

UACES 47th Annual Conference

Krakow, 4-6 September 2017

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Establishing a European Public Prosecutor's Office: Financial Accountability in an Evolving Multilevel Setting

*Paper for the UACES 47th Annual Conference, Jagiellonian University, Krakow, Poland,
4-6 September 2017, Panel 509: EUFINACCO (CRN): PANEL I: Financial Accountability
(Institutional Perspectives)*

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Abstract

In early 2017, after years of discussion in the *Justice and Home Affairs Council*, 16 member states started an enhanced cooperation for the establishment of the *European Public Prosecutor's Office* (EPPO). The EPPO will be one of several institutions which carry joint responsibility for financial management and accountability in the EU multilevel system, but the responsibility of this new institution will be limited to criminal cases. Major portions of EU funding (structural and agricultural funds) fall under shared management. Therefore, the European Commission and the member states' administrations are jointly responsible for the implementation of the EU budget, including internal auditing. The European Court of Auditors (ECA), supreme audit institutions (SAIs) in the member states and in some countries sub-national audit-institutions carry out independent auditing tasks. In cases of irregularities or fraud, the *Office de Lutte Anti-Fraude* (OLAF) can intervene. In order to "combat crimes affecting the financial interests of the Union" (Article 86 (1) TFEU), the Treaty of Lisbon made possible the establishment of the EPPO, derived "from Eurojust". This paper discusses answers to the research question of how the relationship between the different European and domestic institutional actors involved in the EU multilevel financial accountability system is evolving in the framework established by the Treaty of Lisbon. Addressing the question from a trans-disciplinary legal, political and administrative science perspective, the paper asks if financial accountability will become more or less effective in the new institutional context.

Key words: *European Public Prosecutor's Office (EPPO); Financial Interests of the EU; European Court of Auditors, Office de Lutte Anti-Fraude (OLAF); Accountability; Multilevel Financial Accountability*

1. Introduction: empirical starting point and theoretical background

In the EU multilevel system, several institutions carry joint responsibility for financial management and accountability. Major EU funds (structural and agricultural funds) operate under the shared management of EU and member states' institutions. Because of this, the financial management of EU funds is characterised by a specific multilevel setting.

The European Commission and the member states' administrations are responsible for the implementation of the EU budget, including internal auditing. The European *Court of Auditors* (ECA), supreme audit institutions (SAIs) in the member states and in some countries sub-national audit-institutions execute independent audit tasks (cf. Aden 2015a for an overview). In cases of irregularities or fraud, the *Office de Lutte Anti-Fraude* (OLAF) can intervene; in cases of criminal offences, this intervention occurs in cooperation with the judicial authorities of the member states.

The Treaty of Lisbon made possible the establishment of a *European Public Prosecutor's Office* (EPPO) derived "from Eurojust" – an idea which some actors had already been promoting for many years (cf. Erkelens 2015: 2 ff.; Giuffrida 2017: 2 f.).

"In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament" (Article 86 (1) TFEU).

The establishment of the EPPO as a new institution can be conceived as a transfer of new powers to the EU. The Treaty of Lisbon opened the path to establishment of the EPPO via unanimous decision in the Council – not by a majority vote in the Ordinary Legislative Procedure. This is one example of a case in which the Treaty of Lisbon makes it possible, by means of a specific *passerelle clause*, to transfer powers to the EU without a treaty change. Article 86 also establishes the possibility of settling for enhanced cooperation among a number of member states if unanimity is not reached.

In July 2013, the European Commission proposed a regulation in pursuance of the EPPO's establishment. This proposal was intensively debated in the Justice and Home Affairs Council and in the European Parliament's Committee for Civil Liberties, Justice and Home Affairs (LIBE). The Parliament's influence is limited in this case, due to the specific intergovernmental procedure foreseen in Article 86. Nevertheless, the LIBE committee published an interim report in March 2015 (Mocovei 2015).

