

Replies of the European Public Prosecutor's Office (EPPO)

to

**The European Court of Auditors' Special
Report**

on

EU bodies fighting fraud

Contents

I. Introductory note	3
II. Replies to the observations	5
1. Administrative and Criminal investigations	5
2. Complementary Investigations	7
3. Notifications to the European Commission	8
III. Comments to the recommendations issued by the ECA to the European Commission	8
1. Recommendation 1 - Establish a system for an efficient exchange of information on fraud allegations and investigations	8
2. Recommendation 2 - Analyse the variations in the levels of fraud reported across the EU	9
3. Recommendation 3 - Enhance oversight of the follow up of fraud investigations ..	10

I. Introductory note

The EPPO welcomes the special report of the European Court of Auditors and acknowledges the substantial work it represents, as well as its complexity and high value. Taking into account EPPO's experience in criminal investigations during its first four years of operations, it has become manifest that the EU Anti-Fraud Architecture needs to be further developed, in particular to counter more efficiently organised crime groups defrauding EU revenue.

Under the applicable legislation, EPPO, Europol, Eurojust and OLAF have specific roles and responsibilities when it comes to the protection of the financial interests of the EU. Each within their respective mandates, they contribute to the prevention, investigation, prosecution and judgement of EU fraud, as well as to the confiscation of criminal assets and recovery of the corresponding damage. In this sense, their work is complementary.

Their cooperation represents one element within the EU Anti-Fraud Architecture. When it comes to protecting the financial interests of the EU, their activity is complementary to the work of numerous other actors:

- On prevention: a variety of national administrative bodies, the European Commission, the European Court of Auditors...
- When it comes to investigation: national police, tax and customs authorities and, in some instances, still national prosecutors...
- When it comes to prosecution and judgement: national courts and, in some instances, still national prosecutors...
- When it comes to confiscation and recovery: many responsible national authorities and different Commission services.

This special report aims to identify possible ways to enhance the interactions between EPPO, Europol, Eurojust and OLAF. More specifically, it also raises the question whether so called "complementary investigations" by OLAF could be an effective way to reinforce the protection of the EU budget. From an EPPO perspective, while so called "complementary investigations" by OLAF can be presented as a way to reinforce the protection of the EU budget, practice corroborates this projection only in a fairly limited set of circumstances.

As a next step, in particular considering the severely constrained budgetary context, effective ways to address the main challenges that the protection of the EU budget is facing could be also examined. The main challenges are: the persisting detection and reporting gaps, the suboptimal resources allocation, the lack of training and specialisation, the lack of digital and forensics

analysis capacity, the applicable legal frameworks' shortcomings and inadequacies, the existing limitations in tracing and seizing illicit assets, the weaknesses of the existing workflows to ensure damage recovery and, perhaps most importantly, the limited strategic capacity to effectively confront transnational organised crime groups.

The EPPO was created to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in the PIF Directive¹ and determined by its founding Regulation². Whenever there is suspicion of EU fraud, the EPPO should be informed without undue delay.

The EPPO is bound by the principle of legality, which requires that no substantiated suspicion of EU fraud be neglected, and that each ensuing investigation be conducted with the appropriate level of diligence, competence and specialisation. All available resources, though very limited, are dedicated to this responsibility and to the supporting functions essential to its execution.

The EPPO Regulation establishes as a fundamental principle the independence of the Office from any outside influence, with a view to allowing it to act in line with the core principles underpinning the rule of law, in full respect of the fundamental rights of the people involved, as well as in the interest of the Union as a whole. This independence commands that the EPPO, as any other prosecution office, maintains full control of the information associated with its operational activities. This is a mandatory precondition for prosecutors to be able to carry out criminal investigations independently and in full respect of the principle of confidentiality, as regulated both under Union and applicable national (criminal procedural) law.

In practice, EPPO's cooperation with Europol, Eurojust and OLAF is driven by its actual operational needs, deriving from specific criminal investigations. When needed, cooperation is requested, and support is to be provided, as arises from paragraph 9 of the special report. In this context, the EPPO underlines paragraph 27 of the special report, where criminal intelligence analysis and other operational support provided by Europol to the EPPO emerge as the most significant element of support. In the EPPO's view, there is room for more cost-effective synergies between EPPO and Europol, in particular in the perspective of the planned increase of Europol's analytical capacity.

Finally, the special report also highlights that the support from EU IBOAs contributes to a relatively small proportion of EPPO's criminal investigations and that, when it comes to

¹Directive (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.

² Council Regulation (EU) 2017/1939 of 12 October 2017.

effectively confronting the criminal phenomenon, the role of national law enforcement authorities is crucial.

II. Replies to the observations

1. Administrative and Criminal investigations

As explained in the Commission's *White paper* for the Anti-Fraud Architecture review³: “*the EPPO Regulation expressly prohibits parallel administrative investigations by OLAF on the same facts on which the EPPO is conducting a criminal investigation*” and specifies that “*the EPPO may request OLAF to ‘support or complement’ the EPPO’s activities, including by conducting administrative investigations. The subsequently amended OLAF Regulation labelled these administrative investigations as ‘complementary investigations’, although they may not always involve investigative activities*”.

