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THE RELATIONSHIP BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE OTHER JURISDICTIONAL BODIES AT THE EU LEVEL

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Abstract

Judicial cooperation in criminal matters represents one of the novelties of criminal law in the European Union. The purpose of this work is to highlight the role that the EU judicial institutions have in the fight against the phenomenon of white collar crime. Knowing that only one institution is working very hard in the fight against a phenomenon that has gained momentum in recent years, financial fraud against the EU, we must refer to their collaboration. Thus, we will analyze the collaboration of the European Prosecutor's Office with other prestigious institutions such as OLAF or EUROJUST, as well as with the specialized structures within the participating states, but also the trend of collaboration with third countries.

Key words: *European Public Prosecutor's Office, judicial cooperation, European Union, economic crimes;*

INTRODUCTION

THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

The concept of judicial cooperation in criminal matters is the creation of effective legal cooperation mechanisms in order to prevent and combat the criminal phenomenon, carried out on two main axes: that of mutual recognition, which allows overcoming the diversities arising as a result of the multitude of judicial systems at European level and international, as well as on the axis of extradition in criminal matters, a concept that is strongly influenced by the sovereignty of each country. *(Pătrăuș, 2021, p.10)*

The European Public Prosecutor's Office appeared in the current context of the European Union as an urgent solution in relation to the financial problems caused by the phenomenon of "white collar" crime. Even if the ideal of this EU jurisdictional body has been drawn up since the 2000s, its realization only

appeared in 2016, with the adoption of Regulation 1939/2017 of the Council and the European Parliament, representing the first cornerstone in this regard.

The need to establish this institution materialized because another institution, EUROJUST, did not come close to the expected performance in terms of preventing and combating the mentioned phenomenon.Thus, 22 member states of the European Union have decided to recognize and participate in this consolidated form of judicial cooperation in criminal matters, representing partners of the EPPO in combating crimes that endanger the financial interests of the European Union.

The European Public Prosecutor's Office consists of a central structure formed by the College of European Prosecutors and the European Chief Prosecutor, as well as a decentralized structure formed by the European Prosecutors-delegates who act under the close supervision of the Permanent Chambers. We can observe that the EPPO strategies converge towards an efficiency of the judicial act through these two subordinate structures, as well as from the permanent collaboration with the judicial institutions on the territory of the participating states and the other jurisdictional institutions of the European Union: OLAF, EUROPOL or EUROJUST.

1. RELATIONSHIP OF THE EUROPEAN PROSECUTOR'S OFFICE WITH THE EUROPEAN ANTI-FRAUD OFFICE

The European Anti-Fraud Office is the EU body whose objective is to combat fraud, corruption and other illegal activities that affect the financial interests of the European Union. Their competence is also extended by investigating criminal or disciplinary acts committed by officials or agents of various institutions in the exercise of their duties in the aforementioned field.

OLAF has powers, unlike the EPPO, in all the member states of the European Union, an aspect that allows for increased efficiency in the investigation of cross-border crimes. The activities undertaken by OLAF inspectors include the hearing of the persons concerned, the consultation of relevant documents emanating from public institutions such as town halls or the Agency for the Financing of Rural Investments, but also documents from financial institutions such as ANAF or the Court of Accounts. *(Sandru; Morar; Herinean; Predescu, 2021, p. 335).*

Apparently the mandate of OLAF is almost similar to that of the EPPO, essential differences not being identified. However, the attention of the current legislator is to standardize and complete Regulation 1939/2017 regarding the organization of the EPPO and Regulation 883/2013 regarding the organization of OLAF in order to streamline joint actions to protect the financial interests of the EU.

