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EXTENDING THE EUROPEAN PUBLIC PROSECUTOR'S MANDATE- LEGITIMACY, FUNDAMENTAL RIGHTS AND EUROPEAN PUBLIC GOODS

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Abstract

The chapter examines the possibility of extending the mandate of the European Public Prosecutor's Office (EPPO) beyond its current competence of prosecuting crimes against the EU's financial interests. Established under Article 86 TFEU, the EPPO represents a major development in supranational criminal law within the EU. Currently, its jurisdiction primarily concerns offences defined in the PIF Directive, including fraud, corruption, money laundering, and related crimes affecting the EU budget ('PIF crimes'). The EPPO may also prosecute "inextricably linked" offences which are essential to prosecute to address PIF crimes. The chapter assessed the legal and normative arguments for expanding the EPPO's competence to other serious cross-border crimes, particularly violations of EU sanctions. From a normative perspective, such an extension could be justified by the need to protect "European public goods," including EU financial interests, security, and foreign policy objectives. However, extending the EPPO's powers would require a complex legal process under Article 86(4) TFEU and unanimous agreement among Member States, making it politically difficult. The chapter furthermore highlights concerns regarding legitimacy, state sovereignty and the protection of fundamental rights as key issues for a potential extension of the EPPO's mandate. Because the EPPO exercises significant enforcement powers, stronger EU-level procedural safeguards and harmonised criminal procedures may be necessary before expanding its mandate. Overall, while an extension could improve enforcement of certain transnational crimes, the legal, political, and rights-based challenges to such an extension remain significant.

I Introduction

The European Public Prosecutor's Office (EPPO), which commenced its operation in June 2021, is undoubtedly the pinnacle to date of supranational criminal law in the history of European integration to date.[1] There is already a strong body of literature on the history and evolution of this body, highlighting the protracted process of establishing the agency and the powerful opposition of Member States on account of concerns over sovereignty.[2] Leaving these aside for now it is well-known that

1 J. Öberg, 'The European Public Prosecutor: Quintessential supranational criminal law?', 28 (2021) *MJ* 164; J Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' 50 (2025) *European Law Review* 701.

2 For a small selection of recent literature: P Asp (ed.), The European Public Prosecutor's Office—Legal and Criminal Policy Perspectives (Stockholm: Jure, 2015); W Geelhoed, L Erkelens, A Mei (eds.), Shifting Perspectives on the European Public Prosecutor's Office (The Hague: TMC Asser Press, 2018); HH von Herrnfeld, D Brodowski, C Burchard, *European Public Prosecutor's Office: EPPO Regulation (EU) 2017/1939 implementing enhanced cooperation*

the EPPO was established in October 2017[3] on the basis of the new Article 86 TFEU, which provides the Council with a competence to 'establish a European Public Prosecutor's Office' which shall 'be responsible for investigating, prosecuting, and bringing to judgment … the perpetrators of, and accomplices in, offences against the Union's financial interests' and 'exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences'.[4]

The final EPPO Regulation had been preceded by strenuous and politically contested negotiations over four years, involving the highest number of official negotiation documents in the Council to date[5] and a Yellow Card from national parliaments.[6] Because of far-reaching objections from Member States to the creation of the office, the EPPO Regulation ultimately had to be adopted by means of an enhanced cooperation procedure involving 20 Member States under Article 86 TFEU.[7] The negotiation history of the EPPO Regulation illustrates clearly the reluctance of Member States to cede 'core state powers'.[8]

In light of this, this contribution seeks to analyse the normative justifications and procedural legal obstacles for extending the EPPO's remit beyond Article 86 TFEU to also cover prosecution of other crimes than crimes against the EU's financial interest. This is a topic that is not only very timely but also relevant in the context of the current anthology devoted to the very important work done by Peter Csonka on spearheading the EPPO project and his earlier writing that explored this issue.[9] We first consider the substantive jurisdiction of the EPPO as derived from the Treaties and the EPPO Regulation. Then we examine the complex procedural framework for extending the EPPO's

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on the establishment of the European Public Prosecutor's Office ('the EPPO'). Article-by-Article Commentary, (Beck, 2026); K Ligeti, M Antunes, F Giuffrida (eds) *The European Public Prosecutor's Office at Launch* (Alphen aan De Rijn/Padua: Wolters Kluwer/Cedam, 2020).

[3] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office [2017] OJ L 283/1 ('EPPO Regulation').

[4] See Arts 86(1)– (2) TFEU; CONV 426/02, 'Final report of Working Group X "Freedom, Security and Justice"', 19–20 for the thinking behind the provision.

[5] 87 Council Documents as extracted from the Eurocrim database: https://db.eurocrim.org/db/en/vorgang/306/.

[6] Commission, 'Communication from the Commission to the European Parliament, the Council and the National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2' COM (2013) 851 final.

[7] The Netherlands, Malta and most recently Poland and Sweden later joined the EPPO. The states not participating in the EPPO today are Denmark, Ireland (holding opt-outs/-ins in JHA) and Hungary.

