

## THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE – NECESSARY INSTRUMENT OR POLITICAL COMPROMISE?

Senior Researcher Norel Neagu\*

“Acad. Andrei Rădulescu” Legal Research Institute  
of the Romanian Academy, Bucharest, Romania

### **Abstract**

*The legislation in the field of criminal law has evolved significantly in the last ten years in the European Union. This article deals with a new institution, intended to provide new tools for changing traditional judicial cooperation in criminal matters into a framework for united and coordinated proceedings in a criminal law trial throughout the entire EU territory: the European Public Prosecutor's Office. Besides general observations related to the historical development of this idea and a brief examination of the EPPO regulation proposal, the article focuses on the scope of the competence of EPPO: whether it should deal with fraud affecting the financial interests of the EU, or/and with serious crimes with transnational dimensions. The article concludes that establishing the EPPO according to the lines of the proposal, even if necessary, responds mainly to political compromise rather than real needs of the EU citizens.*

**Keywords:** public law; European Public Prosecutor's Office; judicial cooperation in criminal matters; serious crimes with transnational dimension, crimes against the financial interests of the EU.

### **1. Introduction**

European Union is a relatively young organization, which suffered important transformations in the late years, including here criminal law measures as well. If we recall the first acquired competences in criminal law at European level, we cannot go back more than 20 years, to the Treaty of Maastricht. It was an intergovernmental cooperation in the field of serious transnational crime, established in concrete terms starting from 1999, with the Tampere Council. At this particular Council, two fundamental principles of judicial cooperation were established, which enhanced criminal law legislative action and case law at EU level: mutual recognition and mutual trust.

These two principles have given during the years a strong impetus to judicial cooperation in criminal matters within the European Union, starting with the

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European Arrest Warrant legislative instrument<sup>1</sup>, and continuing with the improved cooperation in the field of recognition of custodial and non-custodial sentences and transfer of convicted persons<sup>2</sup>.

Also, a crucial event in the development of both substantial and procedural criminal law within the EU was the entering into force of the Lisbon Treaty in December 2009<sup>3</sup>. It provided for a shared competence in the field of criminal law between the EU and the Member States, the latter being able to exercise their competence as long and insofar as the EU has decided not to exercise its own.

However, imposing mutual recognition and mutual trust upon the Member States of the European Union, was not enough to solve an important issue which this kind of cooperation may raise: due to the lack of harmonization of the national criminal law provisions, sometimes courts from different member states were faced with the implementation of judicial decisions stemming from other national legal systems, which, if taken on their own territory, might have led to different solutions.

In this context, a harmonization of at least some fundamental aspects of a criminal trial, starting from the European Convention of Human Rights and ECHR case law as the common lowest denominator, was required.

An ambitious roadmap for procedural rights in criminal trials has been established in the EU<sup>4</sup>. It included measures related to translation and interpretation<sup>5</sup>, information on rights and information about charges<sup>6</sup>, the right to

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<sup>1</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 1–20.

<sup>2</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327, 5.12.2008, p.27-46; Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ L 337, 16.12.2008, p. 102-122.

<sup>3</sup> Consolidated version of the Treaty on the Functioning of the European Union (TFEU), OJ C 83, 30.03.2010, p. 47-201.

<sup>4</sup> Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1-3.

<sup>5</sup> According to this, the suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments. This measure was already adopted at EU level (Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L280, 26.10.2010, p. 1-7).

<sup>6</sup> A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice

legal advice and legal aid<sup>7</sup>, the right to communication with relatives, employers and consular authorities<sup>8</sup>, and special safeguards for suspects or accused persons who are vulnerable<sup>9</sup>.

