

IMPLEMENTATION OF THE EPPO REGULATION FROM THE SLOVAK PERSPECTIVE / Dominika Becková, Katarína Koromházová

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Abstract: *Nowadays, 22 Member States are participating in enhanced cooperation for establishment of the European Public Prosecutor's Office. Due to the fact that the establishment and exercise of powers of the European Public Prosecutor's Office significantly changes the current concept of EU criminal law, it was necessary for the participating Member States to adapt to this change. To ensure effective application of the Regulation in practice, the Member States had to adopt different implementing measures. As in other Member States, also the national authorities of the Slovak Republic needed to consider necessary legislative measures ensuring effective application of the EPPO Regulation for the purpose of investigating and prosecuting criminal offences affecting financial interests of the EU.*

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Key words: *EPPO; European Delegated Prosecutors; Code of Criminal Procedure of the Slovak Republic; competence; investigation, EU criminal law*

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1. INTRODUCTION

The European Public Prosecutor's Office, as a new body of the European Union, was established by Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation for the establishment of the European Public Prosecutor's Office (hereinafter as "*the EPPO Regulation*"). The adoption of the EPPO Regulation is the result of a mutual political agreement between the states in a group of the Member States, which have expressed an interest in setting up a separate Union body responsible for combating crimes affecting financial interests of the Union. On 3 April 2017, these

Member States,¹ including the Slovak Republic, notified the European Parliament, the Council and the Commission of their wish to establish enhanced cooperation on the basis of a proposal for a Regulation establishing a European Public Prosecutor's Office, thus making use of the procedure set out in Art. 86(1) TFEU.² The EPPO Regulation entered into force on 20 November 2017 with Art. 120 of the EPPO Regulation setting out a minimum period of three years during which the European Public Prosecutor's Office was to prepare for its tasks.³ That three-year period was intended to provide sufficient space not only for the European Public Prosecutor's Office and the European Union to ensure all necessary matters relating to the establishment of a new European Union body, but also for the Member States, which also had to prepare for the activities of the supranational prosecutor's office. Although there was a strong expectation that the European Public Prosecutor's Office would take over the tasks entrusted to it as soon as the "preparatory" three-year period had expired, this was not the case. The date on which the European Public Prosecutor's Office took over the tasks of investigation and prosecution entrusted to it by the EPPO Regulation was set by Commission Decision⁴ on 1 June 2021.

Today, 22 EU Member States⁵ are participating in enhanced cooperation for the establishment of the European Public Prosecutor's Office. These 22 Member States have become parts of a very ambitious EU project, which, if successful, will bring great benefits to the Union itself but also to its Member States. The European Public Prosecutor's Office, which has become a part of the EU's institutional system, is the only EU body with the power to investigate and prosecute perpetrators and accomplices of crimes affecting the Union's financial interests, as well as to bring them to court.⁶ The European Public Prosecutor's Office is an indivisible body of the Union, acting as a single authority with a decentralized structure (Article 8(1) of the EPPO Regulation), which has its own legal personality (Article 3 of the EPPO Regulation) and which is independent in carrying out its tasks (Article 6 EPPO Regulation). Investigations and prosecutions on behalf of the European Public Prosecutor's Office are governed by the EPPO Regulation, but in cases

¹ These Member States were Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain. Subsequently, four other Member States decided to join the enhanced cooperation, namely Latvia on 19 April 2017, Estonia on 1 June 2017, Austria on 9 June 2017 and Italy on 22 June 2017.