In the EPPO's view, the administrative and criminal means cannot be seen as two sides of the same coin (the fight against fraud), as if each individual instance of fraud could be broken down into aspects that can be addressed only by means of criminal law and aspects that could be more efficiently addressed administratively. While this idea is appealing *in abstracto* and could be used to claim that in order to maximise efficiency of the fight against fraud, ideally both sides should be applied systematically and simultaneously, *in concreto*, the fight against fraud takes the form of individual criminal cases. The fundamental split is not in the means (criminal versus administrative) but in who is actually responsible to investigate fraud cases.

Therefore, the EPPO does not endorse the terminological shortcut included in the last sentence of Paragraph 1 of the special report (“(...) *For simplification, in this report we use ‘fraud’ as a collective term irrespective of whether it refers to allegations, illegal activities or confirmed fraud cases*”). This results in using the notion of fraud in an unusually broad sense, essentially covering any form of irregularity, whether intentional or not. However, the distinction between criminal offenses, of which fraud is an integral part⁴, and other irregularities, is the key element that distinguishes the respective missions of the EPPO and of the administrative authorities such as OLAF. It is therefore important not to confuse the articulation of criminal and administrative missions and the role of each of the actors within the EU Antifraud Architecture.

Moreover, it should be underlined that administrative and criminal investigations are in fact very different by nature, including the protection of fundamental rights of the persons involved.

³ COM(2025)546 final.

⁴ See PIF Directive Articles 2 and 3.

Administrative investigations performed in parallel to criminal investigations, especially without the explicit agreement of and close cooperation with the responsible European Delegated Prosecutors, may result in jeopardizing the ongoing criminal investigations by tipping off suspects, increasing the risk of evidence disappearing, weakening their admissibility in Court, or even by violating fundamental rights of suspects.

From EPPO's perspective, OLAF continues to hold the important responsibility (among others) of closely examining irregularities, also to check if they could in fact hide a potential fraud (in which case a corresponding report is to be made to the EPPO) and making appropriate follow up recommendations concerning these irregularities to the responsible administrative services.

Indeed, under the applicable legislative framework, OLAF can also request from the EPPO the authorisation to open a so called "complementary investigation", with a view to make a recommendation to the responsible administrative services as to possible precautionary measures, or financial, disciplinary or administrative action in cases of fraud. The EPPO can also request that OLAF proceeds to such a "complementary investigation".

However, the applicable legislative framework does not foresee the necessity for OLAF to perform such "complementary investigations" with a view to making recommendations, for precautionary measures, or financial, disciplinary or administrative action to be taken by the responsible administrative services. Nor is it appropriate to consider that, in the absence of such a recommendation from OLAF about administrative measures, the financial interests of the EU are not protected to the maximum level possible. OLAF recommendations based on so called "complementary investigations", while potentially useful to facilitate the assessment by the responsible administrative services, are not strictly necessary for them to adopt administrative measures (such as the exclusion from receiving EU funds following Early Detection and Exclusion System procedures).

As a matter of fact, under the cooperation framework between the EPPO and the Commission established in December 2024, a direct, systematic and comprehensive information flow has been established exactly for this purpose. As a general rule, it starts at a much earlier stage (and, at the very latest, at the moment of indictment) than the conclusion of the corresponding criminal cases (final judgement). This new information exchange process, once it will be mastered by all the involved stakeholders, should allow the responsible Commission services to adopt the necessary administrative measures equally fast if not quicker than when based on recommendations by OLAF, originating in so called "complementary investigations" and, perhaps more importantly, in a significantly higher volume of cases than OLAF would be able to cover by so called "complementary investigations" with its existing resources.

In the EPPO's view, if anything could further improve the new, systematic and comprehensive information flow between the EPPO and the responsible Commission services, it would be to equip the EPPO with the necessary resources allowing it to further refine the quality of information provided directly to them, with the aim to facilitate their assessment as regards the appropriate administrative measures to be taken.

For the above mentioned reasons, and considering the applicable legal framework and rule of law principles, one of the main conditions for the EPPO to be able to support the setting up of a central repository of all allegations of fraud received⁵, is that it would not result in creating a systematic and comprehensive information flow from the EPPO to OLAF (or any other administrative authority) concerning cases under EPPO investigation (see also Section III.1 of this reply).

2. Complementary Investigations

Concerning the observation that the *EPPO's limited exchange of information with OLAF reduces the scope for complementary administrative measures to protect the EU budget*⁶, the EPPO would like to emphasise that the extent of the exchange of information with OLAF is in fact determined by the applicable legal framework, with limitations foreseen in the interest of preserving the confidentiality of criminal investigations and the rights of suspects, and not by the EPPO's systems and procedures. The EPPO would also like to underline that in particular the direct, systematic and comprehensive exchange of information between the EPPO and the responsible Commission services is not only supposed to cover essential information which could alternatively be drawn from so called "complementary investigations", but it also substantially enlarges the scope for possible complementary administrative measures.