Currently, it is desired to avoid the investigation of the same cases by both institutions; they collaborate when the EPPO's mandate overlaps with that of

OLAF. In this sense, it is essential to highlight recital (51) of the EPPO Regulation, which recommends to all EU judicial institutions, that when the crimes they investigate coincide with OLAF's mandate, it should be notified in order to exchange information and data that can be used in the investigation. Moreover, in article (35) of Regulation 883/2013, it is mandatory for OLAF to notify the other bodies such as the EPPO when it discovers facts within the competence of these institutions, and a presentation of the facts, an evaluation of the damage, as well as a possible legal classification of the act.

Last but not least, we must also mention the CMS mechanism through which OLAF and EPPO collaborate, being a secure data system through which the case file and documents from the files are jointly managed, allowing a better efficiency of judicial cooperation in criminal matters.

Shortly after the EPPO began its activity, the European Chief Prosecutor signed a collaboration and coordination agreement with the Director General of OLAF to delimit and clarify certain procedural aspects in order to prevent overlaps in the conduct of investigations. The protocol was drafted with the hope that the legislator will, in the future, complete the organization and operation regulations of the two institutions in order to expand their powers for the purpose of joint cooperation.

We do not rule out, by law, that the OLAF institution merges with the European Public Prosecutor's Office in the future, or that a certain structure of the office acts under the coordination of European prosecutors-delegates on the model of the protocol between the National Anti-Corruption Directorate and the Ministry of Internal Affairs.

2. COLLABORATION OF THE EUROPEAN PROSECUTOR'S OFFICE WITH EUROPOL

Even though, apparently, we could consider that Europol's mandate would not have tangents with that of the European Public Prosecutor's Office, these two institutions represent a stable core of judicial cooperation in criminal matters at the level of the member states.

Europol is one of the oldest police institutions in the European Union. It is composed of judicial police bodies that support the institutions with attributions in this sense (both on the territory of the member states and institutions belonging to the EU), with the aim of combating criminal phenomena that endanger unity and union principles. Their mandate is an extended one, thus not being a limitation of competence as in the oasis of the European Anti-Fraud Office, which exercises its powers in the field of combating the phenomena of financial crime.

The basic pillars on which the Europol police work are: terrorism and radicalization, serious crime and cybercrime. At a first analysis, we would find that none of these areas would have any parallels with the criminal phenomenon

under the jurisdiction of the European Public Prosecutor's Office, but things are much broader. We state at the outset that the criminal phenomenon of white collar crimes represents a big problem from the perspective of the financial interests of the European Union; this phenomenon has multiple meanings, including crimes of corruption, illegal access to computer systems, crimes committed by high officials, etc., EPPO having to be a constant in this sense in combating all financial fraud mechanisms that have appeared. *(Sandru; Morar; Herinean; Predescu, 2021, p.340).*

In this sense, it is essential to refer to recital (69) of the EPPO Regulation which recommends the European delegated prosecutors to collaborate equally with both the EPPO and Europol, but also with Eurojust. The collaboration mandate between the EPPO and Europol, in the considerations presented but also from a doctrinal perspective, would represent a permanent exchange of information between the two institutions, as well as a permanent collaboration in carrying out the criminal investigation. This is also provided for in Regulation 794/2016 on the establishment with the help of Europol staff of joint investigation teams if the judicial institution requests this.

From the protocol perspective of these aspects, the European legislator is in a permanent legislative quagmire. We affirm these aspects because legally it does not appear according to the regulation of the European Public Prosecutor's Office that there is a provision regarding effective collaboration with Europol.

Moreover, the Director General of Europol has not yet concluded any official protocol with the European Chief Prosecutor that would result in certain directions for the staff of the two institutions to follow in carrying out investigations. We believe that there is no need to create a legislative framework as quickly as possible either by amending Regulation 1939/2017 and Regulation 764/2016 on the organization of Europol in the light of a precise collaboration framework. This should also be reflected in the collaboration with the police authorities at the level of each Member State, as at the moment no police institution in any Member State is obliged to follow or cooperate with Europol, but only to provide data which would fall within the competence of this institution.