² The EPPO Regulation regulates three different, consecutive procedures for the creation of a European Public Prosecutor's Office. The first subparagraph of Art. 86(1) TFEU provides for the possibility of setting up a European Public Prosecutor's Office from Eurojust, which requires unanimity in the Council and obtaining consent of the European Parliament. In the absence of unanimity in the Council, the second subparagraph of Art. 86(1) TFEU provides for the possibility of submitting a proposal for a Regulation establishing a European Public Prosecutor's Office to the European Council, which, if consensus is reached, shall refer the proposal back to the Council for adoption. However, when setting up the European Public Prosecutor's Office, only the procedure provided for in the third subparagraph of Art. 86(1) TFEU was applied, according to which: *"If no consensus is reached in the European Council and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly within the same time limit. In such a case, the authorization to carry out enhanced cooperation shall be granted pursuant to Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty and the provisions on enhanced cooperation shall apply."*

³ According to Art. 120(2) subparagraphs 2 and 3, the specific date on which the European Public Prosecutor's Office takes over its tasks under the EPPO Regulation is to be determined by a Commission decision based upon a proposal from the Chief European Prosecutor, which may not be earlier than three years from the date of entry into force of the EPPO Regulation.

⁴ Commission Implementing Decision (EU) 2021/856 of 25 May 2021 determining the date on which the European Public Prosecutor's Office assumes its investigative and prosecutorial tasks.

⁵ Following the entry into force of the Regulation, the Netherlands joined the enhanced cooperation on 1 August 2018 and Malta on 7 August 2018.

⁶ Article 4 of the EPPO Regulation.

where the EPPO Regulation does not regulate a specific matter, the relevant national law will apply (Article 5(3) of the EPPO Regulation). Due to the fact that the EPPO Regulation regulates many issues of the functioning and operation of the European Public Prosecutor's Office only in a framework, the European Public Prosecutor's Office will often rely on the provisions of an applicable national law of one of the 22 participating Member States whose substantive and procedural criminal law regulations are significantly different.

Given that establishment and exercise of the powers of the European Public Prosecutor's Office significantly changes the current concept of the EU criminal law, it was necessary for the Member States to decide on participation in enhanced cooperation to adapt to this change. The European Public Prosecutor's Office was established by a regulation binding in its entirety and directly applicable in all participating Member States,⁷ which means that its application in the Member States is automatic without the need for further implementing measures by the Member State. However, in order to ensure effective application of the Regulation in practice, in particular in the conduct of investigations and prosecutions conducted by the European Public Prosecutor's Office in each participating Member State, it was necessary to adopt different legislative measures in those Member States (Kert, 2020). The measures taken were intended to prepare the Member States and their national authorities for the operation of the European Public Prosecutor's Office, in particular to regulate the status and remit of the European Public Prosecutors and European Delegated Prosecutors and to determine the national law to be applied in the Member States to investigations and prosecutions conducted by the European Public Prosecutor's Office (Herrnfeld, 2020). There is a three-year "preparatory" period set out in Art. 120(2) of the EPPO Regulation that should give the participating Member States sufficient time to take necessary implementing measures.

The Slovak Republic is one of the Member States participating in this enhanced cooperation, and it was therefore necessary for the legislators to adapt the standards of Slovak criminal law so that the Slovak Republic was prepared for the functioning of the European Public Prosecutor's Office. Legislative measures adopted in the territory of the Slovak Republic were reflected in the amendment of the provisions of several laws, in particular Act no. 301/2005 Coll. Code of Criminal Procedure, Act no. 153/2001 on the Prosecutor's Office and Act no. 154/2001 Coll. on prosecutors and prosecutor trainees. The first part of this article deals with the issue of the position of the European Public Prosecutor's Office in the conditions of the Slovak Republic, the authors dealing in more detail with the position of the European prosecutors and European delegated prosecutors in the Slovak legal system. In the second part of the presented article, the authors focused their attention on the provisions of the national law, which are crucial for the activities of the European Public Prosecutor's Office, focusing primarily on procedural issues related to the competence of and its exercise by the European Public Prosecutor's Office in Slovakia.