Regarding paragraphs 55, 56, and 57 of the special report, which relate to so called "complementary investigations", the EPPO would like to emphasise that it considers the concept according to which they would be established as a systemic means to ensure the required scope for complementary administrative measures to protect the EU budget to be at odds with the fundamental principle of the necessity to safeguard the confidentiality of criminal investigations.

From a practical perspective, and as mentioned above, it should be noted that, in December 2024, a procedure was established between the EPPO and the responsible Commission services, according to which information on fraud allegations is reported as soon as possible

⁵ As per Recommendation 1.

⁶ Observation covering paragraphs 48 and 49 and also present in paragraph 7 of the special report.

and no later than at the moment of the indictment (and not when the case is concluded). Moreover, it must be recalled that so called “complementary investigations” are foreseen under the applicable legal framework as residual, with very limited circumstances in which they can be deemed necessary or useful, and that they should always happen with the agreement of the EPPO. For these reasons, the EPPO considers that so-called ‘complementary investigations’ cannot be conceived as a significant contribution to further improving the EU Anti-Fraud Architecture.

3. Notifications to the European Commission

Regarding paragraph 60 of the special report, where it is stated that *of the 302 investigations brought to court, the Commission was informed about some two thirds (202), with no information about whether, for the remaining cases, the administrative authorities concerned were outside the Commission, were duly informed, or took the necessary administrative measures*, the EPPO would like to clarify that information about criminal proceedings can only be shared with administrative authorities when foreseen by law. Therefore, the EPPO’s information to administrative authorities, including the Commission, on the decision to prosecute may depend on a number of factors: for example, the criminal offence may not have produced a damage, or has been only an attempt; the damage may have been repaired already before the indictment; the damage may concern a budget managed by another IBOA (for example, the EIB); or it may concern overwhelmingly a national budget, for example in the case of VAT fraud (in which case the Commission itself requested to be informed only periodically, by specific notification).

III. Comments to the recommendations issued by the ECA to the European Commission

1. Recommendation 1 - Establish a system for an efficient exchange of information on fraud allegations and investigations

The EPPO in principle welcomes the establishment, as recommended by the ECA, of an *interoperable antifraud system*, which would make it clear *where allegations of fraud should be reported, and facilitate an efficient exchange of information on fraud allegations and investigations* to be developed by the European Commission, in collaboration with the EPPO, *in full compliance with the relevant legal framework, data protection rules and the need for confidentiality in criminal investigations*.

According to the ECA’s recommendation, the new system should be based on four principles. The EPPO could support the first principle according to which *all allegations received are*

channelled to a central repository, provided such central repository would be managed by EPPO, and that EPPO is properly equipped to ensure *an efficient process for their assessment* under the applicable legal framework.

As regards the second principle, the EPPO reiterates that under the applicable legal framework, *without undue delay* needs to be complied with strictly, in particular to prevent that OLAF investigates without EPPO's explicit authorisation and close coordination with the responsible European Delegated Prosecutors.

The third principle raises no particular concerns. However, the fourth calls for closer examination. In addition to what is stated in Section II.2 of this reply regarding so called "complementary investigations", from EPPO's perspective the recommendation to implement a system where there is systematic obligation for the EPPO to periodically assess at what point access to relevant information may be granted to the Commission corresponds to established practice. The EPPO considers that it is a matter of internal arrangement between the responsible Commission services, including OLAF, on how they share and process information from the EPPO once such access is granted. Imposing on the EPPO a systematic obligation to periodically assess also at what point access to relevant information may be granted to OLAF to determine whether it would be cost effective for OLAF to propose a so called "complementary investigation" goes far beyond EPPO's mandate, and would require a substantial increase in EPPO's capacity, and the acquisition of the necessary technical expertise to perform this evaluation in a manner conducive to facilitate the subsequent follow up by the responsible administrative services.

On the other hand, as mentioned under Section II.1 of this reply, in the EPPO's view, the new information exchange process established between the EPPO and the Commission should allow the responsible Commission services to adopt the necessary administrative measures equally fast if not quicker than when based on recommendations by OLAF, originating in so called "complementary investigations" and, perhaps more importantly, in a significantly higher volume of cases than OLAF would be able to cover by so called "complementary investigations" with its existing resources.

2. Recommendation 2 - Analyse the variations in the levels of fraud reported across the EU

The EPPO welcomes the enlargement of the scope of the audit to issues related to the detection and crime reporting gaps, which the EPPO has identified and disclosed in its annual reports.

3. Recommendation 3 - Enhance oversight of the follow up of fraud investigations

The EPPO welcomes this recommendation. In the EPPO's view, obtaining consistent and systemic oversight of the extent to which amounts due to the EU budget have been repaid, is one of the main issues at stake when it comes to further improving the EU Anti-Fraud Architecture.