

Brussels, 12.9.2022
SWD(2022) 295 final

COMMISSION STAFF WORKING DOCUMENT

**Review of the implementation by the European Union of articles 15 – 42 of Chapter III.
“Criminalization and law enforcement” and articles 44 – 50 of Chapter IV.
“International cooperation” of the United Nations Convention against Corruption for
the first review cycle**

Contents

| | | |
|-------|---|-----|
| 1. | Context and background of the implementation review | 3 |
| 1.1 | The review of the first cycle | 3 |
| 1.2 | Fundamentals of the European Union laws and institutions | 5 |
| 1.3 | Founding principles of the EU | 6 |
| 1.3.1 | The EU's unique institutional set-up | 7 |
| 1.4 | EU decision-making | 9 |
| 1.5 | Specificity of EU Law | 10 |
| 2 | The EU legislation to prevent and fight against corruption | 14 |
| 2.1 | EU policy tools and instruments in the fight against corruption | 17 |
| 2.2 | The role of the European Union Institutions, Agencies and bodies in the fight against corruption | 21 |
| 3 | United Nations Convention Against Corruption (UNCAC) Chapter III. Criminalization and law enforcement | 26 |
| 3.1 | Article 15 – Bribery of national public officials | 26 |
| 3.2 | Article 16 - Bribery of foreign public officials and officials of public international organizations | 30 |
| 3.3 | Article 17 - Embezzlement, misappropriation or other diversion of property by a public official | 32 |
| 3.4 | Article 18 - Trading in influence | 34 |
| 3.5 | Article 19 - Abuse of Functions | 36 |
| 3.6 | Article 20 - Illicit Enrichment | 38 |
| 3.7 | Article 21 - Bribery in the private sector | 40 |
| 3.8 | Article 22 - Embezzlement of property in the private sector | 42 |
| 3.9 | Article 23 - Laundering of proceeds of crime | 44 |
| 3.10 | Article 24 - Concealment | 47 |
| 3.11 | Article 25 – Obstruction of Justice | 49 |
| 3.12 | Article 26 – Liability of legal persons | 52 |
| 3.13 | Article 27 – Participation and attempt | 55 |
| 3.14 | Article 28 – Knowledge, intent and purpose as elements of an offence | 57 |
| 3.15 | Article 29 – Statute of Limitations | 59 |
| 3.16 | Article 31 – Freezing, Seizure and confiscation | 64 |
| 3.17 | Article 32 – Protection of witnesses, experts and victims | 67 |
| 3.18 | Article 33 – Protection of reporting persons | 70 |
| 3.19 | Article 34 – Consequences of acts of corruption | 74 |
| 3.20 | Article 35 – Compensation for damage | 76 |
| 3.21 | Article 36 – Specialized authorities | 78 |
| 3.22 | Article 37 - Cooperation with law enforcement authorities | 85 |
| 3.23 | Article 38 – Cooperation between national authorities | 87 |
| 3.24 | Article 39 – Cooperation between national authorities and the private sector | 91 |
| 3.25 | Article 40 – Bank Secrecy | 93 |
| 3.26 | Article 41 – Criminal Record | 96 |
| 3.27 | Article 42 – Jurisdiction | 98 |
| 4 | United Nations Convention Against Corruption (UNCAC) Chapter IV. International cooperation | 101 |
| 4.1 | Article 43 – International cooperation | 101 |
| 4.2 | Article 44 – Extradition | 107 |
| 4.3 | Article 45 – Transfer of sentenced persons | 111 |
| 4.4 | Article 46 – Mutual Legal Assistance | 112 |
| 4.5 | Article 47 – Transfer of Criminal Proceedings | 118 |

| | | |
|-----|---|-----|
| 4.6 | Article 48 – Law Enforcement Cooperation | 120 |
| 4.7 | Article 49 – Joint Investigations..... | 125 |
| 4.8 | Article 50 – Special Investigative Techniques | 128 |

Disclaimer: this document is a staff working document drafted by Commission services in consultation with the services of other institutions and bodies.

It does not necessarily represent the views of the Commission as an institution, nor of the other institutions and bodies consulted.

1. Context and background of the implementation review

For the European Union, fighting corruption is a fundamental precondition for upholding the rule of law, peace and security, for achieving sustainable development and respect for human rights and fundamental freedoms. Corruption is a global threat to democracy, to the rule of law and security and it undermines citizens' trust in public institutions.

The European Union attaches great importance to multilateralism and to the implementation of existing global and regional instruments. In 2008, the European Union became a party to the United Nations Convention against Corruption (abbreviated as 'UNCAC'), the most comprehensive international anti-corruption treaty both in terms of geographic coverage (188 parties) and issues covered. All EU Member States are parties to UNCAC and the European Union is in a unique position in the Convention, as the only party which is not a State.

The review of the implementation of the United Nations Convention against Corruption plays an important role in the global fight against corruption. In December 2020, the European Commission adopted a Communication expressing its intention to launch the EU review process as soon as possible, ahead of the UN General Assembly Special Session against Corruption 2021¹. Through the same Communication, the Commission set out a framework to facilitate the review to allow swift progress in fulfilling all necessary legal obligations, in full respect of the principles of sincere cooperation and administrative autonomy of the institutions. The Commission also invited the EU institutions to participate and cooperate at all stages of the process.

In June 2021, by a letter of Commissioner Johansson addressed to the Executive Director of the United Nations Office on Drugs and Crime (UNODC), the Commission announced the European Union's readiness to undergo the review process provided for under the UNCAC. In July 2021, the implementation review was launched. In December 2021, Commissioner Johansson also informed the UN Secretary General on the modifications to the competences of the European Union following the Lisbon Treaty concerning matters governed by United Nations Convention against Corruption.

¹ Communication from the Commission to the European Parliament, the European Council, the Council, the Court of Justice of the European Union, the European Central Bank and the Court Of Auditors on the review of the European Union under the Implementation Review Mechanism of the United Nation Conventions against Corruption (UNCAC), COM(2020) 793 final.

1.1 The review of the first cycle

UNCAC covers five areas: preventive measures (Chapter II); criminalisation and law enforcement (Chapter III); international cooperation (Chapter IV); asset recovery (Chapter V); and technical assistance and information exchange (Chapter VI).

UNCAC aims to strengthen measures in order to prevent and combat corruption more efficiently and effectively, promote the integrity, accountability and proper management of public affairs and public property, and facilitate and support international cooperation and technical assistance against corruption.

It addresses several forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in both the public and the private sector. UNCAC introduces a set of standards, measures and rules that countries shall apply to strengthen their legal and regulatory regimes to fight corruption.

In 2009, the Conference of the States Parties to the UNCAC, adopted the terms of reference of the Mechanism for the Review of Implementation of the Convention and created the Implementation Review Group to supervise the review process under the authority of the Conference. Parties are assessed in accordance with the terms of reference of the Mechanism for the Review of Implementation. A model indicative timeframe for completing the review has been developed by the Secretariat².

The implementation review under the UNCAC takes place in two cycles: Cycle 1 focuses on criminalisation and law enforcement (Chapter III) and international cooperation (Chapter IV) and will include reporting on a) offences and law enforcement; b) protection of witnesses, experts, victims and whistleblowers; c) consequences of acts of corruption; d) cooperation within and between international organisations; e) cooperation of international organisations with the EU and Member States; and f) joint investigations. Cycle 2 covers asset recovery (Chapter V) and prevention (Chapter II), which includes law enforcement and public procurement legislation.

In conformity with the UN procedure, the EU has to present a self-assessment to the UNODC secretariat³ about the way it fulfilled the obligations stemming from UNCAC. The present self-assessment responds to this need and concerns the first cycle of the review.

² See UNODC website, Model Schedule for Country Reviews based on the Terms of Reference of the Review Mechanism and the Guidelines for governmental experts and the secretariat, https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/IRG_model_country_review_schedule.pdf.

³ See the Mechanism for the Review of Implementation of the United Nations Convention against Corruption—Basic Documents, at point 15. Each State party shall provide to the secretariat the information required by the Conference on its compliance with and implementation of the Convention, using the comprehensive self-assessment checklist as an initial step for that purpose. States parties shall provide complete, up-to-date, accurate and timely responses.
https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

The self-assessment is technical in nature and presents in a factual manner which EU provisions implement UNCAC, starting with Cycle 1. The scope of the self-assessment covers those areas that are directly relevant to the EU and its institutions, in respect of matters subject to UNCAC, and does not enter into questions of implementation of EU law by Member States, which is covered by their own review processes⁴.

The Union as a whole is bound to implement UNCAC and thus to submit to the review process. The Commission acts as the EU focal point for the EU's implementation review process. To this end, a network of contact points was created, to act as institutional designated experts for the purpose of this implementation review process. The network of contact points includes designated experts from the following institutions, bodies and agencies: the European Parliament, the European Council, the Council of the European Union, the European Commission including the European Anti-Fraud Office, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the European Committee of the Regions, the European Investment Bank Group, comprised of the European Investment Bank (EIB) and the European Investment Fund (EIF), the European Ombudsman and the European Public Prosecutor's Office.

The Commission has coordinated with the other EU institutions the inputs to this self-assessment. This exercise required the involvement of all Union institutions and certain agencies, offices or bodies, depending on the tasks conferred on them by the Treaties (see below) or by the Union's legislation in the area of relevance for UNCAC. Their involvement is governed by the principle of the administrative autonomy of each institution, in matters relating to their respective roles.

In accordance with the mechanism for the review of the implementation of the UNCAC each State party is to be reviewed by two other States parties. The selection of the reviewing States parties is to be carried out by the drawing of lots at the beginning of each year of the cycle, with the understanding that States parties should not undertake mutual reviews. For the implementation review of the EU, the two reviewers drawn for the first cycle on 14-18 June 2021 are Czechia and Niue, while for the second cycle the reviewers drawn are Italy and Comoros.

At the end of the review, the reviewing States parties have to prepare a review report, including an executive summary of the report, in close cooperation and coordination with the Party under review and assisted by the UNODC secretariat. The review report, including the executive summary, is to be finalised upon agreement between the reviewing States parties and the EU.

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the Court of Justice of the European Union, the European Central Bank and the Court Of Auditors on the review of the European Union under the Implementation Review Mechanism of the United Nation Conventions against Corruption (UNCAC), COM(2020) 793 final.

1.2 Fundamentals of the European Union laws and institutions

The European Union is a unique economic and political union between 27 European countries. The predecessor of the EU, the European Economic Community (EEC) was created in 1958 by six countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. Since then, 22 other members joined. On 31 January 2020, the United Kingdom left the European Union⁵.

In 1992, the Treaty on European Union (TEU)⁶ established the European Union (EU) as a political union the founding values of which include the rule of law and are the result of a voluntary and democratic agreement by all EU Member States and with the prospect of establishing an economic and monetary union, with an European Central Bank (ECB) issuing a single currency. In 2009, the Lisbon Treaty modified the Treaty on European Union and the Treaty establishing the European Community. The latter was renamed the Treaty on the Functioning of the European Union (TFEU)⁷. After the entry into force of the Lisbon Treaty the EU was endowed with competences spanning across specified policy areas, from the internal market, climate, environment and health to external relations and security, justice and migration. The Lisbon Treaty explicitly recognised that the EU has full legal personality including the capacity to conclude international agreements or become a member of international organisations⁸. The TFEU also clarified the areas of competence within which the EU can act and increased the legislative power of the European Parliament enhancing the participation and democratisation of the Union.

1.3 Founding principles of the EU

The EU is founded on three main principles. Under the **principle of conferral**, the Union can act within the limit of the powers attributed to it by the Member States; powers not attributed to the Union remain with the Member States. The **principle of subsidiarity** provides that in areas of shared competence, the Union should only act if the objective of the action cannot be achieved sufficiently by the Member States but can rather be better achieved at Union level by

⁵ The EU member states are, in alphabetical order: Austria (since 1995); Belgium (since 1958); Bulgaria (since 2007); Croatia (since 2013); Cyprus (since 2004); the Czech Republic (since 2004); Denmark (since 1973); Estonia (since 2004); Finland (since 1995); France (EU member state since 1958); Germany (since 1958); Greece (since 1981); Hungary (since 2004); Ireland (since 1973); Italy (since 1958); Latvia (since 2004); Lithuania (since 2004); Luxembourg (since 1958); Malta (state since 2004); Netherlands (EU member state since 1958); Poland (since 2004); Portugal (since 1986); Romania (since 2007); Slovakia (since 2004); Slovenia (since 2004); Spain (since 1986); and Sweden (since 1995).

⁶ Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.

⁷ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁸ EUR-LEX Glossary, Legal Personality of the Union, https://eur-lex.europa.eu/summary/glossary/union_legal_personality.html.

reason of the scale or effects of the proposed action. The **principle of proportionality** provides that Union action must not go beyond what is necessary to meet the objectives of the Treaties.

The **rule of law** is one of the fundamental values of the Union, enshrined in Article 2 of the Treaty on European Union. It is also a prerequisite for the protection of all the other Union values, including fundamental rights and democracy. Respect for the rule of law is essential for the very functioning of the EU: for the effective application of EU law, the proper functioning of the internal market, maintaining an investment-friendly environment and mutual trust.

Within the broader EU efforts to promote and defend its founding values, the Union has developed the European Rule of Law Mechanism⁹. This effort also includes the European Democracy Action Plan¹⁰, the renewed Strategy for the Implementation of the Charter of Fundamental Rights¹¹, as well as targeted strategies to progress towards a Union of Equality. The annual Rule of Law Report¹² is a preventive tool, which is at the centre of the European Rule of Law Mechanism. The report looks at rule of law developments across the EU, as well as the specific situation in each Member State. The aim of the report is to promote the rule of law, to prevent problems from emerging or deepening and to address them, as well as to identify best practices. It is not a sanctioning mechanism. The report covers four key areas for the rule of law: justice systems, the anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances.

1.3.1 The EU's unique institutional set-up

According to Article 13 of the TEU, the EU has seven institutions: The European Parliament, the European Council, the Council of the European Union (the Council), the European Commission (the Commission), the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.¹³

The EU is governed by the principle of representative democracy. The EU's general political directions and priorities are defined by the European Council, which brings together the

⁹ For an overview of the Rule of Law Mechanism, see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en.

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, On the European democracy action plan, COM/2020/790 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM/2020/711 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0711&qid=1608047356199>.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule Of Law Report, the Rule of Law Situation in the European Union, COM/2020/711 final, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report_en.

¹³ EUR-LEX Glossary, European Union Institutions, https://eur-lex.europa.eu/summary/glossary/eu_institutions.html.

Heads of State or Government of the Member States, the President of the European Council and the President of the Commission. The European Parliament with 705 members (MEPs) directly elected by the EU citizens, proportionally representing the EU citizens and grouped by political affiliation is involved in the adoption of the EU legislation and of the EU budget together with the Council and has supervisory powers over the Commission.

Member State governments represent their own country's interests as well as the Union interest in the Council. The Council, composed of one representative of each Member State at ministerial level, decides on the legislative proposals submitted by the Commission and on proposal of the EU budget together with the European Parliament and defines and implements the Common Foreign and Security Policy of the Union. Each Member State holds the Council's presidency on the basis of equal rotation every six months.

The Commission is the EU executive and shall promote the general interest of the EU as a whole. It proposes new EU legislation and policy, monitors their implementation and manages the EU budget. The Commission is the guardian of EU Treaties and has the authority to initiate an infringement procedure before the Court of Justice of the EU when it considers that a Member State has failed to fulfil an obligation under the Treaties; it also has the right of legislative initiative and the power to adopt delegated acts.

The Commission, the Council and the European Parliament are assisted in an advisory capacity by the Economic and Social Committee and the Committee of the Regions.

The Court of Justice of the EU ensures that in the interpretation and application of the Treaties, the EU law is observed. As part of that mission, the Court of Justice of the European Union inter alia: reviews the legality of the acts of the EU institutions; ensures that the Member States comply with obligations under the Treaties and interprets EU law at the request of the national courts and tribunals. The Court of Justice thus constitutes the highest judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, ensures the uniform application and interpretation of EU law. The Court of Justice of the European Union, which has its seat in Luxembourg, consists of two courts: the Court of Justice and the General Court (created in 1988)¹⁴.

The European Central Bank (ECB) is responsible for the monetary policy of the Union, the primary objective of which is maintaining price stability. Since 2014, it has also been responsible for the prudential supervision of credit institutions. The ECB has its headquarter in Frankfurt am Main and its decision-making bodies are the Governing Council, the Executive Board and the General Council; complemented by the Supervisory Board for matters of prudential supervision. The ECB conducts its operation in full independence from national

¹⁴ The Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court in the context of the reform of the European Union's judicial structure.

and EU institutions, with its own budget financed by its shareholders, the EU national central banks according to a capital key.¹⁵

The Court of Auditors checks the financing of the EU's activities, improving the financial management of the EU and monitoring the expenditure of EU public funds. The Court of Auditors was established to audit the EU's finances. The starting point for its audit work is the EU's budget and policies, primarily in areas relating to growth and jobs, added value, public finances, the environment and climate action. The Court of Auditors audits the budget in terms of both revenue and spending.

The EU has a number of other services and bodies that play specialised roles, including inter alia the European External Action Service (EEAS) which assists the High Representative of the Union for Foreign Affairs and Security Policy and conducts the common foreign and security policy, also ensuring the consistency and coordination of the EU's external action. The European Ombudsman investigates complaints about maladministration by EU institutions and bodies. Other bodies and agencies committed to fighting corruption are presented further below.

1.4 EU decision-making

The EU remains focused on making its institutions more **democratic and accountable**, including through increased transparency. Decisions are taken as openly as possible and as close as possible to the citizen. Under the current 'Better Regulation' agenda¹⁶, the EU seeks to ensure that EU policies and laws are prepared in an open, transparent manner, informed by the best available evidence and backed by comprehensive stakeholder involvement so that they achieve their objectives at minimum cost.

The EU enacts legislation via the **ordinary legislative procedure**, with the European Parliament and the Council as co-legislators; and the Commission as representative of the EU interests in charge of proposing legislation. The Commission, before proposing legislation, where appropriate, prepares impact assessments on policy options and consults with relevant stakeholders. Once presented, the European Parliament and Council adopt legislation. National parliaments can formally express their reservations when they believe an issue could be better dealt at national or subnational level, in application of the subsidiarity principle. Exceptionally, on a case-by-case basis, EU legislation is adopted under the special legislative procedure either by the Council with the participation of the European Parliament or – less frequently – by the European Parliament with the participation of the Council.

¹⁵ See Europa website https://www.ecb.europa.eu/ecb/pdf/orga/escbstatutes_en.pdf

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better regulation: Joining forces to make better laws, COM(2021) 219 final.

The European citizens' initiative¹⁷ empowers citizens to have a greater say on EU policies that affect their lives. Put in place by the Lisbon Treaty, the citizens' initiative allows 1 million citizens from at least a quarter of the EU Member States to ask the European Commission to propose legislation in areas that fall within its competence. The organisers of a citizens' initiative - a citizens' committee composed of at least 7 EU citizens, resident in at least 7 different Member States - have one year to collect the necessary support. Signatures must be certified by the competent authorities in each Member State. Initiatives are possible in any field where the Commission has power to propose legislation, such as, but not limited to, consumer protection, energy, agriculture or transport, etc. Organisers of successful initiatives participate in a hearing at the European Parliament. The Commission has 3 months to examine the initiative and decide how to act on it.

Citizens can also submit complaints concerning the application of EU law by the Member States. Although citizens will usually be able to enforce their rights better in the country where they live, the European Union offers resources that may also be able to help. There is the right (Article 227 TFEU) to submit a petition to the European Parliament about the application of Union law. Citizens may submit petition by post or online via the European Parliament's website. Moreover, citizens can contact the European Commission about any measure (law, regulation or administrative action), absence of measure or practice by a country of the European Union that they consider is against Union law. The European Commission can take up a complaint if it is about a breach of Union law by authorities in an EU country. If the complaint is about the action of a private individual or body (unless one can show that national authorities are somehow involved), the citizen has to try to solve it at national level (courts or other ways of settling disputes). The European Commission cannot follow up matters that only involve private individuals or bodies, and that do not involve public authorities. If the citizen considers that the European Commission has not dealt with its request properly, it may contact the European Ombudsman (Articles 24 and 228 TFEU)¹⁸.

1.5 Specificity of EU Law

Every action taken by the EU is founded on the Treaties. These binding agreements between EU Member States set out the EU's aims, objectives and policies, the rules applicable to the EU institutions, on decision making and the relationship between the EU and its members. EU Treaties are also referred to as '**primary law**'. The EU Treaties have from time to time been amended to give the EU new areas of responsibility or to reform the powers of the EU institutions. They have also been amended to allow new countries to join the EU. The Treaties are negotiated and agreed by all EU Member States and then ratified by their parliaments, sometimes following a referendum.

¹⁷ See Europa website, Citizen's Initiative, https://europa.eu/citizens-initiative/_en.

¹⁸ For additional information, https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en.

The EU institutions have the power to adopt legal acts (sometimes referred as ‘**secondary law**’). The types of EU legal acts are the following:

Types of EU legal acts:

- a. Regulations: Regulations are legal acts that have general application, are binding in their entirety and apply to all EU countries as soon as they enter into force, without needing to be transposed into national law.
- b. Directives: Directives require EU Member States to achieve a certain result, but leave them free to choose how to do so. EU Member States must adopt measures to incorporate them into national law (transpose) in order to achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission. Transposition into national law must take place by the deadline set when the directive is adopted (generally within 2 years). When a Member State does not transpose a directive or transposes it incorrectly, the Commission may initiate infringement proceedings.
- c. Decisions: A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.
- d. Recommendations: Recommendations allow the EU institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. They have no binding force.
- e. Opinions: An 'opinion' is an instrument that allows the EU institutions to make a statement, without imposing any legal obligation on the subject of the opinion. An opinion has no binding force.

The EU uses a variety of legislative procedures to adopt laws. The procedure followed for a legislative proposal depends on the type and subject of the proposal. The vast majority of EU laws are jointly adopted by the EU Parliament and Council, while in specific cases a single EU institution can adopt alone. The national parliaments of EU Member States are consulted on all Commission proposals, and any changes to the EU treaties requires the agreement of every EU country.