2. EUROPEAN PUBLIC PROSECUTOR'S OFFICE IN THE SLOVAK CRIMINAL JUSTICE SYSTEM

The European Public Prosecutor's Office was established by the EPPO Regulation as an indivisible body of the Union, acting as a single authority with a decentralized structure (Article 8(1) of the EPPO Regulation). The internal organizational

⁷ Article 288 TFEU.

structure of the European Public Prosecutor's Office is regulated by Art. 8 of the EPPO Regulation, which sets out the basic organizational principles and actors, and which, together with the related articles of the third chapter entitled "The position, structure and organization of the European Public Prosecutor's Office", can be described as the European Public Prosecutor's Office's organizational system, which is integrated, comprehensive and multi-level (Burchard, 2021). The central level of the European Public Prosecutor's Office is made up of a headquarters consisting of the Chief European Prosecutor who heads the European Public Prosecutor's Office and his two deputies (Article 10 of the EPPO Regulation), one European Public Prosecutor for each participating Member State (Article 12 of the EPPO Regulation), a college consisting of the Chief European Prosecutor and Delegated Prosecutors (Article 9 of the EPPO Regulation), the Permanent Chambers, each with three members (Article 10 of the EPPO Regulation), and the Administrative Director (Article 18 of the EPPO Regulation). The second, decentralized level of the European Public Prosecutor's Office consists of European Delegated Prosecutors who are located in the participating Member States and act on behalf of the European Public Prosecutor's Office in their Member States (Article 13 of the EPPO Regulation). The link between the decentralized level and headquarters is ensured by close cooperation between the European Delegated Prosecutors responsible for the investigation and prosecution of criminal offences affecting the financial interests of the Union in their Member States and the European Public Prosecutors supervising such investigation and prosecution (Article 12(1) of the EPPO Regulation). At the same time, European Public Prosecutors are a "link" between the European Delegated Prosecutors and the Permanent Chambers, which monitor and direct investigations and prosecutions conducted in the Member States by the European Delegated Prosecutors (Article 10(2) of the EPPO Regulation).

The structure of the European Public Prosecutor's Office determined by the EPPO Regulation has also been reflected in several regulations of the Slovak criminal law regulating the issue of the position and competence of the European Prosecutor's Office as a whole, but also issues of the status and competence of the Chief European Prosecutor, the European Prosecutor and the European Delegated Prosecutor. The basic regulation of the criminal procedural law in the conditions of the Slovak Republic is represented by Act no. 301/2005 Coll. Code of Criminal Procedure (hereinafter referred to as the "Code of Criminal Procedure" or the "CCP"), which stipulates, for the purposes of exercising the powers of the European Public Prosecutor's Office in the Slovak Republic, that: "*a prosecutor shall also mean the Chief European Prosecutor, a Delegated Prosecutor, and a Permanent Chamber*" (Section 10 CCP). This change in the Criminal Procedure Code was made by Act no. 312/2020 Coll.⁸ of 21 October 2020 and represents one of the implementing measures for proper implementation of the EPPO Regulation. The aim of the implementing measure was to ensure that, wherever the rules of criminal law deal with the prosecutor, they are automatically understood to also mean the Chief European Prosecutor, the European Prosecutor, the European Delegated Prosecutor and the Permanent Chamber for criminal matters falling within the remit of the European Public Prosecutor's Office.⁹

Undoubtedly, one of the most important issues related to effective and coherent functioning of the European Public Prosecutor's Office is the position and competence of European Prosecutors and European Delegated Prosecutors, which are regulated in the

⁸ Act no. 312/2020 Coll. of 21 October 2020 on the enforcement of the decision on seizure of property and administration of seized property and on the amendment of certain acts.

⁹ Explanatory report to Act no. 312/2020 Coll.