In the Council, unanimity proved difficult to attain. After the Council meeting in June 2015, the Latvian presidency concluded:

“The Council expressed broad conceptual support for the text of the first 16 articles on the proposal regarding the setting up of a European Public Prosecutor's Office (EPPO). These articles include the most important provisions of the regulation, namely all the rules on the organisation and the functioning of the Office. Moreover, the Council welcomed the advances made on the other articles (articles 17 to 33) which have been discussed during the Latvian presidency but on which more work is still needed at expert level” (Council of the EU 2015b: 5).

Under Luxembourg's presidency, compromises regarding a number of other issues were reached in the second half of 2015 (Council of the EU 2015c).

In early 2017, 16 member states opted for enhanced cooperation, thus exceeding the minimum of nine member states required by Article 86 (1) TFEU: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain (Council of the EU 2017). Whereas the United Kingdom, Ireland and Denmark never intended to join the EPPO due to their broad opt-out for JHA issues (cf. Tekin 2012: 185 ff.), other member states hesitated to join the initiative for various internal political reasons (cf. Giuffrida 2017: 6-7).

The paper discusses answers to the research question regarding how the relationship between different European and domestic institutional actors involved in the EU multilevel financial accountability system is evolving in the framework created by the Treaty of Lisbon and especially the establishment of the EPPO. Addressing the question from a trans-disciplinary legal, political and administrative science perspective, this paper asks if financial accountability will become more or less effective within the new institutional context.

This paper uses a historical neo-institutionalist perspective to explain continuity and change. It starts from the hypothesis that current institutional settings for financial accountability in the EU multilevel system are based on path dependencies which can be traced back to previous path-defining decisions in this field. However, critical junctures have opened windows of opportunity to overcome these path dependencies: especially the establishment of the European Court of Auditors in the period of expanding European integration in the 1970s, the strengthening of OLAF after the corruption scandal produced by the Santer Commission in 1999, and the Treaty of Lisbon's reformation of the EU's institutional system which adapted it to the new size of the EU after a number of new member states had joined in 2004 and 2006. This major institutional reform was also a window of opportunity to introduce a primary law base for the establishment of the EPPO.

This paper combines the neo-institutionalist perspective with a second stream of theory related to the accountability of public administrations. Public accountability has become a research topic in various scholarly disciplines over the past decades and, within this framework, the perspectives from which accountability is studied have become more diverse and sometimes fragmented (cf. Bovens, Schillemans & Goodin 2014 for an overview). Today's scholarly research into accountability issues goes far beyond the original meaning of *accountability* which is limited to the accounts and financial behaviour of a company or public administration. In the broader sense in which the term is used in this paper, accountability is a relational concept, focusing on the relationship between actors who are accountable for something and those actors towards which they are accountable, for example, superiors, governments, parliaments or the citizens – or towards specific monitoring institutions such as courts of auditors, OLAF or the future EPPO.

Methodologically, this paper is based on an analysis of primary sources related to the establishment of the EPPO and the other institutions in this field, and on the relevant scholarly literature.

2. Path dependencies and critical junctures in the development of a system of multilevel financial accountability in the EU

Establishing a new oversight institution is a typical reaction to shortcomings observed in the work of public administrations. The EU system of multilevel accountability is characterised by numerous patterns established since the 1960s.

The complex institutional system for monitoring the correct use of EU funds can be conceived as the result of a series of reactions to incidents highlighting shortcomings in management of the EU multilevel spending programmes. In the early days of European integration, financial monitoring in the European Communities (EC) did not attract much attention. At that time, this task was attributed to an Audit Board and to the Auditor of the European Coal and Steel Community (cf. Stephenson 2016). The European Court of Auditors (ECA) as an independent audit institution, comparable to the member states' supreme audit institutions, was only established in 1977 after the EC's self-financing capability by its own resources had become reality (cf. Laffan 1999, 254). Thus, from a historical-institutionalist perspective, the establishment of the ECA was not a reaction to a specific scandal or event, but rather to the steadily growing importance of European integration and to the growing funding needs for

additional tasks attributed to the EC in that period. The establishment of the ECA did however clear the way for future developments, for example a specific distribution of tasks and influence between the ECA and the European Parliament's Budgetary Control Committee (CONT/COCOBU) in the annual discharge procedure for the EU budget (cf. Aden 2015a).