The Treaties also provide the institutions with the power to adopt delegated and implementing acts, in certain circumstances and under certain conditions:

- a. Delegated acts: an EU legislative act (basic act) may delegate to the Commission the power to adopt delegated acts to supplement or amend non-essential parts of the basic act, for example, in order to define detailed measures. Delegated acts are legally binding and enter into force if the European Parliament and Council have no objections.
- b. Implementing acts: the European Commission (or in exceptional cases the Council) may be given the powers to adopt implementing acts through specific rules included in an EU legislative act (basic act). These acts aim to create uniform conditions for the implementation of the legislative act in question, if and when this is necessary.

In certain areas, the EU enjoys **exclusive competence**, meaning that only the Union can legislate and adopt legally binding acts. The role of Member States is limited to applying the law, unless the EU authorises them to adopt certain laws themselves.

The EU enjoys exclusive competence in the following areas:

- Customs union
- Competition rules for the internal market
- Monetary policy for the Member States whose currency is the euro
- Common Commercial Policy
- Marine plants and animals regulated by the common fisheries policy

The EU also has exclusive competence for the conclusion of an international agreement when its conclusion is provided for in EU law or is necessary to enable the EU to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

In certain areas, the Treaties provide for **shared competence** between the EU and Member States, meaning that both the EU and the Member States may legislate and adopt legally binding acts. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The EU enjoys shared competence in the following areas:

- Internal market
- Employment and social affairs
- Economic, social and territorial cohesion
- Agriculture
- Fisheries
- Environment
- Consumer protection
- Transport
- Trans-European networks
- Energy
- Area of Freedom, Security and Justice
- Public health (specifically for the aspects defined in Article 168 of the Treaty on the Functioning of the European Union)
- Research, technological development and space
- Development cooperation and humanitarian aid

In certain areas, the EU can only support, coordinate or complement the action of Member States. It has no power to harmonise Member States' legislation. In these areas, the EU has what the Treaties call **supporting competence**:

- Protection and improvement of human health Industry
- Culture
- Tourism
- Education and training, youth and sport
- Civil protection
- Administrative cooperation

In certain areas, special competences enable the EU to play a particular role or to go beyond what it is normally allowed under the treaties:

- coordination of economic and employment policies
- definition and implementation of the Common Foreign and Security Policy
- the ‘flexibility clause’¹⁹, which under strict conditions enables the EU to take action outside its normal areas of responsibility.

¹⁹ See article 352 of the TFEU.

2 The EU legislation to prevent and fight against corruption

The EU has a general right to act in the field of anti-corruption policies, within the limits established by the Treaty on the Functioning of the European Union (TFEU).

- In particular, the EU should ensure a high level of security, including through the prevention and combating of crime and, if necessary, through the approximation of criminal laws, pursuant to Article 67 TFEU.
- In Article 83(1) TFEU, the Treaty designates corruption as a 'euro-crime', i.e. areas of particularly serious crime with a cross-border dimension.
- Article 83(2) TFEU provides that, if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.
- The legal basis for combating fraud and any other illegal activities affecting the EU's financial interests is Article 325 TFEU, which tasks the EU itself and its Member States with the obligation to protect the EU's financial interests²⁰.

The EU anti-corruption legislation is reflected as per below:

- The 1997 Convention on fighting corruption involving officials of the EU or officials of Member States of the EU²¹;
- The Council Framework Decision 2003/568/JHA of 22 July 2003²² on combating corruption in the private sector, which criminalises both active and passive bribery.
- The Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption²³;
- Legislation on combating fraud, corruption and other illegal activities affecting the Union's financial interests is also a corner stone of the EU anti-corruption policy framework, as the establishment of the European Public Prosecutor's Office (Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office²⁴) and the Directive

²⁰ However, Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law was adopted on the basis of Art. 83(2) TFEU.

²¹ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

²² Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

²³ Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption (OJ L 301, 12.11.2008), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0852>.

²⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

on the fight against fraud to the Union's financial interests by means of criminal law (Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law²⁵) testify. In addition, the European Anti-Fraud Office (OLAF) conducts administrative investigations in line with Regulation (EU, Euratom) No 883/2013²⁶ to combat fraud, corruption and other illegal activities affecting the financial interests of the EU (see also Commission Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-Fraud Office (OLAF)²⁷);

- The effective fight against corruption is facilitated by the EU rules on the prevention of money laundering and terrorist financing²⁸ and public procurement²⁹. The 5th Anti-Money Laundering Directive (AMLD)³⁰ obliges all EU Member States to set up centralised bank account registries and data retrieval systems as well as central beneficial ownership registers. The AMLD also establishes the interconnection of the beneficial ownership registers;
- Directive (EU) 2019/1153 enhances the use of financial information by giving law-enforcement authorities direct access to information about the identity of bank-account holders contained in national centralised registries. In addition, it gives law enforcement the possibility to access certain information from national Financial Intelligence Units (FIUs) – including data on financial transactions – and also improves the information exchange between FIUs as well as their access to law enforcement information necessary for the performance of their tasks³¹.

²⁵ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574956040076&uri=CELEX:32017L1371>.

²⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 amended by Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ L 437, 28.12.2020, p. 49–73) <http://data.europa.eu/eli/reg/2020/2223/oj>.

²⁷ Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (1999/352/EC, ECSC, Euratom) (OJ L 136 31.5.1999, p. 20), amended by Commission Decisions 2013/478/EU, (EU) 2015/512 and (EU) 2015/2418, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01999D0352-20160101>.

²⁸ See Europa website, Anti-money laundering and countering the financing of terrorism https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-countering-financing-terrorism_en.

²⁹ See Europa website, Public Procurement, https://ec.europa.eu/info/policies/public-procurement_en.

³⁰ 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 or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.

³¹ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122–137) <http://data.europa.eu/eli/dir/2019/1153/oj>.

- Directive (EU) 2018/1673 sets minimum rules on the criminalisation of money laundering and sets out that corruption must be a predicate offence to money laundering.
- In the field of asset recovery, the main EU instruments are Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime³², Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices, Council Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property³³ and Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders³⁴.
- Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law ('the Whistleblowing Directive')³⁵ was adopted in 2019.
- Directive (EU) 2010/24 provides for mutual assistance for the recovery of claims relating to taxes, duties and other measures³⁶. Directive (EU) 2011/16 in Administrative Cooperation in direct taxation provides for mutual assistance through exchange of information requests between Member States to combat tax evasion and tax avoidance, as well as measures to enhance corporate tax transparency. Additionally, Member States' tax authorities have full access to beneficial ownership registers established under EU Anti-Money Laundering Framework³⁷.

In its external relations, the Union is a promoter of the Convention. In some cases, the EU has adopted targeted international actions that promote the fight against corruption. For example, in July 2021, the Council adopted a framework for targeted restrictive measures, that provides for the possibility of imposing sanctions against persons and entities who are responsible for undermining democracy or the rule of law in a specific jurisdiction through, inter alia, 'serious financial misconduct, concerning public funds, insofar as the acts concerned are covered by the United Nations Convention Against Corruption, and the unauthorised export of capital'³⁸.

³² Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39–50), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>.

³³ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ L 68, 15.3.2005, p. 49–51), http://data.europa.eu/eli/dec_framw/2005/212/oj.

³⁴ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103–105), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007D0845>.

³⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, PE/78/2019/REV/1 (OJ L 305, 26.11.2019, p. 17–56), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1937>.

³⁶ Council Directive 2010/24/EU of the European Parliament and of the Council of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

³⁷ Council Directive 2011/16/EU of the European Parliament and of the Council of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

³⁸ European Council, Press Release, Lebanon : EU adopts a framework for targeted sanctions, 30 July 2021, <https://www.consilium.europa.eu/en/press/press-releases/2021/07/30/lebanon-eu-adopts-a-framework-for->

2.1 EU policy tools and instruments in the fight against corruption

The Rule of Law Report (see section 1.3 above) aims at promoting the rule of law across the Union, stimulating a constructive debate on relevant challenges. The Commission has so far adopted two Rule of Law Reports, in September 2020³⁹ and July 2021⁴⁰. The reports monitor significant developments, both positive and negative, in all 27 Member States regarding four pillars: national justice systems, the anti-corruption framework, media pluralism and media freedom and other institutional issues linked to checks and balances. Under the anti-corruption pillar, the Report examines the different stages of national action essential to tackle corruption: anti-corruption strategies, the capacity of the criminal justice system to fight corruption, and the measures set up by Member States to prevent corruption. As announced by Commission President von der Leyen in the 2021 State of the Union address⁴¹, from 2022 onwards the Rule of Law Reports will address specific recommendations to Member States.

The Commission has also dedicated country specific recommendations in the **European Semester**⁴², as well dedicated milestones on anti-corruption in the **Recovery and Resilience Plans**⁴³.

Serious organised crime is often committed across borders. This makes it necessary to cooperate and have mutual recognition of decisions across the EU. EU criminal law helps to prevent and punish serious offences by setting minimum rules on the definitions and sanctions of crime. In accordance with the **EU Strategy to tackle Organised Crime**⁴⁴ adopted in April 2021 in order to step up efforts at EU level, the Commission will assess the existing EU anti-corruption rules, to assess whether they are up to date with evolving criminal practices and to ensure that they cover all relevant corruption-related offences.

targeted-sanctions/. See also Council Decision (CFSP) 2021/1277 of 30 July 2021 concerning restrictive measures in view of the situation in Lebanon and Council Regulation (EU) 2021/1275 of 30 July 2021 concerning restrictive measures in view of the situation in Lebanon.

³⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report, The rule of law situation in the European Union, COM(2020) 580 final.

⁴⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule of Law Report, The rule of law situation in the European Union, COM (2021) 700 final.

⁴¹ European Commission, State of the Union Address 2021, https://ec.europa.eu/info/sites/default/files/soteu_2021_address_en_0.pdf.

⁴² See Europa website, The European Semester, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en.

⁴³ See Europa website, The Recovery and Resilience Facility, https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en.

⁴⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025, COM(2021)170 final, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/pdf/14042021_eu_strategy_to_tackle_organised_crime_2021-2025_com-2021-170-1_en.pdf.

All EU Member States have designated a **national contact point to facilitate information exchange on anti-corruption policy**. Together with the anti-corruption experience-sharing programme launched by the Commission in 2015, these efforts have encouraged national authorities to better implement laws and policies against corruption. There is also a **role of the competent authorities of the Member States** (police, prosecutors, criminal courts): To combat crime efficiently, the criminal justice authorities of EU Member States work together. Ultimately, in a common European area of freedom, security and justice, national law enforcement authorities and judiciaries trust and rely on each other. This increases individuals' confidence in the fairness of proceedings, knowing that their rights are protected when they have to appear in court in another country, or if they fall victim to a crime.

The EU also supports the fight against fraud and corruption in its Member States through **various financial instruments**. The Structural Reform Support Programme⁴⁵ and the Technical Support Instrument⁴⁶ provide tailor-made support to EU Member States to design and implement structural reforms, *inter alia* in the area of fight against fraud, corruption and combating money laundering. Support was provided for the design and implementation of anti-corruption strategies and action plans, monitoring and evaluation of progress in the fight against corruption, review of integrity and anti-corruption legislation, setting up instruments for an improved prevention and detection of corruption.

In addition, under the **Internal Security Fund – Police** (2014 – 2020)⁴⁷, with a total of 11 million euros the Commission supported 24 trans-national projects in the area of prevention of and fight against corruption, involving 150 entities from 23 EU Member States and 5 third countries. The support was in particular provided for preventing corruption in high risk sectors, assessing the impact of implemented anti-corruption measures, enhancing the effectiveness of corruption prosecution, particularly as regards complex cross-border cases, enhancing the crosslinks with the risks of organised crime infiltration in the public systems with corruption as enabling element and implementing best practices across the EU.

The **Internal Security Fund (ISF) 2021-2027** funds projects in the area of the fight against corruption. The first Work Programme of ISF includes a dedicated call for proposals on projects covering a wide variety of key policy priorities including preventing corruption in risks sectors, assessing the impact of implemented anti-corruption measures. Enhancing crosslinks with organised crime infiltration in the public system, enhancing the effectiveness

⁴⁵ See Europa website, Structural Reform Support, https://ec.europa.eu/info/departments/structural-reform-support_en.

⁴⁶ See Europa website, Technical Support Instrument (TSI), https://ec.europa.eu/info/overview-funding-programmes/technical-support-instrument-tsi_en.

⁴⁷ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93–111), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0513>.

of corruption prosecution and implementing best practices across the EU⁴⁸. The first call for proposals under this fund was published during 2022 and has a budget up to 2 million euro⁴⁹.

Since January 2016, the European Commission has set up **the European Early Detection and Exclusion System (EDES)** aiming at protecting the EU's financial interests in relation to fraud and corruption prevention, detection, deterrence and sanctioning. The System allows the early detection of fraudulent or unreliable economic operators (recipient or applicants to EU funds), their possible blacklisting (exclusion) by banning them from obtaining EU funds and the imposition of financial penalties. In the most severe cases, the EDES also allows the publication of the name of the economic operator and the description of the corresponding sanctions.⁵⁰

For the purpose of a centralised analysis of the exclusion cases, financial penalties and related publication, an independent Panel (hereinafter the EDES Panel) assisted by a Secretariat hosted in the European Commission issues recommendations on cases referred to it by an authorising officer of an Union institution, Union body, European office or body entrusted with the implementation of Common Foreign and Security Policy (CFSP) actions (Article 143(1) of the Regulation (EU, Euratom) 2018/1046)⁵¹. The Panel is unique in the sense that its work to establish facts and findings and their preliminary classification in law enables the EU institutions, offices, bodies and agencies to exclude persons or entities in the absence of a final judgement or a final administrative decision and to thus protect the EU's financial interests at an early stage.

While the system applies to several wrong behaviours (grave professional misconduct, irregularities, serious breach of contracts, shell companies), it specifically applies, to the persons or entities applicants or recipients of EU funds falling under the following activities which are analysed under this document⁵²:

- (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law⁵³ and Article

⁴⁸ See Europa website, Internal Security Fund 2021-2027, https://ec.europa.eu/home-affairs/funding/internal-security-funds/internal-security-fund-2021-2027_en.

⁴⁹ See Europa website, CORRUPT call, https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/isf/wp-call/2021-2022/call-fiche_isf_2022-tf1-ag-corrupt_en.pdf.

⁵⁰ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 of 30.7.2018, p. 1), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32018R1046>.

⁵¹ The Panel is composed of a high-level independent chair, two representatives of the Commission as owner of the system, one representative of the EU authorising officer referring the case.

⁵² Article 136 of Regulation (EU, Euratom) 2018/1046).

⁵³ 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, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.198.01.0029.01.ENG.

- 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995⁵⁴;
- (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997⁵⁵, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA⁵⁶, or corruption as defined in other applicable laws;
 - (iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA⁵⁷;
 - (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849⁵⁸;

It is important to highlight that, while the system retains the possibility to assess the remedial measures taken by the person or entity to demonstrate its reliability, prevent it from being excluded, this prerogative is not applicable in the cases of the most severe criminal activities, like corruption.

Since January 2021, the European Commission also has a new tool to protect the Union budget against breaches of the principles of the rule of law that may contribute to fight corruption. Pursuant to Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget,⁵⁹ **the Commission may propose to the Council to impose budgetary measures on Member States where breaches of the principles of the rule of law in that Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests**

⁵⁴ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

⁵⁵ Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 1–11), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1997.195.01.0001.01.ENG.

⁵⁶ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

⁵⁷ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42–45), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2008.300.01.0042.01.ENG.

⁵⁸ 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 or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.141.01.0073.01.EN.

⁵⁹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, p. 1–10), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.LI.2020.433.01.0001.01.ENG>.

of the Union in a sufficiently direct way. For the purposes of that Regulation, the breaches must concern, among the other things, the proper functioning of investigation and public prosecution services in relation to the investigation and prosecution of fraud, including tax fraud, corruption, as well as the prevention and sanctioning of fraud, including tax fraud, and corruption. The Commission can trigger the procedure set by the said Regulation unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively.

In 2022, the European Parliament has adopted a resolution welcoming the EU Global Human Rights Sanctions Regime⁶⁰, while calling for corruption to be included as a punishable offence. In that resolution, the European Parliament calls for a comprehensive global anti-corruption strategy with tools ranging from more effective sanctions to a thorough monitoring of authoritarian countries' grand investment projects and recognises the need to support civil society, whistleblowers and journalists.

2.2 The role of the European Union Institutions, Agencies and bodies in the fight against corruption

At **Union level, the European Anti-Fraud Office (OLAF)**, established by the European Commission in 1999⁶¹, conducts independent administrative investigations into fraud, corruption and any other illegal activity involving EU funds or revenue, to ensure that EU taxpayers' money is spent on projects that can help create jobs and promote growth in Europe. The Office also investigates serious misconduct by EU staff and members of the EU institutions, bodies, offices and agencies, thus helping to strengthen public trust in them. Finally, OLAF develops EU anti-fraud policies in its capacity as a Commission service. Regulation (EU, Euratom) No 883/2013 sets out OLAF's investigative remit⁶².

Since its establishment, OLAF has concluded over 2200 (administrative) investigations and recommended the recovery of over €7.5 billion to the EU budget. In addition, OLAF has issued over 3000 recommendations for judicial, financial, disciplinary and administrative action to be taken by the competent authorities of the Member States and the EU. As a result of OLAF's investigative work, sums unduly spent were gradually returned to the EU budget,

⁶⁰ European Parliament recommendation of 17 February 2022 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning corruption and human rights (2021/2066(INI)).

⁶¹ 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802) (OJ L 136, 31.5.1999, p. 20–22), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31999D0352>.

⁶² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

criminals faced prosecution before national courts and better anti-fraud safeguards were put in place throughout Europe.

The **European Public Prosecutor's Office (EPPO)** was established by Regulation 2017/1939⁶³ and became operational in June 2021. It is the first EU body entitled to conduct criminal investigations and to prosecute and bring to judgment crimes of fraud and corruption affecting the EU's financial interests. 22 out of 27 EU Member States participate in the EPPO while Denmark, Ireland, Hungary, Poland and Sweden do not currently participate (apart from Denmark, the others could decide to join the EPPO). Before the EPPO became operational, only national authorities could investigate and prosecute fraud against the EU budget.

The EPPO, which operates as a single Office, has a multilevel structure⁶⁴, which includes a Central Office (the College, the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director, the Chief European Prosecutor, the European Prosecutors forming the EPPO College, and the Permanent Chambers) and a decentralised level composed of the European Delegated Prosecutors (EDPs) that operate in each of the Member States participating in the EPPO. The Central Office and the European Delegated Prosecutors are both assisted by the staff of the EPPO.. In cross-border cases, the European Delegated Prosecutors work together in accordance with the rules provided in the EPPO Regulation. The EPPO is independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks (Article 6 of the EPPO Regulation).

The European Union Agency for Criminal Justice Cooperation (Eurojust)⁶⁵ is governed by its College comprising a representative of each Member State and of the Commission. The main task of Eurojust is to stimulate and improve the coordination of cross-border investigations and prosecutions and the cooperation between the competent authorities of the Member States in relation to serious cross-border crime, including corruption, fraud, money

⁶³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

⁶⁴ See Europa website, European Public Prosecutor's Office, Structure and Characteristics <https://www.epo.europa.eu/en/structure-and-characteristics>.

⁶⁵ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

laundering or organised crime. Since the entry into operations of the EPPO, Eurojust has maintained its competence for crimes affecting the EU's financial interests whenever the EPPO is not competent (e.g. in relation to Member States that do not participate in the EPPO) or when, despite the competence of EPPO, the latter decides not to exercise its competence.

Eurojust is actively involved in supporting judicial cooperation related to the specific field of corruption. Eurojust has one College Team specifically dedicated to financial and economic crime. Its mission is to gather and offer expertise in cases involving offences such as corruption, money laundering, fraud and tax fraud, as well as matters such as asset recovery. Eurojust moreover has a broad experience in supporting the competent national authorities in fighting corruption. In the period between 1 January 2016 and 31 July 2021, 467 corruption cases were registered at Eurojust. Eurojust has provided support in these cases by organising 79 coordination meetings, assisting in setting up 11 Joint Investigation Teams (JITs), and supporting joint action days.

The European Union Agency for Law Enforcement Cooperation (Europol)⁶⁶ is the EU's law enforcement agency, whose remit is to assist law enforcement authorities in EU member countries. Europol offers a wide range of services, including support for law enforcement operations on the ground, as a hub for information on criminal activities and as a centre of law enforcement expertise. Europol also works closely with a number of EU institutions, bodies, offices and agencies as well as with non-EU partner countries and international organisations. Europol's headquarters host a community of 240 Liaison Officers from EU Member States and over 50 partner countries. Europol employs some 100 criminal analysts, who use state-of-the-art tools to support national agencies' investigations on a daily basis. To give national partners a deeper insight into the criminal problems they face, Europol produces regular long-term analyses of crime and terrorism.

Europol's daily business is based on its strategy. Its specific objectives are set out in the Europol annual work programme⁶⁷. In 2010, the EU established a multi-annual policy cycle to ensure effective cooperation between national law enforcement agencies and other bodies (EU and elsewhere) on serious international and organised crime. This cooperation is based on Europol's Serious and Organised Crime Threat Assessment (SOCTA)⁶⁸, who get 24/7 operational support. Europol is designed to operate in partnership with law enforcement agencies, government departments and the private sector. EU Member States are supported in their investigations, operational activities and projects to tackle criminal threats.

⁶⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

⁶⁷ See Europa website, Europol, Work Programmes, <https://www.europol.europa.eu/publications-documents/work-programmes>.

⁶⁸ See Europa website, Europol, EU Policy Cycle EMPACT, <https://www.europol.europa.eu/content/eu-policy-cycle-empact>.

The European Union Agency for Law Enforcement Training (CEPOL)⁶⁹ is an agency of the European Union dedicated to develop, implement and coordinate training for law enforcement officials. CEPOL contributes to a safer Europe by facilitating cooperation and knowledge sharing among law enforcement officials of the EU Member States and to some extent, from third countries, on issues stemming from EU priorities in the field of security, in particular, from the EU Policy Cycle on serious and organised crime.