Slovak legal system by Act no. 153/2001 Coll. on the Prosecutor's Office (hereinafter referred to as the "Prosecutor's Office Act"), as well as Act no. 154/2001 Coll. on Prosecutors and Trainee Prosecutors (hereinafter referred to as the "Act on Prosecutors"). For the purposes of the regulation, Act no. 242/2019 Coll.¹⁰, Amending the Prosecutor's Office Act and the Act on Prosecutors was adopted, the primary objective of which was to create legislative preconditions for proper functioning of the European Prosecutor's Office and effective exercise of its powers in the Slovak Republic, as well as legislative preconditions for quality representation of the Slovak Republic in the European Public Prosecutor's Office by prosecutors temporarily assigned to the function of the European Prosecutor, European Delegated Prosecutors and, where applicable, the Chief European Prosecutor.¹¹ A separate act¹² also introduced legislation concerning selection of candidates for the position of the European Prosecutor and the European Delegated Prosecutor of the European Public Prosecutor's Office.

2.1 Position of the European Public Prosecutor

There is one European Public Prosecutor in the European Public Prosecutor's Office for each Member State, whose main task is to supervise prosecutions and investigations for which the European Delegated Prosecutor acting in the case of their Member State of origin is responsible (Article 12 of the EPPO Regulation). At the same time, the European Public Prosecutors act as a liaison point and information channel between the Permanent Chambers and the European Delegated Prosecutors in their Member States of origin, precisely because they are sufficiently familiar with the national legislation in question (Article 12(5) of the EPPO Regulation).

The European Public Prosecutors who are parts of the central level of the European Public Prosecutor's Office shall be employed as temporary staff of the European Public Prosecutor's Office in accordance with Article 2(a) Conditions of Employment (Article 96(1) of the EPPO Regulation). Thus, after their appointment, the European Public Prosecutors do not remain active members of their national prosecutor's offices, but become employees of the European Public Prosecutor's Office. As the European Public Prosecutors are employees of the European Public Prosecutor's Office who will perform their tasks at the European Union level and whose tasks are very clearly set out in the EPPO Regulation, they will be guided based on the provisions of the Union law (Švedas and Markevičiute, 2020).

Although the European prosecutors are not active in the national prosecutor's offices and in most cases they "only" supervise investigation and prosecution of the European Delegated Prosecutor, the EPPO Regulation does not preclude the European Public Prosecutors from personally investigating or prosecuting criminals, thus falling within the remit of the European Public Prosecutor's Office (Article 28(4) of the EPPO Regulation). As the European Public Prosecutor is not a member of the national prosecutor's office, the Member States have also had to deal with this situation and legislate for it. In the case of the Slovak Republic, neither the Prosecutor's Office Act nor the Act on Prosecutors explicitly respond to this situation. According to Section 10 of the CCP, in the Slovak legal system, the European Prosecutor is considered to be a prosecutor whose position and competences are regulated by the Prosecutor's Office Act

¹⁰ Act no. 242/2019 Coll. Of 27 June 2019.

¹¹ Explanatory report to Act no. 242/2019 Coll.

¹² Act no. 286/2018 Coll. of 12 September 2018 on the selection of candidates for the position of European Prosecutor and European Delegated Prosecutor in the European Public Prosecutor's Office.

and the Act on Prosecutors in the parts in which he is not subject to a special regulation. The Slovak legislator understood the position of the European Public Prosecutor quite broadly and granted him the same status as the European Delegated Prosecutor, i. e. the position of a public prosecutor under the Slovak law. As the European Public Prosecutor is understood in the Slovak legal sense as a prosecutor, the legislation allows him to conduct investigations, exercise investigative and other powers or order them.

2.2 Position of the European Delegated Prosecutor

The European Delegated Prosecutors have a key role to play in performance of the tasks of the European Public Prosecutor's Office, as they are representatives who act on behalf of the European Public Prosecutor's Office in their Member States and are responsible for investigations, prosecutions and indictments. In order to carry out the tasks entrusted to them effectively, the EPPO Regulation stipulates that the European Delegated Prosecutors should have the same powers as national prosecutors with regard to investigations, prosecutions and indictments, in addition to the specific powers and positions conferred on them by the EPPO Regulation (Article 13(1) of the EPPO Regulation). Implementation of this provision of the EPPO Regulation can already be found in the above-mentioned Section 10 CCP, with the position and competence of the European Delegated Prosecutor also being covered by the Act on Prosecutors (Section 1(3) of the Act on Prosecutors).