[8] See P Genschel and M Jachtenfuchs, 'More Integration, Less Federation: The European Integration of Core State Powers', 23 (2016) JEPP 42; T Winzen, 'From Capacity to Sovereignty: Legislative Politics and Differentiated Integration in the European Union', 55 (2016) *European Journal of Political Research* 100 for the definition of core state powers.

[9] See recently P Csonka and L Zoli, The New Directive on the Violation of Union Restrictive Measures in the Context of the EPPO', "The New Directive on the Violation of Union Restrictive Measures in the Context of the EPPO", 2024, Vol. 19(1), eucrim, pp76–80.

competencies. Subsequently we analyse some recent discussions on extending the EPPO's competence in respect terrorism and EU sanctions. We finally reflect on some of the general challenges in respect of extending the EPPO's remit beyond the current Treaty mandate.

II The EPPO's substantive jurisdiction

A EPPO Jurisdiction according to the Treaties and the EPPO Regulation

The first important point here is that the substantive jurisdiction of the EPPO, as derived from the PIF Directive, is potentially very broad.[10] Although its remit currently is limited to the EU's financial interests, those powers are broadly defined in the PIF Directive covering a broad range of illegal behaviours, encompassing passive and active corruption, fraud, embezzlement, subsidy abuse and money laundering,[11] and additionally 'offences regarding participation in a criminal organisation' if the focus of such an organisation is to commit any of the PIF offences.[12] Recent statistics on the EPPO's activities marshal evidence to support this claim, indicating that, by the end of 2025, the EPPO had Based on all the available information, we opened 2 030 investigations in 2025, which is almost 35% more than in 2024 – corresponding to damage estimated at €48.7 billion..[13]

The second related point here is that whilst Article 86 TFEU does not explicitly confer powers on the EPPO to prosecute ancillary offences the EPPO's jurisdiction also includes 'inextricably linked' offences offering a wider operational mandate for the body. The relevant provision in the EPPO Regulation prescribes that the 'EPPO shall also be competent for 'ancillary' offences where offences are inextricably linked and the PIF offence is preponderant in terms of the seriousness of the offence concerned and where the inextricably linked offence is deemed to be instrumental in the commission of one of the PIF offences.[14] This broader vision of EPPO jurisdiction is inspired by a functional interpretation of Article 86 TFEU and the concern that parallel prosecution of PIF

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[10] Council Regulation (EU) 2017/1939, Article 22; T Gut, 'Eppo's Material Competence and Its Exercise: A Critical Appraisal of the EPPO Regulation After the First Year of Operations', 23 (2023) ERA Forum, 284; See 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 [2017] OJ L 198/29, Article 3(1).

[11] Ibid, Arts 3 and 4.

[12] EPPO Regulation (n 3), Arts 22(2) and 22(3).

[13] European Public Prosecutor's Office, *EPPO Annual Report 2025*, (Luxembourg: Publications Office of the European Union, 2026), 8-9, available at https://www.eppo.europa.eu/assets/annual-report-2025/index.html

[14] See EPPO Regulation (n 3), recitals 54–56, Arts 22(3) and 25(3); J.E. Guerra, 'The Material Competence of the EPPO and the Concept of Inextricably Linked Offences', 1 (2021) *EUCrim* 49–50.

offences and inextricably linked offences based on identical facts by both the EPPO and the national prosecution services would jeopardise the purpose of the EPPO Regulation.[15]

The Commission has argued that the implicit competence could be argued to be implicitly in the original power in Article 86 TFEU and necessary to achieve the objective of effectively fighting crimes against the EU's financial interests.[16] It defended the scope of the Regulation on this basis, arguing that the principle of *ne bis in idem* requires an extension of competence beyond the PIF offences to prosecute inextricably linked offences. Parallel prosecution of PIF offences and inextricably linked offences based on identical facts by both the EPPO and the national prosecution service would defeat the purpose of the EPPO Regulation. In the case of such prosecutions, the *ne bis in idem* principle[17] would oblige the EPPO or the national prosecution service to close the proceedings once a final criminal conviction, prosecutorial case disposal or a final acquittal had been delivered based on the same facts.[18]

The EPPO's ancillary competence is also- judged on the recent annual report of the EPPO- employed in practice with quite a lot of success. For 2025, the EPPO had opened 615 cases relating to ancillary offences amounting to 17, 07 % of all the current EPPO investigations. [19]

B EPPO Jurisdiction- normative considerations

The discussion on ancillary competence of the EPPO brings us to one of the key issues with this chapter which is the normative justifications for extending the EPPO's mandate. The baseline premise for the chapter, which has been elaborated on elsewhere[20], is that EU legislative intervention is legitimate when it protects certain 'European' public goods and transnational