Path dependencies in the EU system of multilevel financial accountability are also related to the specific multilevel system for the administration of EU funds. The majority of these funds are jointly managed by the European Commission and the relevant member states' administrations. The agricultural and structural funds representing the major part of the EU budget are administrated under this *shared management* (cf. Aden 2012 and 2015; European Commission 2013a). The member states collect applications for funding before sending them to the European Commission. The Commission checks the applications and addresses the payments to the central member state administrations that coordinate the applications. These central Member State administrations then make payments either directly to the beneficiaries or to decentralised administrations. According to the relevant EU regulations, the member states establish specific management and control structures for this purpose (cf. Aden 2012 and 2015; cf. Craig 2012: 76 f. for a critical assessment of the system's complexity).

Path dependency in the EU system of multilevel financial accountability can also be traced back to previous cases of misuse and fraud. In the past, for some final beneficiaries of EU funds, Brussels seemed to be too distant for adequate scrutiny. "On the spot" checks by the Commission or by the European Court of Auditors revealed not only cases in which administrative rules had been ignored, but also cases of fraud, for example farmers claiming subsidies for animals or trees that did not exist. In such cases the responsibility lies at least partly at the national level due to the system of shared management of EU funds. In a specific interplay between the ECA and the European Parliaments' Budgetary Control Committee, these cases have favoured the establishment of a complex system of obligations for the member states regarding management and control systems related to the administration of EU funds under shared management. Thus, from a historical-institutionalist perspective, the path dependencies related to specific management and control systems were not established after a specific event or critical juncture, but rather by a series of smaller incidents that led to reactions reflected in the annual budgetary discharge procedure.

This said, the existing system of EU multilevel accountability for financial management was also influenced by two incidents that can be classified as critical junctures: (1) the corruption scandal caused by the Santer Commission in the late 1990s and (2) the Treaty of Lisbon,

reacting to the need of institutional reform in the EU after the accession of a number of additional member states, which made the establishment of the EPPO a possibility. The corruption cases drew attention to the necessity of a monitoring institution with investigative power. To this effect, the already-existing *Unité de Coordination de la Lutte Anti-Fraude (UCLAF)* established in the 1980's was strengthened, eventually becoming the *Office de Lutte Anti-Fraude (OLAF)* in 1999. OLAF remains a hybrid institution, belonging to the European Commission but exerting fraud- and corruption-related monitoring tasks over all activities financed by the EU budget including the Commission.

The accession of new member states beginning in 2004 made major institutional reform necessary. Finally, the Treaty of Lisbon entered into force in 2009, constituting yet another critical juncture for the multilevel financial accountability system in the EU by allowing for the option to establish the EPPO.

3. Why an additional actor in the field? Motivations for the initiative to establish a European Public Prosecutor's Office (EPPO)

The idea of establishing the EPPO is related to two streams of debate: (1) the existing complex control system for the use of EU funds and (2) the harmonisation of criminal law in the EU. Criminal offenses are the link connecting both streams. Under shared management, the member states must install a set of institutions for each funding programme which make sure that monitoring tasks are well-separated from those who make the decisions on funding and those who handle the payments. Alongside these management and control systems, internal and independent external audit institutions have been established over time in the EU and formerly in the European Economic Communities since the 1970's (cf. Laffan 1999; Stephenson 2016; Aden 2015a). Due to member states' co-responsibility under shared management, the independent national audit institutions also play a role in monitoring the correct use of EU funds under shared management (cf. German Audit Institutions 2013; Aden 2015a).

