

# The European Public Prosecutor's Office and Environmental Crime

## Further Competence in the Near Future?

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This article envisages the possible extension of the European Public Prosecutor's Office's competences in the field of environmental protection. The author first presents an overview of the Office's competences under the current legislation and, second, analyses suggestions on extending these competences specifically to the field of environmental crime. The case is made that a stronger, more comprehensive scope of competence for the EPPO would strengthen its position in the EU. This warrants an extension of the Office's jurisdiction to other types of crime, especially in the fight against cross-border crime such as environmental crime.

### I. Introduction

As is often stressed, Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO)<sup>1</sup> established a new player in European criminal policy that revolutionised the European criminal justice scene in several respects.<sup>2</sup> It was the first time that a vertical cooperation model was adopted in the form of this supranational body,<sup>3</sup> as opposed to the classic horizontal cooperation that had taken place until then, through agencies like Eurojust.<sup>4</sup> It was rightly put that a "new sheriff in the city"<sup>5</sup> was operating – with an impact not only at the European but also at the national level, as the EPPO must prosecute and bring cases before the national courts of the EU Member States. More than 20 years after the *Corpus Iuris* project,<sup>6</sup> the EPPO, at long last, became a reality, having assumed operations more than three years ago.

Indeed, since the establishment of the EPPO, one of the most hotly debated issues has been the limitation of this body's competence.<sup>7</sup> Since the EPPO was designed to prosecute offences against the financial interests of the European Union, some authors have pointed out that the EU had created a body to protect solely "its" economic interests, which was "reductionist" at the time.<sup>8</sup> Some argue that this limited EPPO competence somehow "weakened" the body to a certain extent and caused disappointment over the missed opportunity to cover other crimes with a clear cross-border component.<sup>9</sup> I also believe that a stronger, more complete competence for the EPPO would strengthen its position in the EU, especially in the fight against crime. Against this background, this article examines the possibility of extending the EPPO's competence to other crimes, in particular environmental crimes, which may call for its extension, due to the recurring cross-border nature of these crimes.<sup>10</sup>

First, background information is given on how the current EPPO's competences have been organised thus far. Secondly, the possible extension of the EPPO's competence and, if viable, the requirements for doing so will be analysed in order to set out a future proposal for the extension of such competence to environmental offences. However, I would like to start by saying the following: this does not seem to be an idea at present<sup>11</sup> if there are any plans to modify the EPPO's competence at the European level, which also seems highly doubtful, at least to date.

### II. Current Competence of the EPPO

The former Spanish European Prosecutor, *Maria Concepción Sabadell Carnicero*, described the EPPO's (material) competence as "remarkably complex, mainly due to its regulation based on EU legislation to be transposed by the Member States and on EU concepts."<sup>12</sup> Cross-reference to other EU legislation to be implemented in the EU Member States is already laid down in Art. 4 of the EPPO Regulation, which describes EPPO's basic objective and tasks and which reads as follows:

The EPPO shall be 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 (EU) 2017/1371 and determined by this Regulation.

Another premise of the EPPO Regulation is that "bringing to justice" must be done before the appropriate national courts of the Member States, because – against contrary suggestions made in literature<sup>13</sup> – the Union legislature neither established a specific European jurisdiction nor attributed a respective power to the Court of Justice of the European Union (CJEU) in this regard.

The organisation of EPPO's competences is closely related to Art. 325 TFEU, the Treaties' core provision on combating fraud and other illegal activities affecting the financial interests of the Union. A direct effect of Art. 325 TFEU was expressly recognized by the CJEU at the time<sup>14</sup> as part of EU primary law, which leaves room for further enactment of substantive and procedural EU legislation as part of secondary EU law.<sup>15</sup> Inasmuch the birth of the EPPO can be attributed to the "procedural dimension"<sup>16</sup> of Art. 325 TFEU, this provision is also the legal basis for the "substantive" criminal law precept referred to in Art. 4 EPPO Regulation<sup>17</sup>. The latter was sharpened by Directive (EU) 2017/1371 – the PIF Directive.<sup>18</sup> The fact that both rules of EU secondary legislation for the fulfilment of the objective set out in primary EU law were contemplated, namely the PIF Directive and the EPPO Regulation, gives rise to such a double – substantive and procedural – dimension of the regulation in this sense within the context of EPPO.