Unlike the European Public Prosecutors, the European Delegated Prosecutors are not temporary staff of the European Public Prosecutor's Office, but are employed as special advisers in accordance with the Conditions of Employment (Article 96(6) of the EPPO Regulation). The European Delegated Prosecutors shall be considered as active members of the public prosecutor's offices or judiciaries of the Member States, which have nominated them for this post. Within the Prosecutor's Office of the Slovak Republic, the European Delegated Prosecutor, during the term of office, is considered to be the Prosecutor of the Office of the Special Prosecutor.¹³

In addition to the tasks of the European Public Prosecutor's Office, the European Delegated Prosecutors may also perform tasks of national prosecutors to such extent that they do not prevent them from fulfilling their duties as the European Delegated Prosecutor (Article 13(3) of the EPPO Regulation). Although the European Delegated Prosecutors continue to be active members of national prosecutors' offices, they must be independent and impartial in carrying out the tasks of the European Public Prosecutor's Office, meaning that they act in the interests of the Union as a whole and must not seek or take instructions from any person other than European Public Prosecutor's Office or from an EU Member State (Article 6(1) of the EPPO Regulation). This "dual" position of the European Delegated Prosecutors also had to be regulated in the national law. Act no. 242/2019 Coll. amended Section 6 of the Prosecutor's Office Act, which regulates the issue of issuing an instruction to a subordinate prosecutor so that Section 6 was amended with a new paragraph 11, according to which an instruction to the European Delegated Prosecutor while carrying out tasks of the European Public Prosecutor's Office may be imposed only in accordance with the EPPO Regulation, however, in matters in which the European Delegated Prosecutor performs the tasks of a Prosecutor of the Office of the Special Prosecutor, the process in accordance with the Prosecutor's Office Act shall apply when issuing an instruction.¹⁴ Furthermore, Section

¹³ Section 9(3) of the Prosecutor's Office Act.

¹⁴ Section 6(11) of the Prosecutor's Office Act.

12a of the Prosecutor's Office Act explicitly states that the management and control powers of the Prosecutor General¹⁵ do not apply to matters falling within the competence of the European Public Prosecutor's Office.

3. PROCEDURAL POWERS: RELEVANT NATIONAL LEGAL FRAMEWORK

3.1 Powers of the European Public Prosecutor's Office

The EPPO Regulation brings a fundamental change into the Slovak law with regard to functioning of the Prosecutor's Office of the Slovak Republic. The change stems from the fact that the Slovak Republic and its prosecutor's offices, on the basis of the EPPO Regulation, lose their competence to investigate, prosecute and file charges in criminal matters which fall within the exclusive competence of the European Public Prosecutor's Office and which would otherwise fall within the competence of the Slovak Prosecutor's Office. According to Article 149 of the Constitution of the Slovak Republic, "*the Prosecutor's Office of the Slovak Republic protects the rights and legally protected interests of natural and legal persons and the state.*" As a result of the adoption of the EPPO Regulation, the current competence of the Prosecutor's Office of the Slovak Republic in the criminal agenda has been changed by removing criminal matters in which the European Public Prosecutor's Office will have exclusive or selective powers to investigate, prosecute and indict.¹⁶

Under Articles 22 and 23 of the EPPO Regulation, the competences of European Public Prosecutor's Office shall include criminal offences affecting the financial interests of the Union as laid down in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the Union's financial interests (hereinafter referred to as the "Directive"). The Directive does not regulate the wording of the individual elements of criminal offences, which should fall within the remit of the European Public Prosecutor's Office, but lays down minimum rules concerning the definition of criminal offences as regards the fight against fraud and any other illegal activities detrimental to the EU's financial interests. With regard to the above, it was necessary for the Slovak Republic to adopt a law at the national level that would meet the requirements set out in the Directive. This happened under Act no. 214/2019 Coll., amending and supplementing Act no. 300/2005 Coll. Criminal Code as amended and amending certain laws.