CEPOL organises trainings such as courses on ‘Investigating and preventing corruption’⁷⁰. CEPOL has been active in the provision of anti-corruption training since its establishment in line with the legal mandate and the mission of the agency. The relevant training activities target this multifaceted phenomenon in the principle of inter-disciplinarity, concentrating on practical law enforcement solutions, collecting experience from wide range of stakeholders from police, customs, gendarmerie and other law enforcement originations to the judiciary, private and non-governmental sector.

The **Investigation and Disciplinary Office of the Commission (IDOC)** was set up in 2002⁷¹ to enforce ethics and integrity in the Commission, ensuring compliance with legal obligations incumbent on Commission staff members. To fulfil its mission, IDOC investigates facts which may constitute breaches of the Staff Regulations or the Conditions of Employment of Other Servants and carries out disciplinary procedures for the competent Appointing Authority.

The Disciplinary Board is consulted in cases of serious misconduct meriting a sanction more severe than a written warning or a reprimand. IDOC represents the Commission as ‘Appointing Authority’ before the Disciplinary Board. There is no ‘tariff’ of sanctions for specific wrongdoing as there is in criminal law. The Commission may impose one of the sanctions provided for by the Staff Regulations on its staff members. However, the severity of the sanction must be commensurate with the seriousness of the misconduct. After having heard the staff member, the Appointing Authority decides upon the disciplinary sanction taking into account all the circumstances of the case. IDOC drafts the sanction decision and consults the Commission’s Legal Service accordingly. In addition, IDOC carries out an outreach program on prevention, providing training and information to the staff members on rights and obligations under the Staff Regulations. In other EU institutions, bodies or

⁶⁹ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA (OJ L 319, 4.12.2015, p. 1–20), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2219>.

⁷⁰ See Europa website, CEPOL, Investigating and preventing Corruption, <https://www.cepola.europa.eu/education-training/what-we-teach/onsite-activities/802021-investigating-preventing-corruption>.

⁷¹ Commission Decision C(2002) 540 of 19 February 2002 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings, recently replaced by Commission Decision C (2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings, [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2019\)4231&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2019)4231&lang=en).

agencies, the same functions are exercised by different services depending on their internal organisation.

The **European Ombudsman**, established by the Maastricht Treaty in 1992⁷², is an independent and impartial body that holds the EU's institutions and agencies to account, and promotes good administration. The ombudsman is required to report the outcome of its inquiries related to whistleblowing and conflicts of interest with the Union's institutions, bodies, offices or agencies.

More generally, all **EU decentralised agencies and bodies** created pursuant to the provisions of the EU Treaties, are required by EU law⁷³ to adopt rules on the prevention and management of conflicts of interest. In addition, they have the obligation to prepare, every year, a Single Programming Document, which shall include, amongst others, a strategy for the organisational management and internal control systems including an anti-fraud strategy and an indication of measures to prevent recurrence of cases of conflict of interest⁷⁴. Furthermore, EU decentralised agencies and bodies have to inform the Commission without delay of cases of presumed fraud and other financial irregularities, of any completed or ongoing investigations by the European Public Prosecutor's Office or the European Anti-Fraud Office (OLAF), and of any audits or controls by the Court of Auditors or the Internal Audit Service, without endangering the confidentiality of the investigations⁷⁵.

⁷² Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (OJ L 253, 16.7.2021, p. 1–10), <http://data.europa.eu/eli/reg/2021/1163/oj>

⁷³ Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty, (OJ L 122, 10.5.2019, p. 1–38), Article 42, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0715>.

⁷⁴ Article 32 of Commission Delegated Regulation (EU) 2019/715.

⁷⁵ Article 86 of Commission Delegated Regulation (EU) 2019/715.

3 United Nations Convention Against Corruption (UNCAC) Chapter III. Criminalization and law enforcement

3.1 Article 15 – Bribery of national public officials

Concerning Article 15 on Bribery of national public officials⁷⁶, the EU has adopted and is implementing relevant legislation, in particular, the 1997 Convention on the fight against corruption involving EU officials as well as the 2017 Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, which provide for minimum rules by obliging the participating Member States to criminalise active and passive corruption affecting the Union's financial interests. The latter Directive defines passive corruption as 'the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests'⁷⁷. For the purposes of the same Directive, active corruption is instead the 'action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests'⁷⁸.

In addition to the information provided above (in section 2.2), **the European Anti-Fraud Office (OLAF)** has the power to conduct administrative investigations within the EU institutions and in the Member States for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the EU (Article 1 of Regulation (EU, Euratom) No 883/2013). Thus, OLAF can investigate passive and active corruption allegedly committed by EU officials or national public officials, if the EU's financial interests are affected. OLAF is also competent to conduct internal administrative investigations relating to serious misconduct, including corruption, by EU staff and members of EU institutions, bodies, offices and agencies (Article 4 read in conjunction with Article 1(4) of Regulation (EU, Euratom) No 883/2013). Based on its findings, OLAF can send recommendations for a judicial follow up to national prosecutors and for disciplinary follow up to the EU institutions, bodies, offices and agencies.

⁷⁶ Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

⁷⁷ Article 4(2)a of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law ..

⁷⁸ Article 4(2)b of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law ..

The **European Public Prosecutor's Office (EPPO)** is competent to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, the criminal offence of (active and passive) corruption as long as it damages or is likely to damage the Union's financial interests, as per the definition provided for by the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. Between 1 June and 31 December 2021, the EPPO investigated 40 cases of corruption⁷⁹. When any such criminal conduct as well as any other conduct in respect of which the EPPO could exercise its competence comes to light during an investigation conducted by OLAF, the latter is obliged to report this to the EPPO. When the EPPO consequently decides to open an investigation, OLAF shall not continue its investigation into the same facts (Article 12c Regulation (EU, Euratom) No 883/2013). However, with regard to EU Member States that are not participating in the EPPO, OLAF remains the competent Office to conduct administrative investigations relating to fraud, corruption or any other illegal activity affecting the financial interests of the EU.

Corruption is also one of the criminal offences that, when involving two or more Member States, can allow Eurojust and Europol to exercise their powers to support and coordinate cross-border investigations and prosecutions carried out by Member States' authorities. Moreover, whenever a cross-border aspect is involved with regard to investigations and prosecutions linked to corruption, several EU instruments of mutual recognition of judgments and judicial decisions come into play with a view to ensure judicial cooperation among the Member States (see section 4).

The EU Staff Regulations set out clearly the obligations of EU officials with regard to the prevention of corruption. According to Article 11 of the EU Staff Regulations, EU officials need to carry out their duties objectively and impartially and they shall not accept from anyone any honour, decoration, favour, gift or payment of any kind whatever. Moreover, before an EU official is recruited, it is examined whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. Additionally, Article 11a of the EU Staff Regulations stipulates that an EU official shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests. Moreover, an EU official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties. Furthermore, Article 22a of the EU Staff Regulations requires immediate reporting by EU officials of instances of fraud or corruption detrimental to the interests of the Union.

⁷⁹ EPPO Annual Report 2021, p. 13. <https://www.eppo.europa.eu/en/documents>.

The **ECB adopts its own Conditions of Employment and Staff Rules**, which include a dedicated Ethics Framework for its members of staff. The ECB Staff Rules are overall similar in content to the Staff Regulations, but not identical, inter alia taking into account the specificities of the ECB as central bank and banking supervisory authority. A dedicated function, the Compliance & Governance Office (CGO), with a direct reporting line to the ECB President, advises on the interpretation of and monitors the proper implementation of the ethics and integrity rules, conducts fact-finding into potential breaches of these rules for possible submission to the disciplinary authority. Comprehensive rules aiming to promote integrity, objectivity and impartiality and to ensure independence of staff in the performance of their duties are contained in the ECB's Ethics Framework. In particular Article 0.2 on independence of staff, includes an obligation to (i) carry out duties impartially and objectively, (ii) avoid any conflicts of interest; and (iii) refrain from accepting gifts, hospitality or any other form of personal benefit connected in any way with their employment with the ECB. In the same vein, an even stricter set of rules is applicable to staff involved in procurement (Article 0.2.3) to ensure the proper conduct of procurement procedures by maintaining objectivity, neutrality and fairness, and ensuring the transparency as well as in banking supervision.

The ECB high-level officials, such as the members of the Executive Board, the Governing and the members of the Supervisory Board, are subject to the Single Code of Conduct that sets out the requirements for an impartial and ethical conduct - a key element of the ECB's credibility and vital to securing the trust of European citizens; the Code puts specific emphasis on conflicts of interest, relations with interest groups, private activities, gifts and hospitality, private financial transactions and post-employment matters. An independent Ethics Committee performs a role comparable to that of the CGO. The opinions issued to high-level officials on ethics and conduct matters are made public.

The European Commission requires high standards of ethics and integrity from its staff. The **Investigation and Disciplinary Office of the Commission (IDOC)** plays a key role in ethics enforcement by conducting administrative inquiries, disciplinary proceedings, suspension proceedings and proceedings related to waivers of immunity of staff (see above, section 2.2). Similar functions are performed by different services in each EU institutions, body, office or agency depending on their internal organisation.

It is important to stress that both Members and staff of the EU institutions, bodies, offices and agencies are subject to the national criminal law of the competent Member States, i.e. acts of bribery, corruption and related offences committed by them are prosecuted under the national law of the EU Member State concerned. Although, in the interest of the Union, members and staff are immune from legal proceedings in respect of acts performed by them in their official capacity, this immunity can be waived by the respective EU institution wherever this waiver is not contrary to the interests of the Union (Articles 8, 9, 11 and 17 of the Protocol on Immunities and Privileges of the European Union). Both the waiver and a refusal for a waiver are subject to judicial control by the Court of Justice of the EU. As a result, Members and

staff are prosecuted for such offences under national law either by the EPPO or by the relevant national authorities.

To be noted that – as explained under section 1.1 - this self-assessment concerns how the EU is fulfilling the obligations arising from the UN Convention. Therefore it is considered that the situation of the officials of the EU Member States falls within the scope of the implementation review of UNCAC for each Member State.

Relevant EU legislation

- ***Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union***⁸⁰ - see Articles 1, 2, 3, 5 and 7.
- ***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***⁸¹ - see recitals (8), (13), (33) and Articles 4(2) and 4(4).
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***⁸² - see Articles 4, 22(1) and (3), 23 and 25(3).
- ***Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA***⁸³ - see in particular Article 3 and Annex I.
- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic***

⁸⁰ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 2–11, [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

⁸¹ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

⁸² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

⁸³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

*Community and the European Atomic Energy Community*⁸⁴ - see in particular Articles 11, 11a, 22a and 86.

- *Ethics Framework of the ECB, (2015/C 204/04)*⁸⁵
- *Code of Conduct for high-level European Central Bank Officials (2019/C 89/03)*⁸⁶
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*⁸⁷ - see in particular Articles 1, 3 and 4.

⁸⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

⁸⁵ See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620(01)&from=EN).

⁸⁶ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XB0308%2801%29>

⁸⁷ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

3.2 Article 16 - Bribery of foreign public officials and officials of public international organizations

Concerning Article 16 on bribery of foreign public officials and officials of public international organizations⁸⁸, the EU has adopted and is implementing relevant legislation. The same caveats as presented in Article 15 apply.

In particular, as with Article 15 UNCAC, both the 1997 Convention on the fight against corruption involving EU officials and the 2017 Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law criminalise active and passive corruption in various forms and oblige Member States to ensure that bribery and other forms of corruption constitute criminal offences under their national legislation. While the definition of passive and active corruption included in the Directive is reported in the section 3.1 above, here it is appropriate to add that, for the purpose of the same Directive, the notion of 'public official' – which is used in both definitions – covers European Union officials, officials of other Member States than the Member State required to criminalise corruption or of third countries⁸⁹. As for the competence of the EPPO, Eurojust and Europol on the matter, see the previous section. OLAF may as well be competent to conduct administrative investigations in the context of bribery of foreign public officials and officials of public international organizations, in accordance with its mandate, set out in Regulation (EU, Euratom) No 883/2013.

Relevant EU legislation

- *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*⁹⁰ - see Articles 1, 2, 3, 4, 5, 7 and 12 in particular.

⁸⁸ 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. 2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

⁸⁹ See Article 4(4) of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law.

⁹⁰ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 2–11, [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*⁹¹ - see recital (64) and Articles 4, 22(1) and (3), 23 and 25(3) in particular.
- *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*⁹² – see recital (10) and Article 4(2) and 4(4) .
- *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*⁹³ – see in particular Article 3 and Annex I.
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*⁹⁴ - see in particular Articles 1, 3 and 4.

⁹¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

⁹² 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

⁹³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

⁹⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

3.3 Article 17 - Embezzlement, misappropriation or other diversion of property by a public official

Concerning Article 17 on Embezzlement, misappropriation or other diversion of property by a public official⁹⁵, the EU has adopted and is implementing relevant legislation. In particular, the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law obliges Member States to ensure that misappropriation by public officials constitutes a criminal offence under their national legislation (Article 4(3)) and the EU Staff Regulations set-out clearly the rights and obligations of EU officials in this respect.

Article 4(3) of the Directive (EU) 2017/1331 on the fight against fraud to the Union's financial interests by means of criminal law obliges that 'Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence. For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.'

In this respect, Article 0.6 of the ECB's Ethics Framework, requires ECB staff to (i) refrain from using ECB resources for private purposes; and (ii) to take all reasonable and appropriate measures to limit costs, so that the available resources can be used most efficiently.

The EPPO is competent to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, the criminal offence of misappropriation as long as it damages or is likely to damage the Union's financial interests, as per the definition provided for by the Directive on the fight against fraud to the Union's financial interests by means of criminal law. Between 1 June and 31 December 2021, the EPPO investigated 34 cases of misappropriation⁹⁶.

Furthermore, OLAF may be competent to investigate instances of embezzlement, misappropriation or other diversion of property by a public official in accordance with its mandate (Regulation (EU, Euratom) No 883/2013).

Relevant EU legislation

⁹⁵ Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

⁹⁶ EPPO Annual Report 2021, p. 13. <https://www.epo.europa.eu/en/documents>.

- ***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***⁹⁷ - see recitals (9), (10) and Article 4(3)
- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community***⁹⁸ - see in particular Article 11(a) .
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***⁹⁹ - see in particular Articles 4, 22(1) and (3), 23 and 25(3).
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999***¹⁰⁰ - see in particular Articles 1, 3 and 4.
- ***Ethics Framework of the ECB, (2015/C 204/04)***¹⁰¹ – see in particular Article 0.6
-

⁹⁷ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

⁹⁸ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

⁹⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹⁰⁰ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹⁰¹ The Ethics Framework of the ECB (OJ C 204 p. 3-16), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620(01)&from=EN).

3.4 Article 18 - Trading in influence

Concerning Article 18 on Trading in influence¹⁰², the EU has adopted and is implementing relevant legislation.

In particular, the EU Staff Regulations clearly set-out the rights and obligations of EU officials in this respect. Notably, according to Article 11 of the Staff Regulations ‘an official shall carry his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take any instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and keeping with his duty of loyalty to the Institution’. Article 11a of the Staff Regulations stipulates that ‘an official shall not, in the performance of his duties [...] deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests’.

In addition to the extensive provisions mentioned in section 3.1 and given the closeness of the ECB officials to financial markets, the ECB Ethics Framework in relation to independence and impartiality of staff contains a comprehensive and strict set of rules on private financial transactions (Article 0.4 et seq.). Such rules ensure that ECB staff employs utmost caution and care when making private financial transactions for their own account or for the account of a third party to safeguard the reputation and credibility of the ECB, as well as public confidence in the integrity and impartiality of its staff. The rules include prohibition, ex ante or ex post reporting of certain transactions, as well as transactions that require prior authorisation. Furthermore, a strict compliance monitoring framework is in place, requiring staff to declare their accounts and providing for the possibility of conducting regular and ad hoc compliance checks. For high-level ECB officials these rules are complimented by the obligation to publish Declaration of Interests, which inter alia list all their financial interests (irrespective of the actual amount).

In addition, the Regulation (EU, Euratom) 2018/1046¹⁰³ provides for liability for illegal activity, fraud or corruption. Furthermore, financial actors involved in the implementation of the EU budget may incur in liability under criminal law as provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the

¹⁰² Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

¹⁰³ See Europa website, Regulation (EU, Euratom) 2018/1046, https://ec.europa.eu/info/publications/financial-regulation_en.

Union and the fight against corruption involving Union officials or officials of Member States.

OLAF and the EPPO may be competent to investigate instances of trading in influence in accordance with their mandate. In particular, OLAF has the power to investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations (Article 1(4) and 4 of Regulation (EU, Euratom) No 883/2013)). The EPPO has the power to investigate, prosecute and bring to judgment such conduct insofar as it constitutes a criminal offence and is inextricably linked to a criminal offence as defined in Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law.

Relevant EU legislation

- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community***¹⁰⁴ - in particular articles 11(a).
- ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union***¹⁰⁵ - in particular Article 91.
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999***¹⁰⁶ – see in particular Articles 1(4) and 4.

¹⁰⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

¹⁰⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1046>.

¹⁰⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’)***¹⁰⁷ - see Articles 4, 22(1) and (3), 23 and 25(3) in particular.
- ***Ethics Framework of the ECB, (2015/C 204/04)***¹⁰⁸ – see in particular Article 0.6
- ***Code of Conduct for high-level European Central Bank Officials***¹⁰⁹

¹⁰⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹⁰⁸ The Ethics Framework of the ECB (OJ C 204 p. 3-16), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620(01)&from=EN).

¹⁰⁹ Code of Conduct for high-level European Central Bank Officials, (OJ C 89 p. 3-9), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XB0308\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XB0308(01)&from=EN)

3.5 Article 19 - Abuse of Functions

Concerning Article 19 on Abuse of Functions¹¹⁰, the EU has adopted and is implementing relevant legislation. In particular, the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law obliges Member States to ensure that abuse of functions by public officials constitutes a criminal offence under their national legislation (Article 4(2)(a)). The EU Staff Regulations also set out clearly the rights and obligations of EU officials in this respect. In addition, Regulation (EU, Euratom) 2018/1046¹¹¹ provides for liability for illegal activity, fraud or corruption, without prejudice to any liability under criminal law, which financial actors involved in EU budget implementation may incur as provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the Union and the fight against corruption involving Union officials or officials of Member States.

Within the limits set out in section 3.4 above, OLAF and the EPPO may be competent to investigate instances of abuse of functions in accordance with their mandate.

The EU Staff Regulations also lay down specific obligations for EU officials. According to Article 11 of the EU Staff Regulations, EU officials need to carry out their duties objectively and impartially and they shall not accept from anyone any honour, decoration, favour, gift or payment of any kind whatever. Moreover, before an EU official is recruited, it is examined whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. Additionally, Article 11a of the EU Staff Regulations stipulates that an EU official shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests. Moreover, an EU official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.

Relevant EU legislation

- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the***

¹¹⁰ Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

¹¹¹ Article 91 of Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union (FR) (OJ L193/2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046>.

European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999¹¹² - see in particular Articles 1, 3 and 4.

- ***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***¹¹³ - see in particular Article 4(2)(a).
- ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union***¹¹⁴ - in particular Article 91.
- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community***¹¹⁵ - in particular Articles 11, 11a and 12 and Annex IX.

¹¹² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹¹³ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹¹⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046>.

¹¹⁵ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

3.6 Article 20 - Illicit Enrichment

Concerning Article 20 on Illicit Enrichment¹¹⁶, the EU has adopted and is implementing relevant legislation. In particular, the EU directive on freezing and confiscation, allows confiscation possibilities in the framework of illicit enrichment. Standard, value, and third-party confiscation measures exist for people that were convicted of a criminal offence and where it is established that the assets are proceeds of criminal activities, including for public officials on the basis of Article 3 (scope, covering crimes stemming from Article K.3(2)(c) of the convention against corruption involving officials – Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union). Non-conviction based confiscation measures are also available in cases of illness and absconding of the defendant. Extended confiscation measures are available, including instances of unexplained wealth, on the basis of Article 5 of the Directive.

Moreover, within the limits set out in section 3.4 above, OLAF and the EPPO are competent to investigate such instances of illicit enrichment committed by EU staff and Members of EU institutions.

The Regulation (EU, Euratom) 2018/1046 provides for liability for illegal activity, fraud or corruption, without prejudice to any liability under criminal law, which financial actors involved in EU budget implementation may incur as provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the Union and the fight against corruption involving Union officials or officials of Member States.

In addition, the EU Staff Regulations set-out clearly the rights and obligations of EU officials in this respect. Article 11 of the Staff Regulations requires that staff members carry out their duties loyally and impartially and having solely the interests of the Union in mind. This is also reflected in the ECB's Conditions of Employment which require staff *inter alia* to act with loyalty to the Union and the ECB.

Article 12 of the Staff Regulations requires staff members to refrain from any action or behaviour which might reflect adversely upon his position. Based on these provisions, the Appointing Authority assesses the behaviour of the staff members, whenever allegations of abuse of function come to its attention.

¹¹⁶ Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Relevant EU legislation

- ***Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union***¹¹⁷ - in particular Article 3 and Article 5 (indirectly)
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999***¹¹⁸ - see in particular Articles 1(4) and 4.
- ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union***¹¹⁹ - in particular Article 91
- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community***¹²⁰ - in particular Articles 11 and 12
- ***Conditions of Employment for Staff of the European Central Bank***¹²¹ - in particular Article 3(1)
-

¹¹⁷ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39–50), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>.

¹¹⁸ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹¹⁹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1046>.

¹²⁰ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

¹²¹ Conditions of Employment for Staff of the European Central Bank, https://www.ecb.europa.eu/careers/pdf/conditions_of_employment.pdf

3.7 Article 21 - Bribery in the private sector

Concerning Article 21 on Bribery in the private sector¹²², the EU has adopted and is implementing relevant legislation. In particular, the 2003 Council framework decision on combating corruption in the private sector sets out a specific legal framework. In addition, the 1997 Convention on the fight against corruption involving officials obliges Member States to take the necessary measures that allow heads of businesses to be declared criminally liable, (Article 6) while the EU has also set-up the EDES in full system to screen (and potentially disqualify) businesses applying for EU funds (referred to under point 2). If the financial interests of the EU are affected by bribery in the private sector, the European Anti-Fraud Office (OLAF) has the power to conduct an administrative investigation in this respect.