Art. 325 TFEU implies a shared competence between the EU and the Member States. This was corroborated by the CJEU in the famous "Greek Maize" judgment clarifying that the Member States must adopt the same measures to protect the EU's financial interests as those taken to protect national financial interests.<sup>19</sup> It was actually this inactivity – showing less efforts in the protection of the EU's financial interests than in protecting national financial interests – that justified the creation of the EPPO at the time.<sup>20</sup> As a result, the Union legislature decided<sup>21</sup> to attribute to the EPPO a single competence to be shared with the Member States, i.e. Member States would also be responsible for investigating and prosecuting the relevant economic crimes against the EU budget in coordination with EPPO (model of complementarity).<sup>22</sup> On the one hand, this feature should be kept in mind when we discuss a possible further extension of the EPPO's competence. On the other hand, this scenario is another reason for the complexity of the material competence attributed to the EPPO, since the Office's competence is certainly preferential but does not exclude the competence of corresponding national authorities.<sup>23</sup>

More specifically, the EPPO Regulation governs the EPPO's competence in Section 1 of Chapter IV, including Arts. 22 and 23. Three classic allocation criteria are used: material (Art. 22), territorial, and personal (both in Art. 23) competence. Art. 22(1) concretely provides for the above-mentioned reference to the PIF Directive, i.e. the EPPO Regulation does not include an independent and fully-fledged substantive criminal legislation.<sup>24</sup> Another important issue in this regard is that the reference to the PIF Directive must be understood with reference to the transposing national

laws. This results in an additional layer of complexity when determining material competence, because the Directive's implementation, which differs from Member State to Member State, must be taken into account.<sup>25</sup>

Other important characteristics of the regulation on the EPPO's material competence are the following:

- An initial and "dynamic" reference<sup>26</sup> to the general offences set out in the PIF Directive, namely (a) subsidy or aid fraud; b) tax offences; c) money laundering; d) active and passive bribery; embezzlement and smuggling);<sup>27</sup>
- A specific reference with specific requirements in the case of VAT fraud (Art. 22(1) in connection with Art. 3 (2)(d) PIF Directive, requiring the involvement of two or more Member States<sup>28</sup> and a minimum damage of €10 million);
- A particular attribution to competences concerning "offences regarding participation in a criminal organisation" (Art. 22(2) with reference to Framework Decision 2008/841/JHA" of 24 October 2008 on the fight against organised crime<sup>29</sup>);
- A particular attribution to "inextricably linked" offences (Art. 22(3), which is difficult to interpret<sup>30</sup> and thus to determine the degree of connection required for such ancillary competence despite the recital's effort to provide some clarification in this regard<sup>31</sup>);
- A negative competence for criminal offences in respect of national direct taxes (Art. 22(4), inasmuch the competence here is generally attributed to national authorities<sup>32</sup>).

As regards the EPPO's territorial and personal competence in Art. 23, the EPPO Regulation is easier to handle, since no references to other legislation are made. The Regulation prioritises the territorial criterion over that of personality.<sup>33</sup> This is in line with the principle of territoriality that governs the application of criminal law in the nation state. Thus, the competence of the EPPO is generally determined for all offences referred to in Art. 22 if "committed in whole or in part within the territory of one or several Member States." This norm requires the simultaneous jurisdiction of the respective Member State, since its courts will be responsible for the actual trial.<sup>34</sup> Regarding the personality criterion, competence to the EPPO is attributed to those offences listed in Art. 22 of the EPPO Regulation when "committed by a national of a Member State, provided that the respective Member State has jurisdiction for such offences when committed outside its territory". This general framework is supplemented by a specific provision for EU staff and employees (that includes the same procedural requirements).

### III. Possible Extension of the EPPO's Competence to Environmental Crime

#### 1. Legal basis for extension

The extension of EPPO's competences is already envisaged in Art. 86(4) sentence 1 TFEU:

The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State.

Thus, primary Union law sets out two basic conditions for the extension of EPPO's "mandate",<sup>35</sup> i.e. (1) the concept of authorship (the same as for the current competence in relation to offences affecting the financial interests of the Union) and (2) the cross-border character of the crime.<sup>36</sup> In addition, Art. 86(4) sentence 2 TFEU determines the corresponding legislative procedure for the extended mandate:

The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission;

This second sentence of Art. 86(4) raises some questions: What is meant by unanimity? In other words: Does "unanimity" only refer to the Member States participating in the enhanced cooperation of the EPPO or also to the non-participants in the EPPO scheme?<sup>37</sup>

