Jurma, Gheorghe Bucșan, Constantin Claudiu Dumitrescu (coord.), *Studiu cu privire la analiza Regulamentului (UE) 2017/1939 în perspectiva operaționalizării în România a Parchetului European*, p. 7 (available at http://www.pna.ro /obiect2.jsp?id=398 - accessed on 2/25/2022).

[28] In the doctrine, criminal liability is defined as "the criminal legal relation of coercion as the result of a crime, between the state, on the one hand, and the offender, on the other hand, a complex relation, the content of which is the right of the state, as a representative of the society, to hold the offender accountable, to apply the sanction provided for the crime committed and to force him to execute it "(Elena Emilia Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ*, Pro Universitaria Publishing House, Bucharest, 2013, p. 92).

[29] Also called "tertiary law or "*les actes hors nomenclature*", according to French doctrine, or "soft law"(...) or "atypical "or unnamed acts" (Mihaela Augustina Dumitrașcu, *Dreptul Uniunii Europene I*, Universul Juridic Publishing House, Bucharest , 2021, p. 274).

[30] For details on the difference between the two legal acts of the European Union, see Augustina Dumitrașcu, Roxana-Mariana Popescu, *Dreptul Uniunii Europene. Sinteze și aplicații*, 2nd ed., revised and added, Universul Juridic Publishing House, Bucharest, 2015, p. 120.

[31] Adopted by the Council on 18 December 1995, published in OJ L 312, 12/23/1995.

administrative[32] and civil law in the case of the most serious types of fraud-related conduct in this field, while avoiding inconsistencies both within and between each of these areas of law.

In addition to the above, Framework Decision 2008/841/JHA on the fight against organized crime[33] is added. This is the main seat of the definition of a crime that is committed within a criminal organization, as an aggravating circumstance, according to the applicable rules established by the legal systems of the EU Member States.

According to the preamble to Directive (EU) 2017/1371, recital 19, "Member States should make sure that the aggravating circumstance is made available to judges to be taken into account in sentencing offenders, although there is no obligation for judges to take into account the aggravating circumstance in settling their decision".

Derivative EU-specific legislation is extremely diverse and complex. By way of example, we add to the above, as follows: Regulation (EU, Euratom) no. 883/2013 on investigations conducted by the European Anti-Fraud Office (OLAF)[34]; Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union[35]; Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing[36]; Directive (EU) 2016/680 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of prevention, detection, investigation or prosecution of criminal offences or the enforcement of sentences and on the free movement of such data[37]; Regulation (EU) 2018/1725 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data[38].

4. The place of Regulation (EU) 2017/1939 in regulating the protection of the EU's financial interests by the establishment of the European Public Prosecutor's Office

Being the main current EU rule of derivative law, which implements a form of enhanced cooperation on the establishment of the European Public Prosecutor's Office, being materialized, at a higher level, into the protection of EU's financial interests, the approach is limited to the goal agreed by all EU Member States on the achievement of the area of freedom, security and justice. The establishment of the European Public Prosecutor's Office relates to the obligation of the EU and Member States to protect the financial interests of the Union against crimes which cause financial damage every year. The main concern at EU level is that these offences have not, as stated in recital 3 in the preamble to the Regulation, always been sufficiently investigated and prosecuted by national criminal justice authorities.

To the debate on the appropriateness of setting up the European Public Prosecutor's Office, an enlightening answer has been given to us by the application of the principle of subsidiarity[39] as set out in recital 12 in the preamble to the Regulation.

[32] Justified, if we take into account the fact that "the administrative law includes the legal rules that regulate the social relations regarding (....) the responsibility of the public administration, based on and in the execution of the law" (Marta-Claudia Cliza, Constantin-Claudiu Ulariu, *Drept administrativ. Ediție revizuită conform modificărilor Codului Administrativ*, Pro Universitaria Publishing House, Bucharest, 2020, p. 8).

[33] Adopted by the Council on 24 October 2008, published in OJ L 300, 11/11/2008.

[34] Regulation (EU, Euratom) no. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) no. 1073/1999 of the European Parliament and of the Council and Regulation (Euratom) no. 1074/1999 of the Council, published in OJ L 248, 9/18/2013.

[35] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) no. 1296/2013, (EU) no. 1301/2013, (EU) no. 1303/2013, (EU) no. 1304/2013, (EU) no. 1309/2013, (EU) no. 1316/2013, (EU) no. 223/2014, (EU) no. 283/2014 and Decision no. 541/2014 / EU and repealing Regulation (EU, Euratom) no. 966/2012, published in OJ L 193, 7/30/2018.

