Power and competences of the EPPO from a viewpoint of participating and non-participating EU MS

Concept Video: The European Prosecutor Office (EPPO): History, Structure and Competences

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The EPPO: protecting the financial interests of the Union

The EPPO is a body of the Union responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive 2017/1371 (PIF Directive) and determined by the EPPO Regulation involving a total damage of at least 10 EUR million (*material competence*):

- cross-border VAT fraud involving total damages of at least EUR 10,000,000;
- other types of fraud affecting the EU’s financial interests;
- corruption that damages, or is likely to damage, the EU’s financial interests;
- misappropriation of EU funds or assets by a public official;
- money laundering and organised crime, as well as other offences inextricably linked to one of the previous categories.

The EPPO shall also be competent for any other criminal offence that is inextricably linked to the aforementioned criminal offences.

The EPPO: protecting the financial interests of the Union

When the damages caused to the Union's financial interests are less than EUR 10,000,000 the EPPO can exercise its competence if the case has repercussions at Union level or officials or other servants of the Union, or members of the institutions could be suspected of having committed the offence.

The offences under the jurisdiction of the EPPO must have been committed either in whole or in part within the territory of one or more EU Member States, or by an EU national, provided that a Member State has jurisdiction over such offences when committed outside its territory.

Additionally, jurisdiction applies to individuals subject to the Staff Regulations or Conditions of Employment, provided that the Member State also has jurisdiction for such offences committed outside its borders. (*territorial competence*).

Are territorial and material competences met? The EPPO can initiate and conduct criminal investigations and exercise its right of evocation.

Historical Background

1995
The European Commission entrusted a group of experts with the task of elaborating guiding principles to the criminal law protection of the Union's financial interests

1997
A *Corpus Juris* was putting forward a centralised approach of European criminal law related to the fight against fraud as a European need and interest.

2000
Corpus Juris 2000 as a follow-up to the 1997 proposal

2001
the European Commission published its Green paper on criminal law prosecution of the financial interests of the community and the establishment of a European Prosecutor.

2007
The Lisbon Treaty introduced Article 86 TFEU, a provision granting for the first time the European Union competence to establish a European Public Prosecutor's Office.

2013
Proposal of the EPPO Regulation

2017
The EPPO Regulation is adopted.
The EPPO is established.

2021
The EPPO started its activity

EIPA European Institute of Public Administration

Historical Background

The EPPO is the result of prolonged negotiations aimed at balancing a supranational, centralized European prosecution model with an intergovernmental approach based on cooperation between the national systems of the Member States. The latter is evident in the crucial collaboration between the EPPO and the Member States, as well as in the material competence of the EPPO, which is primarily defined by the PIF Directive rather than the EPPO Regulation.

While the directive aims to harmonize criminal offences that affect the EU budget, it still provides a certain level of discretion to the Member States and respects national diversity in the field of criminal justice.

The EPPO started operations on 1 June 2021, after the European Commission confirmed the starting date on 26 May 2021. As of 2024, 24 out of the 27 EU Member States, currently participate in the EPPO. The non-participating Member States are Hungary, Denmark and Ireland (the last two had an opt-out from the area of freedom, security and justice).

By the end of 2023, the EPPO had a total of 1 927 active investigations, with an overall estimated damage to the EU budget of €19.2 billion – 59% of which (€11.5 billion, corresponding to 339 investigations) was linked to serious, cross-border VAT fraud.

Functional Structure of the EPPO

The EPPO is an indivisible Union body operating as one single Office with a decentralised structure. It is divided into a Central Office, which consists of:

- the College,
- the Permanent Chambers,
- the European Chief Prosecutor,
- the Deputy European Chiel Prosecutors,
- 24 European Prosecutors (one per participating EU country) and
- the Administrative Director (central level), and
- European Delegated Prosecutors in each of the participating Member States (decentralised level).

Furthermore, staff of the EPPO assist both sub-bodies in their duties

The College (Article 9)

The EPPO is an indivisible Union body operating as one single Office with a decentralised structure. It is divided into a Central Office, which consists of:

- the European Chief Prosecutor and
- one European Prosecutor per Member State.

It is responsible for the general oversight of the activities of the EPPO and shall take decisions on strategic matters to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States.

