

WELCOME SPEECH OF THE REPRESENTATIVE OF THE SUPREME COURT OF THE REPUBLIC OF CROATIA

Distinguished and esteemed colleagues,

The Regulation on the establishment of the European Public Prosecutor's Office, which is the reason we are gathered here today, is the result of committed work by outstanding experts, but the job is not finished, since the process of bringing the written word to life still lies ahead. Its implementation will require significant organisational manoeuvres in the state attorney system, but domestic courts will need to address the results of the work of European and national prosecutors only in the later stages of the criminal procedure. Although the Regulation does not raise the question of the need to change the network of courts or their internal organisation in any way, it is already possible to detect certain problems that will appear in that part of its implementation.

The first group of problems might arise from the competence of the European Public Prosecutor's Office in view of the way it is prescribed in the Regulation and given the way the competence of the state attorney is regulated under national law.

In the Republic of Croatia, the competence of the state attorney – both in terms of subject-matter and territorial jurisdiction – is derived from the jurisdiction of courts (an exception is foreseen only in the Act on the Office for the Suppression of Corruption and Organised Crime). Subject-matter jurisdiction, of course, depends on the legal designation of the offence indicated in the indictment by the prosecutor and, in case of any doubt as to court jurisdiction, after the courts resolve the matter, the indictment is pursued by the prosecutor who acts before the competent court.

The Regulation prescribes the competence of the European Public Prosecutor's Office and its authorities in conducting, receiving, and referring criminal proceedings. However, the provisions are not sufficiently specific: in some cases, its competence may depend on the "assessment of the damage" caused or likely to be caused to the Union, and sometimes the Office may exercise its competence to investigate and prosecute criminal offences that caused or are likely to cause damage to the Union of less than EUR 10,000 ("[if] the case has repercussions at Union level which require an investigation to be conducted by the EPPO", which does not depend on objective facts but on an almost arbitrary decision of the EPPO), and so on. In all such situations, which can also be disputable, courts will need to examine whether prosecution is within the authority of the national prosecutor or the EPPO. If courts, in view of the results of the proceedings, find that the proceedings were conducted without a request

by the authorised prosecutor (if the prosecutor was a state attorney and should have been the EPPO, which did not send the case to the state attorney, or if an indictment was filed by the EPPO and is not an offence within its competence), the result could be that the case is dismissed.

The second group of potential problems relates to evidence gathered in other states.

The Regulation sets out mechanisms that enable cooperation, delegation of prosecutors, and the possibility available to prosecutors to obtain evidence from the state in which it was gathered. It also prescribes that evidence presented by EPPO prosecutors or the respondent in court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State. Item 80 of the Preamble also provides the condition that the trial court consider the admission of evidence to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter.

Naturally, the use of evidence gathered abroad will be nothing new for Croatian courts. Still, in view of experiences with frequent objections against the unlawfulness of evidence, the precondition to decide about such evidence is knowledge of the law of other states, those in which the evidence was gathered. However, the Regulation develops mechanisms for cooperation by and among European Delegated Prosecutors (who will act in their states in which they will also be collecting evidence) and for the exchange of knowledge and experience, while for national courts such mechanisms are not institutionalised. Therefore, in such court proceedings we can expect greater problems than those we have encountered so far when using the mechanisms of international legal assistance.

Despite problems that can always be expected when significant novelties are introduced in any legal system, which will be the case when the EPPO begins to function, I believe that Croatian courts will do their part of the job lawfully and professionally and that this Conference will also contribute to this as I see many judges amongst the participants.

Everyone present today is contributing to the aims of this Conference by their very presence here, while the exchange of thoughts, ideas, knowledge and experience, complemented with the readiness to learn, which is something we have all brought with us here, will enable us to overcome the challenges ahead.

With great thanks to the organisers, OLAF and the Croatian Association of Criminal Sciences and Practice, on behalf of the president of the Supreme Court of the Republic of Croatia, Đuro Sessa, and me personally, I would like to wish everyone successful work at this Conference.

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