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[15] In the case of such prosecutions, the *ne bis in idem* principle would require the EPPO or the national prosecution service to close the proceedings once a final criminal conviction, prosecutorial case disposal or a final acquittal had been delivered based on the same facts: Case C-467/04 *Gasparini* EU:C:2006:610.
[16] Art 325 TFEU.
[17] Charter of Fundamental Rights, Art 50 and 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, 22.9.2000 [2000] OJ L 239/19, Art 54.
[18] Communication from the Commission to the European Parliament, the Council and the National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2 COM (2013)851 final , paras 2.6, 4–12; Case C-467/04 *Gasparini* EU:C:2006:610; European Court of Human Rights, judgment of 10.2.2009 (No 14939/03) *Sergey Zolotukhin v Russia* (Grand Chamber), para 82.
[19] EPPO, 'EPPO Annual Report 2025', Luxembourg: Publications Office of the European Union, 2025, 9. Available here: https://www.eppo.europa.eu/assets/annual-report-2025/index.html.
[20] J Öberg, 'Normative justifications of EU criminal law: European public goods and transnational interests' (27) 4-6 (2021) *European Law Journal* 408.

interests which Member States cannot sufficiently protect.[21] One of the key elements of (European) public goods is the specifically public nature of the interest at stake which can be conceived as collective assets belonging to members of a group in which the individual shares common social interests. In the definition of European public goods belongs classic public goods that correspond to policy areas that have been assumed by the Union through functionalist spillover effects in its quest to secure output legitimacy.[22]

Under these criteria, a clean environment and public security would be considered public goods *par excellence*, but we also have public goods associated with the EU's task of generating prosperity through creating market institutions at Union level: eg the internal market (and the EU financial market[23]), the currency and finally public goods that may originate in Member States and then have external effects on citizens elsewhere (eg fighting cross-border crime within the Union).[24] In the language of economists, European public goods are non-excludable (individuals cannot be excluded from their enjoyment) and non-rivalrous (the use by one individual does not reduce its value by another).[25] These public goods are European in the sense that Member States typically cannot adequately provide them and that they must therefore be provided by the EU acting as a public authority. Furthermore, such goods are available for all EU residents and exclude – in principle – non-EU residents, which is the case for example with respect to the four freedoms, the use of the euro or public services provided by the EU institutions.[26]

However, the theory of European public goods may also – as in the case of the EPPO's competence – refer to core EU interests, such as the protection of the EU budget. The financial interest of the EU is a genuine supranational interest, as the budget is central for the existence of the Union. The EPPO is, for this purpose, entrusted with the objective of protecting the common interests of the EU budget, which go beyond the territories of individual Member States.[27] The need to confer the EPPO with these competencies arises from the nature of the crimes in question, which by affecting

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[21] See Art 5(3) TEU.
[22] J Monar, 'Reflections on the place of criminal law in the European construction' 27 (2021) *European Law Journal* 356.
[23] The integrated European financial system may require criminal law protection from market dysfunctions as suggested by Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse [2014] OJ L 173/79.
[24] S Coutts, 'Supranational public wrongs: The limitations and possibilities of European criminal law and a European community' 54 (2017) *Common Market Law Revie*w 771, 787–89.
[25] S Collignon (ed), *The Governance of European Public Goods* (Palgrave Macmillan, 2017).
[26] F Zuleeg, 'The rationale for EU action: What are European Public Goods?', paper prepared for the BEPA Workshop on 'The political economy of EU public finances: designing governance for change', 5 February 2009, 6.
[27] See M Wade, EuroNEEDs – Evaluating the need for and the needs of a European Criminal Justice System, Preliminary Report (Max Planck Institute for Foreign and International Criminal Law, 2011).

the Union's own financial interests inevitably have a Union dimension. Furthermore, and as conceded by the opinions of national parliaments,[28] the criminal justice authorities of Member States are systematically predisposed – because of loyalties to the state's criminal enforcement interests – to deprioritise the protection of the EU's financial interests.[29]

Thus, there is a compelling justification for the EPPO to have competencies to prosecute the PIF offences. The degree of legitimacy for EU intervention in terms of inextricably linked offences is nonetheless reduced. Unlike the situations where there are offences against the EU's financial interests, Member States have no competing interests in relation to ancillary offences. In fact, Member States may be well placed to enforce such 'national' offences given their understanding of the local situation.[30] Furthermore, there is a legitimate national economic interest in prosecuting the inextricably linked offences such as VAT or national subsidy abuse cases.

Furthermore, it is argued that the EPPO would be able to function effectively with the powers it has been conferred with to prosecute the PIF offences. The offences in the PIF Directive, which constitute the basis for the EPPO's powers pursuant to the Regulation, are broadly defined, covering in principle ancillary offences. The definition encompasses all actions) which are intended to make an unlawful gain by causing a loss to the EU's financial interest, and covers procurement-related and non-procurement related expenditure,[31] including corruption offences committed by national officials that are likely to damage the Union's financial interest as well as offences by national

[28] Seimas of the Republic of Lithuania, Committee on European Affairs, 'Opinion on the European Commission Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office', 16 July 2014, No V-2014-4174L; Joint Committee on Justice, Defence and Equality (Ireland), 'Reasoned Opinion of Joint Committee on Justice, Defence and Equality, COM(2013)534 Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office', October 2013; Chamber of Deputies (Romania), 'Reasoned opinion finding the lack of conformity of the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with the principle of subsidiarity' COM(2013)534 (courtesy translation); Dutch Senate of the States General, 'Reasoned opinion (breach of subsidiarity) on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (DOC(2013)534)', 17 October 2013, 153768.01.