Relevant EU legislation

- *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector*¹²³.
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*¹²⁴ - see in particular Articles 1 and 3.
- *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*¹²⁵ - in particular Article 6.

¹²² Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

¹²³ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

¹²⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹²⁵ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

For specific information on the Early Detection and Exclusion System (EDES), see section 2.1.

3.8 Article 22 - Embezzlement of property in the private sector

Concerning Article 22 on Embezzlement of property in the private sector¹²⁶, if the financial interests of the EU are affected by embezzlement of property in the private sector, OLAF has the power to conduct an administrative investigation in this respect. In addition, EPPO can, according to Article 22(3), also be competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of Article 22(1). This can include VAT fraud or other relevant criminal acts classified as embezzlement. Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law also criminalises VAT-related offences.

Also, the EU Staff Regulations set out clearly the rights and obligations of EU officials in this respect. Article 11 of the Staff Regulations requires that staff members carry out their duties loyally and impartially and having solely the interests of the Union in mind. Article 12 of the Staff Regulations requires staff members to refrain from any action or behaviour which might reflect adversely upon his position. Based on these provisions, the Appointing Authority assesses the behaviour of the staff members, whenever allegations of abuse of function come to its attention.

Relevant EU legislation

- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community***¹²⁷ - in particular articles 11 and 12.
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999***¹²⁸ - see in particular Articles 1 and 3.

¹²⁶ Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

¹²⁷ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

¹²⁸ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*¹²⁹ - in particular Articles 22(1) and (3)
- *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*¹³⁰

¹²⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹³⁰ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

3.9 Article 23 - Laundering of proceeds of crime

Concerning Article 23 on Laundering of proceeds of crime¹³¹, the EU has adopted and is implementing relevant legislation. Article 4(1) of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law states that Member States shall take the necessary measures to ensure that money laundering as described in Article 1(3) of Directive (EU) 2015/849 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence". Directive (EU) 2018/1673 on countering money laundering by criminal law) seeks to set a framework in the Member States' national criminal legislations on combating money laundering. The aim of this directive is to create a more unified standard of criminalising money laundering within the European Union, to close legal gaps and loopholes and thus to enable more efficient and swifter cross-border cooperation between competent authorities.

Directive (EU) 2018/1673 on combating money laundering by criminal law criminalises money laundering when it is committed intentionally and with the knowledge that the property was derived from criminal activity. In that context, this Directive does not distinguish between situations where property has been derived directly from criminal activity and situations where it has been derived indirectly from criminal activity, in line with the broad definition of 'proceeds' as laid down in Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

In each case, when considering whether the property is derived from criminal activity and whether the person knew that, the specific circumstances of the case should be taken into

¹³¹ 1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: 20 (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; (b) Subject to the basic concepts of its legal system: (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article. 2. For purposes of implementing or applying paragraph 1 of this article: (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences; (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention; (c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there; (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. Intention and knowledge can be inferred from objective, factual circumstances. As this Directive provides for minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering, Member States can adopt or maintain more stringent criminal law rules in that area. Member States should be able, for example, to provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence.

Finally, the EPPO is competent to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, the criminal offence of money laundering as defined by the Directive on the fight against fraud to the Union's financial interests by means of criminal law. Between 1 June and 31 December 2021, the EPPO investigated 47 cases of money laundering¹³². Money laundering is also one of the crimes that, when involves two or more Member States, can allow Eurojust and Europol to exercise their powers to support and coordinate cross-border investigations and prosecutions carried out by Member States' authorities.

In addition, in the context of the Anti-Money Laundering Action Plan adopted by the Council of the Council of the European Union¹³³, ECB Banking Supervision, in the exercise of its prudential supervisory tasks, can act upon money laundering and terrorist financing (ML/TF) concerns that may have an impact on an institution's safety and soundness. While supervision of financial institutions' compliance with AML/CFT requirements remains an exclusive competence of the national AML/CFT authorities, the Action Plan notes that a better exchange of information and collaboration between those authorities and prudential supervisors, especially across borders, is vital in order to achieve effective supervision. In this context, Concerns about money laundering or terrorist financing – especially concerns stemming from AML/CFT authorities' assessments of ML/TF risks associated with individual institutions – will be considered in the prudential supervisory processes¹³⁴.

To effectively address corruption and anti-money laundering via increased financial transparency for the ECB not only their Executive Board and Supervisory Board members but also the members of the Governing/General Councils have been included in the list (established by the European Commission) of politically exposed persons under the AMLD.

The EIB Group also maintains an Anti-Money Laundering and Combating the Financing of Terrorism Policy, which replaces the 2014 EIB Group Anti-Money Laundering and Combating the Financing of Terrorism Framework, was approved by the EIF/EIB Boards of

¹³² EPPO Annual Report 2021, p. 13. <https://www.eppo.europa.eu/en/documents>.

¹³³ See <https://www.consilium.europa.eu/en/press/press-releases/2018/12/04/money-laundering-council-adopts-conclusions-on-an-action-plan-for-enhanced-monitoring/>

¹³⁴ See <https://www.bankingsupervision.europa.eu/banking/tasks/anti-moneylaundering/html/index.en.html>

Directors on 21-22 July 2021. It contains the key anti-money laundering and combating financing of terrorism ('AML-CFT') principles applicable to EIB Group activities and is in line with the principles of relevant EU legislation and with best banking practices and applicable market standards.

Relevant EU legislation

- ***Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (CMLD)***¹³⁵ .
- ***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***¹³⁶ - in particular recital 7 and Article 4(1)
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***¹³⁷ - in particular Articles 4, 22(1) and (3), 23 and 25(3)
- ***Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA***¹³⁸ - in particular Article 3 and Annex I
- ***Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA***¹³⁹ - in particular Articles 4, 5 and 6.

¹³⁵ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018 p. 22–30), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1673>.

¹³⁶ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹³⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹³⁸ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

¹³⁹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>).

3.10 Article 24 - Concealment

Concerning Article 24 on Concealment¹⁴⁰, the EU has adopted and is implementing relevant legislation. In particular, the issue is regulated in Directive (EU) 2018/1673 on combating money laundering by criminal law by criminal law, as well as in the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests¹⁴¹. Eurojust is competent to exercise its powers with regard to cross-border criminal offences listed in Annex I to the 2018 Eurojust Regulation, including corruption and money laundering, but also to offences that are related to those criminal offences. The Eurojust Regulation clarifies that the notion of 'related criminal offences' includes the criminal offences committed in order to facilitate or commit the serious crimes listed in Annex I or to ensure the impunity of those committing the serious crimes listed in Annex I – both categories can encompass the offence of concealment as provided for by Article 24 UNCAC.

As far as the European Public Prosecutor's Office (EPPO) is concerned, the EPPO is competent with regard to money laundering as defined in the Directive on the fight against fraud to the Union's financial interests by means of criminal law. The EPPO is also competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of its competence, and this includes – as explained in recital 56 – any criminal offence that is 'ancillary in nature because it is merely instrumental to the offence affecting the financial interests of the Union, in particular where such other offence has been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as an offence strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or to *ensure the profit or product thereof*' (emphasis added). However, the EPPO can only exercise its competence vis-à-vis inextricably linked offences when the requirements set out in Article 25(3) of the EPPO Regulation are met. Between 1 June 2021 and 31 December 2021, the EPPO investigated 104 cases of inextricably linked offences, although no further details on the qualification of such offences are available¹⁴².

Relevant EU legislation

¹⁴⁰ Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

¹⁴¹ In particular, Title II, on criminal offences with regard to fraud affecting the union's financial interests, such as misappropriation.

¹⁴² EPPO Annual Report 2021, p.13, <https://www.epo.europa.eu/en/documents>.

- ***Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (CMLD)***¹⁴³
- ***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***¹⁴⁴ - in particular recital 7 and Articles 4(1) and 5
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***¹⁴⁵ - in particular Article 22(1) and 22(3) read in conjunction with Recital 56, and Recitals 54 and 55 and Article 25(3)
- ***Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA***¹⁴⁶ - in particular Article 3 (especially 3(4))

¹⁴³ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ L 284, 12.11.2018, p. 22–30, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1673>.

¹⁴⁴ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹⁴⁵ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹⁴⁶ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

3.11 Article 25 – Obstruction of Justice

Concerning Article 25 on Obstruction of Justice¹⁴⁷, the EU has rules in place in order to prevent and avoid obstructive conduct from different individuals and stakeholders. There are different tools that aim to detect, prevent, assess and sanction obstructive behaviours.

A number of cases of obstruction are sanctioned through the European Early Detection and Exclusion System (EDES) (see previously)¹⁴⁸.

According to Regulation (EU/Euratom) No 883/2013 (among others Article 3) at the request of OLAF, the competent authority of the Member State concerned shall provide the staff of the Office with the assistance needed in order to carry out their tasks effectively, as specified in the written authorisation. Where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the competent Commission services. Moreover, the case law of recognised that economic operators do not have a right to resist an on-the-spot check (See *Sigma Orionis v Commission*, case T-48/16¹⁴⁹, par. 95).

In accordance with Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget¹⁵⁰ (and the Guidelines from the Commission¹⁵¹) non-effective or untimely cooperation with the EPPO and OLAF constitutes a ground for action under that Regulation. Furthermore, Article 11 of the Staff Regulations specifically sets out the duty of loyalty of EU staff members. According to EU case law, the

¹⁴⁷ Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention; (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of State Parties to have legislation that protects other categories of public official.

¹⁴⁸ See for example Case 2017/08 and 2018/03, Commission Staff Working Document Early Detection and Exclusion System (EDES) - Panel referred to in Article 108 of the Financial Regulation Accompanying the document Report from the Commission to the European Parliament and the Council, 30th Annual Report on the Protection of the European Union's financial interests - Fight against fraud – 2018, https://ec.europa.eu/anti-fraud/system/files/2021-09/pif_2018_early_detection_and_exclusion_system_edes_en.pdf.

¹⁴⁹ Court of Justice of the European Union, Judgment of the General Court (First Chamber) of 3 May 2018, *Sigma Orionis SA v European Commission*, Case T-48/16.

¹⁵⁰ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I , 22.12.2020, p. 1–10), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32020R2092>.

¹⁵¹ Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget, https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/c_2022_1382_3_en_act_part1_v7.pdf.

duty of loyalty is infringed where, by a failure to cooperate in good faith, the official prevents the institution from verifying whether that official complies with his obligations under the Staff Regulations¹⁵². Concerning internal investigations, EU staff members have a duty to cooperate with OLAF. Lack of cooperation with OLAF could be seen as a breach of the duty of loyalty and cooperation and thus make them liable to disciplinary proceedings under Article 86 of the Staff Regulations.

Rules on obstruction are also applied by the EIB Group.

The EIB Group maintains an Anti-Fraud Policy¹⁵³¹⁵⁴. The EIB will not tolerate Prohibited Conduct (i.e. corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing) in its activities or operations.

More specifically, the EIB Group Anti-Fraud Policy indicates that ‘In pursuance of this policy, Prohibited Conduct includes corruption, fraud, coercion, collusion, theft at EIB Group premises, obstruction, misuse of EIB Group resources or assets, money laundering and financing of terrorism defined as follows: [...]

e. An obstructive practice is

(a) destroying, falsifying, altering or concealing of evidence material to the investigation; or making false statements to investigators, with the intent to impede the investigation;
(b)—threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
(c) acts intended to impede the exercise of the EIB Group's contractual rights of audit or inspection or access to information The EIB Group's definition of obstructive practice covers the rights that any EU competent body, in particular OLAF and the EPPO, may have concerning any EIB Group-related operations or activities in accordance with any law, regulation or treaty or pursuant to any agreement into which the EIB or the EIF has entered in order to implement such law, regulation or treaty.

Relevant EU legislation

- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999¹⁵⁵ – in particular article 3***

¹⁵² See judgment in *Willeme v Commission*, T-89/01, paragraph 78; judgment in *N v Commission*, T-273/94, paragraph 132.

¹⁵³ See EIB Group Anti Fraud Policy,

https://www.eib.org/attachments/publications/eib_group_anti-fraud_policy_en.pdf

which provide that it will not tolerate Prohibited Conduct in its activities or operations.

¹⁵⁴

¹⁵⁵ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation

- ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, of 18 July 2018¹⁵⁶*** - in particular recital 71, and Article 136 (3)
- ***Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget¹⁵⁷*** – in particular recital 18, and Article 4

(Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹⁵⁶ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1046>

¹⁵⁷ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I, 22.12.2020, p. 1–10), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32020R2092>.

3.12 Article 26 – Liability of legal persons

Concerning Article 26 on Liability of legal persons¹⁵⁸, the EU has adopted and is implementing relevant legislation. The issue is addressed in a number of previously cited EU legal instruments, including the 2003 Council Framework Decision on combating corruption in the private sector, the Convention against corruption involving EU officials and the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law as well as the 2018 Directive on combating money laundering by criminal law.

By and large, the provisions on the liability of legal persons included in the different EU instruments have the same pattern. First, such liability is not labelled as criminal or administrative, hence the Member States retain a certain discretion in that respect¹⁵⁹. Second, the EU instruments provide that the Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; or (c) an authority to exercise control within the legal person¹⁶⁰. No further requirement is provided for when the predicate offence is committed by a person having a leading position.

Third, when it comes to persons subject to the authority of persons in a leading position, the EU instruments require the Member States to take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by persons in a leading position has made possible the commission, by a person under their authority, of the predicate offences¹⁶¹. Fourth, the EU instruments clarify that the liability of legal persons – to be regulated in accordance with the above-mentioned rules – shall not preclude criminal proceedings from being brought against natural persons who are perpetrators, inciters or

¹⁵⁸ 1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

¹⁵⁹ Opinion of advocate general Campos Sánchez-Bordona, delivered on 12 September 2017(1), Case C-524/15, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=194362&doclang=EN#:~:text=The%20first%20Engel%20criterion%20concerns,of%20a%20criminal%20nature>.

¹⁶⁰ See 5(1) of the Council Framework Decision on combating corruption in the private sector; Article 7(1) of the Directive on combating money laundering by criminal law; and Article 6(1) of the Directive on the fight against fraud to the Union's financial interests by means of criminal law.

¹⁶¹ See 5(2) of the Council Framework Decision on combating corruption in the private sector; Article 7(2) of the Directive on combating money laundering by criminal law; and Article 6(2) of the Directive on the fight against fraud to the Union's financial interests by means of criminal law.

accessories in the predicate offences¹⁶². Finally, the EU instruments require the Member States to take the necessary measures to ensure that legal persons held liable pursuant to the relevant provisions are subject to effective, proportionate and dissuasive sanctions, which *shall* include criminal or non-criminal fines and *may* include other sanctions¹⁶³.

Whenever the liability of legal persons is of criminal nature, and the predicate offences committed for their benefit are criminal offences affecting the Union's financial interests as provided for by 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law, the EPPO is competent to investigate and prosecute legal persons in accordance with Regulation 2017/1939 and the applicable national law.

OLAF is competent to conduct administrative investigations into legal persons that have potentially committed fraud, corruption or any other illegal activity affecting the financial interests of the EU. At the end of the investigation, OLAF will draw up a report that gives an account of, amongst others, the facts established and the estimated financial impact thereof. Where appropriate, the report also includes recommendations that indicate if any follow-up action should be taken by the Member States. This report is sent to the relevant authorities of the Member State concerned, which are obliged to take such action as the results of the investigation warrant. The action taken vis-à-vis the legal person thus depends on the judicial system of the Member State involved.

Concerning the effective implementation of the requirements from this provision, the EU has established an Early Detection and Exclusion System (EDES). See above (2.1) for more explanation.

Relevant EU legislation

- ***Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector***¹⁶⁴ - in particular article 5, 6 and 9

¹⁶² See 5(3) of the Council Framework Decision on combating corruption in the private sector; Article 7(3) of the Directive on combating money laundering by criminal law; and Article 6(3) of the Directive on the fight against fraud to the Union's financial interests by means of criminal law.

¹⁶³ See 6 of the Council Framework Decision on combating corruption in the private sector; Article 8 of the Directive on combating money laundering by criminal law; and Article 9 of the Directive on the fight against fraud to the Union's financial interests by means of criminal law. In accordance with the latter two provisions, the additional sanctions to which the Member States may subject legal persons that have been held liable are: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent exclusion from public tender procedures; (c) temporary or permanent disqualification from the practice of commercial activities; (d) placing under judicial supervision; (e) judicial winding-up; (f) temporary or permanent closure of establishments which have been used for committing the criminal offence. The same optional sanctions – with the exception of those mentioned under lit. (b) and (f) – are also listed in Article 6(1) of the Council Framework Decision on combating corruption in the private sector.

¹⁶⁴ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

- *Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (CMLD)*¹⁶⁵ - in particular Articles 7 and 8
- *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*¹⁶⁶ - in particular Article 6 but also Article 5 (sanctions)
- *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*¹⁶⁷ - in particular recital 14, Articles 2(1)(b), 6 and 9 (sanctions)
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*¹⁶⁸ - in particular Article 11
- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*¹⁶⁹

¹⁶⁵ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ L 284, 12.11.2018, p. 22–30, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1673>.

¹⁶⁶ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

¹⁶⁷ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹⁶⁸ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹⁶⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

3.13 Article 27 – Participation and attempt

Concerning Article 27 on Participation and attempt¹⁷⁰, the EU has adopted and is implementing relevant legislation that envisages the punishment by means of criminal law of acts that incite, aid and abet and attempt the commission of any of the previously described criminal offences. For example, Article 5 of the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law specifies that 'Member States shall take the necessary measures to ensure that inciting, and aiding and abetting the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences' and 'Member States shall take the necessary measures to ensure that an attempt to commit any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.'

The EPPO Regulation provides that 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 the Directive on the fight against fraud to the Union's financial interests by means of criminal law, which, as mentioned, also covers the attempt to commit any of the criminal offences affecting the Union's financial interests provided for by that same Directive.

Lastly, Article 4 of Directive (EU) 2018/1673 on combating money laundering by criminal law (CMLD) criminalises 'Aiding and abetting, inciting and attempting' in relation to money laundering offences.

Relevant EU legislation

- ***Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector***¹⁷¹ - in particular Article 3
- ***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***¹⁷² - in particular Article 5

¹⁷⁰ 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention. 2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention. 3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

¹⁷¹ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’)***¹⁷³ - in particular Articles 4, 22, 23 and 25(3)
- ***Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (CMLD)***¹⁷⁴ - in particular Article 4

¹⁷² 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹⁷³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹⁷⁴ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ L 284, 12.11.2018, p. 22–30, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1673>.

3.14 Article 28 – Knowledge, intent and purpose as elements of an offence

Concerning Article 28 on Knowledge, intent and purpose as elements of an offence¹⁷⁵, the EU has adopted and is implementing relevant legislation which defines the notion of the intention of committing a crime. The Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law provides for minimum rules relating to the definition of criminal offences affecting the Union's financial interests when committed intentionally whereas it does not cover non intentional conduct. Recital 11 clarifies that 'the notion of intention must apply to all the elements constituting those criminal offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances'.

Directive (EU) 2018/1673 on combating money laundering by criminal law criminalises money laundering when it is committed intentionally and with the knowledge that the property was derived from criminal activity. Recital 13 clarifies that intention and knowledge can be inferred from objective, factual circumstances.

Under Article 6 of Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.

Relevant EU legislation

- ***Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (CMLD)***¹⁷⁶
- ***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***¹⁷⁷ - in particular Recitals 11 and 12 and Articles 3(1), 4(2), 4(3) and 5

¹⁷⁵ Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

¹⁷⁶ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22–30), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1673>.

¹⁷⁷ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

- *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*¹⁷⁸ - in particular Article 6

¹⁷⁸ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

3.15 Article 29 – Statute of Limitations

Concerning Article 29 on Statute of limitations¹⁷⁹, the EU has adopted and is implementing relevant legislation which establishes a limitation period for investigating, deciding and sanctioning criminal offenses.

In particular, in accordance with Article 12(2) of the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, Member States have to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 (fraud), 4 (money laundering, corruption, misappropriation) and 5 (incitement, aiding and abetting, and attempt) of that Directive, which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least five years from the time when the offence was committed. Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts (Article 12(3) of that Directive).

With respect to offences affecting the Union's financial interests which are not punishable by a maximum sanction of at least four years of imprisonment, Member States shall anyway take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of those criminal offences for a sufficient period of time after their commission, in order for those criminal offences to be tackled effectively (Article 12(1) of that Directive). In addition, Article 12(4) considers enforcement and the statute of limitations: 'Member States shall take the necessary measures to enable the enforcement of: (a) a penalty of more than one year of imprisonment; or alternatively (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment, imposed following a final conviction for a criminal offence referred to in Article 3, 4 or 5, for at least five years from the date of the final conviction. That period may include extensions of the limitation period arising from interruption or suspension.'

Relevant EU legislation

- ***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 law¹⁸⁰*** - in particular Recital 22 and Article 12

¹⁷⁹ Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30 – Prosecution, adjudication and sanctions

Concerning Article 30 on Prosecution, adjudication and sanctions¹⁸¹, the EU has adopted and is implementing relevant legislation regarding the prosecution, investigation, decision and sanction of acts of corruption. In particular both, OLAF and the EPPO have competencies regarding investigating corruption-related crimes in carrying out administrative and the latter criminal investigations, respectively. .

The EPPO has the competence to prosecute corruption and corruption-related crimes which affect the Union's financial interests. OLAF, on the other hand, cannot prosecute or apply sanctions. At the end of the investigation, OLAF draws up a report that gives an account of, amongst others, the facts established and the estimated financial impact thereof. Where appropriate, the report also includes recommendations that indicate if any follow-up action (including judicial action) should be taken by the Member States. This report is sent to the relevant authorities of the Member State concerned, which take such action as the results of the investigation warrant.