This impetus of procedural criminal law provisions at EU level was determined by the new legal basis from the Treaty of Lisbon. Thus, Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides that

*'[t]o the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States'.*

At this particular moment, the EU institutions considered that time was ripe for a new development in criminal proceedings: stepping from traditional judicial cooperation towards united and coordinated investigations throughout the entire territory of the EU<sup>10</sup>. And this is also due to existing legal basis in the Lisbon Treaty [Article 86(1) TFEU]:

*'[i]n order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.'*

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the due course of the criminal proceedings. This measure has also been adopted at EU level (Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings, OJ L 142, 01.06.2012, p. 1-7.)

<sup>7</sup> The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice. The first part of the measure (right to legal advice) is already adopted (Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 06.11.2013, p. 1-12). The second part (right to legal aid) implies delicate negotiations, due to the impact on national budget of the Member States.

<sup>8</sup> A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

<sup>9</sup> In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

<sup>10</sup> K. Ligeti, M. Simonato, 'The European Public Prosecutor's Office: Towards a Truly European Prosecution Service?', *New Journal of European Criminal Law*, Volume 4, Issue 1-2, 2013, p. 7-21.

## 2. Historical Background and Rationale

The idea of a European Public Prosecutor's Office (hereafter EPPO) is not new and it did not pop up from thin air. The discussion in this field started in 1997, with a document elaborated by several scholars, proposing a model solution to solve the issue of protecting the EU's financial interests through criminal law measures, entitled *Corpus Juris*<sup>11</sup>. It was not an official paper of the European Commission but a piece of research work commissioned by it. The purpose of the group was not to create a single criminal code or criminal procedure for the EU but to come up with a set of legal principles that would be valid across all Member States when dealing with financial crime that related to the EU.

This document triggered various reactions, from complete approval to absolute rejection of the idea<sup>12</sup>. Nevertheless, in December 2002, the European Commission issued a Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor<sup>13</sup>.

Even if the majority of frontline operators supported a qualitative step forward, political consensus was not reached for the establishment of a European Prosecutor as a necessary step towards the construction of an area of freedom, security and justice within the Union<sup>14</sup>. The main reason invoked for postponing discussions on the subject was the need for a Treaty amendment to allow the establishment of a European Prosecutor:

"[...] The amendment of the Treaties establishing the European Communities remains an indispensable condition: it alone can confer political legitimacy on the proposal."<sup>15</sup>

As regards the rationale for establishing a European Public Prosecutor's Office, the Commission's Follow-up report<sup>16</sup> offered several reasons for its setting up:

"[...] there is broad recognition of the fact that the fragmented nature of the European judicial area hampers the effectiveness of criminal prosecutions. It is important for the less convinced to remember that there are still obstacles to the effective prosecution of fraud in the field of substantive criminal law: limitation periods may differ, for example, and offences in one Member State may not correspond to those in another. On their own, national legal systems have proved ill-equipped to respond to the transnational nature of Community fraud owing to the principle of territoriality of the law of criminal procedure and the diversity of

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<sup>11</sup> M. Delmas-Marty, 'Corpus Juris: Introducing Penal Provisions for the Purpose of the Financial Interests of the European Union', *Economica*, Paris, 1997.

<sup>12</sup> J.R. Spencer, 'Who's afraid of the big, bad European Public Prosecutor?', *Cambridge yearbook of European legal studies*, Volume 14, 2011/2012 (2012), p. 363-380.

<sup>13</sup> Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2001) 715 final.

<sup>14</sup> Follow-up Report on the Green Paper on the criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2003) 128 final.

<sup>15</sup> *Idem*, p. 20.

<sup>16</sup> *Idem*, p. 9.

rules governing the production of evidence. All too often these factors ensure that prosecutions are not launched or completed, as the problems involved in obtaining evidence deter even the most willing.

Where the instruments of international judicial cooperation continue to expose positive or negative power struggles and the difficulties with the need for the *ne bis in idem* principle or the execution of international letters rogatory, the European Prosecutor could provide the solution. He would be equally capable of doing so at the investigation stage, thanks to his delegates, whose work would be based on a minimum of common rules and whose findings would be mutually admissible, and at the prosecution stage, as cases would be tried in just one Member State.”.