The College shall not take operational decisions in individual cases. The College adopts the internal rules of procedure of the EPPO and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the EPPO. Furthermore, this sub-body sets up the Permanent Chambers.

Permanent Chambers (Article 10)

The Permanent Chambers (PC), are headed by the Chair, which shall be the European Chief Prosecutor or one of the Deputy European Chief Prosecutors and consists of three European Prosecutors.

There are fifteen PC established. They are responsible for the monitoring and directing of the European Delegated Prosecutors (EDPs) investigations and prosecutions, a task it carries out with the support of the Permanent Chamber Support Officers. This oversight task is carried out through meetings in which the relevant EDP is invited to participate. The PC shall decide on the following issues:

Review of the considerations for exercising or refraining from exercising EPPO's competence:

if the EDP considers to abstain, the PC shall review the decision. The EP shall provide his/her opinion on the matter.

Monitoring of investigations:

If the EDP decides to act, the PC shall verify that the EPPO's competence has been correctly exercised. The PC shall conduct a periodical review of the progress of the investigation.

Adoption of the decisions foreseen by the Article 10(4) of the EPPO Regulation:

Instruct the initiation of an investigation or the right to evocation, allocate or reallocate the case to a EDP, etc

Permanent Chambers (Article 10)

The PC shall decide on the following issues:

Termination of investigation:

when the EDP considers that the investigation is completed, the EDP shall forward to the PC a draft decision on the prosecution of the case. The PC shall decide on the matter.

Referral of cases:

If the EDP decides to act, the PC shall verify that the EPPO's competence has been correctly exercised. The PC shall conduct a periodical review of the progress of the investigation.

Monitoring Court Proceedings:

The PC shall analyse whether there are grounds for issuing instructions to the EDP or the EP.

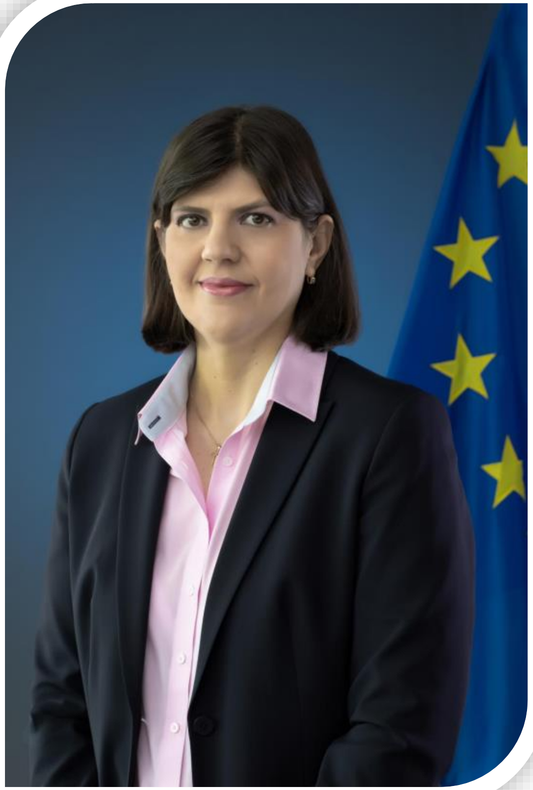
Reopening an investigation:

When after the dismissal of a case, or part of it, the EDP registers new facts that were not known at the time of the dismissal decision, and which may warrant further investigations, the PC shall assess the reopening the investigation.

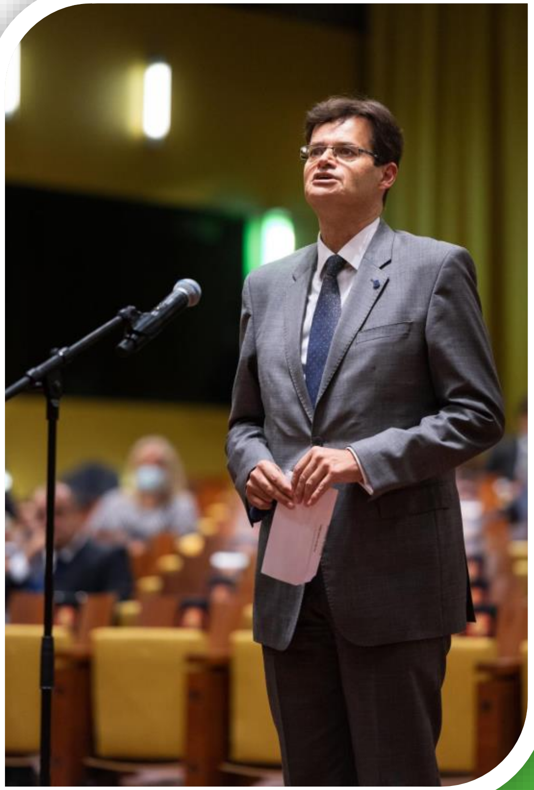
The European Chief Prosecutor and the Deputy European Chiel Prosecutors (Article 11)

