



Weekly Briefing

Croatia external relations briefing:
A Geodesy Faculty Scandal Sparks a Conflict between EPPO and
Croatian Prime Minister
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A Geodesy Faculty Scandal Sparks a Conflict between EPPO and Croatian Prime Minister

Summary

In November 2023 EPPO launched an investigation into alleged misappropriation of EU funds linked to the Faculty of Geodesy at the University of Zagreb. The investigation traced ties to the Ministry of Culture, implicating one of its ministers and leading the prime minister to get involved in a political conflict with EPPO. The case not only revealed regulatory shortcomings in the setup of EPPO but also highlighted a domestic democratic deficit.

Introduction

After extensive negotiations, in 2017 a consensus was reached for the creation of the European Public Prosecutor's Office (EPPO) with Council Regulation (EU) 2017/1939. A hybrid prosecution body, responsible for protecting the Union's financial interests, was established with both a central office in Luxemburg and decentralized national offices immersed in the national judiciary, relying on genuine cooperation. The incentive behind this initiative arose from the EU's discontent with the efficacy of national judicial systems prosecuting crimes against the financial interests of the European Union. However, this goal has somewhat been sacrificed during the regulatory stage in the name of a compromise with member states. As of now, 22 EU member states are participants in EPPO, with Ireland, Hungary, Poland, Sweden and Denmark abstaining. EPPO office became operative in Croatia on the 1st of June 2021 and since then it initiated 47 investigations with total damage estimated at 278 million euros. 36 of these were launched last year, with a damage of 69 million euros.¹ One of the latest and the largest of the EPPO's investigation in Croatia brought its work close into the public eye, with a public challenge to its competence causing political controversy in an already turbulent national pre-election period. Almost half a year after the initial arrests were

¹ European Public Prosecutor's Office, "EPPO Annual Report 2023 - Croatia," accessed April 8, 2024, <https://www.eppo.europa.eu/en/2023-numbers>. <https://glashrvatske.hrt.hr/en/domestic/eppo-launched-1371-investigations-in-2023-with-damages-of-122-billion-euros-11391489>

made, the saga continues, now including the University of Zagreb personnel, Minister of Culture, the prime minister, his party members, the political opposition, journalists and the EPPO with its chief prosecutor Laura Kövesi. The scope of this article cannot fully cover the rich political exchange that has occurred and since no official documents or evidence have been made public, no definite legal answers can be offered regarding the specific issues in question. However, this article will explain the substance of the conflict and the implications it raises for the practical capacity of EPPO in achieving its mission in Croatia and more broadly. The ramifications for the rule of law in Croatia cannot also be omitted from the discussion.

The Geodesy Affair

In November 2023 EPPO opened an investigation against 29 Croatian citizens and one company, suspecting them to be responsible for subsidy and procurement fraud connected to the University of Zagreb, Faculty of Geodesy. Specifically, it is suspected that Almin Đapo, the dean of the faculty at the time and Boško Pribičević, a professor at the same faculty abused office and authority for “misuse of public procurement procedures, forgery of official documents and money laundering”.² EPPO reported that in the period from October 2019 to November 2023, the two individuals were tasked with managing public procurement for four major projects, funded with €5.99 million, of which 85% was EU-sourced.³ Allegations suggest they misappropriated funds for personal gain by rigging 28 bids to favour certain small companies and law offices, which then funnelled a portion of the funds, some without rendering services. Aforementioned faculty personnel also allegedly misused project funds to acquire vehicles and a motorboat for private use and forged travel expenses for themselves and 11 associates over 317 instances, for non-existent travel. EPPO reported a total estimated damage of EUR 2.073.514,46, out of which EUR 1.715.017,32 is the damage to the EU budget.⁴

On the day of the arrests, a Croatian online news portal Telegram released an article tying the Croatian Minister of Culture Nina Obuljen Koržinek, a member of the currently ruling Croatian Democratic Party (HDZ), to the malversations at the Faculty of Geodesy.⁵ Telegram

² European Public Prosecutor’s Office, “Croatia: 29 Suspects Arrested in Investigation Involving University of Zagreb,” accessed April 1, 2024, <https://www.eppo.europa.eu/en/news/croatia-29-suspects-arrested-investigation-involving-university-zagreb>.

³ Ibid.

⁴ Ibid.