### 3. Proposed Regulation Establishing an European Public Prosecutor’s Office

In 2012 the European Commission issued a Proposal for a Directive on the fight against fraud to the Union's financial interests<sup>17</sup> and also announced its intention on proposing a Regulation establishing a European Public Prosecutor’s Office with competence in this field in 2013<sup>18</sup>.

In July 2013 the proposal for the European Public Prosecutor was issued<sup>19</sup>.

The main objectives of the proposal are:

- To contribute to the strengthening of the protection of the Union's financial interests and further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union’s institutions, while respecting all fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.
- To establish a coherent European system for the investigation and prosecution of offences affecting the Union’s financial interests.
- To ensure a more efficient and effective investigation and prosecution of offences affecting the EU’s financial interests.
- To increase the number of prosecutions, leading to more convictions and recovery of fraudulently obtained Union funds.

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<sup>17</sup> Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, COM (2012) 363 final.

<sup>18</sup> For an extended analysis of this proposal, see also K. Ligeti (Ed.), ‘Toward a Prosecutor for the European Union. Volume 1, A comparative analysis’, Oxford: Hart, 2013; F. Galli, A. Weyembergh (Ed.), ‘Approximation of substantive criminal law in the EU: the way forward’, Bruxelles: Éd. de l’Université de Bruxelles, 2013; M. Zwiers, ‘The European Public Prosecutor’s Office. Analysis of a Multilevel Criminal Justice System’, Intersentia, Cambridge/Antwerp/Portland, 2011, p. 372-385; S. White, ‘A Decentralised European Public Prosecutor’s Office. Contradiction in Terms or Highly Workable Solution’, Eucrim, Volume 2, 2012, p. 67-75; J. Fenyk, ‘European Public Prosecutor, a step towards mutual recognition, or establishment of European criminal justice?’, Czech yearbook of international law, Volume 1, 2010, v. 1, p. 187-205.

<sup>19</sup> Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, COM (2013) 564 final.

- To ensure close cooperation and effective information exchange between the European and national competent authorities.
- To enhance deterrence of committing offences affecting the Union's financial interests.

Several aspects are of importance in this proposal: the exclusive competence over offences against the Union's financial interests<sup>20</sup>; the territorial competence of the EPPO throughout the whole territory of the European Union<sup>21</sup>; its structure, comprising both a centralized body and decentralized European Delegated Prosecutors;<sup>22</sup> the principles guiding its activity<sup>23</sup>; the jurisdiction of national courts over proceedings opened by the EPPO<sup>24</sup>, its investigative measures<sup>25</sup>,

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<sup>20</sup> The competence of the EPPO regarding offences affecting the financial interests of the Union should take priority over national claims of jurisdiction so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. Any extension of this competence to include serious crimes having a cross-border dimension would require a unanimous decision of the European Council.

<sup>21</sup> For the purpose of investigations and prosecutions, the territory of the Union's Member States shall be considered a single legal area in which the EPPO may exercise its competence, which can be extended over an offence which was partly or wholly committed outside the territory of the Member States by one of their nationals, by Union staff members or by members of the Institutions, if assistance is obtained from the third country concerned.

<sup>22</sup> The organizational structure of the EPPO comprises a single centralized body where decisions are taken by the European Public Prosecutor, and also decentralized European Delegated Prosecutors in the Member States. In cases involving several Member States or cases which are of particular complexity, the efficient investigation and prosecution may require that the European Public Prosecutor also exercise his powers by instructing national law enforcement authorities. The European Public Prosecutor and the European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of prosecution and bringing a case to judgment, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.

<sup>23</sup> The investigations and prosecutions of the EPPO should be guided by the principles of proportionality, impartiality and fairness towards the suspect. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory. In order to ensure legal certainty and zero tolerance towards offences affecting the Union's financial interests, the investigation and prosecution activities of the EPPO should be based on the principle of mandatory prosecution, whereby it should initiate investigations and, subject to further conditions, prosecute every offence within its competence.