[29] See J Öberg, 'National Parliaments and Political Control of EU Competences – A Sufficient Safeguard of Federalism?' (2018) 24 *European Public Law* 695 for discussion.

[30] National parliaments made this point clearly in their reasoned opinions; see Chamber of Deputies (Romania), 'Reasoned opinion' (n 28); Dutch Senate of the States General, 'Reasoned opinion' (n 28); Seimas of the Republic of Lithuania, Committee on European Affairs, 'Opinion' (n 28); Senate of the Republic of Poland, 'Opinion of the European Union Affairs Committee of the Senate of the Republic of Poland on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office', COM (2013)534, adopted at the meeting of 9 October 2013 (courtesy translation); Statement by the Committee on Justice, 'Reasoned Opinion of Swedish Parliament – 'Subsidiarity check on the proposal on the establishment of the European Public Prosecutor's Office', 2013/14: JuU13.

[31] See PIF Directive (n 10) Art 3(2).

officials who are entrusted with the management of funds and who misappropriate them and damage the Union's financial interest.[32]

Given the wide design of the EPPO's powers, there is no convincing rationale for conferring an additional competence on the EPPO to prosecute 'inextricably linked offences'. We revert to this argument below when examining the extension of the EPPO's crimes to other offences such as terrorism and EU sanctions.

III Extending the EPPO's mandate- procedural steps

It is apparent that the drafters of the TFEU probably had in mind a broader jurisdiction for the EPPO, to include other offences. Article 86(4) TFEU specifically enables the European Council to extend the powers of the EPPO. The procedural conditions for an extension of the EPPO's competences are quite intricate. The central provision is Article 86(4) TFEU, which foresees a simplified Treaty amending procedure and envisage extension of the EPPO's powers in two steps.

As a first step, the European Council would need to adopt a decision amending Article 86(1) and (2) TFEU to extend the powers of the EPPO to include 'serious crimes having a cross-border dimension' and as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. For that purpose, the European Council would need to 'act unanimously after obtaining the consent of the European Parliament and after consulting the Commission'. The term 'unanimously' in Article 86(4) TFEU appears to refer to all EU Member States, and not only to those participating in the enhanced cooperation of the EPPO including those states which not, by virtue of Protocols 21[33] and 22[34], take part in the adoption of measures by the Council under Title V of Part Three of the TFEU, i.e. Denmark and Ireland[35]. The European Council may amend Article 86(1) TFEU to extend the material competence of the EPPO to any "serious crimes having a cross-border dimension". [36] In addition to that, the amendments to Article 86(1) and (2) TFEU would need to reflect the additional requirement according to which the EPPO's competence may only be extended in relation to serious crimes affecting 'more than one Member State'.[37]

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[32] See PIF Directive (n 10) Arts 4(2) and 4(3); and EPPO Regulation (n 3) Art 22(1).
[33] Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice [2016] OJ C 202/295.
[34] Protocol (No 22) on the position of Denmark, [2008] OJ C 115/299.
[35] Although Ireland has commenced the procedure of joining the EPPO as of October 2023: https://www.oireachtas.ie/en/debates/question/2025-10-14/684/.
[36] See Art 83(1) TFEU.
[37] See Art 86(4) TFEU.

As a second step, separate from the European Council's decision to amend Article 86 TFEU, the EPPO Regulation would need to be modified accordingly so as to include the competence over the specific offence. Such amendment must consider the requirement that more than one Member State needs to be affected and introduce the possible adaptations that might be required for the EPPO's activities concerning the specific offences. Given that the EPPO was established by enhanced cooperation, the EPPO Regulation would have to be amended by all and for all the participating Member States.

The procedural hurdles to extend the EPPO's competence are nonetheless contested.

There is one camp that argues that the establishment of the EPPO through enhanced cooperation makes an extension of its competence impossible.[38] When the EPPO Proposal was referred to the European Council during the negotiations it only required that it gave its consent, as per Article 86(1) TFEU. While consensus is not a voting rule but merely the confirmation by the President of the European Council that agreement has been reached, unanimity on the other hand is supposed to be the result of a vote.[39] A literal reading of Article 86(4) leaves limited room for alternative interpretations and would at the outset require that all Member States vote in the European Council. This would not only include the participating Member States with the addition of the non-participating Hungary. Both Ireland and Denmark would be concerned as well as their 'opt-in' and 'opt-out' clauses apply to the actions of the Council.[40]In light of this interpretation, it is indeed difficult to envisage an extension as it would require Member States agreeing on extending the competence of the EPPO while at the same time disagreeing on its very establishment.[41]

Nonetheless, there is another line of argument that supports a reading of unanimity within the context of Article 86(4) which is that Article 86 TFEU is considered *lex specialis* in relation to the general rules regarding enhanced cooperation found in Title III of Part VI TFEU.[42] Since Article 86 TFEU itself states that 'the provisions on enhanced cooperation shall apply', it can be argued that