In the current institutional setting, numerous institutions already carry out the tasks of monitoring the execution of the EU budget, preventing fraud and investigating when there is suspicion of fraud or corruption. Besides the ECA and OLAF, other EU institutions may be involved, as is the case for institutions belonging to the emerging EU criminal justice system. *Eurojust* and the *European Judicial Network (EJN)* are the core elements of criminal justice

cooperation in the EU. In a broader sense, the *European Police Office Europol* is also part of the emerging EU criminal prosecution system. In criminal cases related to the misuse of EU funds, Europol and Eurojust may play a role if these cases fall under their authority. Internal and external auditing institutions in the member states where the cases take place may intervene; in criminal cases, national criminal justice institutions including criminal police, public prosecutors and criminal courts are also involved.

Thus, in light of these numerous institutions already involved in defending the European Union's financial interests, the "added value" that another institution might contribute to the correct management of EU funds is a core question.

The main argument brought forward for an EU prosecution institution is that not all member states' judicial institutions take the task of prosecuting offences against the EU's financial interests seriously enough:

"Prosecuting offences against the EU budget is currently within the exclusive competence of Member States and no Union authority exists in this area. While their potential damage is very significant, these offences are not always investigated and prosecuted by the relevant national authorities, as law enforcement resources are limited. As a result, national law enforcement efforts remain often fragmented in this area and the cross-border dimension of these offences usually escapes the attention of the authorities" (European Commission, 2013, 2; cf. also Macovei 2015).

Criminal procedures and criminal justice systems still vary considerably among the member states. Prosecution and sanctions for the same offences may therefore differ depending upon the member state in which the offender is prosecuted. There are no plans currently to establish an EU criminal court. Because of this, the harmonising effect of the EPPO will remain limited to the prosecution side.

However, the motivation of those actors promoting the establishment of the EPPO goes beyond offences against the EU's financial interests. Article 86 TFEU does not restrict the EPPO's authority in this field, but opens to the Council the possibility to extend the EPPO's mission to other forms of "serious crime having a cross-border dimension" (Article 86 (4)). Therefore, once established, the extension of the EPPO's authority to other forms of trans-border crime is possible. From this perspective, the EU's financial interests open the door for the establishment of a new institution and therefore a new path – one that may lead to a much broader Europeanisation of the criminal justice system in the future.

4. The EPPO as the “new kid on the block” – its impact upon the existing institutions for the monitoring of the use of EU funds?

Establishing the EPPO as the “new kid on the block“ leads to the question of to what extent pre-existing institutions will evolve with the establishment of the EPPO as the next critical juncture establishing new path dependencies for the EU multilevel system of financial accountability and criminal law. The draft regulation presented by the European Commission in 2013 and finalised by the Council Regulation for enhanced cooperation in 2017, only propose general provisions establishing obligations to cooperate with the EPPO, but do not propose to modify significantly the other EU institutions involved (European Commission 2013b; Council of the EU 2017). The EPPO will function in a kind of multilevel structure with European Delegated Prosecutors in each member state (Council of the EU 2017, Article 8; European Commission 2013b, 18 = Article 6 (4) and (5)). This new multilevel institution will intervene in the specific multilevel setting for the shared management of EU funds.

The European Parliament’s LIBE committee called for clarification on the relationship between Eurojust, the EPPO and OLAF (European Parliament 2014, no. 13-14; Macovei 2015, 8). In the final version submitted for enhanced cooperation, the rules related to OLAF were clarified to some extent, but OLAF is still conceived as an institution cooperating with the EPPO rather than as another element of the EU’s financial accountability system (cf. Council of the EU 2017, recitals 69, 100, 103-105; Articles 39 (4) and 101).