<sup>24</sup> The European Public Prosecutor shall choose, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the jurisdiction of trial and determine the competent national court. The jurisdiction of trial should be chosen by the European Public Prosecutor on the basis of a set of transparent criteria.

<sup>25</sup> The use of the investigative measures should comply with the conditions set out in it, including the need to obtain judicial authorization for certain coercive investigative measures. Other investigative measures may be subject to judicial authorization if this is required by the national law of the Member State where the investigation measure is to be carried out. The general requirements of proportionality and necessity should apply to the ordering of the measures by the EPPO and to their authorization by the competent national judicial authority.

and judicial review<sup>26</sup>; the rules on evidence admissibility<sup>27</sup>; defense rights<sup>28</sup>.

#### 4. Scope of Competence for Investigation: Necessity *versus* Political Compromise

My further argument is about the necessity of establishing an EPPO in respect to its proposed jurisdiction.

Stepping up from traditional judicial cooperation between judicial authorities in the Member States towards united and coordinated criminal investigation with vertical dimension at European Union level is a huge move forward in terms of speeding up investigations in criminal law. This revolution in procedural criminal law is necessary, in my opinion, in support of preventing and combating serious harm to legal goods of significant importance to EU citizens<sup>29</sup>.

In respect to protecting legal goods and their importance at EU level through criminal law measures, two texts are of importance in the EU legislation: Article 83(1) and Article 83(2) TFEU<sup>30</sup>. One can observe from the two mentioned texts that

<sup>26</sup> National courts are entrusted with the judicial review of all acts of investigation and prosecution of the EPPO which may be challenged.

<sup>27</sup> The evidence presented by the EPPO to the trial court should be recognized as admissible evidence, and thus presumed to meet any relevant evidentiary requirements under the national law of the Member State where the trial court is located, provided that court considers it to respect the fairness of the procedure and the suspect's rights of defense under the Charter of Fundamental Rights of the European Union. The trial court cannot exclude the evidence presented by the EPPO as inadmissible on the ground that the conditions and rules for gathering that type of evidence are different under the national law applicable to it.

<sup>28</sup> The EPPO is required to respect fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union, and, in particular, the right to a fair trial, the rights of the defense and the presumption of innocence, the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*). The rights of defense already provided for in the relevant Union legislation, should apply to the activities of the EPPO.

<sup>29</sup> See N. Neagu (Ed.), 'Foundations of European Criminal Law', Bucharest, C.H. Beck, 2014 (forthcoming).

<sup>30</sup> Article 83(1) TFEU:

'The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.

[...]

Article 83(2) TFEU:

'If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonization measures in question [...].'

there are two important areas where criminal law measures can be adopted at EU level: an area of serious crime with a cross-border dimension (*e.g.* terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime), and an area where criminal law measures are necessary to ensure the effectiveness of an EU policy (such as budget and protection of EU financial interests).

Having to choose from these two particular areas for creating the EPPO's jurisdiction, which area did the EU institutions chose?

In respect to the EPPO's scope of competence, there is a political consensus that it should deal with criminal offences against the financial interests of the European Union. It is true that all discussions on the EPPO, from the origins of the idea, have dealt with this area of jurisdiction.

But even if we refer only to this specific jurisdiction, there are skeptic voices about aided value and effectiveness on creating an EPPO protecting EU financial interests<sup>31</sup>. Firstly, the total volume of fraud has at times been considered insufficient to justify the cost involved in establishing a new body<sup>32</sup>. Secondly, according to certain government sources, the number of fraud cases that are transnational (affecting several Member States) but limited to the European Union (not involving third countries), which would be the main area of interest to the European Prosecutor, is too small to justify establishing the institution<sup>33</sup>.