#### 2. General approaches and concrete proposals

The essential question remains, however, as to which new offences the EPPO should investigate and prosecute. As a starting point, the question arises as to whether an extension should only cover those cross-border offences that are defined as "the so-called euro-crimes"<sup>38</sup> in Art. 83(1) TFEU, e.g. trafficking in human beings. A second approach could be to take recourse to the broader list of offences defined in instruments of mutual recognition of judicial decisions in criminal matters exempting the examination of double criminality, such as Art. 2(2) of the Council Framework Decision on the European Arrest Warrant (EAW).<sup>39</sup> Yet a third approach would be to include other criminal offences with a typical cross-border dimension beyond said norms, such as offences relating to market abuse and/or infringements of competition law.<sup>40</sup>

So far, the European Commission has launched one concrete initiative for the specific area of terrorism (in 2018),<sup>41</sup> following announcements by former Commission President *Jean-Claude Juncker* to strengthen the "Security Union". However, this initiative has not been followed up on yet.<sup>42</sup>

At the moment, other fields, in particular the violation of restrictive measures imposed by the EU, are being more widely supported. In fact, this idea had already been put forward by a group of Member States precisely in the context of the negotiations taking place in this area on the basis of the proposal presented at the time by the European Commission for the violation of Union restrictive measures,<sup>43</sup> which became Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024.<sup>44</sup> Indeed, the current political context, such as the Russian war of aggression against Ukraine, plays a large and decisive role today, as can be seen in the European institutions themselves in the light of the debates taking place within them.<sup>45</sup> The same favourable opinion on the *extension of the EPPO's competence to the violations of EU restrictive measures* is not only held by (some) Member States<sup>46</sup>, but also by the EPPO itself.<sup>47</sup>

#### 3. Discussion on extension of competence to environmental crime (pros and cons)

In the midst of these debates, the area of environmental crime has also gained attention. In particular, *Francesco De Angelis* considered environmental crime a suitable field for extending the EPPO's competence.<sup>48</sup>

EU environmental law represents a relevant corpus of detailed norms and constitutes an extraordinary laboratory of European integration.

The peculiarity of "environmental criminal law" is that it covers many different forms and means of environmental harm, including pollution (air, sea, water, etc.) as well as climate change.<sup>49</sup> Infringements of environmental laws are regulated in both administrative and criminal law, entailing a risk of overlapping or differing classifications in the different EU Member States.<sup>50</sup> An important game changer could be the recently enacted Directive (EU) 2024/1203 on the protection of the environment through criminal law.<sup>51</sup> Notwithstanding this development, we can observe parallels between environmental crimes and PIF crimes:<sup>52</sup>

- Both are often serious crimes with a cross-border dimension;
- Similar to PIF offences, environmental offences also do not seem to be a priority for the national authorities of the Member States;<sup>53</sup>
- Both areas of crime are "victimless", and the environment, like the EU budget, can be considered a "European good";<sup>54</sup>
- Like the protection of the EU's financial interests, environmental protection represents "one of the Community's essential objectives".<sup>55</sup>

With regard to the last point, I wish to reiterate that it was precisely a landmark judgment that gave rise to the birth of European criminal law in the former first pillar related to environmental matters: the ECJ's judgment of 13 September 2005, *European Commission v. Council of European Union*<sup>56</sup> established the obligation for the EU Member States to enact criminal sanctions for violations against environmental protection, despite the lack of EU competence to do so in the first pillar.

In contrast, an important counter-argument with regard to the extension of the EPPO's jurisdiction to environmental crime is that a sound definition of environmental crime is still lacking. In the absence of a common European definition,<sup>57</sup> its definition at the national level by the Member States is not helpful, as the regulations in this respect are also diverse.<sup>58</sup>

#### 4. Perspectives

Coming back to the general approaches described above, environmental crimes are certainly not covered by Art. 83 TFEU, but they are enumerated in the list of 32 crimes for which double criminality checks are exempted with regard to the mutual recognition of judicial decisions in criminal matters. Moreover, the importance of the environment within the Union derives from the regulation of the Treaties themselves, namely the express mention of environmental protection in Art. 3(3) TEU.<sup>59</sup> The need for specific criminal law protection in environmental matters and part of the European agenda is its inclusion in the Commission Communication of 20 September 2011 "Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law".<sup>60</sup>

Lastly, the European institutions themselves have also been sensitive to promoting the extension of the EPPO's competence to environmental crime. In a resolution of 20 May 2021 on the liability of companies for environmental change, the European Parliament "calls on the Commission to explore the possibility of extending the mandate of the European Public Prosecutor's office (EPPO), once it is fully established and fully functional, to cover environmental offences."<sup>61</sup> Moreover, in the light of the negotiations on the Environmental Crime Directive, the EP's Committee on Legal Affairs proposed including a recital on the possible extension of the EPPO's competence to environmental offences of a cross-border dimension.<sup>62</sup> Nonetheless, these parliamentary initiatives have not yet fallen on fertile ground, so it appears that there is currently no political will at the Union level for extending EPPO's competences to the field of environmental crime.