⁵ Dora Kršul, “Mega afera ministrice kulture: Geodetskom faksu dala 19 milijuna kuna za vrlo sumnjiv posao,” Telegram, accessed April 1, 2024, <https://www.telegram.hr/politika-kriminal/skandal-ministrice-kulture-dala-19-milijuna-kuna-geodetskom-fakultetu-za-vrlo-sumnjiv-posao/>.

claimed that in April 2020 the minister directly decided to offer 19.1 million kuna⁶ to the Faculty of Geodesy to conduct 3D imaging of buildings affected by the 2020 earthquakes, without holding a public tender. The project was personally led by the same Geodesy dean Đapo and coordinated by professor Pribičević. Đapo personally determined the costs of the project, which turned out to be massively overestimated when compared with the market average for these services.⁷

After the public reveal of the Minister's alleged involvement in the dealings at the Geodesy Faculty, she defended the absence of a public tender as a necessary response to the urgency following the earthquakes.⁸ Two days later, Croatia's Prime Minister and a member of HDZ party, Andrej Plenković publicly asserted that the project was funded by national, not EU sources, arguing this as a basis for the EPPO's lack of jurisdiction. This stance on competence was echoed and reinforced in the following days by Plenković, Obuljen, and other HDZ members, stirring controversy. At a press conference Plenković urged State's Attorney's Office (DORH) and the Suppression of Corruption and Organised Crime (USKOK) to clarify their jurisdiction, which was followed by an official inquiry to State Attorney Šipek from his office.⁹ Soon after, USKOK confirmed they requested a final decision on conducting the investigation and other documents from EPPO, raising the suspicion that of acting under direct command from the executive. Although Plenković refused to admit any overstepping, this spurred a widespread outcry from the political opposition, media and the public alike over perceived governmental overreach into prosecutorial duties and warranted the first official response from EPPO. In a television interview Kövesi stated that this is not the first time she has witnessed the attempt to "raise a smoke screen" before citizens, referring to the government's attempt to shift the focus from the alleged crimes to the question of competence.¹⁰

⁶ Kuna is a former Croatian currency that was replaced by Euro as of 1 January 2022.

⁷ Telegram.hr, "Objavljujemo dokaz: ministrica je morala znati da geodetima previše plaća za skeniranje zgrada," accessed April 8, 2024, <https://www.telegram.hr/politika-kriminal/ministrica-nina-obuljen-morala-znati-da-geodetskom-fakultetu-debelo-previse-placa-za-skeniranje-zgrada/>.

⁸ N1 Hrvatska, "Ministrica i Dalje Tvrdi Da Posao s Geodetskim Fakultetom Nije Preplaćen: Opet Bih Sve Isto Napravila," November 26, 2023, <https://n1info.hr/vijesti/ministrica-napravljena-je-ozbiljna-profesionalna-pogreska-kad-smo-premijer-ija-optuzeni-da-lazemo/>.

⁹ Telegram.hr, "Rastakanje demokratskog poretka ide dalje. Neslužbeno: Uskok se javio EPPO-u na Frkin mig," Telegram.hr, accessed April 8, 2024, <https://www.telegram.hr/politika-kriminal/rastakanje-demokratskog-poretka-ide-dalje-neslužbeno-uskok-se-javio-epo-u-tek-nakon-sluzbenog-dopisa-iz-vlade/>.

¹⁰ "Kovesi o Plenkoviću: Dimna Zavjesa, Taj Sam Film Već Gledala, Nećemo Se Zastrahiti!," accessed April 8, 2024, <https://n1info.hr/vijesti/ekskluzivno-za-n1-sefica-epo-a-laura-kovesi/>.

The Question of Material Competence

The latest information suggests that a contract for financing the project from the EU Solidarity Fund was signed in July 2021. The contract was subsequently broken up, as according to Obuljen “costs were not acceptable according to the rules of the Solidarity Fund”.¹¹ However, in the state budget the payment to the Faculty was labeled as European money, as it was in the final report of the state budget, adopted months after the termination of the contract.¹² Based on the alleged change in the source of funding, the prime minister contends that EPPO lacks competence, overly simplifying and misrepresenting EPPO’s mandate.¹³ Indeed, if the funding for the project is sourced from the EU budget, the case clearly belongs within the competence of EPPO. However, even if the specific project was not implemented through the EU sourcing, EPPO’s competence cannot be automatically excluded. The article will briefly set out these regulatory possibilities. Although it is unknown at the moment on which reasoning the decision was based, it is important to state that EPPO Permanent Council in Luxemburg, made up of three European public prosecution officers from outside of the concerned member state, confirmed EPPO’s competence before the case was taken by EPPO in the first place.¹⁴

The material jurisdiction of EPPO in Croatia is determined by Council Regulation (EU) 2017/1939 which established the office and national criminal law by transposing the EU Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. The Regulation defines three main categories of EPPO’s material jurisdiction, namely: criminal offenses against the financial interests of the Union, criminal offenses related to participation in a criminal organization with focus against the financial interests of the Union and any other criminal offense that are “inextricably linked” to criminal offenses against the financial interests of the Union.