3. THE COLLABORATION OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE WITH THE NON-PARTICIPATING STATES

When the legislative framework was drawn up for the acceptance and recognition of the European Public Prosecutor's Office in the European Union, only 22 of the member states answered in the affirmative. Poland, Hungary, Sweden, Ireland and Denmark chose not to join the initiative to strengthen this form of judicial cooperation in criminal matters. This aspect can raise big problems in the efficiency of the investigations that the European prosecutors

supervise, since these states do not have the obligation to collaborate with the EPPO in the situation in which their help is requested.

The most truthful example is Hungary, which has become a country increasingly "resistant" to Western changes. The non-recognition of the competence of the European Public Prosecutor's Office is a confirmation of the fact that internal policies prevail over external ones, as the government itself announced a year ago. It is obvious that even the European Union did not remain a spectator to these "declarations of independence", taking the natural decision to suspend Hungary's access to European funds, as well as the lack of negotiations regarding the signing of the financial year called the National Recovery and Resilience Program. We believe that the decision of the European Commission to stop the collaboration with a state that does not accept to follow the path that it committed to with the accession and that does not want to become transparent regarding the expenses regarding external funds is natural. Even the European Anti-Fraud Office published a report last month on the management of European funds by the Hungarian government, and the result revealed a fraud of about 4% between the years 2015-2019.

The most frequent example in the matter of cases that impede the effectiveness of criminal prosecutions from the perspective of the relationship between the EPPO and the non-participating Member States is related to cross-border crimes. If at the level of Romania or another participating state, the financial and judicial institutions have to provide any information requested by the European prosecutors-delegates, in the case of the non-participating states, this does not represent an obligation. As the criminal process is essentially represented by the evidence brought by the parties, we can notice a big problem from the perspective of the European prosecutors in administering evidence from the territory of those states. We can see, therefore, a situation similar to that of the judicial police bodies belonging to Europol, whose investigations cannot be exploited in view of the omission of the non-participating states. Thus, investigations that have involved a lot of analysis and research can suddenly stop as a result of the lack of interest that the non-participating states show.

What could the European legislator do under these conditions?

As I have considered in other situations, it is necessary for these states to be forced to collaborate with the institution of the European Public Prosecutor's Office, even if they are not participating states. This seems to denote the lack of involvement of governments in the fight against corruption and the defense of the financial interests of the European Union, and it is necessary to take measures to support their involvement. It is all the more serious as this lax attitude would discourage other states from actively fighting against white collar crimes. The fact that the invitation to join the initiative on the operation of the European Public

Prosecutor's Office is permanently open must represent for these 7 states a strong question mark regarding their role in judicial cooperation in criminal matters.

4. JUDICIAL COOPERATION BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND EUROJUST

Since the beginning of the 2000s, the ideal of a judicial body to defend the financial interests of the Union institutions has taken shape at the European Union level. This was achieved in a very short time by establishing an institution with a role in fighting against organized crime called EUROJUST. Gradually, the effectiveness of this institution was questioned by the large number of crimes committed in the fields otherwise common with Europol (e.g. terrorism, acts of high-level corruption). Thus, the European Public Prosecutor's Office came into existence, which was thought of as an institution that would help both the already existing institutions in terms of combating the criminal phenomenon, but also the member states, having limited powers expressly provided by the regulation. *(Sandru; Morar; Herinean; Predescu, 2021, p.326).*

The major difference between the EPPO and Eurojust is the object of the activity: whereas in the case of the European Public Prosecutor's Office, criminal investigations and prosecutions are carried out under the coordination of the European Delegated Prosecutor, in the case of Eurojust the coordination and cooperation of criminal investigations is carried out at the level of the competent national authorities, through the Judicial Network European, aspect established by article 85 para. 1 letter c) of the TFEU.