In sum, considering the importance of environmental protection within the EU, together with the seriousness and cross-border nature of many of environmental offences, the inclusion in the core competence of the EPPO can be justified.<sup>63</sup>

#### V. Concluding Remarks

The current EPPO's competence is limited to criminal offences affecting the EU's financial interests. This reflects a reductionist, probably "selfish", view on the part of the Union. And this is why the possibility of extending the competence of the EPPO to other areas of criminal law was proposed even before the body became operational in 2021. The greatest support was obtained for the crime of terrorism at that time, in particular given that EU Member States wished to show strong political commitment following various terrorist attacks in Europe.<sup>64</sup>

Even though there are many reasonable arguments that a future extension of the EPPO's competence to offences other than those relating to the protection of the Union's financial interests must take place, it is currently rather unlikely that this extension will cover environmental offences, at least not in the near future. As mentioned above, other areas have so far attracted closer attention of the European Union for a possible extension of EPPO's competence. Thus, the most imminent case seems to be the field of violation of restrictive measures imposed by the EU – an area currently more widely supported in the Union's policy, given that this idea has already been put forward by a group of EU Member States. Thus, the belief is justified that the EPPO's competence will be extended to this sphere and not to that of environmental crime. *On verra!*

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1 OJ L 283, 31.10.2017, 1.

2 In these words: L. Seiler, “Le parquet européen: une révolution sans bouleversements”, (2019) 99 (11–12) *Revue de droit pénal et de criminology*, 1188. Also in a similar context, A. Fiodorova, “Fiscalía Europea: un nuevo actor en la persecución por delitos”, in: E. Ortega Burgos et al. (eds.), *Derecho Penal 2020*, 2020, p. 197. For the EPPO in general, see e.g., L. Bachmaier Winter (ed.), *The European Public Prosecutor’s Office. The challenges ahead*, 2018; M. Jimeno Bulnes, “La estrategia de la cooperación judicial penal europea en materia de intereses financieros”, in: I. Berdugo Gómez de la Torre and N. Rodríguez-García (eds.), *Decomiso y recuperación de activos. Crime doesn’t pay*, 2020, p. 267 and “La Fiscalía Europea: un breve recorrido por la ‘institución’”, in: A. Miranda Rodrigues et al. (eds.), *Procuraduría europea e criminalidade económico-financiera / La fiscalía Europea ante la delincuencia económica y financiera*, 2023, p. 113.

3 In concrete terms: D. Brodowski, “Strafverfolgung im Namen Europas. Die Europäische Staatsanwaltschaft als Meilenstein supranationaler Kriminalpolitik”, (2022) 169(8) *Goltdammer’s Archiv für Strafrecht (GA)*, 421, 422, in particular qualifying the EPPO as “weltweit erste ‘echte’ supranationale Strafverfolgungsbehörde”. Also W.M. Kühn, “The European Public Prosecutor’s Office – The protection of the EU’s financial interests as supranational integration project”, (2023) 59 *Revista General de Derecho Europeo (RGDE)*, 17. F. Vacas Fernández expressed greater doubt in “The European Public Prosecutor’s Office: a major step towards political integration or another middle-ground European agency in the name of pragmatism”, (2020) 51 *Revista General de Derecho Europeo (RGDE)*, 252, 254.

4 On both roles and their coordination, see M. Luchtman and J. Vervaele, “European agencies for criminal justice and shared enforcement (Eurojust and the European Public Prosecutor’s Office)”, (2014) 10(5) *Utrecht Law Review*, 132, 134. In particular, on the latter cooperation: J. Espina Ramos, in: L. Bachmaier Winter (ed.), *The European Public Prosecutor’s Office. The challenges ahead*, *op. cit.* (n. 2), p. 87.

5 A. Ayala González, “Hay un nuevo sheriff en la ciudad: algunas notas sobre la Fiscalía Europea a propósito de la cuestión de competencia resuelta por el ATS núm. 20424/2022, de 9 de junio”, (2022) 10147, *Diario La Ley*, <<https://diariolaley.laleynext.es/content/Inicio.aspx>>. All hyperlinks in this article were last accessed 14 October 2024.