According to the EPPO Regulation the final category is necessary to achieve efficient investigation and to respect the principle *ne bis in idem*, i.e. to avoid prosecuting the same defendants for the same offences more than once. This means EPPO has jurisdiction to

¹¹ Telegram.hr, “Ministrica priznala: geodete je išla platiti iz EU, ugovor raskinut zbog neprihvatljivih troškova,” Telegram.hr, accessed April 7, 2024, <https://www.telegram.hr/politika-kriminal/ministrica-priznala-geodete-je-islplatiti-iz-eu-ugovor-raskinut-zbog-neprihvatljivih-troskova/>.

¹² Ibid.

¹³ Vlada Republike Hrvatske, “Ne Postoji Pritisak Na EPPO. Zalažemo Se Za Zakonito Trošenje Europskih Sredstava Za Koja Se Vlada Izborila,” November 3, 2024, <https://vlada.gov.hr/vijesti/ne-postoji-pritisak-na-eppo-zalazemo-se-za-zakonito-trosenje-europskih-sredstava-za-koja-se-vlada-izborila/42095>.

¹⁴ “Dobili Smo Uvid u Dokument: Evo Zašto EPPO Smatra Da Su Za 3D Skeniranje Sumnjivo Trošeni EU Novci,” accessed April 8, 2024, <https://n1.info.hr/crna-kronika/dobili-smo-uid-u-dokument-evo-zasto-eppo-smatra-da-su-za-3d-skeniranje-sumnjivo-troseni-eu-novci/>.

investigate and prosecute some offences under national law if these are ‘inextricably linked’ in time and space, i.e. with substantially the same facts as the offences against the EU financial interests.¹⁵ This could provide the basis for EPPO’s competence as the 3D imaging case involves the same individuals at the same faculty during the same period of time as in the other alleged malversations at the faculty that are under EPPO’s competence. However, the regulation does not make it clear if the competence can be stretched to solely the instances that would affect the *non bis in idem* principle or if and how much the factor of efficiency determines the interpretation. The regulation does set out some specific limitations to the exercise of EPPO’s jurisdiction in relation to ‘inextricably linked’ offences, based on the penalty sum or the amount of damage.¹⁶ The problem in applying these rules lies in the fact that in criminal cases all facts are often not clear before the start of the investigation and it is impossible to make a definitive decision about the competence at the beginning.

Additionally, as reiterated by a Croatian European Prosecutor Tamara Laptoš, EPPO does not only have competence where material damage for the EU budget occurred but also where that damage could have occurred¹⁷, as “the protection of the Union's financial interests concerns not only the management of budget appropriations, but extends to all measures which negatively affect or which threaten to negatively affect its assets and those of the Member States, to the extent that those measures are of relevance to Union policies”.¹⁸ It is evident that even if the financing ultimately came from Croatia's national budget, the initial intent was to use EU funds, as evidenced by the signed financing agreement. Whether the EU terminated the agreement due to unsatisfactory costs or the ministry had the last moment change of heart attempting to remove the project from EPPO competence, EPPO’s competence might be retained due to an initial attempt. Nevertheless, regulation lacks definitive guidance on the matter, leaving it open to interpretation.

In any scenario, the judgment on the conflict of competence is surely not in the hands of the executive branch and cannot be made through casual political interpretation but is rather the

¹⁵ Recital 54 of EPPO Regulation.

¹⁶ Article 25 (3) of EPPO Regulation.

¹⁷ Telegram.hr, “Tamara Laptoš uništila Plenkovićeve teze o nadležnosti EPPO-a u aferi Nine Obuljen,” accessed April 8, 2024, <https://www.telegram.hr/politika-kriminal/tamara-laptos-unistila-plenkoviceve-teze-o-nadleznosti-eppo-a-u-afere-nine-obuljen-pozalila-se-porezna-nam-ne-da-uid-u-baze-podataka/>.