4.1 Eurojust

According to the wording of Article 86 TFEU, the European Public Prosecutor’s Office shall be established “from Eurojust”. This wording might lead to the misunderstanding that Eurojust is to be replaced by the EPPO. In actuality, the functions of these two institutions differ considerably: Eurojust’s main task is coordination among courts and public prosecutors of the EU member states in trans-border criminal cases. The EPPO, on the other hand, will only be responsible for a limited number of cases. Offences against the EU’s financial interests can, but must not necessarily, have a trans-border component. It was thus clear from the beginning of the debate on the implementation of the EPPO that this new institution cannot take over Eurojust’s current functions (cf. Ligeti & Weyembergh 2015: 70 for a critical assessment of the Commission’s draft).

In the draft regulation, the European Commission opted for a more specific wording, saying that the EPPO “shall cooperate with Eurojust and rely on its administrative support [...]” The EPPO “shall establish and maintain a special relationship with Eurojust based on close cooperation and the development of operational, administrative and management

links between them [...] (European Commission, 2013, 17 and 41 (= draft Article 3 (3) and 57 (1)).

The proposal for enhanced cooperation opted for a vague wording for the relationship between Eurojust and the EPPO as well – recognising that the EPPO will not replace Eurojust: “In accordance with Article 86 TFEU, the EPPO should be established from Eurojust. This implies that this Regulation should establish a close relationship between them based on mutual cooperation.” [...] “The EPPO and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates” (Council of the EU 2017, recitals 10 and 102). “The EPPO shall establish and maintain a close relationship with Eurojust based on mutual cooperation within their respective mandates and on the development of operational, administrative and management links between them as defined in this Article. To this end, the European Chief Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern [...]” (Article 100 (1)). A former national member of Eurojust may be on the selection panel for the European Chief Prosecutor (Article 14 (3)).

Considering the administrative overheads required to maintain such trans- and supranational institutions, a close cooperation between Eurojust and the EPPO may lead to synergies in both institutions’ respective administrations. In the long run, this may even lead to a full merger of the institutions.

4.2 Europol

The TFEU states that the EPPO shall act “where appropriate in liaison with Europol”, but does not precisely define what this means for the relationship between these institutions. It would be theoretically conceivable to make Europol an auxiliary body for the EPPO for the investigation of criminal cases under the EPPO’s authority. This would build upon the model currently used in those member states where criminal police officers do most of the investigative work under the public prosecutors’ supervision.

This is however not the current intention for the relationship between the EPPO and Eurojust. The Commission proposed that the EPPO shall “develop a special relationship with Europol” (European Commission 2013b, 42 = Article 58 (1)) – leaving open to interpretation how such a relationship might be implemented in practice. Only the exchange of information between both institutions within their respective mandate was mentioned in Article 58 (3) of the draft regulation. In the final version for enhanced cooperation, the relationship between the EPPO and Europol was regulated in a separate article – leaving the details to a “working arrangement setting out the modalities of their cooperation” (Council of the EU 2017, Article 102).

From the perspective that, once established, the EPPO’s authority might be extended to other forms of trans-border crime, it seems probable that the relationship will become more like the

model established in several member states. This might lend Europol even more similarities to central criminal investigation departments as they exist in federal systems, such as the US *Federal Bureau of Investigation* (FBI) and the German *Bundeskriminalamt*.

4.3 OLAF

As the EPPO's tasks overlap with a major part of OLAF's functions, establishing the EPPO will probably have a considerable impact on the future of this institution. The draft regulation proposed that OLAF should continue to exist as a unit of the Commission. As the Commission authored the draft, its own institutional interest probably played a role in this respect (European Commission 2013b, 42 = Article 58 (3)). The proposal even extended OLAF's authority to investigations in cases where the EPPO is suspected to spend EU funds incorrectly. In the final version for enhanced cooperation, the provisions related to OLAF were extended considerably compared to the draft regulation. Article 101 now gives a somewhat more detailed clarification of the relationship between the institutions. Where the EPPO conducts a criminal investigation, "OLAF shall not open any parallel administrative investigation into the same facts," according to the Regulation (Council of the EU 2017, Article 101(3)). The EPPO may ask for OLAF's support (Article 101 (4)) and transmit cases to OLAF for administrative investigation where criminal investigations have been dismissed or closed without a result (Article 101 (5)). Indirect access to OLAF's case management system based on a hit/no hit arrangement is also foreseen (Article 101 (6)). The Regulation also claims that OLAF will act independently of the Commission in all actions in support of the EPPO (Recital 104).