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[38] K Ligeti, *Toward a Prosecutor for the European Union, Vol.1 A Comparative analysis* (Hart Publishing, 2012).
[39]J JE Schutte, 'Establishing Enhanced Cooperation under Article 86 TFEU' in: The European Public Prosecutor's Office: An Extended Arm or a Two-Headed Dragon? LH Erkelens, AWH Meij & M Pawlik (eds.) (TMC Asser Press, 2015) 200-203.
[40] See Protocol no 21 and 22.
[41] Ligeti, (n 38) 2.
[42] CDF Maesa, 'EPPO and environmental crime: May the EPPO ensure a more effective protection of the environment in the EU?' 9 (2018) *New Journal of European Criminal Law* 191, 200.

those *lex generalis* provisions found in Articles 326 to 334 TFEU should be applicable to the EPPO to the extent they do not contradict the specific provisions of Article 86 TFEU.[43]

Article 330 TFEU stands out as especially interesting in this context.[44] Although referring to actions of the Council, it provides that even though all Member States might participate in the deliberations, unanimity 'shall be constituted by the votes of the representatives of the participating Member States only'. Additionally, the CJEU provided an interpretation of the provisions on enhanced cooperation in the *EU Unitary Patent* judgement, clarifying that if the conditions of Article 20 TFEU and Articles 326 to 334 TFEU have been satisfied, it is the votes of only those Member States taking part in the enhanced cooperation that constitute unanimity.[45] The Court also clarified that it is permissible for those taking part in the enhanced cooperation to prescribe rules that non-participants would have disagreed with if they had taken part in it.[46]

Following such an application of the lex generalis provisions the establishment of the EPPO through enhanced cooperation would not in itself obstruct an extension of its competence to other cross-border crimes.[47] This solution and reading nonetheless presumes that the cooperation with the non-participants works smoothly and that the unanimous decision of the participating Member States would to be obtained.

The two possible readings of Article 86(4) presented, makes the possibility to extend the EPPO's competence to other crimes challenging from a procedural standpoint. The first reading, requiring the unanimous decision of all 27 Member States would for obvious reasons make such an extension at least exceedingly difficult. The second interpretation is for this reason appealing. Applying the *lex generalis* provisions on enhanced cooperation found in Title III of Part VI TFEU would make an extension possible despite the EPPO being established through enhanced cooperation. However, regardless of how appealing the second interpretation might be in this context the following needs be considered. Firstly, the fact that the EPPO stands out due to its political sensitivity and implications for state sovereignty.[48] Secondly, the principle that enhanced cooperation shall be open

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[43] Ibid.
[44] CDF Maesa, 'Repercussions of the Establishment of the EPPO via Enhanced Cooperation. EPPO's Added Value and the Possibility to Extend its Competence' 3 (2017) eucrim 156, 159.
[45] Joined cases C-274/11 and C-295/11 *Kingdom of Spain and Italian Republic v. Council of the European Union*, EU:C:2013:240. para. 35.
[46] ibid, para. 82.
[47] Maesa,' EPPO and environmental crime' (n 42), 201.
[48] J Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' (n 1).

to participation of other Member States also sets certain boundaries.[49]The choice of the drafters of the Treaty to leave the decision of a competence enlargement in the hands of the European Council might be interpreted as justified by these concerns and it is unclear to what extent the proposed reading of the *lex generalis* provisions on enhanced cooperation would address these concerns.

Having said that, a joint reading and teleological interpretation of Article 86(1) and (4) TFEU and Articles 328 and 330 TFEU opens the possibility for extending competence of the EPPO by a unanimous vote of the Member States participating in enhanced cooperation. It would defeat the purpose of the general rules on enhanced cooperation in Articles 328 and 330 TFEU to interpret Article 86(4) TFEU as effectively establishing a veto for non-participating Member States to obstruct the further integration of the EPPO by an extension of its mandate. The whole rationale behind these provisions would be that Member States who wished to embark on a journey beyond the current confines of the Treaties should not be obstructed of doing so[50]. It can be questioned if the possibility for non-participating Member States to effectively veto any further progress is in line with the overarching principle that only participating Member States can decide on the developments of an enhanced cooperation[51] and the principle of loyalty[52]. The fundamental idea of providing for an 'ever-closer Union' and that the Member States should decide on 'further steps to be taken in order to advance European integration'[53] strongly favours the second interpretation which only requires unanimity by the participating Member States. Politically this is yet a high hurdle to pass as all the current 24 Member States participating in the EPPO would need to agree to this extension.

IV Extending the EPPO's mandate to EU sanctions- normative considerations

Given the geopolitical situation and recent developments in EU foreign policy, the timeliest and politically realistic case study for an extension of the EPPO's mandate relates to EU sanctions. Directive (EU) 2024/1226[54] already mentions that it seeks to foster supranational cooperation, providing for a stronger inter-institutional exchange of information among Member States'

[49] see Article 328(1) TFEU.
[50] A Miglio, 'Differentiated integration and the principle of loyalty,' (14) 2018 *European Constitutional Law Review* 475.
[51] Art 327 TFEU
[52] Art 4(3) TEU.
[53] Preamble to the Treaty on the European Union.
[54] Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, OJ [2024] L series.

competent authorities, the Commission, Eurojust, Europol, and the EPPO, whose respective roles would come into play within their respective competences.[55]

