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## **INTEGRATION OF THE EPPO IN THE CROATIAN CRIMINAL JUSTICE SYSTEM: INSTITUTIONAL AND PROCEDURAL CHALLENGES**

The institutional and procedural integration of the European Public Prosecutor's Office into the Croatian criminal justice system remains a big challenge. By adopting Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO), we are far from being able to say that we have completed the work, even though certainly three and a half years of negotiations, preceding the adoption of the Regulation, represent a great deal of work and commitment.

The initial legislative proposal by the Commission envisaged a different structure of the central office, consisting only of the European Chief Prosecutor and five deputies. Croatia was among a group of Member States that were (strongly) advocating for a collegial model comprised of representatives from all the Member States participating in the work of the EPPO. That model, as we strongly believed from the beginning, is certainly more in line with the idea and purpose of the Office, as well as with its better functioning and integration in the national justice system, where cases remain in national courts after the indictment.

Therefore, although we have gathered at this international conference, which was organised at an excellent moment, to share experiences and points of views related to the challenges and opportunities that we have in the integration of the EPPO in national legislation, we should not forget that the establishment of the Office and the work that awaits us are firmly intertwined with the EU element in all further steps that we shall take. We continue to be involved in the in-depth work of a group of experts that meet regularly in Brussels. The complexity of this process is also evident in the variety of experts ranging from legal practitioners to IT experts involved in deliberations of the EPPO expert working group and in the number of logistical and legislative conditions that need to be fulfilled in order for the EPPO to function. The working group

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met just a few days ago in Brussels (on 8 April) and discussed issues pertaining to the working arrangements and legal status of Delegated European Prosecutors (i.e. their legal status as special advisers, their rights and obligations, working conditions and other issues which are very important for the adaptation of national legislation to this new challenge), as well as issues related to the case management system of the EPPO.

The concrete steps we are taking at the national level and the dynamics of the planned work are the most important aspects of my speech today.

We took a stand that in such a comprehensive and complex process of establishing a new body of the European Union, and which we have to integrate into the national judiciary, the best implementation is done step by step, since the EPPO is envisaged as an EU body operating as a single office, consisting of the central level with headquarters in Luxembourg (the European Chief Prosecutor, European Prosecutors, the College, Permanent Chambers), and decentralised levels in the Member States participating in enhanced cooperation. As the Office itself is set up in stages – it first starts with the selection of the European Chief Prosecutor, then the election of European Prosecutors should follow, and finally the focus should move to Delegated European Prosecutors (DEP) – we decided to take the implementation steps in stages at the national level as well.

Here I must emphasise that within our ministry we have set up an implementation working group, which I lead myself, consisting of representatives of several sectors of our ministry.

So far, we have intervened in the Courts Act and the Act on the State Attorney's Office, with the aim of preparing the ground for the implementation of the candidacy for the European Prosecutor, where we left the possibility to regulate this issue in a separate Rulebook. This act, the *Rulebook on the conditions and procedure for nominating a candidate for appointment as European Prosecutor*, has also already been adopted.

In the part related to the candidacy, we have decided to use the opportunity offered to us by the Regulation, which provides that candidates for European Prosecutor may be active members of the public prosecution or judicial authorities, thus envisaging a wider opportunity to apply for the selection of candidates where all active judicial officials may apply (such as prosecutors, deputy prosecutors or judges). Of course, the candidates need to have practical experience in criminal cases in the field of economic crime, criminal offences against official duty, and experience in international judicial cooperation in criminal matters. We had in mind the role of European Prosecutors, which requires experience and knowledge of law enforcement and prosecuting in the country of origin, due to their supervisory role and acting as a connection point and channel of information between the Permanent Chambers and DEPs (the Permanent Chamber monitors and directs investigations and prosecutions

conducted by DEPs handling the case in their Member State, brings a case to judgment, dismisses a case, etc.).

We have also conducted a selection process, and I am pleased to say that the Commission for the nomination of national candidates has determined the list of candidates which we submitted to the Government for the election of three candidates from Croatia, which will be submitted to the Council of the European Union for the election and appointment of a European Prosecutor.

As for our national process regarding the candidates' identification and evaluation, which was conducted by the Commission, I would like to emphasise that the members of the Commission entrusted with this responsible role are legal experts and practitioners (two members among the deputies of the State Attorney General, one member from among the judges of the Supreme Court), as well as members of the academic community (one member representing law faculties).

Regarding further steps, we are in the final stages of establishing a working group to amend the Act on the Office for the Suppression of Corruption and Organised Crime, which will soon begin to operate, since the initial idea is that DEPs should fit into the structure of the Office for the Suppression of Corruption and Organised Crime, within the set parameters of the Regulation. In the first place, the DEPs will have "double-hat" competences because they need to be active members of the national public prosecutor's office at the moment of their appointment, but their independence must be beyond question, since, while working on the EPPO files, they will follow the guidelines and instructions of the Permanent Chamber and the supervising European Prosecutor. Therefore, we see the State Attorney's Office of the Republic of Croatia as one of our key partners with whom we can consult in this matter, to integrate the Office and implement the Regulation as successfully as possible, without disrupting the national prosecution structure.

Furthermore, we know that the minimum number of DEPs is determined by the Regulation in Art. 13 para 2, which prescribes at least two DEPs in each Member State. Following the election of the European Chief Prosecutor, which is a longer-than-expected procedure, the European Chief Prosecutor will, after consulting and agreeing with the relevant authorities within the Member States, approve the exact number and the functional and territorial division of competences among them.