Considering the fact that these two institutions have as their object of activity: the fight against the white collar criminal phenomenon, the legislator did NOT foresee a collaboration protocol between these two institutions. The only basis which the staff of the two institutions can rely on is a collaboration protocol drawn up and signed by the European Chief Prosecutor and the Director General of Eurojust (similar to that of OLAF) through which the two entities collaborate in order to carry out investigations.

An aspect that must be specified is related to the common strategies of the two institutions. The protocol provided for investigations related to public procurements carried out during the COVID-19 pandemic, a topic of interest from a social point of view, all the more so since European prosecutors opened a first file of great importance, which concerned the procurement of vaccines carried out by the European Commission.

We believe that it would be of particular importance that, at least in the case of Eurojust and EPPO, in order to have an effective collaboration, the legislator should provide a clear corollary from the perspective of sharing the powers of the two institutions.

5. THE ACTIVITY OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE IN ROMANIA COOPERATION BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE NATIONAL ANTI-CORRUPTION DIRECTORATE

The European Public Prosecutor's Office carries out its activity at the level of the participating states, enjoying the independence that Regulation 1939/2017 conferred. Yet still, what would be the problems that the European delegated prosecutors would encounter if there were certain inconsistencies between national and European law?

The principle of legality is the main basis of criminal liability. No natural or legal person can be investigated or convicted in the absence of a legal provision characterizing the typicality of the committed act. This was cut through the PIF Directive which was adapted in the laws of the participating states in order not to create certain disputes regarding the principle of legality of criminalization. In Romania, the provisions of the directive have modified Law 78/2000 for the prevention, detection and sanctioning of acts of corruption in order to align with the Union norms.

Thus, a wide range of powers regarding the facts investigated by the National Anticorruption Directorate, the Section for combating crimes assimilated to corruption, the Service for combating corruption crimes directed against the financial interests of the European Union previously provided for in Art. 13 paragraph (2) from O.U.G 43/2002 regarding the National Anti-corruption Directorate related to Art 4 paragraph (2) letter b of Order 1.643/C/2015 regarding the Internal Order Regulation of the National Anticorporation Directorate.

Therefore, the legislator created the legal basis for the facts provided for in the directive to be provided for in Romanian law, thereby conferring the possibility of legal framing according to the principles of the Romanian Penal Code.

Although there was a transfer of competence between these institutions, the cooperation between them did not end, the prosecutors and the staff of the National Anticorruption Directorate acting jointly when the European prosecutors-delegates ask for their help. This is also provided for in Regulation 1939/2017 on the organization of the EPPO at recital (69) which provides that the institutions with specific powers within the participating states support the activity of the EPPO at a decentralized level.

In other words, whenever the DNA prosecutors will investigate facts that are within the competence of the EPPO, they will decline the competence to this institution, supporting them in carrying out the investigations.

CONCLUSIONS AND *DE LEGE FERENDA* PROPOSALS

The European Public Prosecutor's Office is a necessary institution for any state of the European Union. In every country we encounter increasingly extensive crimes and methods of financial fraud that can endanger the stability and economic relations that states have undertaken throughout the formation of the European Union.

Cross-border crime represented a real challenge for both national and European institutions, as most of the EU member states are also members of the Schengen area, an aspect that amplifies the activity of criminals. Thus, it is essential that the EPPO be able to supervise both at the central and at the decentralized level the criminal groups that through their activity harm the financial interests of the EU, so that the efficiency of the institution can face the new challenges.

We consider that at the central level, through the European Chief Prosecutor and the College of European Prosecutors, procedures should be started by which Regulation 1939/2017 will be amended so that the collaboration between the prosecutor's office and the other jurisdictional bodies mentioned can rise to the level of law in order to make common actions more efficient on an institutional level.

It would also be of interest for the essential EU institutions (European Parliament, European Commission and EU Council) to create a legislative framework that should not allow the other member states to choose whether or not to participate in this form of judicial cooperation in criminal matter. We believe that the mentioned example, which reflects Hungary's situation, is representative of what the mandatory recognition of this institution by all states should mean.

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