6 See M. Mireille Delmas-Marty and J. Vervaele (eds.), *The implementation of the Corpus Iuris in the Member States*, 4 vols., 2000. Also on the impact of the *Corpus Iuris* at the time: A. Damaskou, “The European Public Prosecutor’s Office. A ground-breaking new institution of the EU legal order”, (2015) 6(1) *New Journal of European Criminal Law (NJECL)*, 126, 128.

7 If one can use the term “competence” at all in the case of the Public Prosecutor’s Office. I agree with the argument put forth by E. Pedraz Penalva, “De la jurisdicción como competencia a la jurisdicción como órgano”, in: E. Pedraz Penalva (ed.), *Constitución, jurisdicción y proceso*, 1990, p. 43, *passim*, for whom the concept of competence is indissolubly associated with that of jurisdiction. For the purpose of simplification, however, and given that “competence” is the legal and doctrinal terminology used, I will also use it in the present context of the EPPO alongside the notion “jurisdiction”; the latter especially reflects the “judicial character” according to CJEU case law. See D. Ceccarelli, “Status of the EPPO: an EU judicial actor”, 1 (2024) *eu crim*, 58–64.

8 In Spain G. Ormazábal Sánchez, “Hacia una autoridad de persecución criminal común para Europa (Reflexiones acerca de la conveniencia de crear una Fiscalía europea y sobre el papel de Eurojust)”, *La Ley Penal* 56 (2009), 12 <<https://web.laley.es/revistas-laley/laley-penal/>>.

9 See, e.g., D.C. Doreste Armas, “El espacio judicial europeo y la fiscalía europea como órgano de investigación y persecución penal versus modelo procesal español”, (2017) 8981, *Diario La Ley*, 19 <<https://diariolaley.laleynext.es/content/Inicio.aspx>>.

10 In this context: C. Di Francesco Maesa, “EPPO and environmental crime: May the EPPO ensure a more effective protection of the environment in the EU?”, (2018) 9(2) *New Journal of European Criminal Law (NJECL)*, 191, 194.

11 Same opinion voiced by C. Di Francesco Maesa, *op. cit.* (n. 10), 215.

12 C. Sabadell Carnicero, “La competencia material de la Fiscalía Europea”, (2023) 10298, *Diario La Ley*, 1 <<https://diariolaley.laleynext.es/content/Inicio.aspx>> (author’s translation). Sabadell Carnicero also mentions that the regulation already resulted in five conflicts of competence, three of them in Spain.

13 See G. Conway, “Holding to account a possible European Public Prosecutor Supranational governance and accountability across diverse legal traditions”, (2013) 24(3) *Criminal Law Forum*, 371, 392; J.A. Espina Ramos, “¿Hacia una Fiscalía Europea?”, in: C. Arangüena Fanego (ed.), *Espacio europeo de Libertad, seguridad y justicia: últimos avances en cooperación judicial penal*, 2010, p. 101, 119.

14 CJEU, 8 September 2015, C-105/14, *Criminal proceedings against Ivo Taricco and others*, ECLI:EU:C:2015:555, paras. 51–52.

15 See J. Vervaele, “Judicial and political accountability for criminal investigations and prosecutions by a European Public Prosecutor’s office in the EU: the dissymmetry of shared enforcement”, in: M. Scholten and M. Luchtman (eds.), *Law enforcement by EU authorities*, 2017, p. 247, pp. 252–255.

16 In particular E. Herlin-Karnell, “The establishment of a European Prosecutor’s Office: between ‘Better regulation’ and subsidiarity”, in W. Geelhoed et al., *Shifting perspectives on the European Public Prosecutor’s Office*, 2018, p. 41, 48.

17 In relation to this legal basis: L. Kuhl, “The initiative for a Directive on the protection of the EU financial interests by substantive Criminal Law”, (2012) 2 *eu crim*, 63, 64.

18 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law, OJ L 198, 28.7.2017, 29. See C. Di Francesco Maesa, “Directive (EU) 2017/1371 on the fight against fraud to the Union’s financial interests by means of Criminal Law: a missed goal?”, (2018) *European Papers* 3(3), 1455, 1466 concerning its relationship with the EPPO; from a critical perspective at the time of negotiations: R. Sicurella, “A blunt weapon for the EPPO? Taking the edge off the proposed PIF Directive”, in: W. Geelhoed et al.,

*Shifting perspectives on the European Public Prosecutor's Office*, *op. cit.* (n. 16), p. 99.