In the system of EU multilevel financial accountability, bundling the capacities and specific knowledge related to the protection of the EU's financial interests may lead to new synergies. Therefore, from a medium-term perspective, transferring OLAF from the Commission to the EPPO would probably be more effective.

However, from a short-term perspective, the fact that not all member states will join the EPPO will make it necessary to maintain OLAF, at least as a smaller unit, under the Commission (cf. European Parliament 2014, no. 16). Otherwise the opt-out would mean that investigations of offenders against EU financial interests from the opt-out countries would no longer take place at the EU level.

4.4 The European Commission's internal audit units

The draft and the final regulation do not explicitly mention the relationship between the EPPO and the Commission's internal audit units.

The final version of the regulation states more generally: "The EPPO shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting the financial interests of the Union. To that end, they shall conclude an agreement setting out the modalities for their cooperation" (Council of the EU 2017, Article 103 (1)).

A close working relationship seems probable, as internal auditing will from time to time expose cases of criminal offenses against the EU's financial interests.

4.5 Member States' criminal investigation institutions: police and public prosecutors

The Commission proposed that the EPPO's investigative work should mostly be done by the national law enforcement institutions – with a quasi-subordination of the member states' criminal investigation units under the EPPO:

"The designated European Delegated Prosecutor may either undertake the investigation measures on his/her own or instruct the competent law enforcement authorities in the Member State where he/she is located. The authorities shall comply with the instructions of the European Delegated Prosecutor and execute the investigation measures assigned to them" (European Commission 2013b, 23 = Article 18 (1)).

During the discussion in the Council, the member states' governments maintained the idea of opting for a multi-level structure, attributing major investigation tasks to European Delegated Prosecutors who may also exercise as national prosecutors. But they softened the rules concerning the quasi-subordination of national criminal justice institutions to the Delegated Prosecutors (cf. Council of the EU 2015a, 19-20 and 34). In the final version, this clause has been softened as follows:

"The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them" (Council of the EU 2017, Article 28 (1)).

While the proposal opted for a very traditional hierarchical mode of governance which is rather unusual in administrative cooperation between the EU and its member states (cf. Trondal & Peters 2013), the final version turned into a more cooperative, multilevel regulatory approach. In the long run, capacity building at the European level might be an alternative.

4.6 Member States' criminal courts

As there is no explicit Treaty base for establishing an EU criminal court, criminal proceedings will continue to take place before the member states' courts for cases investigated by the EPPO (Council of the EU 2017, Article 36; European Commission 2013b, 28 = Article 27 (2)).

This leaves a margin of discretion to the EPPO to decide in which member state the proceedings should take place. The draft regulation allowed four criteria: (1) the place where the offence was committed, (2) the habitual residence of the accused person, (3) the place where the evidence is located or (4) the place where the direct victims have their habitual residence. The discretion might have led to the risk of forum-shopping – the EPPO might in fact choose the member state where the toughest punishment can be expected. The European Parliament proposed to define a priority from 1 to 4 for the criteria mentioned above (European Parliament 2014, annex, modification 4). For the final version, this provision has been reshaped:

“A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, 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” (Council of the EU 2017, Article 26 (4)).

In the long run, forum-shopping could be prevented by establishing an EU criminal court. Article 257 TFEU creates the option to establish “specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas.” This might also include a criminal court. This would however require a much higher degree of harmonisation of substantive criminal law than exists today, and is therefore unlikely in the near future.