This Act fully transposed the Directive into the legal order of the Slovak Republic. *This Directive replaces the EU Convention of 26 July 1995 on the protection of the European Communities' financial interests* (OJ EC C 316, 27.11.1995) and its Protocols, to which the Slovak Republic acceded in 2004 and the content of which was reflected in the Slovak law. Therefore, most of the requirements of the Directive are already met. However, compared to the Convention, the Directive strengthens protection of the European Union's financial interests and lays down minimum rules concerning the definition of criminal offences and sanctions in connection with the fight against fraud and any other illegal activities affecting the European Union's financial interests. Given the relationship of the Directive with the EPPO Regulation, the provisions of the Directive are crucial for proper functioning of the European Public Prosecutor, which refers to the directive defining its jurisdiction.¹⁷

¹⁵ Sections 10 to 12 of the Prosecutor's Office Act.

¹⁶ See Chapter IV of the EPPO Regulation for more details.

¹⁷ Explanatory report to the bill no. 214/2019 Coll.

Article 22 of the EPPO Regulation also regulates the competence of the European Public Prosecutor's Office, according to which *"the competence of the European Public Prosecutor's Office shall include criminal offences against the financial interests of the Union provided for in Directive (EU) 2017/1371, as implemented under national law, without regard to whether the same criminal offence could be classified as a different type of criminal offence under national law."* The EPPO Regulation also explicitly defines the cases in which the European Public Prosecutor's Office will not be responsible for acting, in particular for criminal offences involving national direct taxes.¹⁸ Investigations and prosecutions on behalf of the European Public Prosecutor's Office are governed by the EPPO Regulation and therefore the national law applies only if the matter is not regulated by it.¹⁹

Since 01 January 2021, the Act no. 312/2020 Coll. on the enforcement of decisions on seizure of property and administration of seized property and on amendments to certain laws has been in force. *The bill continues to implement Council Regulation (EU) 2017/1939 of 12 October 2017 which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office, as well as ensuring the implementation of Regulation (EU) 2018/1805 of the European Parliament and of the Council on mutual recognition of seizure orders and confiscation orders. Both regulations are key tools in the fight against crime affecting the financial interests of the European Union, in particular with regard to the confiscation of the proceeds of such crime. In order for the Slovak Republic to be able to effectively apply the Regulation on Mutual Recognition of Seizure and Confiscation Orders, it must have an effective national system for tracing and subsequent confiscation of assets, including the management of seized and confiscated property.*²⁰

Act no. 312/2020 Coll. caused a change in the provisions of Act no. 301/2005 Coll. Code of Criminal Procedure.²¹ *As part of the amendment to the Code of Criminal Procedure, the bill focuses primarily on the expansion of institutes used to seize property intended for criminal offences or which is the proceeds of crime (securing real estate, securing ownership interest in a legal entity, securing other property value, securing replacement value, securing movable property) and the fourth section of the first part of the fourth chapter of the Code of Criminal Procedure is re-amended. At the same time, for the purposes of criminal proceedings, a matter important for criminal proceedings is defined and the purposes of seizing are distinguished. The other points of the amendment are mostly related to the transposition of directives and the implementation of Council Regulation (EU) 2017/1939, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office.*²²

Article 4 of the EPPO Regulation sets out the primary role of the European Public Prosecutor's Office, according to which *"the European Public Prosecutor's Office is responsible for investigating, prosecuting perpetrators and accomplices of crimes affecting the financial interests of the Union as set out in Directive (EU) 2017/1371 and regulations, and for indicting them. In this context, the European Public Prosecutor's Office shall conduct investigations, prosecute and act as prosecutors in the competent courts of the Member States pending a final decision on the case."* The European Delegated Prosecutor will therefore initiate an investigation within their own Member State if a criminal offence falling within the competence of the European Public Prosecutor's Office

¹⁸ For details, see Article 22(4) of the EPPO Regulation.