19 CJEU, 21 September 1989, C-68/88, *Commission of the European Communities v. Hellenic Republic*, para. 24.

20 Critical A. Klip, "The substantive Criminal Law jurisdiction of the European Public Prosecutor's Office", (2012) 20(4) *European Journal of Crime, Criminal Law and Criminal Justice (EJCCLCJ)*, 367, 368–370.

21 In contrast to the Commission Proposal, which provided for an exclusive competence of EPPO, see Art. 11 (4) Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, COM(2013) 534. In favour of the centralisation of the EPPO's competence: L. Bachmaier Winter, "The potential contribution of a European Public Prosecutor in light of the Proposal for a Regulation of 17 July 2013", (2015) 23(2) *European Journal of Crime, Criminal Law and Criminal Justice (EJCCLCJ)*, 121, 131.

22 H. Satzger, "The European Public Prosecutor's Office and its coordination with the national Public Prosecutor's Office: the model of complementarity", in: L. Bachmaier Winter (ed.), *The European Public Prosecutor's Office. The challenges ahead*, *op. cit.* (n. 2), p. 43ff., proposing this model of complementarity as alternative model to EPPO's centralized competence.

23 See Recital 58 EPPO Regulation, i.e., "the competence of the EPPO regarding offences affecting the financial interests of the Union should, as a general rule, take priority over national claims of competence so that it can ensure consistency and provide steering of investigations and prosecutions at Union level". On this opinion: A. Planchadell Gargallo, "La Fiscalía Europea en España: una cuestión de competencia", in: A. Miranda Rodrigues et al. (eds.), *Procuradoria europeia e criminalidade económico-financiera / La fiscalía Europea ante la delincuencia económica y financiera*, *op. cit.* (n. 2), p. 205, 214.

24 In this context: H.H. Herrfeld, "Introduction", in: H.H. Herrfeld et al. (eds.), *European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). Article-by-Article Commentary*, 2021, p. 1, 5; see also comments on Arts. 22 and 23 at p. 144 and p. 171.

25 Some authors therefore refer here to the "indirect" expansion of the EPPO's material competence, e.g., M.A. Pérez Marín, "La competencia de la Fiscalía Europea: criterios materiales y territoriales para su determinación", (2019) V(VIII) *Revista Internacional Consinter de Direito*, p. 255, pp. 266–267. See also criticism by R. Sicurella, "The EPPO's material scope of competence and non-conformity of national implementations", (2023) 14(1) *New Journal of European Criminal Law (NJECL)*, 18, 21–25 in reference to the "inherent weaknesses of the legal landscape of EPPO's material scope".

26 D. Vilas Álvarez, "The material competence of the European Public Prosecutor's Office", in: L. Bachmaier Winter (ed.), *The European Public Prosecutor's Office. The challenges ahead*, *op. cit.* (n. 2), 25, 29.

27 It should also be borne in mind that the legislation applicable in each case must also be taken into account, e.g., in the field of money laundering the 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 purposes of money laundering on terrorism financing, OJ L 14, 5.6.2015, 73. See, J.P. Cortés, "Fiscalía Europea: competencia objetiva, territorial y conflictos de jurisdicción", (2023) 10369, *Diario La Ley*, 2 <<https://diariolaley.laleynext.es/content/Inicio.aspx>>.

28 To take into account which scenarios can be different, including Member States that participate in EPPO, others that do not,

and even third countries, see specifically F. Giuffrida, "Cross-border crimes and the European Public Prosecutor's Office", (2017) *eu crim*, 149, 150, who contemplates "at least three scenarios".

29 OJ L 300, 11.11.2008, 42, again, "as implemented in national law" and when this offence is a means to commit any of the offences enumerated in Art. 22 (1) EPPO). See criticism at the time, precisely in relation to a lack of harmonization in Member States, despite its enactment, in: F. Calderoni, "A definition that could not work: the EU Framework Decision on the fight against organized crime", (2008) 16(3) *European Journal of Crime, Criminal Law and Criminal Justice (EJCCLCJ)*, 265, 278 ff.

30 An attempt at interpretation of this concept is made by L. Neumann, "The EPPO's material competence and the misconception of 'inextricably linked offences'", (2022) 12(3) *European Criminal Law Review (EuCLR)*, 235, 239 ff.

31 Recital 54 EPPO Regulation clarifying that "the notion of 'inextricably linked offences' should be considered in light of relevant case-law which, for the application of the *ne bis in idem* principle, retains as a relevant criterion the identity of the material facts (or facts which are substantially the same) understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space". See E. Sitbon, "Ancillary crimes and *ne bis in idem*", in: Geelhoed et al., *Shifting perspectives on the European Public Prosecutor's Office*, *op. cit.* (n. 16), p. 129, 138. See also A. Planchadell Gargallo, *op. cit.* (n. 23), 220–224 with reference to the indeterminacy of the competence criteria.