Moreover, the prospect of extending competence to the European Public Prosecutor's Office (EPPO) to include breaches of EU sanctions has been raised by some Member States and the European Parliament, and such a development would clearly entail much stronger and coordinated *criminal* enforcement.[56] Conferring powers to a centralised supranational prosecutor can be desirable in selected areas of transnational crime where there are compelling rationales to fight those crimes through common measures. If the EPPO could contribute to addressing complex violations of EU restrictive measures by pooling expertise, competencies and investigative resources that individual Member States cannot muster, there is a *prima facie* case for an extension of the EPPO's powers also in this field. In other words, EPPO appears better placed to enforce this type of legislation – limiting national fragmentation.[57]

Csonka and Poli has argued that, from a substantive perspective, there may be grounds to expand the EPPO's authority to include criminal offenses harmonized by the new Directive. In fact, restrictive measures are a crucial tool for advancing the objectives of the CFSP and, like fraud against the EU budget, the effective detection and punishment of non-compliance with EU provisions can be viewed as an interest of the Union itself, justifying criminal enforcement at the EU level.[58] It is admittedly true observed that the crimes that the EPPO would be empowered to investigate (i.e., sanctions violations) are not primarily of national concern. With binding enforcement powers, the EPPO is capable of directing prosecutions and investigations into all the sanctions violations in all participating jurisdictions, thus ensuring a coherent and efficient prosecution of such offences. In addition, it is maintained that protecting the effectiveness of EU sanctions regimes is a collective asset belonging to the whole community, since the enforcement of EU sanctions is about protecting the common values and objectives of the European Union in the external context.[59] The protection of EU sanctions are thus rightly conceived as 'European public

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[55] Ibid, Art 20.
[56] See 'L'appel des ministres français et allemand de la justice: « Nous souhaitons l'extension de la compétence du parquet européen aux violations des sanctions prises par l'UE »' Le Monde, 29 November 2022); European Parliament resolution of 18 January 2023 on the implementation of the common foreign and security policy — annual report 2022 (2022/2048(INI)), OJ C 214, 16.6.2023, at 26, para 18; Parliamentary question – O-000022/2023, 'Extension of the mandate of the European Public Prosecutor's Office with regard to the criminal offence of violation of Union restrictive measures', 27 April 2023 –
[57] Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' (n 1).
[58] Csonka, & Zoli. (n 9).
[59] Art 2 TEU.

goods',[60] which by their nature (since states alone do not have the expertise and resources to deal with this issue)[61] can only be protected on a European level, thus surpassing the notion of 'territory' and national public goods. It is thus apparent that we are dealing with clear European offences and EU interests- ensuring that its sanctioning regime is effectively applied and its foreign policy interests protected- it seems natural that the EPPO have a real interest in prosecuting such offences. Secondly, we know from experience and reports, that national enforcement efforts in this field are uneven and ineffective due to lacking expertise and resources. Compared to terrorism offences, which at times could be of a cross-border nature and sometimes have a stronger national dimension, the case for EU action in the field of sanctions seems to be more compelling.[62]

The key objection to extending the EPPO's powers rather relates to the relatively immature EU political and legal order and the absence of a strong European framework of rights and remedies protecting defendants and suspects involved in such proceedings. The second objection relates to fundamental rights and remedies. Because the EPPO has such far-reaching powers and both can prosecute and indict individuals there needs to be a strong procedural framework protecting the rights of defendants and suspects involved in such proceedings. A potential extension would also be highly sensitive from the perspective of state sovereignty as law enforcement has always traditionally been a 'core state' power that is jealously guarded by Member States. [63]

This chapter will now turn to reflect on those challenges.

V Legitimacy and fundamental rights

The absence of a strong fundamental rights framework at the EU level corresponding to the EPPO's strong enforcement powers constitute the strongest challenge to extending the EPPO's mandate beyond the Treaty remit. This issue speaks to the fundamental issue in EU political discourse of legitimacy.

According to the leading intellectual tradition, articulated by Habermas, public power is only considered legitimate if it is exercised in a way that deserves recognition by those subjected to that

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[60] See J Öberg, *The Normative Foundations for EU Criminal Justice- Limits, Powers and Justifications* (Hart Publishing, 2024) ch 2. See also Coutts (n 24).
[61] Art 5(3) TEU.
[62] F Finelli and J Öberg 'Criminalisation of EU Sanctions Violations' in J Öberg, E Herlin-Karnell and Maria Bergström (eds), *Sanctions in the EU Legal Order* (Hart Publishing, forthcoming, 2026).
[63] Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' (n 1), 720-725.

exercise of power.[64] Scharpf has prominently divided EU legitimacy into output legitimacy, judged in terms of the ability of the EU's institutions to govern effectively for the people (output-oriented legitimisation), and input-oriented legitimation, judged in terms of the EU's responsiveness to citizen concerns as a result of participation by the people.[65] To these understandings Schmidt has added 'throughput' legitimacy which is a process-oriented notion of legitimacy which is based on the interaction of all actors engaged in EU governance encompassing the accountability and transparency of the governance processes.[66] For the purpose of assessing the extension of the EPPO's mandate we define legitimacy in a broader sense (following Schmidt's understanding) encompassing that EU bodies and agencies must be capable of being held responsible for their decisions, emphasising accountability and fundamental rights as key elements of legitimacy.[67] In that regard, it has to be pointed out that the EPPO exercises criminal law enforcement powers, which due to its very intrusive character in respect of the freedoms of individuals, needs a high level of legitimacy.[68]