¹⁹ For details, see Article 5(3) of the EPPO Regulation.

²⁰ Explanatory report to the bill no. 312/2020 Coll.

²¹ See Article III of Act no. 312/2020 Coll. for more details.

²² Explanatory report to the bill no. 312/2020 Coll.

has been or is being committed. These will most often be offences committed on the territory of several States, so the EPPO Regulation stipulates that "*proceedings will be brought and dealt with, as a rule, by a European Delegated Prosecutor from the Member State where the crime was concentrated or, if several related criminal offences were committed that fall within the remit of the European Public Prosecutor's Office, the European Delegated Prosecutor from the Member State where the majority of the offences were committed.*"²³

Article 28(1) of the EPPO Regulation allows the European Delegated Prosecutor, in accordance with the EPPO Regulation and national law, to carry out investigative and other measures by themselves or to order them to be carried out by the competent authorities in their Member State. In view of the above, the question arises as to the extent to which European Delegated Prosecutors will conduct investigations themselves and in which cases they will use the opportunity to order them to the competent national authorities. Dr. Ondrejová states that the European Delegated Prosecutor cannot entrust the investigation as a whole to national authorities, but must participate in it on an ongoing basis (Ondrejová, 2018). Responsibility for the activities of national authorities will be exercised through the supervision of the Delegated European Public Prosecutor. If, in the course of an inquiry, the European Delegated Prosecutor finds that the act under investigation does not constitute a criminal offence falling within the EPPO's remit, the question whether to transfer the matter to the competent national authorities will not be decided by the European Public Prosecutor, but by a Permanent Chamber, who will do so without undue delay.²⁴

3.2 Investigation and Criminal Prosecution in the Conditions of the Slovak Republic

Within our legal system, the prosecutor, as a body active in criminal proceedings in the pre-trial part of the proceedings, has the status of a so-called master of litigation. Its role consists in particular in supervising observance of the rule of law in the procedure before commencement of criminal proceedings and in preparatory proceedings,²⁵ as well as in performance of procedural acts, in particular in issuing decisions in accordance with the provisions of Section 231 of the Code of Criminal Procedure. The prosecutor is entitled to carry out the entire investigation themselves,²⁶ but in practice prosecutors use this right only in rare cases. Investigations and prosecutions provided for in the EPPO Regulation are, in substance, in line with our national legislation. However, Dr. Ondrejová draws attention to the fact that the European Delegated Prosecutor will have to be involved much more during investigations conducted in matters within the competence of the European Public Prosecutor's Office than prosecutors do in the so-called ongoing supervision of investigations conducted in national criminal proceedings. Otherwise, they would not be able to fulfil obligations imposed on them by, for example, Article 28(1) of the EPPO Regulation, according to which the acting European Delegated Prosecutor shall notify the relevant European Public Prosecutor and the Permanent Chamber through the case management system of any significant developments in accordance with the rules laid down in the internal rules of procedure of the European Public Prosecutor's Office. According to point 35 of the preamble, it should thus announce, for example,

²³ Article 26(4) of the EPPO Regulation.

²⁴ For details, see Article 34 of the EPPO Regulation.

²⁵ For more details, see Section 230 of the Code of Criminal Procedure.

²⁶ For more details, see Section 230(2c) of the Code of Criminal Procedure.

implementation of investigative measures or changes in the list of suspects (Ondrejová, 2017).