¹⁸ Preamble 1 of “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,” 198 OJ L § (2017), <http://data.europa.eu/eli/dir/2017/1371/oj/eng>.

responsibility of the judicial authorities. The mentioned unclarities regarding the material scope afford the designated authorities more discretion for interpretation when deciding on the conflict of competence. Therefore, the allocation of this responsibility to an impartial and politically independent body is crucial.

Resolving the Conflict of Competence

When a disagreement arises over the allocation of competence between the national prosecution authorities and EPPO, the EPPO Regulation stipulates that “the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation of the case.”¹⁹ It is left to the Member States to specify the responsible national authority. In Croatia the law that implemented the EPPO Regulation allocates the responsibility to the head state prosecutor who is the head of the state prosecution body.²⁰ This solution raises several issues.

As deciding the conflict of competence is a matter of interpretation of the EU law, EPPO Regulation states that the Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation on “any conflict of competence between EPPO and the competent national authorities”.²¹ Nevertheless, in Croatia this is impossible in practice since the State Attorney General does not have the ability to seek preliminary reference from the Court of Justice, as this option is only opened to the courts. There is also no legal avenue for an appeal against the decision of the Attorney General in front of the national courts that could then request a preliminary reference, meaning the decision is made independently by the State Attorney General, without necessary due process safeguards. This has been one of the critiques of the political opposition who propose that the law should be amended to allow an appeal against the decision of the conflict of competence, but also a worry often expressed by EPPO itself.²²

¹⁹ Article 25(6) of EPPO Regulation.

²⁰ Article 8, Zakon o provedbi Uredbe Vijeća (EU) 2017/1939 od 12. listopada 2017. o provedbi pojačane suradnje u vezi s osnivanjem ureda Europskog javnog tužitelja (»EPPO«).

²¹ Article 42 (2) (c)

²² Jutarnji list, “- Možemo! traži da Vrhovni sud, a ne glavni državni odvjetnik, rješava sukob nadležnosti DORH-a i EPPO-a,” March 4, 2024, <https://www.jutarnji.hr/vijesti/hrvatska/mozemo-trazi-da-vrhovni-sud-a-ne-glavni-drzavni-odvjetnik-rjesava-sukob-nadleznosti-dorh-a-i-epo-a-15435098>.

While a lack of such safeguard is generally problematic it becomes especially so when there is a doubt regarding political independence of the national authority making the decision of competence. EPPO was precisely established to eliminate such influences which previously hindered the effective protection of EU financial interests within the national systems. Placing the same national authorities, whose prior ineffectiveness in prosecution led to the creation of EPPO, in the position to hold sway over crucial decisions and potentially shield wrongdoers, virtually empties EPPO of powers when dealing with the politically contentious cases, bringing into question the reason for its establishment.

The question of political influence over Croatia's national prosecution is a contentious topic, with the aspiration for neutrality widely seen as rather elusive. Previously, the State Attorney General was, without a public vacancy, elected by the Government and proposed to the Parliament. The 2020 elections were the first to allow independent applications through an open vacancy. Candidates were then interviewed by several ministers, including Plenković himself, who recommended a candidate to the Parliament. The parliament, with a simple majority, approved the candidate, meaning that the agreement from the opposition was not necessary. Although HDZ commended itself for making the process “more democratic” no substantial change was achieved since the elected candidate remains the one politically installed.²³ The latest election of Ivan Turudić as the State Attorney General has sparked controversy due to his history of friendly relations with known criminals and his close party association with HDZ. The opposition even accused HDZ of electing Turudić precisely to prevent the investigation against their minister from going further.²⁴ This article cannot make such accusations, however it is not difficult to justify such a conclusion since Turudić himself publicly stated that Croatia does not need EPPO.²⁵ It is outside of the scope of this article to discuss further the political nature of the election process of the State Attorney General and the implications it produces for the perception and the independence of DORH itself. Nevertheless, it is crucial to highlight the nature of the position when discussing the potential implications for the efficacy of EPPO in dealing with politically sensitive cases.

²³ Jutarnji list, “Treba li nam potpuno novi model izbora šefa DORH-a?,” April 25, 2020, <https://www.jutarnji.hr/vijesti/hrvatska/prvi-put-se-glavni-drzavni-odvjetnik-bira-javnim-natjecajem-ali-nema-velikog-interesa-treba-li-nam-potpuno-novi-model-izbora-sefa-dorh-a-10245463>.