¹⁸⁰ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹⁸¹ 1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence. 2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional 23 privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention. 3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences. 4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings. 5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences. 6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence. 7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from: (a) Holding public office; and (b) Holding office in an enterprise owned in whole or in part by the State. 8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants. 9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention 24 and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law. 10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

The relevant legislation provides an obligation to either prosecute, adjudicate and/or sanction both EU and EU Member State officials for the crimes in question. As far as the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law is concerned, its detailed rules on sanctions for natural persons can be found in Article 7¹⁸². As required by UNCAC, these rules take into account the gravity of the offence, as the Directive requires that the criminal offences provided for therein – including corruption and misappropriation affecting the Union's financial interests – shall be made punishable by a maximum penalty of at least four years of imprisonment when they involve considerable damage or advantage. The damage or advantage is presumed to be considerable where it involves more than EUR 100.000. Furthermore, Article 8 of the Directive requires the Member States to take the necessary measures to ensure that where a criminal offence referred to in Article 3, 4 or 5 is committed within a criminal organisation, this shall be considered to be an aggravating circumstance.

As far as the European Public Prosecutor's Office (EPPO) is concerned, it ought to be noted that the European Delegated Prosecutors *shall* initiate an investigation where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO – including corruption and misappropriation affecting the Union's financial interests – is being or has been committed (Article 26(1) of the EPPO Regulation). In accordance with the Preamble of the EPPO Regulation, the EPPO's activities should be guided by the principle of legality, with the consequence that 'the investigations of the EPPO should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution, or where no simplified prosecution procedure has been applied' (recital 81)¹⁸³. Where national authorities happen to have initiated an investigation into criminal offences within the competence of the EPPO, they are obliged to inform the EPPO without undue delay. Upon receiving all relevant information, the EPPO shall then take its decision on whether to exercise its right of evocation (i.e. take over the case from national authorities) as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision (Article 27(1) of the EPPO Regulation).

Provisions on the lifting of the immunities are contained in the TFEU, Protocol No 3 on the Statute of the Court of Justice of the European Union and Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TFEU and to the TEU, and the texts implementing them. Article 29 of the EPPO Regulation provides that where the investigations of the EPPO involve persons protected by a privilege or immunity under national law or

¹⁸² For sanctions with regard to legal persons, see Article 9, which is reported in the section above concerning Article 26 UNCAC.

¹⁸³ The same recital adds that 'The grounds for dismissal of a case are exhaustively laid down in this Regulation'. Cf also Recital 66: 'In order to ensure legal certainty and to effectively combat offences affecting the Union's financial interests, the investigation and prosecution activities of the EPPO should be guided by the legality principle, whereby the EPPO applies strictly the rules laid down in this Regulation relating in particular to competence and its exercise, the initiation of investigations, the termination of investigations, the referral of a case, the dismissal of the case and simplified prosecution procedures.'

Union law (in particular the Protocol on the privileges and immunities of the European Union), and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law or Union law. For all other aspects of criminal procedure that are not regulated by the EPPO Regulation, e.g. release pending trial, national law applies, in accordance with Article 5(3) of the EPPO Regulation.

The Investigation and Disciplinary Office of the Commission is competent to carry out, for the Appointing Authority, pre-disciplinary and disciplinary proceedings concerning those Commission staff members who made the object of an investigation by OLAF or by the EPPO, with a view to determine whether the breaches amount to a failure of the statutory obligations, which would warrant the imposition of one of the disciplinary sanctions provided for in Article 9 of Annex IX to the Staff Regulations. The same functions are performed by different services in other EU institutions, bodies, offices or agencies depending on their internal organisation for their respective staff.

Relevant EU legislation

- ***Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector***¹⁸⁴ - in particular Article 9.
- ***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***¹⁸⁵ - in particular Articles 7 and 8.
- ***Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union***¹⁸⁶ - in particular Article 5
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)***¹⁸⁷ - in particular Article 1, 3, 4 and 11.

¹⁸⁴ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

¹⁸⁵ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371>.

¹⁸⁶ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

¹⁸⁷ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation

- *Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)*¹⁸⁸ - in particular Article 6.
- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*¹⁸⁹ - in particular recitals (66) and (81) as well as Articles 4, 26(1), 27(1) and 29.
- *Protocol (No 7) on the privileges and immunities of the European Union*¹⁹⁰.
- *Protocol (No 3) on the Statute of the Court of Justice of the European Union*¹⁹¹.
- *Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*¹⁹² - in particular Articles, 11, 12 and 86.

(Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

¹⁸⁸ Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 15–19), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31999Q0531>.

¹⁸⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

¹⁹⁰ Consolidated version of the Treaty on the Functioning of the European Union, Protocols, Protocol (No 7) on the privileges and immunities of the European Union (OJ C 326, 26.10.2012, p. 266–272), https://eur-lex.europa.eu/eli/treaty/tfeu_2012/pro_7/oj.

¹⁹¹ Protocol (No 3) on the statute of the Court of Justice of the European Union (OJ C 115, 9.5.2008, p. 210–229), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E%2FPRO%2F03>.

¹⁹² Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

3.16 Article 31 – Freezing, Seizure and confiscation

Concerning Article 31 on Freezing, seizure and confiscation¹⁹³, the EU has adopted and is implementing relevant legislation on the freezing and confiscation of the instrumentalities and proceeds of crime. Acknowledging the importance of asset recovery to deprive organised crime groups of their illicitly obtained profits and their means to operate as well as to compensate victims and restore the damage inflicted to society, the EU has laid down clear rules with regards to confiscation, freezing and seizing of instrumentalities and proceeds of crime, including on the mutual recognition of freezing and confiscation orders by EU Member States.

The EU legislative framework on asset recovery is composed of three main instruments: the Asset Recovery Offices Council Decision, the Confiscation Directive and the Regulation on mutual recognition of freezing and confiscation orders. The Asset Recovery Offices Council Decision¹⁹⁴ requires Member States to set up Asset Recovery Offices to facilitate the tracing of proceeds of crime, and establishes minimum requirements to facilitate their cooperation across borders, by enabling Asset Recovery Offices to exchange information upon request and spontaneously (subject to data protection provisions) and to share best practices.

The Confiscation Directive, partially replacing instruments dating back to the late 90s and 2000s, sets minimum rules for the freezing, management and confiscation of criminal assets. Building upon Framework Decision 2005/212/JHA, which allows for standard confiscation measures to all crimes punishable by deprivation of liberty for more than one year¹⁹⁵, the Confiscation Directive requires Member States to enable the confiscation of property of

¹⁹³ 1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds; (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

¹⁹⁴ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

¹⁹⁵ Article 2(1) Council Framework Decision 2005/212/JHA.

equivalent value to the proceeds of a crime (value confiscation), held by a third party (third-party confiscation), or property derived from criminal conducts but that goes beyond the direct proceeds of the crime for which the offender was convicted (extended confiscation). It also requires Member States to enable confiscation of property in cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction (non-conviction based confiscation). Such confiscation mechanisms are applicable to a defined set of offences from the areas of ‘eurocrimes’ (terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime as well as, in virtue of the Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, crimes against the Union's financial interests). It also lays down rules on freezing measures, asset management, a set of safeguards, and minimum rules on statistical data collection. The Regulation establishing the European Public Prosecutor's Office (EPPO) makes a reference to this Directive by providing that, ‘Where, in accordance with the requirements and procedures under national law including the national law transposing Directive 2014/42/EU of the European Parliament and of the Council [the Confiscation Directive], the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the EPPO, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for damage that they have incurred’ (Article 38 of the EPPO Regulation).

The most recent legal instrument in force is Regulation (EU) 2018/1805, which replaced Framework Decisions 2003/577/JHA¹⁹⁶ and 2006/783/JHA¹⁹⁷. It facilitates the mutual recognition of freezing and confiscation orders across the EU by establishing rules that oblige a Member State to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory. This includes an exception to the verification of double criminality for certain types of offences. The Regulation applies to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters as well as to types of orders issued without a final conviction, even where such do not exist in the legal system of the executing Member State. The scope of offences covered is not limited to particularly serious crimes that have a cross-border dimension and therefore goes beyond the offences currently covered by the Confiscation Directive.

Relevant EU legislation:

¹⁹⁶ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45–55) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003F0577>.

¹⁹⁷ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59–78) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006F0783>.

- ***Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders***¹⁹⁸.
- ***Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime***¹⁹⁹
- ***Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property***²⁰⁰ - in particular Article 2
This Framework Decision, after being partially replaced by the Confiscation Directive, only applies in respect of standard confiscation with the exception of Denmark, which is not bound by the Confiscation Directive and for which the other provisions of the 2005 Framework Decision apply (notably the provisions on extended confiscation).
- ***Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union***²⁰¹ - in particular recitals (11), (12) and Articles 2(1), 4, 5, 6, 7 and 10.
- ***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***²⁰² - in particular Article 10.
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***²⁰³ - in particular Article 38.

¹⁹⁸ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1–38) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1805>.

¹⁹⁹ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime; Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union; Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

²⁰⁰ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, OJ L 68, 15.3.2005.

²⁰¹ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39–50), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>.

²⁰² 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574956040076&uri=CELEX:32017L1371>.

²⁰³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

3.17 Article 32 – Protection of witnesses, experts and victims

Concerning Article 32 on Protection of witnesses, experts and victims²⁰⁴, the EU has adopted and is implementing relevant legislation for the protection of witnesses, experts and victims. This includes specific standards for EU Member States across various fields of crime in general (as provided under Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime),

At Union level, reports and public disclosures by whistleblowers are an upstream component of enforcement of Union law and policies. By reporting breaches of Union law that are harmful to the public interest, whistleblowers play a key role in exposing and preventing such breaches and in safeguarding the welfare of society. They feed national and Union enforcement systems with information, leading to effective detection, investigation and prosecution of breaches of Union law, thus enhancing transparency and accountability.

To facilitate whistleblowing and ensure robust protection for whistleblowers across all EU Member States, the EU adopted, on 23 October 2019, Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law²⁰⁵. The Directive entered into force on 16 December 2019. This Directive draws upon the European Court of Human Rights case-law on freedom of expression and on the Council of Europe 2014 Recommendation on Protection of Whistleblowers. It provides for high common minimum standards of protection for whistleblowers who unveil illegal activities and covers a large number of key EU policy areas, ranging from data protection to product, food and transport safety, environmental protection, breaches of the rules of corporate tax, public health and nuclear safety. It thus enriches the EU toolkit in the fight against corruption, by contributing to the effective application of EU rules, amongst others, on public procurement, financial services, anti-money laundering and counter-terrorist financing, conduct of prudential supervision, and to the prevention and deterrence of fraud and other illegal activities affecting the EU's financial

²⁰⁴ Article 32. Protection of witnesses, experts and victims 1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them. 2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process: (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means. 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article. 26 4. The provisions of this article shall also apply to victims insofar as they are witnesses. 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

²⁰⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, (OJ L 305, 26.11.2019, p. 17–56), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>.

interests. Moreover, Member States are encouraged to extend the Directive's rules to other areas, to establish comprehensive and consistent frameworks at national level.

The Directive covers whistleblowers working in both the public and the private sector. It protects employees, self-employed service providers, contractors, shareholders, volunteers, trainees and job applicants. It also protects third persons who assist whistleblowers, as well as relatives or colleagues who may suffer retaliation in a work-related context. All private companies and public entities with 50 or more employees are obliged to establish internal reporting channels. The national authorities designated as competent to investigate reports have also to set up channels enabling confidential reporting.

Whistleblowers are encouraged to report first internally, but may also report directly to the competent authorities as they see fit, in light of the circumstances of the case. They are protected from retaliation, broadly defined, and have access to information and independent advice. In case of retaliation, whistleblowers have at their disposal appropriate remedies and can take legal actions such as for reinstatement, compensation, or for interim relief. While the Directive clearly benefits whistleblowers, there are also significant benefits for organizations. Most importantly, by ensuring that effective whistleblowing arrangements are in place, employees are encouraged to raise concerns internally. By doing so, organizations have an opportunity to identify and manage risk at an early stage, helping to avoid or limit financial and reputational damage.

According to the ECB's whistleblowing framework (as described in section 3.18), witnesses have the possibility to report anonymously via the whistleblowing tool or reveal their identity. In any event their identity is protected under strict confidentiality requirements. Furthermore, witnesses benefit from the same set of rules and processes ensuring protection of whistleblowers from retaliation. Furthermore, according to Article 23 of Regulation No 1024/2013 of 15 October 2013 (SSM Regulation) the identity of persons who report breaches of relevant European Union law committed by a supervised bank, national supervisor or the ECB itself, shall be protected.

The identity of witnesses in OLAF investigations is protected under the confidentiality requirement set out in Article 10 of Regulation (EU/Euratom) No 883/2013.

Relevant EU legislation:

- ***Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime***²⁰⁶

²⁰⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57–73), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>.

- *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons who Report Breaches Of Union Law*²⁰⁷
- *Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*²⁰⁸ - in particular Articles 22a, 22b and 22c
- *Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institution*²⁰⁹
- *Ethics Framework of the ECB, (2015/C 204/04)*²¹⁰

²⁰⁷ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, (OJ L 305, 26.11.2019, p. 17–56) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>.

²⁰⁸ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

²⁰⁹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institution, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1024>

²¹⁰ The Ethics Framework of the ECB (OJ C 204 p. 3-16), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620(01)&from=EN).

3.18 Article 33 – Protection of reporting persons

Concerning Article 33 on Protection of reporting persons²¹¹, the EU has adopted and is implementing relevant legislation for the protection reporting persons (also known as whistleblowers). This includes, in particular, the general 2019 Directive on the protection of persons who report breaches of Union law (Whistleblowers directive) but also, particular rules for EU staff that reports irregular activity.

The European institutions, bodies, offices and agencies have long been committed to ensuring the integrity of its operations and, for that reason, has in place a system for reporting irregularities, together with relevant policies reflecting the best practices of national and international systems alike. The main instrument governing the rights and obligations of staff members of the European public administration is the EU Staff Regulations. Article 21a of the EU Staff Regulations provides that staff members have to inform their hierarchy about orders that they consider irregular. Further to the review of the Staff Regulations carried out in 2004, this general obligation to inform superiors about irregular orders has been further extended by the third paragraph of Article 21a, introducing protection of reporting officials from any prejudice on the account of reporting an irregular order²¹².

In addition, the 2004 review of the Staff Regulations was also the occasion to adopt specific rules to protect whistleblowers within the EU institutions, bodies, offices and agencies. The new Article 22a of the EU Staff Regulations creates an obligation for EU staff members to report in writing to their hierarchy any facts that give rise to a presumption of existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties. Staff members can report either to their immediate superiors, to their respective Directors-General, to the Secretary-General or directly to OLAF. In addition, according to Article 22b of the EU Staff Regulations, the EU staff members can also report, under certain conditions, to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or to the European Ombudsman.

Articles 22a and 22b of the EU Staff Regulations provide the necessary protection against any retaliation for staff members having reported perceived illegal activities if the staff member honestly and reasonably believed the reported facts to be true. It also creates the right for the staff member to be informed, within 60 days as of making the report, about the timeframe

²¹¹ Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

²¹² Article 21a, par. 3 of the Staff Regulation as amended by the Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 states: ‘An official who informs his superiors of orders which he considered to be irregular or likely to give rise to serious difficulties shall not suffer any prejudice on that account.’

within which the administration envisages to take the necessary steps in relation to the reported illegality.

Article 22c of the EU Staff Regulations also lays down an obligation for the EU institutions, bodies, offices and agencies to adopt internal rules on whistleblowing, including procedures for the handling of complaints made by staff members who report serious irregularities, rules on protection of their legitimate interests and privacy and rules on providing information to staff members who report serious irregularities. The European Commission has adopted Guidelines on Whistleblowing for Commission staff²¹³. Each EU institution, body, office or agency has similar guidelines²¹⁴.

The European Central Bank's (ECB) whistleblowing framework, as revised in 2020, (see Article 0.4bis of the ECB Staff Rules) significantly enhanced the policies in place by introducing several dedicated rules and processes aiming to ensure effective protection of whistleblowers and witnesses. This new policy complements the existing external Single Supervisory Mechanism Regulation²¹⁵ whistleblowing framework for the reporting of breaches of relevant European Union law committed by a supervised bank, national supervisor or the ECB itself.

First, a secure online tool has been introduced. The online tool can be used as an alternative reporting channel and facilitates secure and anonymous reporting of potential breaches (including fraud and corruption). Second, the identity of whistleblowers and witnesses (if disclosed) is treated in strict confidence and can only be disclosed on a strict need to know basis and, in any event, not to the person concerned (alleged wrongdoer). Third, any direct or indirect act or omission which causes or may cause an unjustified detriment to the whistleblower or witness and is prompted by the reporting constitutes retaliation and is considered a breach of professional duties. This should be understood as including threats and attempts of retaliation. Furthermore, if retaliation occurs, whistleblowers and witnesses can activate the 'protection from retaliation' procedure, provided that they reported in good faith and on reasonable grounds.

In order to further strengthen the independence and the impartiality of the respective functions dealing with these matters, two distinct departments have responsibility for the intake of the reports and the matters dealing with protection against retaliation. A request for protection from retaliation can lead to the adoption of interim and/or final measures which aim at correcting the detriment suffered and protecting the requester from any further retaliation.

²¹³ Communication to the Commission, Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing, 06.12.2012, [https://ec.europa.eu/transparency/documents-register/detail?ref=SEC\(2012\)679&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SEC(2012)679&lang=en).

²¹⁴ For an example, see European Court of Auditor's Special Report 13/2009, at <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=50742>, and the European Investment Bank's whistleblowing policy, <https://www.eib.org/en/publications/eib-group-whistleblowing-policy>.

²¹⁵ See Europa website, European Central Bank, whistleblowing, <https://www.bankingsupervision.europa.eu/banking/breach/html/index.en.html>.

As an additional safeguard to protect whistleblowers and witnesses, the ECB bears the burden of proof for establishing that act or omission did not constitute retaliation. Via a dedicated Decision of the ECB Governing Council the scope of the enhanced whistleblowing framework has been extended to include all high-level ECB Officials with a dedicated supporting process.

OLAF and the EPPO both rely on whistleblowers. According to recital 50 of the EPPO Regulation, whistleblowers may bring new information to the attention of the EPPO, thereby assisting it in its work to investigate, prosecute and bring to judgment perpetrators of offences affecting the Union's financial interests, including corruption and misappropriation. However, whistleblowing may be deterred by fear of retaliation. With a view to facilitating the detection of offences that fall within the competence of the EPPO, Member States are encouraged to provide, in accordance with their national law, effective procedures to enable reporting of possible offences that fall within the competence of the EPPO and to ensure protection of the persons who report such offences from retaliation, and in particular from adverse or discriminatory employment actions. The EPPO should develop its own internal rules if necessary.

The European Ombudsman is required to report the outcome of its inquiries related to whistleblowing and conflicts of interest with the Union's institutions, bodies, offices or agencies.

Finally, whistleblowers' protection has been reinforced by the adoption of a new Article 10(3a) in Regulation (EU/Euratom) No 883/2013²¹⁶, which provides that the Directive (EU) 2019/1937 shall apply to the reporting of fraud, corruption and any other illegal activity affecting the financial interests of the Union and the protection of persons reporting such breaches.

Relevant EU legislation

- ***Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons who Report Breaches Of Union Law***²¹⁷
- ***Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic***

²¹⁶ This Article was introduced by Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, OJ L 437, 28.12.2020, p. 49–73.

²¹⁷ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, (OJ L 305, 26.11.2019, p. 17–56) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>.

*Community and the European Atomic Energy Community*²¹⁸ - in particular articles 22a, 22b and 22c

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²¹⁹ - in particular recital 50.
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*²²⁰ – in particular Article 10(3a).
- *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.*

*Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom*²²¹ - in particular article 4 and 8

- *Ethics Framework of the ECB, (2015/C 204/04)*²²²
- *Decision (EU) 2020/1575 of the European Central Bank of 27 October 2020 as regards the assessment of and follow-up on information on breaches reported through the*

²¹⁸ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

²¹⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²²⁰ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²²¹ Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (OJ L 253, 16.7.2021, p. 1–10), <http://data.europa.eu/eli/reg/2021/1163/oj>

²²² The Ethics Framework of the ECB (OJ C 204 p. 3-16), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XB0620(01)&from=EN).

whistleblowing tool where a person concerned is a high-level ECB official (ECB/2020/54)²²³

²²³ Decision (EU) 2020/1575 of the European Central Bank of 27 October 2020 as regards the assessment of and follow-up on information on breaches reported through the whistleblowing tool where a person concerned is a high-level ECB official (ECB/2020/54), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020D1575&rid=1>

3.19 Article 34 – Consequences of acts of corruption

Concerning Article 34 on Consequences of acts of corruption²²⁴, the EU has established mechanisms as to create consequences for acts of corruption. In particular, the Financial Regulation 2018/1046 provides for the Early Detection and Exclusion System (EDES) (Article 135 – 145). The Regulation (EU, Euratom) 2018/1046 includes important provisions concerning consequences for acts of corruption, when being awarded EU funds. EDES, already referred to under point 2.1 of this document, is the main tool at hand to prevent the reception of funds from the budget by such entities. Under the EDES system, persons or entities involved in corruption related activities, can be excluded from being awarded contracts or grants).

Lastly, there are also consequences for corruption in agreements with third countries – Article 220(5), Article 263(3) and (4) of Regulation (EU, Euratom) 2018/1046. The Regulation includes provisions to prevent the reception of funds by third countries, where in the implementation of such funds the beneficiary country has engaged in any act of corruption. To this end the financing agreements with third countries will contain provisions that allow the Union to suspend such agreements in cases of detection of corruption activities linked to its implementation.

In addition, the EIB²²⁵ maintains an Exclusion Policy, which sets forth the policy and procedures for the exclusion of entities and individuals found to have engaged in Prohibited Conduct from EIB-financed projects and other EIB activities for a certain period of time. The EIB's Exclusion Policy enforces the prohibitions contained in the EIB Group's Anti-Fraud Policy and, in doing so, contribute to safeguarding the financial interests, the integrity and reputation of the Bank and the activities it finances. This Policy has been approved by the Bank's Board of Directors on 11 December 2017 and became effective upon its publication on 19 February 2018.