32 Of this opinion: D. Vilas Álvarez, *op. cit.* (n. 26), 36.

33 Both terms used in F. Vacas Fernández, *op. cit.* (n. 3), 271.

34 See J.P. Cortés, *op. cit.* (n. 27), 3.

35 Even though, from the literal wording of the precept, it only appears to be a possibility, i.e., "may establish"; cf. further W.M. Kühn, *op. cit.* (n. 3), 60.

36 Recall prior scenario proposed by F. Giuffrida, *op. cit.* (n. 28), 150.

37 It seems that most experts share the view that only the unanimity of the participants in enhanced cooperation will be necessary. See, W.M. Kühn, *op. cit.* (n. 3), pointing to Art. 330 TFEU as well as CJEU case law, e.g., CJEU, 16 April 2013, Joined cases C-274/11 and C-295/11, *Kingdom of Spain and Italian Republic v. Council of the European Union*, ECLI:EU:C:2013:240, para. 35.

38 As stated by P. Csonka and O. Landwehr: "10 years after Lisbon. How 'lisbonised' is the substantive Criminal Law in the EU?", (2019) 4 *eu crim*, 261, 263.

39 OJ L 190, 18.7.2002, 1. See, in this context, M. Jimeno Bulnes, *La orden europea de detención y entrega*, 2024, pp. 167 ff.

40 See G. Ormazábal Sánchez, *op. cit.* (n. 8), 12; also D.C. Doreste Armas, *op. cit.* (n. 9), 19.

41 Communication from the Commission to the European Parliament and the European Council, "A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes", COM(2018) 641 final. See A. Juszczak and E. Sason, "Fighting Terrorism through the European Public Prosecutor's Office (EPPO)? – What future for the EPPO in the EU's Criminal Policy?" (2019) *eu crim*, 66–74. See also Di Francesco Maesa, "Repercussions on the establishment of the EPPO via enhanced cooperation. EPPO's added value and the possibility to extend its competence" (2017) *eu crim*, 156, 158 ff.

42 See also: European Council Conclusions, 18 October 2018, <<https://www.consilium.europa.eu/en/press/press-releases/2018/10/18/20181018-european-council-conclusions/>>, para 9: "The Commission initiative to extend the competences of the

European Public Prosecutor's Office to cross-border terrorist crimes should be examined".

43 Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures, 2.12.2022, COM(2022) 684 final. See P. Csonka, "La directive relative à la violation des mesures restrictives de l'Union et le Parquet européen", (2023) 4 *Revue du droit de l'Union européenne*, 87, 97; incidentally, the author argues that the term "unanimity" in Art. 86(4) TFEU should be understood to cover not only the Member States participating in the European Public Prosecutor's Office but all of them.

44 OJ L, 2024/1226, 29.4.2024. See comments by T. Wahl, "New Directive criminalises violation/circumvention of EU restrictive measures", 1 (2024) *eucri*, 14 with reference to prior literature.

45 For example, parliamentary questioning by J.F. López Aguilar, including the answer given by the Council representative, *Jessika Rosswall*, and the European Commissioner for Justice, *Didier Reynders*, during the European Parliament's debate on 14 June 2023, <[https://www.europarl.europa.eu/doceo/document/CRE-9-2023-06-14-ITM-018\\_EN.html](https://www.europarl.europa.eu/doceo/document/CRE-9-2023-06-14-ITM-018_EN.html)>.

46 See declarations by *E. Dupond-Moretti* and *M. Buschmann*, French and German Ministers of Justice, respectively: "Violations of EU sanctions must be prosecuted by the European Public Prosecutor's Office, *Le Monde*, 29.11.2022, <[https://www.lemonde.fr/en/opinion/article/2022/11/29/violations-of-eu-sanctions-must-be-prosecuted-by-the-european-public-prosecutor-s-office\\_6006013\\_23.html](https://www.lemonde.fr/en/opinion/article/2022/11/29/violations-of-eu-sanctions-must-be-prosecuted-by-the-european-public-prosecutor-s-office_6006013_23.html)>.