4.7 European Court of Auditors

The ECA's pre-existing tasks and competences are not directly affected by the establishment of the EPPO.

The ECA's audit authority will be extended to the EPPO (Council of the EU 2017, Articles 94 and 110; European Commission 2013, 45 = Article 66 (2)). At the same time, the ECA is obligated to report to the EPPO "any criminal conduct in respect of which it could exercise its competence" (Council of the EU 2017, Article 24 (1); draft wording: European Commission 2013b, 22 = Article 15 (1)). This does not fundamentally change the ECA's previous practice of reporting potential criminal cases discovered during its audit work to the relevant law enforcement institutions. Former ECA Members can also be on the panel for the selection of the European Chief Prosecutor (Council of the EU 2017, Article 14 (3)).

In the long run, an informal or even formal cooperation and coordination practice between both institutions will probably occur.

4.8 Member States' supreme audit institutions and regional audit institutions

Neither the Commission's proposal nor the final regulation mentions the member states' independent national and regional audit institutions. However, an overlap between these institutions' work and the EPPO's tasks is as probable to occur as for the ECA. National audit institutions will from time to time discover criminal offences against the EU's financial interests during their audit work where the member states' administrations are co-responsible under the shared management of EU funds. National independent audit institutions will also be interested in using the results of the EPPO's work to draw conclusions about modifications to administrative practice that can be recommended to relevant government departments.

Therefore, in the long run, an informal cooperation and coordination practice will probably be established between these institutions and the EPPO as well.

5. Conclusion and outlook: Improved accountability or "punitive turn"

This paper has shown that the establishment of the European Public Prosecutor's Office will add another institution to the EU's complex system of multilevel financial accountability. This not only affects the beneficiaries of EU funds who will be held accountable to yet another institution, but also the pre-existing institutions in this field. The effectiveness of the system will likely be hampered by the opting-out of some member states, making it necessary to maintain OLAF with its actual functions for the opt-out countries. Because of this, doubts remain concerning the effectiveness of the new institutional setting (cf. also Csúri 2016; Giuffrida 2017).

The paper has shown that the impact of the new institution differs from case to case. While the ECA and national independent audit institutions will probably have to get used to cooperating with yet another institution in the field, OLAF's and Eurojust's work will be much more closely related to the new institution. The specific multilevel structure relying on investigations carried out by European Delegated Prosecutors who work in the member states shows that the emergence of the EPPO as "new kid on the block" will not only affect the other EU institutions working in this field, but also the multilevel structure for financial accountability and the system of shared management of EU funds. However, the EPPO's intervention will be limited to the most problematic cases, especially those in which people use fraud to their own financial benefit. This new institution will therefore barely contribute to the general quality of EU funding, but rather demonstrate to the public that the EU does not tolerate criminal misuse of its funds.

While the EPPO as an additional institution may possibly contribute to improved accountability of EU financial management, the approach can also be seen from a more critical perspective: establishment of the EPPO may be conceived as another example of politics relying on criminal law to solve all kinds of problems – often without taking into account whether this strategy is effective and proportional in relation to the encroachment upon citizens' fundamental rights. A "punitive turn" has been observed and criticised in Europe and beyond (cf. Aden 2015b on the EU; Garland 2001 for the US). The European Parliament therefore particularly paid attention to the provisions of the draft regulation related to the defendants' rights (cf. European Parliament 2014; Macovei 2015; cf. also Esser 2014).

The development of Europol since the 1990's shows that, once a new institution has been established, political decision-makers tend to attribute additional tasks to it in situations in which they feel the need to prove their ability to act, e.g. after terrorist attacks. It therefore seems probable that the establishment of the EPPO has opened a path for similar development in the field of criminal justice. More member states are likely to join and additional tasks will probably soon be attributed to the EPPO, once it has been established. The controversies related to the establishment of the EPPO will in this respect remain an interesting topic for further research when it comes to extending the new institution's authority to more member states and to other types of transnational crime.

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