It should also be pointed out that several governments, some of which were opposed in principle to the idea of a European Prosecutor, took the view that if a European Prosecutor were established sometime in the future, his powers set out in the Green Paper would need to be extended to cover other areas of Community interest<sup>34</sup>.

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<sup>31</sup> L. Hamran, E. Szabova, 'European Public Prosecutor's Office – Cui Bono?', *New Journal of European Criminal Law*, Volume 4, Issue 1-2, 2013, p. 40-58.

<sup>32</sup> According to the statistics collected by OLAF, cases of illegal activities involving EU funds (so-called "irregularities") caused a cumulated damage to EU public money of approximately € 2.07 billion in 2010. Within the amount of the illegal activities in 2010 suspicion of fraud amounted to € 617 million of EU public money potentially lost to crime (0,5% of the EU budget for 2010). It appears reasonable to assume that **not all the losses of EU funds to illegal activities can be avoided or recovered by criminal law** (emphasis added). See in this respect the Impact Assessment (Part I) accompanying the document Proposal for a Directive of the European Parliament and of the Council on the protection of the financial interests of the European Union by criminal law [COM(2012) 363 final]. It is also mentioned in the Impact Assessment that an empirical demonstration of exactly how much EU public money could be recovered, or losses of it be avoided, by criminal law measures is not possible due to the absence of, and methodological challenges in generating, empirical data on the preventive effect and thus financial impact of any given criminal law provision.

<sup>33</sup> Follow-up Report on the Green Paper on the criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2003) 128 final, p. 8. At the public hearing, the ministerial representative from the United Kingdom pointed out that the cases of agricultural irregularities in the United Kingdom had fallen from 393 in 2000 to 252 in 2001. She added that at European level only 30% of fraud cases involved more than one Member State or third countries; in 70% of the cases, the fraud was being committing in one Member State only.

<sup>34</sup> Belgium, Denmark, Spain, Luxembourg, Portugal and, to a lesser degree, Germany. Follow-up report Green Paper, p. 6-7.



Also, from the impact assessments<sup>35</sup> accompanying several proposed legislative acts in the field of serious crimes with a cross-border dimension, a more clear need for criminal law instruments in certain fields was proved. Thus, adoption of criminal law measures in the field of informatics systems was mainly determined by malware or botnets attacks<sup>36</sup>, and also trafficking in human being was addressed at EU level due to the widespread dimension of transnational crime<sup>37</sup>. In these areas (not to mention drug trafficking or terrorism), no frontier

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<sup>35</sup> At EU level, a proposed directive with criminal law provisions should be accompanied by an impact assessment, which should prove, between others, the necessity to adopt criminal law provisions.