As discussed elsewhere the Court of Justice has an important role to play in reinforcing the legitimacy of the EPPO's actions, notably with respect to providing remedies and judicial safeguards against the actions of the EPPO (which is still very much reliant on national law and procedure).[69] As demonstrated by *G. K. and Others*[70] and *EPPO v I.R.O F.J.L.R. I.*[71] the Court has taken a nuanced approach to judicial remedies balancing carefully the need for an effective supranational system of criminal enforcement with judicial safeguards for defendants. These rulings brings in the thesis that a supranational prosecutor as the EPPO does not only need to have institutional structures, tools and resources to ensure that it can achieve its objectives of fighting crimes against the EU's financial interests effectively (output). It is suggested that a firm legal framework surrounding the EPPO's

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[64] J Habermas, *Legitimation Crisis* (Polity Press, 1988, English translation); J Tallberg and Zürn. The legitimacy and legitimation of international organizations: introduction and framework, 14 Rev Int Organ (2019) 581.
[65] F Scharpf, *Governing in Europe* (OUP, 1999). These definitions of legitimacy speaks to Abraham Lincoln's famous Gettysburg address where he posited that democracy required government by the people (political participation), of the people (citizen representation), and for the people (governing effectiveness): A. Lincoln, 'The Gettysburg Address', Gettysburg, Pennsylvania, November 19, 1863: *https://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm.*
[66] V Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output *and* 'Throughput', 61*Political Studies* (2012) *2*.
[67] P Craig, 'Integration, Democracy and Legitimacy' in Craig and de Búrca (eds.), *The Evolution of EU Law* (OUP, 3rd edn, 2021).
[68] A Erbežnik, 'European Public Prosecutor's Office (EPPO) – too much, too soon, and without legitimacy?'3 (2015) *European Criminal Law Review* 209, 214.
[69] Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' (n 1), 720-725.
[70] Judgment of 21 December 2023, Case C-281/22, *G.K. and Others (Parquet européen),* EU:C:2023:1018.
[71] Case C-292/23, *EPPO v I.R.O. F.J.L.R. I:* EU:C: 2025:255.

operational action with strong legal safeguards for individual defendants, is decisive for ensuring the (throughput) legitimacy of this new unique supranational prosecutor.

A potential extension of the EPPO's competence necessitate us thus to think more general on the need for EU harmonisation in this area.[72] While the establishment of the EPPO is a welcome step towards a 'federalisation' of EU criminal law in the specific area of crimes against the EU budget,[73] it is difficult to envisage that EPPO can function effectively and extend its powers without some degree of harmonisation of national criminal procedures. Whilst the philosophy behind the EPPO Regulation is that national criminal procedural law plays a dominant role in the Regulation [74], the EPPO is only one building block of a Federal European criminal law system in respect of crimes against the EU's financial interests. It would be useful here to draw inspiration from the original thinking behind the EPPO, developed by the *Corpus Iuris* project[75]. This project envisaged a highly centralized supranational prosecutor as part of a general federal criminal policy in the area of crimes against the EU's financial interests,[76] including suggestions of a single set of offences applicable throughout the Union[77] and a common set of procedural rules for the prosecution of such offences and the establishment of a European Public Prosecutor. It is argued that specific centralised EU rules on national criminal procedures for EPPO cases would be justified given the very far-reaching federal structure of the EPPO system for enforcement of crimes against the EU's financial interests.[78] Such harmonisation becomes even more essential if the EPPO would extend its competences beyond the Treaty remit to also cover terrorism offences and offences against the EU's sanctioning regime.

Such a centralised approach would also better address the limits imposed on the operation of mutual recognition by the case law of the European Court of Human Rights and the potential negative

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[72] According to Article 119 of the EPPO Regulation, the Commission shall conduct an evaluation on the implementation and the impact of the Regulation and produce a report envisaged to be published under 2026.
[73] E Herlin-Karnell and C Gomez Jara, 'Prosecuting EU Financial Crimes: The European Public Prosecutor's Office in Comparison to the US Federal Regime', 19 (2018) *German Law Journal* 119
[74] EPPO Regulation, *supra* note 6, recital 21 and Art. 8(1).
[75] M. Delmas Marty and J. Vervaele (eds), *The Implementation of the Corpus Juris in the Member States – Penal Provisions for the Protection of European Finances* (Intersentia, 2001).
[76] The protection of the EU's financial interests has for a long time been a key concern for the EU institutions, following the allocation of resources to the European Community and evolved further with the signing of the PIF Convention of 26 July 1995, and further strengthened by the Amsterdam Treaty, where a specific legal basis was provided for the protection of the EU's financial interests: See Commission, 'Draft for a Treaty Amending the Treaty Establishing a Single Council and a Single Commission of the European Communities so as to Permit the Adoption of Common Rules on the Liability and Protection under Criminal Law of Officials and other Servants of the European Communities', COM (76)418 final, [1976] OJ C 222/02, 22 September 1976; Article 280 of the Consolidated Version of the Treaty Establishing the European Community [2002] OJ C 325/33.
[77] This idea has subsequently been realised through the adoption of the PIF Directive (n 10).
[78] See also Öberg, 'The European Public Prosecutor's Office- Supranationalism, Sovereignty and Legitimacy' (n 1).