Relevant EU legislation

- ***Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, of 18 July 2018***²²⁶ - in particular Article 74 (8) second subparagraph, Article 76(2), Article 91 (responsibility

²²⁴ With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

²²⁵ See EIB website, Exclusion Policy, <https://www.eib.org/en/publications/exclusion-policy>.

²²⁶ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046>.

of financial actors to report illegal activities), Article 135-145 (EDES) and Articles 220(5) and 263(3) and (4).

3.20 Article 35 – Compensation for damage

Concerning Article 35²²⁷ on Compensation for damage, the EU has adopted and is implementing relevant legislation. There are substantial EU rules on compensation of victims of crime, including Article 340 of TFEU on the EU's contractual and non-contractual liability and relevant directives. Specific provisions for EU staff also are laid down in the Staff Regulations. Under Article 24, the Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties. It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it.

According to Article 340 TFEU, the contractual liability of the Union shall be governed by the law applicable to the contract in question. In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

With regard to compensation by the offender, the 2012 Victims' Rights Directive provides minimum standards allowing victims to obtain a decision on compensation by the offender in the course of criminal proceedings or other legal proceedings and to encourage mechanisms to recover compensation awards from the offender. With regard to compensation from the State, Directive 2004/80/EC relating to compensation to crime victims requires that all EU Member States ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes.

The Staff Regulations also hold relevant provisions - see the description under 3.19 / Article 33.

Relevant EU legislation

- *Article 340 TFEU*²²⁸

²²⁷ Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

²²⁸ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

*Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*²²⁹ - in particular recitals 49 and 62, and articles 4, 9 and 16

- *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims*²³⁰
- *Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*²³¹ - in particular Article 24 .

²²⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57–73), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>.

²³⁰ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15–18), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0080>.

²³¹ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

3.21 Article 36 – Specialized authorities

Concerning Article 36 on Specialized authorities²³², the EU has adopted and is implementing relevant legislation and established pertinent specialised authorities in the fight against corruption. This includes in particular the European Anti-Fraud Office OLAF and the European Public Prosecutor's Office (EPPO), but also Europol and Eurojust.

In addition, the Investigation and Disciplinary Office of the Commission is competent to carry out, for the Appointing Authority, pre-disciplinary and disciplinary proceedings concerning those staff members who made the object of an investigation by OLAF or by the EPPO, with a view to determine whether the breaches amount to a failure of the statutory obligations, which would warrant the imposition of one of the disciplinary sanctions provided for in Article 9 of Annex IX to the Staff Regulations. The same functions are performed by different services in other EU institutions, bodies, offices or agencies depending on their internal organisation for their respective staff.

- ***European Public Prosecutor's Office (EPPO)***

The **European Public Prosecutor's Office (EPPO)** was established by Regulation 2017/1939 and became operational in June 2021. It is the first EU body entitled to conduct criminal investigations and to prosecute and bring to judgment crimes of fraud and corruption affecting the EU's financial interests. 22 out of 27 EU Member States participate in the EPPO while Denmark, Ireland, Hungary, Poland and Sweden do not currently participate (apart from Denmark, the others could decide to join the EPPO). Before the EPPO became operational, only national authorities could investigate and prosecute fraud against the EU budget.

The EPPO has a multilevel structure²³³ which embeds national knowledge, embodied mostly by the European Delegated Prosecutors (EDPs) that operate in each of the Member States participating in the EPPO in the framework of a single European office. The EPPO has a central level in Luxembourg and a decentralised level. At the decentralised level, i.e. in each of the Member States participating in the EPPO, the European Delegated Prosecutors conduct the EPPO's investigations on the ground. As a rule, the European Delegated Prosecutors in the Member State where the alleged offence was committed, handle the case. The European Delegated Prosecutors are experts of the legal system of the Member State they are working in and are chosen among the active members of the public prosecution service or judiciary. The European Delegated Prosecutors works under the direction of the Central Office in

²³² Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

²³³ See Europa website, EPPO, Structure and Characteristics, <https://www.eppo.europa.eu/en/structure-and-characteristics>.

Luxembourg, which is composed of the College, the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the Administrative Director Both the Central Office and the European Delegated Prosecutor are supported by the EPPO staff, located at central level... The activities of the European Delegated Prosecutors on the ground are monitored and directed by the Permanent Chamber.

The EPPO's cases are divided across 15 Permanent Chambers. In addition, the European Delegated Prosecutors are supervised by the European Prosecutor from the same Member State, who sits in the Central Office in Luxembourg. In cross-border cases concerning participating Member States only, the European Delegated Prosecutors of different Member States cooperate in accordance with the rules provided in the EPPO Regulation. These rules largely depart from the existing EU procedures of judicial cooperation and aim to ensure an even swifter and more efficient cooperation among the European Delegated Prosecutors, who are members of the same Office, the EPPO. Cooperation with non-participating Member States and Third States operates on the basis of the EU instruments (mainly mutual recognition instruments) or international legal instruments, respectively. Between 1 June 2021 and 31 December 2021, 142 of the EPPO's investigations concerned cross-border cases²³⁴. At the end of the investigations, the Permanent Chamber decides – upon a proposal of the European Delegated Prosecutor handling the case – whether to prosecute or dismiss the case. The EPPO is operational since June 2021, and its investigations are ongoing. Between 1 June 2021 and 31 December 2021, the EPPO opened 576 investigations for an estimated total damage to the Union budget of approximately 5.4 billion²³⁵. On 23 November 2021, a first conviction in an EPPO-led investigation was handed down in Slovakia²³⁶.

The EPPO is independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks (Article 6 of the EPPO Regulation).

On the independence of the EPPO see: Recital 16–18, 40, 46, 107, 111, Article 6 (independence and accountability), Article 7, Article 14(2), Article 16(1), Article 17(2) of the EPPO Regulation.

²³⁴ EPPO Annual Report 2021, p. 13, <https://www.eppo.europa.eu/en/documents>.

²³⁵ EPPO Annual Report 2021, p. 12, <https://www.eppo.europa.eu/en/documents>.

²³⁶ See Europa website, EPPO, “First Conviction in EPPO case: former Slovak mayor sentenced to 3 years of conditional imprisonment”, <https://www.eppo.europa.eu/en/news/first-conviction-eppo-case-former-slovak-mayor-sentenced-3-years-conditional-imprisonment>.

Member States had to transpose Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (also known as the 'PIF Directive') into their national laws by 6 July 2019. The new rules have increased the level of protection of the EU budget by harmonising the definitions, sanctions and limitation periods of criminal offences affecting the Union's financial interests. Not only is the Directive an essential instrument for the harmonisation of the criminal law of the Member States in the area of crimes against the Union budget but it also lays the foundation for the European Public Prosecutor's Office, which investigates, prosecutes and enforces those offences as of 1 June 2021.

- ***The European Anti-Fraud Office (OLAF)***

The European Union budget finances a wide range of programmes and projects which improve the lives of citizens across the EU and beyond. The improper use of funds provided by the EU budget or the evasion of the taxes, duties and levies, which fund the EU budget directly harms European citizens and prejudices the entire European project.

OLAF fulfils its mission by:

- carrying out independent investigations into fraud and corruption involving EU funds, so as to ensure that all EU taxpayers' money reaches projects that can create jobs and growth in Europe;
- contributing to strengthening citizens' trust in the EU Institutions by investigating serious misconduct by EU staff and members of the EU Institutions;
- developing a sound EU anti-fraud policy.

OLAF can investigate matters relating to fraud, corruption and other offences affecting the EU financial interests concerning:

- all EU expenditure: the main spending categories are Structural Funds, agricultural policy and rural development funds, direct expenditure and external aid;
- some areas of EU revenue, mainly customs duties;
- suspicions of serious misconduct by EU staff and members of the EU institutions.

OLAF receives information about possible fraud and irregularities from a wide range of sources. In most cases, this information results from controls by those responsible for managing EU funds within the European Institutions or in the Member States.

All allegations received by OLAF undergo an initial assessment to determine whether the allegation falls within the remit of the Office and meets the criteria for opening an investigation.

Investigations can involve interviews and inspections of premises and they are classified under one of the following three categories:

- Internal investigations: Internal investigations are administrative investigations within the European Union institutions and bodies for the purpose of detecting fraud, corruption, and any other illegal activity affecting the financial interests of the

European Union; including serious matters relating to the discharge of professional duties.

- External investigations: External investigations are administrative investigations outside the European Union institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons. Cases are classified as external investigations where OLAF provides the major part of the investigative input.
- Coordination cases: OLAF contributes to investigations carried out by national authorities by facilitating the gathering and exchange of information and contacts.

After an investigation is concluded, the Office recommends action to the EU institutions, bodies, offices or agencies and authorities of Member States concerned: this usually includes recommendations to launch criminal investigations, financial recoveries, administrative or disciplinary measures. It then monitors how these recommendations are implemented.

- ***European Union Agency for Law Enforcement Cooperation (Europol)***

The European Union Agency for Law Enforcement Cooperation (Europol) is the EU's law enforcement agency, whose remit is to help make Europe safer by assisting law enforcement authorities in EU member countries.

Benefiting from its central position in the European security architecture, Europol offers a unique range of services:

- support for law enforcement operations on the ground
- a hub for information on criminal activities
- a centre of law enforcement expertise.

Europol employs some 100 criminal analysts who are among the best-trained in Europe. This gives it one of the largest concentrations of analytical capability in the EU. Analysts use state-of-the-art tools to support national agencies' investigations on a daily basis.

To give national partners a deeper insight into the criminal problems they face, Europol produces regular long-term analyses of crime and terrorism. Europol is headed by an Executive Director, who is Europol's legal representative and appointed by the EU Council. Europol's Management Board gives strategic guidance and oversees the implementation of Europol's tasks. It comprises one high-ranking representative from each EU country and the European Commission. Each country has a Europol National Unit, which is the liaison body between Europol and the other national agencies.

Europol's daily business is based on its strategy. Its specific objectives are set out in the Europol annual work programme²³⁷. In 2010, the EU established a multi-annual policy cycle to ensure effective cooperation between national law enforcement agencies and other bodies (EU and elsewhere) on serious international and organised crime. This cooperation is

²³⁷ See Europa website, Europol, Work Programmes, <https://www.europol.europa.eu/publications-documents/work-programmes>.

based on Europol's Serious and Organised Crime Threat Assessment (SOCTA)²³⁸, who get 24/7 operational support. Government departments and private companies working in partnership with Europol. EU Member States, supported in their investigations, operational activities and projects to tackle criminal threats.

- ***European Union Agency for Criminal Justice Cooperation (EUROJUST)***

The European Union Agency for Criminal Justice Cooperation (Eurojust)²³⁹ is governed by its College comprising a representative of each Member State and of the Commission. The main task of Eurojust is to stimulate and improve the coordination of cross-border investigations and prosecutions and the cooperation between the competent authorities of the Member States in relation to serious cross-border crime, including corruption, fraud, money laundering or organised crime. Since the entry into operations of the EPPO on 1 June 2021, Eurojust is competent for crimes affecting the EU's financial interests whenever the EPPO is not competent (e.g. in relation to Member States that do not participate in the EPPO) or when, despite the competence of EPPO, the latter does not exercise its competence.

Eurojust is actively involved in supporting judicial cooperation related to the specific field of corruption. Eurojust has one College Team specifically dedicated to financial and economic crime. Its mission is to gather and offer expertise in cases involving offences such as corruption, money laundering, fraud and tax fraud, as well as matters such as asset recovery. In 2019, Eurojust published the Report on Eurojust Casework in Asset Recovery²⁴⁰ which identifies legal and practical issues, best practice and the role of Eurojust in supporting national authorities in this field. As a significant aspect in the fight against crime, notably economic crime, including corruption, the report is horizontal in nature and addresses also corruption cases brought to Eurojust.

Eurojust moreover has a broad experience in supporting the competent national authorities in fighting corruption. In the period between 1 January 2016 and 31 July 2021, 467 corruption cases were registered at Eurojust. Eurojust has provided support in these cases by organising 79 coordination meetings, assisting in setting up 11 Joint Investigation Teams (JITs), and supporting joint action days.

In its efforts to support national competent authorities in fighting corruption, Eurojust has helped the authorities in overcoming operational issues in complex and sensitive corruption cases such as conflicts of jurisdiction, cases involving politically exposed persons, requests for banking and financial information, and issues in relation to the gathering and exchange of

²³⁸ See Europa website, EU Policy Cycle EMPACT, <https://www.europol.europa.eu/content/eu-policy-cycle-empact>.

²³⁹ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

²⁴⁰ See Europa website, Eurojust, Eurojusts Casework – Asset Recovery, <https://www.eurojust.europa.eu/report-eurojusts-casework-asset-recovery>.

evidence. One area in particular where Eurojust support has proven fruitful is cooperation with non-EU countries. Through its network of 10 Liaison Prosecutors posted at Eurojust, Cooperation Agreements with 13 countries, and Contact Points in more than 50 countries around the world, Eurojust has fostered close cooperation with international counterparts. Its cooperation agreements provide a possibility of exchanging operational information (such as evidence and personal data) between Eurojust and the national authorities of the countries involved, as well as international organisations, in a systematic way²⁴¹. Eurojust has also concluded cooperation agreements with countries without which no EU level agreement is in place. On Eurojust's independence – see recital 16, 61 and 62 of the Eurojust Regulation²⁴²

- **The Investigation and Disciplinary Office of the Commission (IDOC)**

The Investigation and Disciplinary Office of the Commission (IDOC) was set up in 2002²⁴³ to enforce ethics and integrity in the Commission, ensuring compliance with legal obligations incumbent on Commission staff members. To fulfil its mission, IDOC investigates facts which may constitute breaches of the Staff Regulations or the Conditions of Employment of Other Servants and carries out disciplinary procedures for the competent Appointing Authority.

The Disciplinary Board is consulted in cases of serious misconduct meriting a sanction more severe than a written warning or a reprimand. IDOC represents the Appointing Authority before the Disciplinary Board. There is no 'tariff' of sanctions for specific wrongdoing as there is in criminal law. The Appointing Authority may impose one of the sanctions provided for by the Staff Regulations. However, the severity of the sanction must be commensurate with the seriousness of the misconduct. After having heard the staff member, the Appointing Authority decides upon the disciplinary sanction taking into account all the circumstances of the case. IDOC drafts the sanction decision and consults the Legal Service accordingly.

In addition, IDOC carries out an outreach program on prevention, providing training and information to the staff members on rights and obligations under the Staff Regulations. The same functions are performed by different services in other EU institutions, bodies, offices or agencies depending on their internal organisation for their respective staff.

Relevant EU legislation

²⁴¹ See Europa website, Eurojust – States and Partners – Third countries – International Agreements <https://www.eurojust.europa.eu/states-and-partners/third-countries/international-agreements>.

²⁴² Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

²⁴³ Commission Decision C (2002) 540 of 19 February 2002, recently replaced by Commission Decision C (2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²⁴⁴
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*²⁴⁵
- *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA*²⁴⁶
- *Regulation (EU) 2018/1727 of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust)*²⁴⁷

²⁴⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²⁴⁵ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²⁴⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

²⁴⁷ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

3.22 Article 37 - Cooperation with law enforcement authorities

Concerning Article 37 on Cooperation with law enforcement authorities²⁴⁸, both the OLAF and the EPPO require the cooperation of persons concerned by the investigations with the relevant bodies.

To fulfil its mandate, the EPPO works hand in hand with national law enforcement authorities and closely cooperate with other EU bodies, including Eurojust, Europol and the European Anti-Fraud Office (OLAF).

In the context of internal administrative investigations conducted by OLAF, EU officials and Members of EU institutions are obliged to cooperate with and supply information to OLAF (Article 4(7) of Regulation 883/2013 and Article 1 of the Interinstitutional Agreement of 1999 concerning internal investigations by OLAF).

Relevant EU legislation

- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)*²⁴⁹, in particular article 4(7)
- *Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)*²⁵⁰ - in particular Article 1.

²⁴⁸ 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. 4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention. 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

²⁴⁹ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²⁵⁰ Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 15–19), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31999Q0531>.

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²⁵¹

²⁵¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

3.23 Article 38 – Cooperation between national authorities

Concerning Article 38 on Cooperation between national authorities²⁵², the EU has adopted and is implementing relevant legislation. In particular, all relevant specialised EU offices, bodies and agencies (EPPO, OLAF, Eurojust, Europol) should cooperate with each other and with the authorities of the EU Member States.

Article 15 of the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law specifies the cooperation between the Member States and the Commission (OLAF) and other Union institutions, bodies, offices or agencies.

The relevant provisions of the EPPO Regulation are those concerning the cooperation between the EPPO and the other Union bodies, notably, in addition to Articles 24 (on the reporting obligation of national authorities and other EU bodies and agencies towards the EPPO reported above), Articles 99 ('Commons provisions' on the relations with partners), 100 ('Relations with Eurojust'), 101 ('Relations with OLAF'), 102 ('Relations with Europol'), and 103 ('Relations with other institutions, bodies, offices and agencies of the Union') and 105 ('Relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO').

To the date of this assessment, the EPPO has concluded Working Arrangements with , Eurojust, Europol, OLAF, the European Court of Auditors, the the European Investment Bank (EIB) and the European Investment Fund (EIF), the Office of the Prosecutor General of Hungary, the Prosecutor General's Office of Lithuania, the Italian General Prosecutor's Office of the Court of Auditors, the Prosecutor's General Office of Bulgaria, the Specialised State Prosecutor's Office of Slovenia, Bulgaria's Commission for Anti-Corruption and Illegal Assets Forfeiture, the Prosecutor's General Office of Ukraine, the Hellenic National Transparency Authority, the Public Law Corporation of Land and Mercantile Registrars of Spain, the National Antimafia and Counter Terrorism Directorate of Italy and the Spanish General Council of Notaries. In June 2021, the EPPO signed an Agreement with the Commission. The texts of these Arrangements and of the Agreement are available on the EPPO's website.

It should be added that, due to its unique nature of a 'single Office with a decentralised structure' (Article 8(1) of the EPPO Regulation), the EPPO is structurally embedded in national systems and cooperates – especially through its European Delegated Prosecutors –

²⁵² Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include: 28 (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or (b) Providing, upon request, to the latter authorities all necessary information.

with national authorities, notably police authorities, on a daily basis. Article 5(6) of the EPPO Regulation lays down the general principle that ‘[t]he competent national authorities shall actively assist and support the investigations and prosecutions of the EPPO. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation’.

Eurojust, as previously mentioned (see 2.2 and 3.22), has a key role in enhancing cooperation between the authorities of the EU Member States. Each EU Member State shall appoint one or more national correspondents for Eurojust (Article 20(1) of the Eurojust Regulation) and shall set up a Eurojust national coordination system (ENCS) ‘to ensure coordination of the work carried out by: (a) the national correspondents for Eurojust; (b) any national correspondents for issues relating to the competence of the EPPO; (c) the national correspondent for Eurojust for terrorism matters; (d) the national correspondent for the European Judicial Network in criminal matters and up to three other contact points of the European Judicial Network; (e) national members or contact points of the Network for joint investigation teams, and national members or contact points of the networks set up by Decisions 2002/494/JHA, 2007/845/JHA and 2008/852/JHA; (f) where applicable, any other relevant judicial authority’ (Article 20(3) of the Eurojust Regulation). As Eurojust is competent to support and enhance judicial cooperation among national investigating and prosecuting authorities dealing with cross-border crime, the cooperation between Eurojust and national authorities lies at the heart of Eurojust’s mission and is further regulated by different provisions of the Eurojust Regulation, such as Articles 4, 5, 8, 9, 19, 21, 22 and 25. In addition to the above-mentioned Working Arrangement with the EPPO, Eurojust has also concluded a Memorandum of Understanding with the Commission, Europol, Frontex (European Border and Coast Guard Agency), CEPOL, eu-LISA (European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice), EJTN (European Judicial Training Network), EMCDDA (European Monitoring Centre for Drugs and Drug Addiction), FRA (the European Union Agency for Fundamental Rights), and signed a Practical Agreement on arrangements of cooperation with OLAF. All of them are available on the Eurojust’s website.

Europol is the EU’s law enforcement agency, whose remit is to assist law enforcement authorities in EU member countries. Europol offers a wide range of services, including support for law enforcement operations on the ground, as a hub for information on criminal activities and as a centre of law enforcement expertise. Europol also works closely with a number of EU institutions, bodies, offices and agencies as well as with non-EU partner countries and international organisations. Article 3 of Regulation (EU) 2016/794 outlines the aim of cooperation between EU Member States, which is further substantiated in chapter II of the Regulation (cooperation between Member States and Europol) and provisions on cooperation with Eurojust and OLAF (Article 21).

Relevant EU legislation

- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***²⁵³ - in particular Articles 5, 24, 99, 100, 101, 102, 103, 105
- ***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***²⁵⁴ - in particular Article 15
- ***Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA***²⁵⁵ – see in particular Articles 47 ('Commons provisions' on the relations with partners), 48 ('Cooperation with the European Judicial Network and other Union networks involved in judicial cooperation in criminal matters'), 49 ('Relations with Europol'), 50 ('Relations with the EPPO') and 51 ('Relations with other Union bodies, offices and agencies').
- ***Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union***²⁵⁶ - in particular Article 9
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999***²⁵⁷ - in particular Articles 12 and 13
- ***Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and***

²⁵³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²⁵⁴ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574956040076&uri=CELEX:32017L1371>.

²⁵⁵ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

²⁵⁶ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 2–11, [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

²⁵⁷ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

*replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA*²⁵⁸ - article 3, article 21 and Chapter II

²⁵⁸ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

3.24 Article 39 – Cooperation between national authorities and the private sector

Concerning Article 39 on Cooperation between national authorities and the private sector²⁵⁹, the EU has adopted and is implementing relevant legislation. EU offices, agencies and bodies such as OLAF, Europol and the EPPO have rules for cooperating with the private sector. Private parties can report to the EPPO via a form available online. OLAF has put in place an online Fraud Notification System (FNS) that allows the public to report, anonymously and securely, allegations on fraud, serious irregularities with potential negative impact for EU funds or serious misconduct by members of staff of EU institutions and bodies in any official EU language and also establishes a secure two-way communication and document transmission channel between specific OLAF staff and the informants.