The European Chief Prosecutor (ECP) is the Head and representative of EPPO. The ECP organises the work of the EPPO, direct its activities, and take decisions in accordance with this Regulation and the internal rules of procedure of the EPPO.

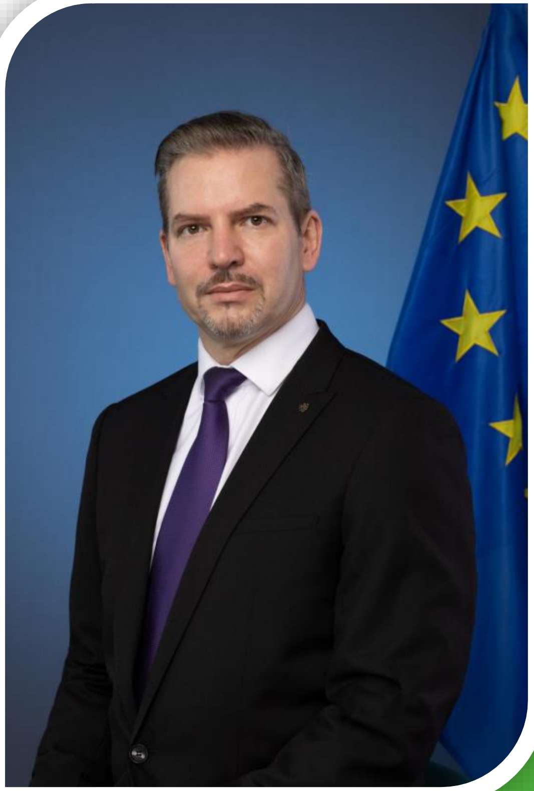
Two Deputy European Chief Prosecutors shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and to act as replacement.



Laura Kövesi,
European Chief Prosecutor



Andres Ritter,
Deputy European Chief Prosecutor



Petr Klement
Deputy European Chief Prosecutor

The European Prosecutors (Article 12)

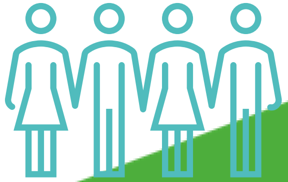
On behalf of the PC, the European Prosecutors (EPs) supervise the investigations and prosecutions for which the EDPs handling the case in their Member State of origin are responsible.

They act as liaisons and information channels between the PC and the EDPs in their respective Member States of origin. In this capacity, they monitor the implementation of EPPO tasks in their respective Member States in close coordination with the EDPs, ensuring that all relevant information flows between the Central Office and the EDPs, in accordance with the EPPO Regulation and the internal rules of procedure.

In relation to its close collaboration with the PC, the EP who is supervising an investigation or a prosecution in accordance with Article 12(1) EPPO shall participate in the deliberations of the PC, present summaries of the cases under their supervision and, where applicable, proposals for decision to be taken by the PC. In The supervising European Prosecutor who is supervising an investigation, or a prosecution shall participate in the vote if provided for in Article 10(9) EPPO Regulation.

European Prosecutor

European Delegated Prosecutor



Permanent Chamber

The European Prosecutors (Article 12)

The supervising EP shall have a right to vote, except as regards the PC's decisions on:

- delegation or withdrawal of delegation in accordance with Article 10(7) EPPO Regulation,
- instructing an EDP to initiate an investigation, if the deliberation includes the question whether to allocate the case to the same EDP of the same Member State to which the information was assigned for verification, or to another EDP of another Member State,
- reallocation of a case to an EDP in another Member State, also as a consequence of a possible decision on merging or splitting,
- bringing a case to judgment in accordance with Article 36(3) EPPO Regulation, where more than one Member State has jurisdiction for the case,
- review of assisting measures in cross-border investigations under Article 31(8) EPPO Regulation.