reception of national constitutional courts to the absence of remedies for the EPPO's actions.[79] The key line of this case law from the ECtHR is that there always needs to be safeguards to ensure that national courts have the possibilities to review manifest breaches of fundamental rights in the Charter of Fundamental Rights and the European Convention. A more strongly harmonised model of rights for defendants in cross-border proceedings are the best solution to address those potential fundamental rights challenges.

VI **Concluding remarks**

There is normatively a strong case for extending the EPPO's mandate to serious cross-border crime such as EU sanctions. Only a European public prosecutor has the correct incentives, competencies and resources to effectively prosecute violation of EU sanctions. The theory of European public goods provides a strong justification for a centralised European public prosecutor which can defend markedly strong EU interests, such as the foreign policy interests of the EU. The need to confer the EPPO with effective and binding powers arises from the nature of the crimes at issue, which by affecting the Union's core interests involves a clear European dimension.[80] Those arguments speak in favor of extending the EPPO's mandate to EU sanctions.

The key objections to extending the powers of the EPPO to new crimes relates to sovereignty and legitimacy. Political legitimacy considerations suggest that the Member States' interest in preserving national autonomy in this field should be taken seriously.[81] It is apparent that the nation state is regarded as the most legitimate entity for adopting legislation in the field of criminal justice.[82] Even though the traditional ('Bodian') notion of sovereignty[83] is not persuasive enough to reject the conferral of binding powers to the EPPO, criticism of the EPPO's legitimacy should be taken seriously.[84] This speaks to the issue of legitimacy and the (absence) of a strong fundamental rights

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[79] *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, paras 160-65; European Court of Human Rights, judgment of 23 May 2007, no. 17502/07, *Avotiņš v. Latvia*, paras 105-122.
[80] See Öberg,' Normative justifications of EU criminal law' (n 20)
[81] Art 4(2) TEU expresses a clear notion of state sovereignty. See P Craig and G De Búrca, *EU Law: Text, Cases, and Materials* (Oxford University Press 2011) 279–314.
[82] The German Federal Constitutional Court has stated that nothing more strongly embodies the exercise of sovereign authority than the right to define and enforce the rules of criminal law, since a criminal justice system constitutes a legal community which expresses a code of conduct that is anchored in its moral values, 2 BvE 2/08,2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08, 2 BvR 182/09 - (2009), paras 252–53, 355–56.
[83] Franklin, *Bodin on Sovereignty* (Cambridge University Press, 2012); D Lee, *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations* (Oxford University Press, 2021).
[84] P Craig, 'Democracy and Rule-making Within the EC: An Empirical and Normative Assessment' 3 (1997) European Law Journal 105; G Majone, 'Europe's "Democratic Deficit": The Question of Standards' 4 (1998) European law journal 5.

framework encasing the operations of the EPPO. If we conjecture that the legitimacy of the EPPO is not only dependent on the success of its enforcement actions (i.e., output legitimacy) but also its capacity to respect individual rights, there is a need for corresponding legal standards of rights of defence and judicial protection surrounding the operations of the EPPO to countenance the body's enforcement powers. Stronger common EU measures for protecting the rights of the defendant particularly in respect of judicial remedies against the EPPO's actions, along with effective safeguards that form the basis for the exercise of the EPPO's powers, should be a central feature of a potential future amendment of the EPPO Regulation legitimacy of this new unique supranational prosecutor. In the absence of such a framework it is highly doubtful whether it is justified to extend the EPPO's powers beyond Article 86 TFEU to also cover the prosecution of crimes against the EU's sanctioning regime.[85]

Apart from these substantive objections, an extension of the EPPO might politically a very complicated exercise. A creative interpretation of Article 86 TFEU which would disregard the general rules on enhanced cooperation would give some room to establish the EPPO without requiring the participation of Member States not participating in the EPPO. Given the political sensitivity of the EPPO, there is this argument against advancing such an interpretation of the Treaties. Extending the EPPO's remit is largely a Treaty revision which requires significant political and constitutional legitimacy which might be impossible to achieve without a unanimous decision by the European Council for this policy option. A teleological interpretation of Article 86(4) and Articles 328 and 330 TFEU suggests nonetheless that it should be feasible to extend the EPPO's mandate beyond Article 86 with only a unanimous vote by the Member States participating in enhanced cooperation. Politically, it seems nonetheless plausible that political support for an extension is more likely to be achieved in respect of EU sanctions than in relation to terrorism, as the Commission Communication of 2018 to date has received lukewarm support by the Member States.

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[85] Öberg, 'The European Public Prosecutor's Office-Supranationalism, Sovereignty and Legitimacy' (n 1).

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