In 2020, in the framework of the Regulation (EU) 2016/794, and in line with Europol mission and vision, Europol Strategy 2020+ and Europol Work Plan, Europol has established the Economic and Financial Crime Centre (EFECC) to increase the support to Member States' major investigations in the area of financial and economic crimes, including the fighting of high-level corruption. EFECC will promote the maximum use of financial investigations and asset tracing/recovery actions in the MS in order to tackle organised crime groups more effectively based on the 'follow the money approach'. Within the EFECC, a dedicated team (Analysis Project CORRUPTION) has been created in order to broaden Europol's high-level engagement in countering all forms of corruption affecting the EU. EFECC is composed by top-level law enforcement personnel (Specialists and Analysts) with expertise in the area of financial and economic crimes for a total of 62 staff members.

Relevant EU legislation:

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²⁶⁰ - in particular recital (49)
- *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector*²⁶¹

²⁵⁹ 1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention. 2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

²⁶⁰ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²⁶¹ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999²⁶²* - in particular Article 5(1).
- *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA²⁶³*
- *Regulation of the European Parliament and of the Council Amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation²⁶⁴.*

²⁶² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²⁶³ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

²⁶⁴ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation, 9.12.2020, COM(2020)796 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0796&from=EN>.

3.25 Article 40 – Bank Secrecy

Concerning Article 40 on Bank secrecy²⁶⁵, while there is no EU provision that has a wording that precisely corresponds to Article 40 UNCAC, the Commission notes that the European Investigation Order (EIO) Directive – which is binding on all EU Member States except for Denmark and Ireland – expressly includes a couple of provisions on the exchange of information on bank and other financial accounts (Article 26) as well as on banking and other financial operations (Article 27). An EIO can also be issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as the monitoring of banking or other financial operations that are being carried out through one or more specified accounts (Article 28).

Cooperation with Denmark and Ireland still takes place in accordance with the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, the Protocol to which regulates the requests for information on bank accounts (Article 1), requests for information on banking transaction (Article 2), requests (Article 3), and provides that ‘A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.’ (Article 7).

More broadly, Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering (the 5th Anti-Money Laundering Directive) has added a new Article 32a to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering. According to the provisions of Article 32a, all Member States are obliged to establish ‘centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts and bank accounts’. Paragraph 2 of Article 32a provides as follows:

‘2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 of this Article is directly accessible in an immediate and unfiltered manner to national FIUs²⁶⁶. The information shall also be accessible to national competent authorities for fulfilling their obligations under this Directive. Member States shall ensure that any FIU is able to provide information held in the centralised mechanisms referred to in paragraph 1 of this Article to any other FIUs in a timely manner...’

²⁶⁵ Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

²⁶⁶ Financial Intelligence Units, set for the fight against money-laundering, its predicate offences and terrorist financing.

For the purposes of administrative cooperation, information about savings income obtained in a Member State by individuals who are resident in another Member State has been the subject of automatic exchange between the respective tax authorities since 1 July 2005, thanks to Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (the ‘Savings Directive’). Since 1 January 2016, after the repeal of the Savings Directive and thanks to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, the scope of automatic exchange of financial account information between Member States has been greatly improved in line with the internationally agreed OECD Common Reporting Standard to this purpose. All the 27 Member States are also parties to the Multilateral Competent Authority Agreement which enables automatic exchange of financial account information in accordance with this same standard between more than 110 jurisdictions throughout the world.

Relevant EU legislation:

- ***Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union***²⁶⁷ - in particular Article 7
- ***Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters***²⁶⁸, – in particular Recitals 24, 27 and 29 and Articles 26, 27 and 28; see also Article 19(4)
- ***Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering (the 5th Anti-Money Laundering Directive)***²⁶⁹

²⁶⁷ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 2–8), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A42001A1121%2801%29>.

²⁶⁸ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1–36), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>.

²⁶⁹ 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 or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) (OJ L 141, 5.6.2015), pp. 73–117, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.

- *Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation*²⁷⁰.
- *Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments* repealed by Council Directive 2015/2060 of 10 November 2015 because of the adoption of the more extensive provisions of Council Directive 2014/107/EU²⁷¹
- *Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU*²⁷².

²⁷⁰ Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L359, 16.12.2014, p. 1–29), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0107>.

²⁷¹ Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ L 157, 26.6.2003, p. 38–48), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32003L0048>.

²⁷² Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1–29), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0107>.

3.26 Article 41 – Criminal Record

Concerning Article 41 on Criminal record²⁷³, the EU has adopted and is implementing relevant legislation. In particular, the EU has established the European Criminal Records Information System (ECRIS) which allows for the exchange of information on previous criminal convictions between the EU Member States – currently at the level of 4 million messages yearly. In 2023, it will be supplemented by ECRIS-TCN allowing for the identification of Member States holding conviction information on third country nationals.

Operational since April 2012, ECRIS provides an electronic exchange of criminal record information on a decentralised basis between the Member States' central authorities designated for that purpose. It allows Member State's central authorities to obtain complete information on previous convictions of any EU nationals from the Member State of that person's nationality. ECRIS-TCN, once set up, will be a centralised system that allows Member State's central authorities to identify which other Member States hold criminal records on the third country nationals or stateless persons being checked, so that they can then use the existing ECRIS system to address requests for conviction information only to the identified Member States.

Improving ECRIS with regard to TCN is part of the European Agenda on Security. The initiative is also a part of the new approach set out by the European Commission towards data management for borders and security whereby all centralised EU information systems for security, border and migration management should become interoperable in full respect of fundamental rights.

ECRIS-TCN²⁷⁴ will be developed and managed by eu-LISA. A Member State, Eurojust, Europol, or the EPPO wishing to identify the Member State(s) holding criminal record information on a particular TCN can do so by performing a 'hit/no hit' search in the central TCN system. Moreover, Eurojust will serve as contact point for third states and international organisations seeking same information.

Relevant EU legislation:

²⁷³ Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

²⁷⁴ See <https://www.eulisa.europa.eu/Publications/Information%20Material/Leaflet%20ECRIS-TCN.pdf> and <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Ecris-Tcn> and https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_eu_information_systems_security_and_borders_en.pdf.

- *Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States*²⁷⁵
- *Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA*²⁷⁶
- *Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings*²⁷⁷
- *Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN)*²⁷⁸
- *Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA*²⁷⁹

²⁷⁵ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23–32), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009F0315>.

²⁷⁶ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33–48), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009D0316>.

²⁷⁷ Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32–34), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0675>.

²⁷⁸ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1–26), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560235952507&uri=CELEX:32019R0816>.

²⁷⁹ Directive (EU) 2019/884 of the European Parliament and of the Council of 17 April 2019 amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (OJ L 151, 7.6.2019, p. 143–150), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L0884>.

3.27 Article 42 – Jurisdiction

Concerning Article 42 on Jurisdiction²⁸⁰, the relevant EU *acquis* includes rules on jurisdiction. In accordance with Article 11 of the 2017 Directive on the fight against fraud to the Union's financial interests by means of criminal law, a Member State must establish jurisdiction over offences affecting the Union's financial interests as provided for by the same Directive ('PIF offences') where the criminal offence is committed in whole or in part within its territory or where the offender is one of its nationals (Article 11(1)). Member States must take the necessary measures to establish their jurisdiction over PIF offences where the offender is subject to the Staff Regulations at the time of the criminal offence. Member States may refrain from applying this rule, or may apply it only in specific cases or only where specific conditions are fulfilled. They must also inform the Commission if they are not applying it or if they are only applying it in certain cases (Article 11(2)). Member States must also inform the Commission if they decide to extend their jurisdiction over PIF offences committed: (i) by habitual residents in their territory; (ii) for the benefit of a legal person established in their territory; or (iii) by one of their officials acting in his or her official duty (Article 11(3)). Finally, in cases where the offender is one of their nationals²⁸¹, Member States must not make the exercise of jurisdiction subject to the condition that a prosecution can be initiated only following: (i) a report made by the victim in the place where the criminal offence was committed; or (ii) a denunciation from the State of the place where the criminal offence was committed (Article 11(4)).

As far as the EPPO is concerned, it is competent for the offences affecting the Union's financial interests where such offences: (a) were committed in whole or in part within the territory of one or several Member States; (b) were committed by a national of a Member

²⁸⁰ 1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when: 29 (a) The offence is committed in the territory of that State Party; or (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed. 2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when: (a) The offence is committed against a national of that State Party; or (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or (c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or (d) The offence is committed against the State Party. 3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals. 4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her. 5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions. 6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

²⁸¹ In accordance with Article 11(1)(b) of the same Directive.

State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or (c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory (Article 23 of the EPPO Regulation).

Additionally, Eurojust may ask national authorities to coordinate and to accept that one of them may be better placed to investigate. Furthermore, the role of Eurojust in conflicts of jurisdiction between the Member States is enshrined in Article 12 of the Framework Decision 2009/948/JHA, which provides that when parallel proceedings exist and the competent authorities do not reach consensus on an effective solution the matter shall be referred to Eurojust.

As part of its mission to facilitate judicial cooperation, Eurojust often assists national authorities in relation to conflicts of jurisdiction, transfer of proceedings, or in cases potentially involving *ne bis in idem* issues. Pursuant to Article 4 of the Eurojust Regulation, Eurojust may ask the competent authorities of the Member States to undertake an investigation or prosecution or to accept that one Member State may be in a better position to do so. Where Member States do not agree, Eurojust issues a written opinion on the case, which is practically always accepted by the competent national authorities involved. In transnational cases affecting the EU's financial interests which involve non-participating Member States or third countries, the EPPO may request Eurojust to provide support for the prevention and solving of conflicts of jurisdiction.

Moreover, to address the issue of parallel proceedings involving potential *ne bis in idem* issues, Framework Decision 2009/948/JHA lays down general provisions aiming at establishing contact and exchange of information between the competent authorities of two or more Member States conducting parallel criminal proceedings.

Relevant EU legislation

- ***Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector***²⁸².
- ***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***²⁸³ - in particular recitals (20) and (21) and Article 11.

²⁸² Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54–56), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>.

²⁸³ 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, p. 29–41), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574956040076&uri=CELEX:32017L1371>.

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²⁸⁴ - in particular Article 23.
- *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*²⁸⁵.
- *Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings*²⁸⁶.
- *Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community*²⁸⁷.

²⁸⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²⁸⁵ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 2–11, [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

²⁸⁶ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42–47), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009F0948>.

²⁸⁷ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20220101>.

4 United Nations Convention Against Corruption (UNCAC) Chapter IV. International cooperation

4.1 Article 43 – International cooperation

As regards Article 43 on International cooperation²⁸⁸, the EU has adopted and is implementing relevant legislation. In particular, the EU has concluded international agreements on mutual legal assistance and extradition (see relevant sections 4.2, 4.3 and 4.4 below), and the specialised EU agencies and bodies (OLAF, the EPPO, Eurojust, Europol) have clear provisions on the matter of international cooperation.

With regard to the international agreements concluded by the EU, it is important to note that the Trade and Cooperation Agreement between the EU and the United Kingdom of Great Britain and Northern Ireland, in particular under Part three, regulates law enforcement and judicial cooperation between the Member States and Union institutions, bodies, offices and agencies and the United Kingdom in relation to the prevention, investigation, detection and prosecution of criminal offences and the prevention of and fight against money laundering and financing of terrorism.

With the creation and start of operations of the EPPO the European Union has moved a step further in strengthening its capacity to fighting corruption, including of transnational nature, as the EPPO is the EU's independent and supranational prosecutorial body competent - within the limits of its material and territorial competence – to investigate, *inter alia*, offences criminalised under UNCAC.

The EPPO represents a veritable revolution in the 'international cooperation' landscape, as, pursuant to Article 31 of the EPPO Regulation, recourse to traditional mutual legal assistance or to EU mutual recognition instruments is, as a rule, not anymore necessary for 'intra-EPPO' cross-border investigations (i.e. cases concerning only Member States participating in the EPPO). From this perspective, as the EPPO Regulation goes beyond the traditional forms of judicial cooperation in criminal matters provided in Chapter IV of UNCAC, this new way of 'cooperation' is a key contribution by the Union to the modernisation of the mechanisms for obtaining evidence, with an evident positive impact in cross-border cases within the scope of UNCAC. Between 1 June 2021 and 31 December 2021, 142 of the EPPO's investigations concerned cross-border cases²⁸⁹.

²⁸⁸ 1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption. 2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

²⁸⁹ EPPO Annual Report 2021, p. 13, <https://www.eppo.europa.eu/en/documents>.

The EPPO is the Union's competent authority for the application of the UNCAC's provisions on international cooperation with a view to creating a solid legal basis for cooperation in criminal matters between the EPPO and the competent authorities of the States Parties to UNCAC.

The EPPO can cooperate with third countries and EU Member States that do not participate in the EPPO in accordance with the rules set out in Articles 104 and 105 of the EPPO Regulation, respectively. The participating Member States are in the process of notifying the EPPO as a competent authority for the purpose of different EU instruments of mutual recognition and judicial cooperation, in accordance with Article 105(3) of the EPPO Regulation. This notification should allow the EPPO to rely on those EU instruments when cooperating with the competent authorities of the Member States that do not participate in the EPPO.

In accordance with Article 104(4) of the EPPO Regulation, the participating Member States are also in the process of notifying the EPPO as a competent authority for the purpose of the 1959 European Convention on Mutual Assistance in Criminal Matters and its two additional Protocols, with a view to ensuring the EPPO's cooperation with the competent authorities of the States Parties to the Convention in accordance with the rules set out therein as well as in the two additional Protocols. As the Union is a Party to UNCAC, Article 104(3) of the EPPO Regulation applies²⁹⁰ and the EPPO should be competent to cooperate with the competent authorities of the States Parties to UNCAC in accordance with its provisions. The EPPO has concluded a Working Arrangement with the Office of the Prosecutor General of Ukraine, meant to facilitate the application between the EPPO and the Ukrainian authorities of the relevant binding international legal instruments for judicial cooperation.

Finally, the European Union notified the EPPO as a competent authority for the purposes of the Title VIII [Mutual Assistance] of Part Three [Law Enforcement and Judicial Cooperation in Criminal Matters] of the Trade and Cooperation Agreement between the EU and the UK²⁹¹. The Union also notified the EPPO as a competent authority for the purpose of making and, if appropriate, executing freezing requests made under Title XI [Freezing and Confiscation] of Part Three [Law Enforcement and Judicial Cooperation in Criminal Matters] of the Trade and Cooperation Agreement, as well as a central authority for the purpose of sending and answering to such requests.

²⁹⁰ 'International agreements with one or more third countries concluded by the Union or to which the Union has acceded in accordance with Article 218 TFEU in areas that fall under the competence of the EPPO, such as international agreements concerning cooperation in criminal matters between the EPPO and those third countries, shall be binding on the EPPO' (Article 104(3) of the EPPO Regulation).

²⁹¹ EU-UK Trade and Cooperation Agreement - Notification by the Union, Notification on behalf of the Union regarding the European Public Prosecutor's Office (EPPO), OJ L444/1486, 31.12.2020.

OLAF has signed several Administrative Cooperation Arrangements (ACAs) with partner authorities in non-EU countries and territories and counterpart administrative investigative services of International Organisations in order to facilitate practical cooperation.²⁹²

As far as Eurojust is concerned, 10 Liaison Prosecutors come from countries outside the EU and are posted at Eurojust based on the international agreement with the respective country. In the interest of facilitating judicial cooperation between Eurojust and the third country, Liaison Prosecutors have access to Eurojust's operational tools and facilities, including the use of office space and secure telecommunications services. The mandate and duration of each posting are determined by the national authorities of the third countries. Ten third countries have seconded Liaison Prosecutors to Eurojust: Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States of America.

Eurojust has concluded agreements with 12 third countries, i.e. Albania, Montenegro, North Macedonia, Serbia, Georgia, Iceland, Liechtenstein, Moldova, Norway, Switzerland, Ukraine and the USA. These agreements create an enabling environment in which third countries can participate in and benefit from the practical cooperation tools offered through Eurojust.

In March 2021, the Council, on the recommendation of the Commission, has adopted the decision authorising opening of negotiations with 13 third countries for cooperation with Eurojust. With Council decision authorising the opening of the negotiation, negotiations concerning agreements for information exchange with Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey can start. The conclusion of such agreements will strengthen the transnational judicial cooperation of Eurojust with third countries and widen the international scope in the fight against cross-border crime, including corruption.

Finally, Eurojust has Contact Points with the competent authorities in third countries. These connections enable prosecutors from Member States to establish quick contact and liaise with their counterparts in a third country when a crime extends beyond the European Union's borders. However, the involvement of Eurojust Contact Points does not allow for the exchange of operational information, including personal data, unless one of the situations in which such exchange had been enabled applies (i.e. international agreement, cooperation agreement concluded before 12 December 2019, adequacy decision, appropriate safeguards, derogations for specific situations). Contact Points are usually appointed by the General Prosecution Office, national courts or the Ministry of Justice in the respective country.

Relevant EU legislation:

²⁹² For the full list, see Europa website, List of signed ACAs, https://ec.europa.eu/anti-fraud/system/files/2021-07/list_signed_acas_en_7fd50a9cbe.pdf.

- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*²⁹³ - see in particular Articles 31, 104, 105
- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*²⁹⁴ – see in particular Articles 1.1, 3.1, 3.10, 12, 12a, 12b, 14
- *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*²⁹⁵ - in particular Articles 3(5), 47, 52, 53, 54, 56, 57, 58, 59
- *Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland*²⁹⁶

Other relevant EU measures, actions and support

As regards Article 43 on international cooperation, the European Union provides also extensive support in the framework of the fight against corruption to third countries through the European Commission (through the Directorate-Generals for International Partnerships as well as Neighbourhood Policy and Enlargement Negotiations).

EU Neighbourhood Policy and Enlargement Negotiations

²⁹³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

²⁹⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

²⁹⁵ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

²⁹⁶ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (J L 149, 30.4.2021, p. 10–2539), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC.

The Commission's external actions and policy engagement with partner countries in the fight against corruption is part of comprehensive and wider efforts to strengthen democracy, good governance and the rule of law.

The Commission's anti-corruption assistance amounts around EUR 448 Million for the programming period 2014-2020 under both the Instrument for Pre-accession Assistance (IPA II) and the European Neighbourhood Instrument (ENI). This includes tailor-made programmes to help build partner countries capacities to implementing international standards and the EU *acquis* on the prevention and repression of corruption, anti-money laundering and ensuring an effective judicial response. In addition, to central and local governments and institutions in charge of anti-corruption, such activities may target parliaments, media including investigative journalists and civil society.

The Commission's anti-corruption actions are implemented in seven Enlargement partners (Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia, Serbia and Turkey) under IPA and in at least six partners in the South (Jordan, Lebanon, Tunisia, Algeria, Libya, Morocco) and at least five partners in the East (Armenia, Azerbaijan, Georgia, Moldova, Ukraine) under ENI.

This engagement consists of several measures whose objective is the prevention and repression of corruption including the adoption of the revised enlargement methodology to enhance the rule of law, fundamental rights and democracy, public administration reform, socio-economic stability, and where anti-corruption aspects are considered with all their crosscutting relevance.

The EU's anti-corruption policy dialogue with Enlargement partners in particular takes place in the framework of the bilateral Stabilisation and Association Agreements (SAA) and as part of the strategic Stabilisation and Association Process (SAP). The dialogue focuses on progress in the implementation of the fight against corruption and related reform efforts, including on the justice sector, on money laundering and organised crime. Additionally, regular monitoring of anti-corruption and related reforms take place on under the EU enlargement process culminating in the corresponding Annual Reports, in which the Commission services present the detailed assessment of the state of play in each candidate country and potential candidate, including achievements and guidelines on future reform priorities.

Under the Technical Assistance and Exchange Instrument (TAIEX), the Commission organises regular study visits, peer reviews and workshops to complement regional and bilateral programmes.

* *This designation is without prejudice to positions on status, and is in line with UNSC 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.*

For the neighbourhood and enlargement area, the Commission Directorate-General in charge has adopted an Anti-Fraud Strategy (AFS), which addresses fraud, corruption and other illegal practices affecting the EU's interests. The strategy is based on a fraud risk assessment and is implemented through Annual Action Plans.

- One of the key objectives of the Anti-Fraud Strategy is supporting the national authorities and other implementing partners in building knowledge in the field of fraud and corruption.
- The Directorate-General is actively cooperating with OLAF, IDOC, EPPO and other investigative services. A network of OLAF Focal Points is active with representatives in each Directorate and Delegation/ Office.

International Partnerships

As part of bilateral support, the Commission plans to support work on anti-corruption in 30+ partner countries in which anti-corruption is a main focal area in the multi-annual indicative programmes (MIPs) for the period 2021-2027. The main areas of support include:

- Strengthening the capacities of key institutions and legislation to fight against corruption
- Improving the efficiency of the judicial system in the fight against corruption, including collaboration between actors of the judicial chain
- Support to the key institutions that exert an independent oversight role, as well as cooperation between key oversight entities
- Strengthening civil society organisations in their advocacy and watchdog capacities
- Harness the enabling power of digitalisation to fight corruption, including digitalisation of critical judicial functions
- Supporting other anti-corruption measures:
 - assets declaration, procurement policies and fight against money laundering
 - improve access to information
 - multi-level and transparent budgeting, geared towards the fight against corruption
 - anti-corruption measures to improve service delivery

Under the thematic Programme on Human Rights and Democracy, in 2020 the Commission signed a EUR 5 million contract with Transparency International - Strengthening Accountability Networks among Civil Society (SANCUS) - to improve democratic accountability of public institutions globally, by empowering civil society to demand systemic change to address accountability and anti-corruption deficits in 21 countries over 36 months.