DEPs will certainly be a big challenge in national implementation, given their status, and it is necessary to consider (at the inter-ministerial level as well) how to incorporate the EU rules on specific issues, such as, for example, the right to remuneration for the duration of sick leave, the entitlement to paid maternity and parental leave, and similar entitlements that could be exercised under national rules and be the responsibility of the Member States rather than the EU, although a DEP will work for the EPPO at its decentralised level.

It will also be necessary to decide whether those DEPs from the Republic of Croatia will work full time or part time, especially considering the estimation of the number of criminal cases within the jurisdiction of the EPPO and the size of the country. Defining this question in one way or another may have different repercussions on the above-mentioned rights, from the health and pension scheme. It must also fit into the functioning and organisation of the national state attorney offices, their method and work plan.

Furthermore, after consulting the State Attorney's Office of the Republic of Croatia, we must decide whether DEPs in Croatia will be only from the rank of Deputy Director General of the Office for the Suppression of Corruption and Organised Crime, or perhaps from the rank of Deputy County Attorney.

When talking about the integration of the EPPO, we must certainly bear in mind that many of the challenges are of a procedural nature, so let me briefly touch on the necessary revision of the provisions of the Criminal Procedure Act (CPA), although I believe that my interlocutors in this panel will have more to say on this section.

The Ministry of Justice has already made a preliminary analysis of the provisions of the CPA to determine the compatibility of national criminal proceedings with the procedure prescribed by the Regulation, and based on that analysis it was concluded that the specific peculiarities of the EPPO procedures will have to be prescribed. However, as with any other amendment to the CPA, the Ministry will bring together the relevant criminal law experts in the working group and consult with all the relevant stakeholders before deciding on the final solutions.

I would also like to mention some procedural and legal challenges that may potentially need to be reconsidered.

Regarding the Right of Evocation, which always gives priority to the EPPO (except for emergency measures), with a five-day deadline for taking a decision (the deadline which the European Chief Prosecutor may prolong for a maximum of five days), it is necessary to examine the provisions of the CPA related to criminal charges, the register of the same in the register of criminal charges if it is a case that could entail the question of jurisdiction of the EPPO, i.e. issuing a decision to conduct an investigation, and for the EPPO's ability to decide to refrain from exercising its competence and to refer the case to national authorities.

Furthermore, the DEP prepares a draft decision confirming the indictment against the suspect or defendant, and submits it to the relevant Permanent Chamber which, within 21 days of receipt, decides on the indictment (bringing a case to judgment), but may also request additional evidence or restart the investigation. This indicates that it is due to review the provisions of the CPA relating to the investigation, indictment, as well as deadlines for all the above.

It is also necessary to review the provisions of the CPA relating to the dismissal of criminal charges in proceedings within the jurisdiction of the EPPO, given the prescribed control of the competent Permanent Chamber, as well as the reasons for the same, and the provisions of the CPA relating to suspension of the investigation.

Further, it is necessary to reconsider the provisions of the CPA related to the institute of appeal, given the possibility of the withdrawal of an appeal prescribed by the Regulation. The appeal should be filed within the period determined by national law, before the national courts, or the DEP, prior to filing an appeal, submit a report with the draft decision to the competent Permanent Chamber and await the referral. Only if the DEP has not received it within the deadline is he or she entitled to file an appeal without prior instructions and to submit a report to the Permanent Chamber, which instructs him or her to proceed with the appeal or to withdraw it. The same procedure applies if, during the court proceedings, and in accordance with applicable national law, the DEP who leads the subject takes a standpoint that may lead to the rejection of the case.

Given that Art. 30 of the EPPO Regulation, which regulates investigative measures as well as other measures, also provides for the option of seeking the interception of electronic communication to and from a suspect or a defendant over any electronic communication means used by the suspect or defendant, as well as tracking objects by technical means, among other things, controlled deliveries of goods (Art. 30, para 1, items e) and f)), and the corresponding evidence actions of domestic legislation, it will be necessary to consider the need for expanding the catalogue of criminal offences under Art. 334 CPA.

Furthermore, in cases where the CPA provides hierarchical supervision, in the form of notification or approval by the higher state attorney to take certain actions, it is necessary to define for EPPO cases that this role is in accordance with Art. 12 para 4 of the Regulation which gives the supervisory powers to the supervising European Prosecutors.

Finally, a structure needs to be devised to incorporate the Regulation (although, of course, it is directly applicable) into domestic procedural legislation, to clarify the competences of the prosecuting authorities and the specificities that characterise the procedures which fall under EPPO competences. One possible way of addressing these issues is to regulate them as a separate heading in Part Three of the CPA, which regulates special procedures, considering that EPPO investigations should generally be conducted by DEPs in the Member States, in accordance with the Regulation and, for questions not covered by the Regulation, in accordance with the national law.

We can see how complex, layered and extensive this process is, which is why we have chosen to work in stages. Therefore, the opportunity to share

experiences and reflections through these two days of the conference is very valuable. There is still a lot of preparatory work to do to integrate the EPPO into the national criminal justice system and to implement the Regulation fully, but we certainly feel we are on the right track. We can also be satisfied with the work done so far and continue systematically in the same way.