The supervising EP may, in a specific case and in compliance with applicable national law and with the instructions given by the competent PC, give instructions to the handling EDP, whenever necessary for the efficient handling of the investigation or prosecution or in the interest of justice, or to ensure the coherent functioning of the EPPO.

European Delegated Prosecutors (Article 13)

Each participating country has at least two European Delegated Prosecutors (EDPs) conducting EPPO's investigations in their home country. The EDPs act on behalf of the EPPO in their respective Member States and have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them.

They are responsible for the investigations and prosecutions initiated by them or allocated to them or those that they have taken overusing their right of evocation. The EDPs shall be in constant contact with the PC through the EP in order to inform them about the initiation of an investigation, the decision to refrain from exercising the right of evocation or to exercise the right.

Furthermore, the EDP shall report to the competent EP and to the PC any significant developments in the case. In addition to that, the EDP can act as the contact point for competent national authorities. For instance, when during investigations conducted by the EPPO, the competent national authorities take urgent measures in accordance with national law necessary to ensure effective investigations, the national authorities shall without undue delay inform the handling EDP of the urgent measures they have taken.

Competences: Initiation of an investigation and the right of evocation

The EPPO Regulation establishes a system of shared competence between the EPPO and national authorities for combating crimes that affect the financial interests of the Union, grounded in the EPPO's right of evocation.

In light of the principle of sincere cooperation, both the EPPO and the competent national authorities should support and inform each other with the aim of efficiently combatting the crimes falling under the competence of the EPPO.

1 On the one hand, the EPPO Regulation imposes certain obligations on the competent authorities of the Member States. According to Article 24(1), these authorities must report any criminal conduct to the EPPO without undue delay if it falls within the EPPO's competence under Articles 22, 25(2), and 25(3). Therefore, as practitioners within judicial or law enforcement authorities, if you initiate an investigation into a criminal offence that the EPPO may have jurisdiction over, or if you have reasonable grounds to believe that such an offence has been or is being committed, you are required to inform the EPPO.

To do so, you must submit a report that includes at least a description of the facts, an assessment of the actual or potential damage caused, a possible legal classification of the offence, and any available information regarding potential victims, suspects, or other involved persons.

Competences: Initiation of an investigation and the right of evocation

Anyone (whether an EU citizen, non-EU citizen, private individual, or legal entity) can report a crime to the EPPO, provided there are reasonable grounds to suspect that a criminal offence affecting the EU's financial interests has been committed through the EPPO website (here: [Report a crime | European Public Prosecutor's Office (europa.eu)]()).

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On the other hand, according to Article 25(1), the EPPO can exercise its competence either by initiating an investigation or by deciding to use its right of evocation. First, the EPPO, after receiving relevant information about any offence committed or being committed that could potentially fall within its mandate, shall register and verify the information provided to assess whether there are grounds to exercise its powers. In accordance with EPPO's Internal Rules of Procedure, the verification process for the purpose of evocation shall assess:

i) the maturity of the investigation;
ii) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
iii) the cross-border aspects of the investigation;
iv) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.

Competences: Initiation of an investigation and the right of evocation

Nonetheless, the verification for the purpose of initiating an investigation shall assess whether:

i) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
ii) there are reasonable grounds under the applicable national law to believe that an offence is being or has been committed;
iii) there are obvious legal grounds that bar prosecution;
iv) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.

In other cases, the EPPO shall refrain from exercising its powers in respect of any PIF offence and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter. In accordance with Article 25(3), this occurs in two specific situations:

a. Lesser Maximum Sanction: If the maximum penalty for the PIF offence is equal to or less severe than that of a linked offence, unless the linked offence was instrumental in committing the PIF offence.
b. Damage Comparison: If the damage caused or likely to be caused to the EU's financial interests is no greater than the damage caused to other victims. (This scenario does not apply to PIF offences referred to in Article 3(2)(a), (b) and (d) of PIF Directive)

In such cases, the EPPO will consult with national authorities and refer the case to them without delay.

Competences: Initiation of an investigation and the right of evocation

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Two possibilities can happen after the verification process:

A. Where upon verification the EPPO decides that it is not competent, a reasoned decision shall be noted in the case management system. The EPPO shall notify the informant national authority and the crime victims. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.