<sup>36</sup> The term 'botnet' indicates a network of computers that have been infected by malicious software (computer virus). Such a network of compromised computers ('zombies') may be activated to perform specific actions, such as attacking information systems (cyber attacks). These 'zombies' can be controlled – often without the knowledge of the users of the compromised computers – by another computer. This 'controlling' computer is also known as the 'command-and-control center'. The persons who control this center are among the offenders, as they use the compromised computers to launch attacks against information systems. Attacks from such botnets can be very dangerous for the affected country as a whole, and can also be used by terrorists or others as a tool to put political pressure on a state. This became clear in Estonia in April-May 2007, where important parts of the critical information infrastructure in government and the private sector were taken out for days due to large scale attacks against them. As a result, the Parliament was forced to close down its e-mail system for 12 hours. Due to extensive access attacks two major banks present in Estonia (Hansabank and SEB Eesti Unisbank) completely stopped their online business and blocked their contacts with foreign countries for a long time. There have also been reports of attacks on the Estonian telephone system stating that at least one public telephone exchange was put out of service. A similar attack occurred in Lithuania on 28 June 2008 when more than 300 private and official sites were attacked from proxy servers located outside of Lithuania. The world witnessed the spread of a botnet called 'Conficker' (also known as Downup, Downadup and Kido), which has propagated and acted in an unprecedented scale and scope since November 2008, affecting millions of computers worldwide. In terms of the potential capacity of current botnets, the above-mentioned botnet 'Conficker', with an alleged bot capacity number of 12 million infected computers (February 2009 estimate) and a capacity to send 10 billion of spam emails per day, is considered the biggest and fastest botnet currently affecting the world. It infected at a rate of more than a million computers worldwide per day. Inside the EU, damages from this botnet were reported in France, the UK and Germany. French fighter planes were unable to take off after military computers were infected by Conficker in January 2009. The German army reported in February 2009 that parts of its computer network were infected by Conficker, making the websites of the German army, and the Defense ministry unreachable and preventing them from being updated by their administrators. Certain IT services, including e-mails, were unavailable for weeks to the UK Ministry of Defense personnel in January/February 2009 after they were infected by the Conficker botnet. In March 2009, computer systems of government and private organizations of 103 countries (including a number of Member States, such as Cyprus, Germany, Latvia, Malta, Portugal and Romania) were attacked by malware installed to extract sensitive and classified documents. See the Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on attacks against information systems, and repealing Council Framework Decision 2005/222/JHA [COM(2010) 517 final].

<sup>37</sup> The International Organization for Migration (IOM) database includes data collected from 12,627 victims who have been assisted by IOM worldwide from November 1999 to December 2007. Out of these, 10,473 are female and 2,154 are male. 630 persons are below 14 years of age, 1,416

can stop a criminal offence (especially in the European Union, a space of liberty, security and justice, with no border checks). And the need of EU protection in this field is proved by the very instruments adopted at EU level<sup>38</sup>.

Balancing the clear need for EU action in certain fields of serious crimes with cross-border dimension with the (at least doubtful) need for criminal law intervention for protecting EU's financial interests, I can find no scientific explanation for choosing the latter to establish the jurisdiction of the EPPO, instead of the former.

Indeed, the message sent to the European citizens is the following one: several legal goods, of tremendous importance to you (such as life, freedom, health etc.), are of secondary importance to us (European institutions and Member States). More important are our financial interests, and we chose a very powerful and revolutionary instrument (the EPPO) to protect these interests.

The only logical explanation for this choice is the lack of political will to grant more powers to EU institutions in the field of criminal law. Member States have come to consider criminal law as part of their own sovereignty, and granting part of it to EU means less power for national authorities. As they are prepared to do so in a field where they have little or no interest for protecting (EU financial interests), there is no intention, at least in the near future, towards extending it to fields where the EU interests may collide with the national ones. But, in doing so, the message sent to European citizens is far from encouraging: important social values, such as life, freedom, health, can be protected sufficiently through traditional judicial cooperation. However, EU financial interests are of such importance, that only vertical, united and coordinated investigation through the creation of the EPPO, can succeed in efficiently protecting those interests.

I wonder if there is still time to change this message.

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between 14 and 17, 5,880 between 18 and 24, 2,485 between 25 and 30, 2,092 over 30 (124 not recorded). The most represented countries of origin are Ukraine, Republic of Moldova, Belarus, and Romania. Among the countries to which people are trafficked there are several EU countries: Italy (500 victims), Greece (105), Germany (136), Czech Republic (303), Bulgaria (204), Austria (101), and Poland (778). 188 recorded cases concern international trafficking, 2,389 are cases of internal trafficking. See the Impact Assessment accompanying the document Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, [COM(2009) 136 final].

<sup>38</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L164, 22.06.2002, p.3-7; Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, OJ L 335, 11.11.2004, p. 8-11; Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13, 20.01.2004, p. 44-48; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1-11; Proposal for a Directive of the European Parliament and of the Council on attacks against information systems, and repealing Council Framework Decision 2005/222/JHA [COM(2010) 517 final].

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