Another difference can be found in the prosecutor's authorization at the post-investigation stage. As part of our national legislation, after investigation or abbreviated investigation, a police officer shall submit the file to the prosecutor with a motion to indict or otherwise decide.²⁷ In the conditions of the Slovak Republic, therefore, only the prosecutor has the right to indict the accused in accordance with the provisions of Section 231 of the Code of Criminal Procedure. A different post-investigation procedure takes place under the EPPO Regulation, which in Article 35(1) provides that *"if the acting European Delegated Prosecutor considers the investigation closed, he/she shall submit to the supervising European Prosecutor a report summarizing the case and a draft decision on whether to bring an action before a national court or consider referring or dismissing the case or a simplified prosecution procedure under Article 34; 39 or 40 of the Regulation. The supervising European Public Prosecutor shall forward these documents to the relevant Permanent Chamber and, if he/she deems it necessary, will attach his/her own opinion. If a Permanent Chamber pursuant to Article 10(3) adopts a decision proposed by the European Delegated Prosecutor, the European Delegated Prosecutor shall proceed accordingly."* Thus, unlike our national legislation, the European Delegated Prosecutor is not entitled to bring an action immediately after the end of the investigation, but must submit a draft opinion to the supervising European Prosecutor, who will then forward the documents to the Permanent Chamber. If, in the draft decision, the European Delegated Prosecutor proposes to bring an action, the Permanent Chamber may not reject the case.²⁸ At the national level, therefore, the prosecutor supervises compliance with the basic principles of the criminal procedure, as well as the provisions of the Code of Criminal Procedure with regard to the procedure and decision-making of the police officer (Ivor et al, 2021). However, under the EPPO Regulation, supervision of a prosecutor in criminal proceedings in the European Public Prosecutor's Office will be even more significant, as the investigation will be overseen by the European Delegated Prosecutor, who will in turn be overseen by the European Public Prosecutor of the given country.

4. CONCLUSION

The European Public Prosecutor's Office began its activities on 01 June 2021, which means that only the current application practice will show the most fundamental problems of its functioning. In particular, it will be important to assess the impact of the European Public Prosecutor's Office on judicial cooperation and the fight against crime affecting financial interests in the initial phase of its operation. In the article, we pointed out particular changes in our national legislation that have occurred in connection with the adopted EPPO regulation, as well as possible problems that may hinder effective performance of the activities of the European Public Prosecutor's Office. We agree with the opinion of Dr. Tóthová that exercise of the powers of the European Public Prosecutor's Office within non-participating states and especially third countries can be deemed the most problematic (Tóthová, 2021). It should be in the interest of the European Union that measures are taken to enable the European Public Prosecutor's Office to also exercise its powers effectively vis-à-vis third countries. It will also be important to follow the decisions of the College concerning determination of a uniform procedure for the European Public Prosecutor's Office in the field of investigation and

²⁷ For more details, see Section 209 of the Code of Criminal Procedure.

²⁸ For details, see Article 36(1) of the EPPO Regulation.

prosecution in accordance with the application of Article 26(5) of the EPP0 Regulation, according to which the Permanent Chamber may decide to change the allocation of a case pending the indictment. The Permanent Chamber may therefore change the Member State in which the indictment is to be brought and thus the criminal law, which raises questions as to whether such action will be in accordance with the accused's right to a fair trial and in which cases the Permanent Chamber will exercise this right. It should also be borne in mind that national legislation on criminal law varies considerably from one Member State to another. For example, our legal system includes the provision of Section 363 of the Code of Criminal Procedure, according to which "*the Prosecutor General shall annul a valid decision of the Prosecutor or a police officer if such a decision or the proceedings preceding it constituted violation of the law.*" This provision is not included in the legal systems of most Member States and it will thus be important to observe how the European Public Prosecutor's Office will deal with the differences of individual criminal codes. In addition, the work of the European Public Prosecutor's Office may be greatly affected by the current situation with the COVID-19 pandemics. Given the negative economic consequences of this pandemics, the amount of EU resources available to the Member States will increase, as will the flexibility in their use, which may lead to increase in crime rates harming the EU's financial interests. Laura Kövesi, the European Prosecutor General herself, said in an interview that "*more funds and more freedom to use European funds unfortunately also mean more opportunities for fraud and corruption.*" (Geist and Gabrižová, 2020).

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