[36] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) no. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC, published in OJ L 141, 6/5/2015.

[37] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of prevention, detection, investigation or prosecution of criminal offences or the enforcement of free movement of such data and repealing Council Framework Decision 2008/977 / JHA published in OJ L 119, 5/4/2016.

[38] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union's institutions, bodies, offices and agencies and on the free movement of such data and repealing of Regulation (EC) no. 45/2001 and Decision no. 1247/2002 / EC, published in OJ L 295, 11/21/2018.

[39] Art. 5 para. (3) TEU: "In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall intervene only if and to the extent that the objectives of the envisaged action cannot be satisfactorily achieved by the Member States, regionally and locally, but due to the size and effects of the planned action, they can be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity in accordance with the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with the principle of subsidiarity in accordance with the procedure laid down in that Protocol. "The principle of subsidiarity" is linked to the principle of respect for national identity and refers to the fact that Community action must fall within the limits of the powers conferred on the Communities and the Union" (Laura-Cristiana Spătaru-Negură, *Dreptul Uniunii Europene – o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016, p. 196).

Accordingly, it is considered that, "in accordance with the principle of subsidiarity, the fight against crimes affecting the financial interests of the Union can be better achieved at Union level, given its scale and effects". The explanations for this legislative intervention are justified by the fact that, until the entry into force of the Regulation or the operationalization of its application in the Member States, criminal prosecution of offences against the financial interests of the Union used to fall exclusively within the competence of the Member States' authorities which have not always contributed to a sufficient extent, to the achievement of this objective. Applying the principle of subsidiarity, in the fight against crimes affecting the financial interests of the Union is considered not to be satisfactorily achieved by the Member States of the Union, given the fragmentation of criminal proceedings. EPPO has the power to better prosecute crime at EU level.

In accordance with the principle of subsidiarity, the principle of proportionality shall be applied in such a way that the measures taken in application of the principle of subsidiarity do not go beyond what is necessary in order to achieve those objectives and, at the same time, making sure that the Regulation impact on legal systems and institutional structures of the Member States is as less intrusive as possible.

The third principle applicable in this matter is that of loyal cooperation, according to which both the EPPO and the competent national authorities support and inform each other in order to effectively combat crimes falling within the jurisdiction of EPPO.

In full accordance with the above principles, the Regulation doesn't prejudice the national systems of Member States concerning the way criminal investigations are conducted.

Another feature of the EPPO is its independence, in the sense that it acts exclusively in the interest of the Union without seeking or accepting instructions from anyone other than itself. Independence is also strengthened by EPPO's accountability to the Union institutions, the interests of which it protects. Thus, the responsibility of the European Chief Prosecutor is placed at the highest level (European Parliament, Council and Commission), being fully responsible for the performance of his tasks, in the position where he performs, but also from the point of view of taking global institutional responsibility for his general activities. Any of the three institutions that are part of the EU's decision-making triangle can initiate proceedings before the Luxembourg Court of Justice for dismissal in certain situations, including in cases of serious misconduct. The same is available for the dismissal (dismissal) of European prosecutors.

The speed of activities carried out at this level is possible, given the organizational structure that allows a fast and efficient decision-making process in the conduct of criminal investigations and prosecutions, regardless of whether they involve one or more Member States. The EPPO structure takes into consideration the presence of all the national legal systems and traditions of the Member States, and prosecutors familiar with each legal system will, in principle, conduct investigations and prosecutions in their respective Member States.

The effectiveness of the EPPO approaches is ensured by the coherent action at two levels (national and Union), both from a normative perspective and from an actional, institutional point of view.

5. Conclusions

EPPO research and analysis is necessary, useful and opportune, given its involvement in achieving EU objectives. The approach will be continuous, but different. The statement is based on the fact that, at present, we do not have enough data / information to highlight the experience gained in the field. Its activity is only at the beginning, but in time, the details of such an effort will certainly increase, contributing thus to the improvement of the field. In fact, even the TFEU, at Art. 86 para. (4) leaves room for such expectations, stating that, "The European Council may, at the same time or later, adopt a decision amending paragraph (1) for the purpose of extending the powers of the European Public Prosecutor's Office to include the fight against serious crime of cross-border dimension and for the purpose of amending paragraph (2) in respect of perpetrators and co-perpetrators of serious offences affecting more than one Member State".

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