Under the thematic Programme on Human Rights and Democracy, the Directorate-General for International Partnerships at the European Commission (DG INTPA) also plans to support a project implemented by Open Government Partnership (OGP) in the period 2022-2024 to support inclusive co-creation and implementation of action plans, with a focus on anti-corruption. At the country level, the project will support intensive engagement with selected countries across regions to advance co-creation of OGP action plan commitments on key themes. The project will also enable cross-country learning and exchange

As with all EU development cooperation, breaches of fundamental values or serious cases of corruption can lead to suspension and ultimately termination of a programme.

4.2 Article 44 – Extradition

Concerning Article 44 on Extradition²⁹⁸, the EU has in place a simplified cross-border judicial surrender procedure among the Member States – for the purpose of prosecution or execution

²⁹⁸ 1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party. 2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law. 3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences. 4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence. 5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies. 6. A State Party that makes extradition conditional on the existence of a treaty shall: (a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and (b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article. 7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves. 8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition. 9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies. 10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings. 11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution. 12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article. 13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof. 14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and

of custodial sentences or detention orders – which is regulated under Framework Decision 2002/584/JHA (the European Arrest Warrant). In a residual number of cases not falling under the scope of the Framework Decision, the European Union Convention on Simplified Extradition Procedure 1995 and the Convention on extradition between the Member States of the European Union of 1996 may still apply.

With regard to extradition agreements with third States, the EU has concluded agreements on extradition with the United States of America, Iceland and Norway and the United Kingdom. The Commission plans to issue guidelines on extradition to third States in 2022.

The EPPO and Eurojust can also be involved in this process where needed. In particular, as far as the EPPO is concerned, where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant (Article 33(2) of the EPPO Regulation). Where it is instead necessary to request the extradition of a person, the handling European Delegated Prosecutor may request the competent authority of his/her Member State to issue an extradition request in accordance with applicable treaties and/or national law (Article 104(7) of the EPPO Regulation).

Eurojust can play a key role in supporting and facilitating surrender procedures within the Union and extradition procedures with third States, in accordance with the rules and procedures provided for in the 2018 Regulation.

Relevant EU legislation

- ***Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)***²⁹⁹
- ***Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union***³⁰⁰

guarantees provided by the domestic law of the State Party in the territory of which that person is present. 15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons. 16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. 17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation. 18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

²⁹⁹ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (OJ L 190, 18.7.2002, p. 1–20), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0584>.

- *Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union*³⁰¹
- *Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of the Member States of the EU*³⁰² - in particular Article 5, Article 8
- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*³⁰³ - in particular Articles 33(2) and 104(7)
- *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*³⁰⁴ - in particular Articles 2(1), 2(2) and 4(1)b
- *Agreement on extradition between the European Union and the United States of America*³⁰⁵
- *Agreement between the European Union and Iceland and Norway on the surrender procedure*³⁰⁶

³⁰⁰ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (OJ C 78, 30.3.1995, p. 2–10), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41995A0330%2801%29>.

³⁰¹ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union - Joint Declaration on the right of asylum - Declaration by Denmark, Finland and Sweden concerning Article 7 of this Convention - Declaration on the concept of 'nationals' - Declaration by Greece regarding Article 5 - Declaration by Portugal on extradition requested for an *offence* punishable by a life sentence or detention order - Council declaration on the follow up to the Convention (OJ C 313, 23.10.1996, p. 12–23), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41996A1023%2802%29>.

³⁰² Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2–11), [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0625(01)).

³⁰³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

³⁰⁴ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

³⁰⁵ Agreement on extradition between the European Union and the United States of America (OJ L 181, 19.7.2003, p. 27–33), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22003A0719%2801%29>.

³⁰⁶ Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway – Declarations (OJ L 292, 21.10.2006, p. 2–19), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22006A1021%2801%29>.

- *Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland*³⁰⁷- in particular Part three, Title VII.

³⁰⁷ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (J L 149, 30.4.2021, p. 10–2539), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATO.C.

4.3 Article 45 – Transfer of sentenced persons

Concerning Article 45 on Transfer of sentenced persons³⁰⁸, the EU has adopted and is implementing relevant legislation, in particular Council Framework Decision 2008/909/JHA on mutual recognition of custodial sentences, which establishes rules under which a Member State, with a view to facilitating the social rehabilitation of a sentenced person, is to recognise a judgment and enforce the sentence delivered in another Member State.

Relevant EU Legislation

- *Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*³⁰⁹

³⁰⁸ States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

³⁰⁹ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27–46), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008F0909>.

4.4 Article 46 – Mutual Legal Assistance

Concerning Article 46 on Mutual legal assistance³¹⁰, the EU has adopted Directive 2014/41/EU on the European Investigation Order (EIO) which sets up a comprehensive

³¹⁰ States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. 2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party. 3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) Facilitating the voluntary appearance of persons in the requesting State Party; 34 (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party; (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention; (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention. 4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention. 5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay. 6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance. 7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation. 8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy. 9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1; (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention; (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality. 10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met: (a) The person freely gives his or her informed consent; (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate. 11. For the purposes of paragraph 10 of this article: (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred; (b) The State Party to which the person is transferred shall without delay implement its

obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties; (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred. 12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory 36 of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred. 13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible. 14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith. 15. A request for mutual legal assistance shall contain: (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; 37 (e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought. 16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution. 17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request. 18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party. 19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay. 20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party. 21. Mutual legal assistance may be refused: (a) If the request is not made in conformity with the provisions of this article; 38

framework in criminal matters allowing authorities in one Member State to obtain evidence from another Member State. The Directive replaces other EU mutual legal assistance schemes³¹¹, notably the 2000 EU Mutual Legal Assistance Convention and its Protocol. Many other relevant acts that assist with mutual legal assistance across the EU and its Member States are in force. OLAF, the EPPO and Eurojust are additionally also involved in these processes. Furthermore, the EU has concluded international agreements on mutual legal assistance with the United States of America, as well as with Japan, Iceland and Norway, and has included Title VIII on mutual assistance in the EU-UK Trade and Cooperation Agreement.

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests; (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted. 22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. 23. Reasons shall be given for any refusal of mutual legal assistance. 24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required. 25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. 26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions. 27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will. 28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne. 29. The requested State Party: (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public. 30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

³¹¹ Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 35 of Directive 2014/41/EU.

OLAF may transmit to the competent (judicial) authorities of the Member States concerned information obtained in the course of external or international investigations to enable them to take appropriate action in accordance with their national law (Article 12(1) and (2) Regulation 883/2013). Furthermore, OLAF can transmit information relating to criminal matters to the competent authorities of Member States in the form of its final reports, which include, where appropriate, recommendations regarding judicial action to be taken by the Member State concerned. (Article 11(1) of Regulation 883/2013).

Relevant EU legislation

- ***Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters***³¹²
- ***Convention on mutual assistance in criminal matters between the Member States, and the Protocol of 16 October 2001 to that Convention***³¹³
- ***Joint Investigation Teams*** - see section 4.7 (4.7 Article 49 – Joint Investigations).
- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***³¹⁴ - in particular Articles 31, 104(3), (4), (5) and (6), 105(3)
- ***Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA***³¹⁵, in particular Articles 2(1), 2(2) and 4(1)(b).
- ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the***

³¹² Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1–36), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>. In January 2021, the Commission proposed an amendment to Article 20 of the Directive to align it with EU rules on the protection of personal data.

³¹³ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 1–1), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001F1121\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001F1121(01)).

³¹⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

³¹⁵ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999³¹⁶, in particular Articles 1, 11, 12, 12a and 12b.

- ***Agreement on mutual legal assistance between the European Union and the United States of America³¹⁷.***
- ***Agreement between the European Union and Japan on mutual legal assistance in criminal matters³¹⁸.***
- ***Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto³¹⁹.***
- ***Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland³²⁰ - in particular Part Three, Title VIII.***

Additional relevant legislation³²¹ on:

Judicial cooperation in criminal matters - liaison magistrates:

- 22 April 1996 - Joint Action 96/277/JHA concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the EU (9)

³¹⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

³¹⁷ Agreement on mutual legal assistance between the European Union and the United States of America, OJ L 181, 19.7.2003, p. 34–42.

³¹⁸ Agreement between the European Union and Japan on mutual legal assistance in criminal matters, OJ L 39, 12.2.2010, p. 20–35.

³¹⁹ Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto, OJ L 26, 29.1.2004, p. 3–9.

³²⁰ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (J L 149, 30.4.2021, p. 10–2539), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC.

³²¹ For an overview, see <https://www.consilium.europa.eu/media/45846/eu-instruments-criminal-law-and-texts.pdf>.

European Judicial Network (EJN):

- Council Decision 2008/976/JHA on the European Judicial Network

4.5 Article 47 – Transfer of Criminal Proceedings

Concerning Article 47 on Transfer of criminal proceedings³²², the Commission is planning to issue a legislative proposal on transfer of criminal proceedings in 2022.

Moreover, the EU has adopted and is implementing relevant legislation, particularly to facilitate such transfer of proceedings between the EU Member States in the context of the EPPO activities. While they do not refer to ‘transfer of criminal proceedings’ as such, Articles 26(4) and (5) and 36(3) of the EPPO Regulation provide for a mechanism by which the EPPO can decide to open or continue investigations or launch prosecutions in a Member State other than 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. The choice of this other Member State where investigations should be initiated or continued or the prosecution should be launched is to be done in accordance with the criteria listed in Article 26(4) of the EPPO Regulation in order of priority (the place of the suspect’s or accused person’s habitual residence; the nationality of the suspect or accused person; the place where the main financial damage has occurred).

Beyond the EPPO Regulation, Council Framework Decision 2009/948/JHA regulates a mechanism of consultation among EU Member States’ competent authorities in cases of conflict of jurisdiction, which Eurojust may also help to solve.

As part of its mission to facilitate judicial cooperation, Eurojust often assists national authorities in relation to conflicts of jurisdiction, transfer of proceedings, or in cases potentially involving *ne bis in idem* issues. Pursuant to Art. 4 of the Eurojust Regulation, Eurojust may ask the competent authorities of the Member States to undertake an investigation or prosecution or to accept that one Member State may be in a better position to do so. Where Member States do not agree, Eurojust issues a written opinion on the case, which is practically always accepted by the competent national authorities involved.

In transnational cases affecting the EU’s financial interest which involve non-participating Member States or third countries, the EPPO may request Eurojust to provide support for the prevention and solving of conflicts of jurisdiction.

Eurojust may ask the authorities to accept that one Member State is in a better position to undertake an investigation. Furthermore, Eurojust also issued the Guidelines for deciding ‘Which jurisdiction should prosecute’, available on Eurojust’s website.³²³

³²² States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

³²³ For some recent data on the matter: Eurojust Written Recommendations on Jurisdiction: Follow-up at the National Level (<https://www.eurojust.europa.eu/cs/executive-summary-eurojust-written-recommendations-jurisdiction-follow-national-level>); Eurojust Written Requests on Jurisdiction in a Nutshell

Relevant EU legislation

- *Convention established by the Council (Council Act of 29 May 2000) in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union*³²⁴ - in particular Article 7 (Spontaneous exchange of information).
- *Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings*³²⁵.
- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*³²⁶ - in particular Articles 26(4) and 36(3).
- *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*³²⁷ - in particular Article 4.

(<https://www.eurojust.europa.eu/eurojust-written-requests-jurisdiction-nutshell>); Both available at <https://www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-application-judicial-cooperation-instruments/conflicts-of-jurisdiction>.

³²⁴ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1–2

³²⁵ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42–47), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009F0948>.

³²⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

³²⁷ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

4.6 Article 48 – Law Enforcement Cooperation

Concerning Article 48 on Law enforcement cooperation³²⁸, the EU has adopted and is implementing relevant legislation, in particular in relation to law enforcement cooperation among the EU and its Member States. Europol, CEPOL and Eurojust play an important role as agencies in this process.

Europol plays a key role. With the aim of fostering financial investigations and the recovery of assets derivate from crimes, including corruption, Directive (EU) 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, contains inter alia rules on access to national centralized bank account registers (CBAR). Article 11 of the Directive pertains to Europol indirect access to the national centralised bank account registers and data retrieval systems. The Directive was due to be transposed by 1 August 2021. As of this date, Europol may ask bank account information (as per definition in article 2 paragraph 7 of the Directive). The requests will be centralized by the Europol Financial Crime Team and sent via SIENA. Each request shall be duly justified and Europol data protection officer shall be informed.

The Secure Information Exchange Network Application (SIENA) is a state-of-the-art platform that meets the communication needs of EU law enforcement. The platform enables the swift and user-friendly exchange of operational and strategic crime-related information among:

³²⁸ 1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures: (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities; (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning: (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned; (ii) The movement of proceeds of crime or property derived from the commission of such offences; (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences; (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes; (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities; (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers; (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention. 2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies. 41 3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

- Europol's liaison officers, analysts and experts
- Member States
- Third Parties with which Europol has cooperation agreements / working arrangements.

Launched on 1 July 2009, the following year the following entities and countries started using it:

- EU law-enforcement agencies
- cooperating partners such as Eurojust, Frontex, OLAF and Interpol
- cooperating states outside the EU, such as Australia, Canada, Norway, Liechtenstein, Moldova, Switzerland and the United States.
- Access continues to be extended in 2020.

In more recent years, access to SIENA has also been afforded to specialized law-enforcement units and various initiatives, such as the asset-recovery offices (AROs), police customs cooperation centres (PCCCs), passenger-information units (PIUs), financial intelligence units (FIUs), fugitive active search teams (ENFAST), special tactics units (ATLAS), Nordic LOs initiative and Lake of Constance initiative.

The European Union Agency for Law Enforcement Training (also known as CEPOL) is an agency of the European Union dedicated to develop, implement and coordinate training for law enforcement officials. Since 1 July 2016, the date of its new legal mandate¹, CEPOL's official name is 'The European Union Agency for Law Enforcement Training'. CEPOL contributes to a safer Europe by facilitating cooperation and knowledge sharing among law enforcement officials of the EU Member State and to some extent, from third countries, on issues stemming from EU priorities in the field of security; in particular, from the EU Policy Cycle on serious and organised crime. CEPOL organises trainings such as courses on 'Investigating and preventing corruption'³²⁹. CEPOL has been active in the provision of anti-corruption training since its establishment in line with the legal mandate and the mission of the agency. The relevant training activities target this multifaceted phenomenon in the principle of interdisciplinarity, concentrating on practical law enforcement solutions, collecting experience from wide range of stakeholders from police, customs, gendarmerie and other law enforcement originations to the judiciary, private and non-governmental sector.

Trainings focus on the sharing of good detection, intelligence, investigation practices, emerging crime patterns while debating the management of risk management systems and the specific steps to strengthen prevention systems. The fight against systemic, grand corruption cases, the organised crime infiltration into legitimate business structures, the vulnerabilities of public procurement processes and the requirements of tackling corruption within law enforcement do receive special attention. Integrity testing, the management and protection of whistleblowers, the use of special law enforcement techniques such as undercover agents are

³²⁹ See Europa website, CEPOL, Education & Training – What we teach, <https://www.cepoleuropa.eu/education-training/what-we-teach/onsite-activities/802021-investigating-preventing-corruption>.

also debated extensively during CEPOL trainings together with financial investigation and asset recovery techniques. Moreover cross-border cooperation practice, the use of international and EU instruments (OLAF, Europol, Eurojust) in judicial proceedings, the possibilities of joint investigations and the respective fundamental rights obligations are also taken into account in the training curricula. CEPOL typically annually organises a special course on the topic ('Investigating and preventing corruption') that attracts competent officers from EU law enforcement agencies and shares knowledge on recent developments of these elements. Besides this particular annually repeated international onsite course CEPOL addresses the issue of corruption horizontally in its training portfolio via the implementation of thematic serious organised crime activities. Trainings that generally discuss excise fraud, criminal finances, illegal immigration and other types of serious crimes frequently have sessions on corruption which is certainly one of the main crime enabler of these grave offences.

Relevant EU legislation

- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999³³⁰*, in particular Articles 12, 12a and 12b
- *Regulation (EU) 2015/2219 of the European Parliament and of The Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL)³³¹*
- *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA³³²*,

³³⁰ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

³³¹ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA (OJ L 319, 4.12.2015, p. 1–20), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2219>.

³³² Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

- ***Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794***, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation³³³.
- ***Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA***³³⁴, in particular Article 11.
- ***Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA***³³⁵, providing funding opportunities for Member State authorities for the prevention of and fight against corruption in 2014-2020, and ***Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund (ISF)***³³⁶, providing funding opportunities for the Member State authorities for the prevention of and fight against corruption in 2021-2027.
- ***The Trade and Cooperation Agreement with the UK***, which provides for a Chapter on the Cooperation with and via Europol³³⁷
- ***Cooperation agreements between Europol and third countries***. At the moment, at least 20 third countries have such an agreement³³⁸, including the stationing of a liaison officer

³³³ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation, 9.12.2020, COM(2020)796 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0796>.

³³⁴ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122–137), <https://eur-lex.europa.eu/eli/dir/2019/1153/oj>.

³³⁵ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (OJ L 150, 20.5.2014, p. 93–111), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0513>.

³³⁶ Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund (OJ L 251, 15.7.2021, p. 94–131), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1149>.

³³⁷ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (J L 149, 30.4.2021, p. 10–2539), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.149.01.0010.01.ENG&toc=OJ%3AL%3A2021%3A149%3ATOC.

³³⁸ Albania, Australia, Brazil, Canada, Colombia, North Macedonia, Georgia, Iceland, Israel, Japan, Moldova, Montenegro, New Zealand, Norway, Serbia, Switzerland, Turkey, Ukraine, United kingdom, United States. See <https://www.europol.europa.eu/partners-collaboration>.

at Europol headquarters. A number of agreements for cooperation between third countries and Europol are still under negotiation.

4.7 Article 49 – Joint Investigations

Concerning Article 49 on Joint investigations³³⁹, the EU has adopted and is implementing relevant legislation providing for the framework for EU Member States as well as for the EPPO, within the limits of its mandate, to set up a Joint Investigation Team (JITs).

The EPPO can set up a JIT with the competent authorities of Member States that do not participate in the EPPO, and with third countries, in accordance with Article 105(3) of the EPPO Regulation and, if needed, with the support of Eurojust. The first JIT between the EPPO and a non-participating Member State was established, with the support of Eurojust, in February 2022³⁴⁰.

Additionally, the EU acquis sets out the conditions on when and how the specialised EU agencies (Europol and Eurojust) can contribute to facilitate the setting up of such JITs by EU Member States' competent authorities, including by providing financial support. OLAF may also participate in JITs and, in that framework, exchange operational information acquired pursuant to Regulation (EU/Euratom) No 883/2013.

Furthermore, the JITs Secretariat that was established in 2005 to support the work of the JIT Network has been hosted at Eurojust since 2011. The aim of this Network, which consists of national law enforcement and judicial experts, is to facilitate the work of practitioners, as well as to encourage the use of JITs and contribute to the sharing of experience and best practice in using this tool.

Relevant EU legislation

- *Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union*³⁴¹ - in particular Article 13.
- *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and*

³³⁹ States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

³⁴⁰ See Europa website, Eurojust, Eurojust assists in setting-up first joint investigation team with EPPO at the request of the Swedish authorities, <https://www.eurojust.europa.eu/news/eurojust-assists-first-joint-investigation-team-epo-swedish-authorities>.

³⁴¹ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union OJ C 197, 12.7.2000, p. 1–2

*replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA*³⁴² - in particular Article 5 (possibility to set-up joint investigation teams)

- *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*³⁴³ - in particular Article 12b
- *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*³⁴⁴ - in particular recitals (15) and (57) and Articles 14(1)(f) and 14(2)(d); 8(1)(d); 48(2); 60(4) and 64(1)
- *Council Framework Decision of 13 June 2002 on joint investigation teams.*³⁴⁵ The Framework Decision itself will cease to have effect after the 2000 MLA Convention has entered into force in all Member States.
- *Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT)*³⁴⁶
- *Council Document 11037/05 establishing JITs Network*³⁴⁷
- *Guidelines on the Network of National Experts on Joint Investigation Teams*³⁴⁸

³⁴² Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>.

³⁴³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0883-20210117>.

³⁴⁴ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138–183), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>.

³⁴⁵ Council Framework Decision of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1–3), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465>.

³⁴⁶ Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (OJ C 70, 19.3.2010, p. 1–12), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010G0319%2801%29>.

³⁴⁷ Council Document 11037/05 (08.07.2005) establishing a JITs Network, <https://www.eurojust.europa.eu/sites/default/files/Partners/JITs/JITs-Council-document-11037-05-EN.pdf>.

³⁴⁸ Guidelines on the Network of National Experts on Joint Investigation Teams, (07.2018), https://www.eurojust.europa.eu/sites/default/files/assets/2020_12_jit_guidelines_july_2018.pdf. These

- ***Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')***³⁴⁹ - in particular Articles 31(6) and 105(3)

guidelines have been recently reviewed, including with EPPO contribution. The December 2021 edition is available here <https://www.eurojust.europa.eu/publication/jits-practical-guide>

³⁴⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

4.8 Article 50 – Special Investigative Techniques

Concerning Article 50 on Special investigative techniques³⁵⁰, the EU has some rules in place.

Directive 2014/41/EU on the European Investigation Order (EIO) lays down some provisions in relation to specific investigative measures (under Chapter IV of the Directive). In particular, an EIO may be issued in order to obtain information on banking and other financial operations (Article 27), for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time such as controlled deliveries (Article 28), for the purpose of covert investigations (Article 29) and for the interception of telecommunications (Article 30).

Moreover, Article 30 of the EPPO Regulation provides that, at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request some of the investigation measures provided for by Article 50 UNCAC, and notably: (i) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using; and (ii) track and trace an object by technical means, including controlled deliveries of goods. The Regulation also provides that the evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State (Article 37 of the EPPO Regulation).

Relevant EU Legislation

³⁵⁰ 1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom. 2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements. 3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. 4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

- *Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters*³⁵¹ - in particular Chapter IV.
- *Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*³⁵² – Article 73
- *Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’)*³⁵³ – in particular Articles 30(1)(e), (f) and 37 (the latter in combination with Recital 80)

³⁵¹ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1–36), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>.

³⁵² The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19–62), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42000A0922%2802%29>.

³⁵³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (OJ L 283, 31.10.2017, p. 1–71), <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.