   When no investigation is in place, Article 26 establishes that a EDP from the Member State where the primary focus of the criminal activity or the bulk of the offences occurs is responsible for initiating an investigation and recording the case in the case management system. A EDP of a different Member State could initiate an investigation in duly justified cases, taking into account the following criteria, in order of priority: (a) the place of the suspect's or accused person's habitual residence; (b) the nationality of the suspect or accused person; (c) the place where the main financial damage has occurred. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

B. Where upon verification the EPPO decides that it is competent, it shall identify if judicial or law enforcement authorities of a Member State have already initiated an investigation or not.

Competences: Initiation of an investigation and the right of evocation

4

Once a criminal investigation has been initiated by competent national authorities, the EPPO shall take its decision to exercise its right of evocation as soon as possible, but not later than 5 days after receipt of information and shall inform about its decision. In specific cases, the ECP can extend the time limit by issuing a reasoned decision for a maximum period of 5 days.

Additionally, the EPPO can exercise its right of evocation, if it becomes aware by any other means, of the fact that a national criminal investigation of a criminal offence under its mandate. The body responsible for making the decision is the a EDP from the Member State where the investigation was initiated. It shall consult with the national authorities and decide whether to exercise its right of evocation. Where the EPPO decides to exercise its right of evocation, the competent authorities of the Member States must refrain from carrying out further investigative acts (until that moment the national authority can still carry out investigative actions) and transfer the file to the EPPO. The competence relies on the EPPO. However, when EDP refrains from investigating, it shall inform the PC through the EP with a view to enabling the PC to take a decision. If the PC reaffirms the decision of the EDP, the EPPO shall inform the competent national authorities without undue delay. In any case, the competent national authorities could, at any time, provide additional information which could give the EPPO reasons to reconsider its decision.

Competences: Initiation of an investigation and the right of evocation

Furthermore, the institutions, bodies, offices and agencies of the Union shall, without undue delay, report to the EPPO any criminal conduct in respect of which it could exercise its competence.

The combination of these provisions aims to strike a balance between a centralized model and a more cooperative, less integrated approach, where the EPPO and Member States are required to inform and liaise with each other during the process. This balance is reflected in the EPPO Regulation, as national authorities must refrain from exercising their own competence over the same criminal conduct if the EPPO decides to exercise its jurisdiction.

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However, in the event of disagreements between the EPPO and national prosecution authorities, the issue is resolved by the national authorities competent to decide on the attribution of competences, as outlined in Article 25(6). In the absence of a specific procedure established by the EPPO Regulation, the EPPO shall comply with the rules established by the national law regarding the resolution of conflicts of competence and address the authority specified by the concerning Member State as the appropriate to decide on the attribution of competence. If appropriate in accordance with the national legislation, the EDP shall file a reasoned application with the competent national authority requesting that the EPPO is declared competent for the investigation of the case.

Criminal investigations: Investigation measures and other measures

The EDP handling the case may either undertake investigation measures or other measures on his/her own or instruct the competent authorities in his/her Member State. Investigation measures may only be ordered when there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective (proportionality test).

At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the EDPs are entitled to order or request the following investigation measures and other measures:

a) search measures and conservatory measures to preserve the integrity of evidence or to avoid the loss or contamination of evidence;
b) obtain the production of any relevant object or document;
c) obtain the production of stored computer data, encrypted or decrypted;
d) freeze instrumentalities or proceeds of crime including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation;
e) intercept electronic communications;
f) track and trace an object by technical means.

Criminal investigations: Investigation measures and other measures

Additionally, the EDPs shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases.

The handling EDP may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases and when the person concerned is not present in the Member State, it shall issue a European Arrest Warrant

Criminal investigations: Referral, transfer and reallocation of the proceedings

Any significant developments in the case shall be reported to the PC and the EP by the EDP. For this purpose, the PC conducts periodical reviews of the progress reported by the EDP every six months, unless the specific case requires shorter review intervals.

When monitoring the case, the PC should, inter alia, verify whether the criteria establishing EPPO's competence (Article 22 Regulation) and the criteria under which the EPPO can exercise its competence (Article 25(3)(a) and (b) Regulation) are met. In this regard, at any point of the investigation, if it reveals that the facts subject to investigation do not constitute a criminal offence within material competence of the EPPO or the specific conditions for the exercise of its competence, the PC shall decide to refer the case without undue delay to the competent national authorities.