²⁴ “REAKCIJA MILANOVIĆA NAKON TURUDIĆEVE PRISEGE U SABORU: Plenković postavio Turudića kako bi spriječio istragu EPPO-a,” Euractiv.hr, accessed April 6, 2024, <https://euractiv.hr/politika/a6860/Plenkovic-postavio-Turudica-kako-bi-sprijecio-istragu-EPPO-a-ocijenili-na-Pantovcaku.html>.

²⁵ Večernji List, “Turudić Rekao Da Nam Ne Trebaju EU Tužitelji, Sad Se Oglasio i EPPO,” August 2, 2024, <https://www.vecernji.hr/vijesti/turudic-rekao-da-nam-ne-trebaju-eu-tuzitelji-sad-se-oglasio-i-eppo-1744899>.

Diverging Interests

The work of EPPO and its coordination with national authorities are based on principles of shared competence and sincere cooperation. This means that the proper functioning of the system is dependent on a relationship of dialogue, trust and commitment. As Kövesi pointed out, it is expected that the institutions are working towards the common goal of protecting the financial interests of the Union.²⁶ Indeed, the EU is not an elusive entity separate from member states, whose interests the member states are expected to protect. Croatian taxpayers, as contributors to and beneficiaries of EU funds, have a vested interest in seeing these investments utilized for the benefit of infrastructure, agriculture, innovation, energy or any other receiving sector. If the EU funds from this, possibly final, period of intense financing directed at Croatia are misappropriated and not fueled towards sustainable economic growth, the citizens will bear the costs.²⁷ Plenković appears to acknowledge this shared interest in safeguarding the funds, however, continues to insist on national authorities taking the investigation from EPPO.²⁸

If the prime minister is indeed genuinely committed to the common goal, one must question the seemingly overriding priority of asserting competence in an already advanced investigation. The EPPO's investigation would take place in Croatia, under the direction of European Delegated Public Prosecutors (EDPs) who are Croatian nationals of the same professional qualifications as their counterparts in DORH. The discernible difference lies in the political insulation of EPPO that cannot be guaranteed in the case of national prosecutors. EDPs are selected at the EU level and operate independently from the National Prosecutor's Office.

Given the frequent instances of corruption among his ranks, Plenković's support for politically insulated investigation relating to one of his ministers would help demonstrate the government's commitment to the rule of law. Unfortunately, HDZ opted for a narrative portraying EPPO as an entity with aims contrary to national interests and a threat to national sovereignty, potentially harming the investigation and the "shared" interests. This stance indicates a divergence of interests significant enough to prompt the Prime Minister to breach constitutional norms, undermine the separation of powers, interfere with domestic legal processes, and provoke a conflict with the EU.

²⁶ "Kovesi o Plenkoviću: Dimna Zavjesa, Taj Sam Film Već Gledala, Nećemo Se Zastrahiti!"

²⁷ tportal, "Njavro: Postavlja Se Pitanje Kako Zadržati Rast Kad Presahnu Obilni EU Fondovi," accessed April 8, 2024, <https://www.tportal.hr/biznis/clanak/njavro-uskoro-ce-presahnuti-obilni-eu-fondovi-a-onda-se-postavlja-pitanje-kako-zadržati-rast-20231128>.

²⁸ Vlada Republike Hrvatske, "Ne Postoji Pritisak Na EPPO. Zalažemo Se Za Zakonito Trošenje Europskih Sredstava Za Koja Se Vlada Izborila."

Conclusion

The establishment of the European Public Prosecutor's Office in member states signifies a landmark effort to fortify the European Union against financial crimes. Nevertheless, the finalized regulation clearly shows signs of a struggle to reach a delicate compromise between the efficiency of the mandate and national sovereignty. This compromise in turn left the proper functioning of EPPO dependent on the assumption that national and European authorities share the same overriding objective of preventing the financial offences, protecting simultaneously the European financial interests and those of the citizens. However, particularly in the states with less consolidated democracies, it might be hopeful to assume that other interests will not influence the process if afforded the margin. For Croatia, the implications of Geodesy affair are regrettable. Should the National Attorney General withdraw the case from EPPO's competence, Croatia risks being labeled a democratic backslider, potentially aligning itself with the likes of Orbán's Hungary and receiving sanctions from the EU. This conflict does little to serve the Croatian people, but the risk might be worthwhile for the Prime Minister if it defers the matter until after the elections.