47 EPPO, "European Chief Prosecutor Laura Kövesi speaks at the Bundestag", 9.11.2022, <<https://www.eppo.europa.eu/en/media/news/european-chief-prosecutor-laura-kovesi-speaks-bundestag>> explicitly: "Commissioner Reynders recently inquired about our expert opinion on the extension of our competence to the violations of EU restrictive measures. The answer of the College of the EPPO is straightforward: yes, it is feasible."

48 F. De Angelis, "The European Public Prosecutor's Office (EPPO) – Past, present and future", (2019) *eucri*, 272, 274.

49 To the point of justifying the creation of a kind of 'climate justice' at the international level with a civil and criminal dimension, cf. M. Torre-Schaub, "Vers une justice climatique transnationale et globale", (2023) 4 *Revue Internationale de Droit Comparé (RIDC)*, 777, 786.

50 C. Di Francesco Maesa, *op. cit.* (n. 10), 203, 207.

51 OJ L, 2024/1203, 30.4.2024. See, for this Environmental Crime Directive, the contributions by *M. Faure*, *R. Pereira*, and *C. Olsen Lundh* in this issue.

52 See, for this in particular, De Angelis, *op. cit.* (n. 48), 275.

53 C. Di Francesco Maesa, *op. cit.* (n. 10), 193; also F. De Angelis, "op. cit. (n. 48), 275.

54 F. De Angelis, *op. cit.* (n. 48), 275.

55 See, for this argument, R. Sicurella, "4. Article 86", in: G. Grasso et al. (eds.), *Articles 82–86 of the Treaty on the Functioning of the European Union and Environmental Crime*, 2015, 42, 46, pointing out the maintained interests of European courts in this area since the 1980s (for instance, ECJ, 7 February 1985, case C-240/83, *Procureur de la République v. Association de défense des brûleurs d'huiles us-*

*ages (ADBHU)*, ECLI:EU:C:1985:59, para. 13 also reproduced in ECJ, 20 September 1988, case C-302/86, *Commission of the European Communities v. Kingdom of Denmark*, ECLI:EU:C:1988:421, para. 11).

56 Case C-176/03, ECLI:EU:C:2005:542. In this context: R. Pereira, "Environmental Criminal Law in the first pillar: a positive development for environmental protection in the European Union?", (2007) 16(10) *European Energy and Environmental Law Review*, 254.

57 Despite the attempts of the European institutions, e.g., Information provided by Council of the European Union, "How the EU fights environmental crime", <<https://www.consilium.europa.eu/en/infographics/eu-fight-environmental-crime-2018-2021/>>.

58 As a simple example, the definition and enumeration of offences provided by Europol in this field is worthy of mention here: Europol, *Crime areas: environmental crime* <<https://www.europol.europa.eu/crime-areas/environmental-crime>>. Also at the international level, the report elaborated by the United Nations Office on Drugs and Crime: Environmental Investigation Agency (EIA), "Environmental crime: a threat to our future" <[https://www.unodc.org/documents/NGO/EIA\\_Ecocrime\\_report\\_0908\\_final\\_draft\\_low.pdf](https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf)>.

59 It reads: "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance."

60 COM(2011) 573 final, pp. 10–11, explicitly: "In other harmonised policy areas, the potential role of criminal law as a necessary tool to ensure effective enforcement could also be explored further. Indicative examples could be: [...] environmental protection, if the existing criminal law legislation in this area requires further strengthening in the future in order to prevent and sanction environmental damage".

61 2020/2027(INI), OJ C 15, 12.1.2022, 186, para. 33.

62 Antonius Manders, "Report on the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC", Report-A9-0087/2023, 28.3.2023, available via <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0093\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0093_EN.html)>.

See Amendment 35 in relation to Recital 30 a (new): "Given the high financial impact of environmental offences, their potential link with other serious financial crimes, as well as their cross-border nature, the European Public Prosecutor's Office would be best placed to exercise its competences on the most serious crimes with a cross-border dimension. The EPPO's competences being currently limited to financial crimes, the Commission should precise in a report the possibility for an extension of the competences of the EPPO in cooperation with Eurojust to include serious cross-border environmental crimes, and the arrangements for such an extension."

63 C. Di Francesco Maesa, *op. cit.* (n. 10), 199.

64 For example, the Italian Minister of Justice's statements following the terrorist attack in Barcelona, which even led him to address a letter to the Commissioner for Justice and Consumers, *Vera Jourová*, with a proposal to extend the EPPO's competence to such terrorist offences: "Guardasigilli Orlando: estendere la Procura Europea anche ai reati di terrorismo", *Diritto e Giustizia*, 23.8.2017, <<https://www.dirittoegiustizia.it/#/documentDetail/9179050>>.