The ECP shall be informed and can request the PC to request its decision. As a result, the competent national authorities can reject to accept to take over the case or they can decide to open an investigation. In the first case, when after a maximum of 30 days, the competent national authorities do not accept, the PC shall remain competent to prosecute or dismiss the case. In the latter case, the EPPO shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.

Criminal investigations: Referral, transfer and reallocation of the proceedings

Furthermore, the PC can, on proposal of the EP, decide to reallocate a case to another EDP in the same Member State when the EDP handling the case:

a) cannot perform the investigation or prosecution; or
b) fails to follow the instructions of the PC or the EP.

In exceptional cases, after having obtained the approval of the competent PC, the supervising EP may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
c) in the event of failure of the reallocation mechanism

Criminal investigations: Termination, prosecution or dismissal of the proceedings

1. When the EDP considers that the investigation has been concluded, he/she shall submit a report to the supervising EP containing a summary of the case and a draft decision whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure.

2. Within 10 days, the supervising EP shall forward to the PC the case report and the draft decision together with his/her own observations, if deemed necessary.

3. After evaluation, the PC can take the decision as proposed by the EDP, which shall pursue the matter accordingly, or it can amend the decision proposed by the EDP, may adopt a different decision or may instruct the EDP to continue the investigation, indicating the specific activities to be undertaken, in accordance with Article 46 Internal Rules of Procedure. Where the PC fully agrees with the proposal and the reasoning of the handling EDP, a reference in its decision to the report shall be sufficient. In case of disagreement with the EDP's proposal and/or reasoning, the PC shall duly motivate its decision.

Criminal investigations: Termination, prosecution or dismissal of the proceedings

If the EDP proposed to bring the case to judgment, the PC shall decide on the draft decision to bring a case to judgment within 21 days. The PC cannot decide to dismiss the case if a draft decision proposes bringing a case to judgment. Where the PC does not take a decision within the 21-day time limit, the decision proposed by the EDP is deemed to be accepted.

4 Before deciding to bring a case to judgment, the competent PC may, on the proposal of the handling EDP, decide to join several cases, where investigations have been conducted by different EDP against the same person(s) with a view to prosecuting these cases in the courts of a single Member State which, in accordance with its law, has jurisdiction for each of those cases. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law.

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Criminal investigations: Termination, prosecution or dismissal of the proceedings

5 If the prosecution has become impossible, the PC shall, based on the report provided by the EDP handling the case, decide to dismiss the case against a person on account of any of the following grounds:
a) the death of the suspect or accused person or winding up of a suspect or accused legal person;
b) the insanity of the suspect or accused person;
c) amnesty granted to the suspect or accused person;
d) immunity granted to the suspect or accused person, unless it has been lifted;
e) expiry of the national statutory limitation to prosecute;
f) the suspect's or accused person's case has already been finally disposed of in relation to the same acts;
g) the lack of relevant evidence.

Where a case has been dismissed, the EPPO shall officially notify the competent national authorities and shall inform the relevant institutions, bodies, offices and agencies of the Union, as well as, where appropriate under national law, the suspects or accused persons and the crime victims, of such dismissal. Having said that, at any time, if after the dismissal of a case, or part of it, if the EDP reports new facts that were not known at the time of the dismissal decision, and which may warrant further investigations, the PC can decide to reopen the investigation

Key Takeaways

You have reached the end of the video. After exploring the history of EPPO, its organisational structure and its main competences, we expect than you acquired a proper understanding of the following takeaways:

- The EPPO was established in 2017, and **it is the result of prolonged negotiations aimed at balancing a supranational, centralized European prosecution model with an intergovernmental approach** based on cooperation between the national systems of the Member States.

- **The intergovernmental and sovereignty-friendly approach is manifested in the organisational structure of the body**, which is internally divided into a centralised level and a decentralised level ensuring a high level of collaboration between the EPPO and the participating Member States.

- **The EPPO is empowered to initiate and conduct criminal investigations and exercise a right of evocation in relation to PIF offences** that involve a total damage of at least 10 million euros (material competence) **and are connected with the territory of two or more Member States or a national of a Member State** (territorial scope).