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Review Article

CONFLICTS OF COMPETENCE BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND NATIONAL PROSECUTING AUTHORITIES

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ABSTRACT

Background: *The establishment of the European Public Prosecutor's Office (EPPO) under Article 86 TFEU introduced a new model of criminal law integration within the European Union (EU) based on the functional allocation of competence between the EPPO and national prosecuting authorities. Although Regulation (EU) 2017/1939 establishes the legal framework governing the EPPO's competence, determining the competent authority in complex cross-border cases continues to raise significant legal and practical challenges. The absence of a sufficiently structured approach to the application of competence criteria may give rise to conflicts of competence, which may affect legal certainty, procedural efficiency, and the effective protection of the EU's financial interests.*

Method: *The study employs doctrinal legal research based on a systematic analysis of EU primary and secondary legislation, including Article 86 TFEU, Regulation (EU) 2017/1939, and Directive (EU) 2017/1371. The research combines doctrinal, systematic, and case-law analysis of the legal framework*

governing the EPPO's competence with an examination of the case law of the Court of Justice of the European Union (CJEU) and relevant Bulgarian judicial practice. Particular attention is paid to the interaction between EU and national legal rules and to the practical application of the criteria for determining the competent authority in cross-border criminal proceedings.

Results and Conclusions: *The analysis demonstrates that conflicts of competence constitute a structural consequence of the model of functionally distributed competence established by EU law rather than isolated procedural anomalies. Although Regulation (EU) 2017/1939 provides the legal framework governing the EPPO's competence, it does not ensure sufficiently clear and predictable criteria for determining the competent authority in all complex cross-border cases. The study makes an original contribution by proposing an author's classification of conflicts of competence, a structured system of competence criteria, and an author's conceptual analytical framework for determining the competent authority. This framework supports a more coherent and predictable application of Regulation (EU) 2017/1939 and contributes to greater legal certainty and effectiveness in determining the competent authority between the EPPO and national prosecuting authorities.*

1 INTRODUCTION

The establishment of the European Public Prosecutor's Office (EPPO) constitutes one of the most significant institutional changes in the development of European criminal law. The legal basis for its establishment is contained in Article 86 of the Treaty on the Functioning of the European Union (TFEU), which provides for the establishment of a body competent to investigate, prosecute and bring to judgment criminal offences affecting the financial interests of the Union.[1] This possibility was implemented by Regulation (EU) 2017/1939, by which the European Public Prosecutor's Office (EPPO) was established.[2]

The primary objective of the EPPO is to ensure the effective protection of the financial interests of the EU by overcoming the limitations of traditional inter-State cooperation.

The specific nature of the EPPO lies in the fact that it exercises its competence jointly with the national prosecution authorities within a model of functionally allocated competence, rather than through their institutional replacement. This hybrid structure creates the preconditions for conflicts of competence between the EPPO and the national prosecuting authorities.

The question of delimiting competence is further complicated by the lack of sufficiently clear, predictable, and hierarchically structured criteria in the current legal framework. The

1 Treaty on the Functioning of the European Union (TFEU) (consolidated version) [2012] OJ C326/47, art 86.

2 Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office (EPPO) [2017] OJ L 283/1.

case law of the Court of Justice of the European Union (CJEU) gradually clarifies certain aspects of the interaction between the EPPO and the national authorities, but a number of practical issues remain unresolved. This normative uncertainty does not constitute merely a theoretical problem, but has a direct impact on legal certainty, the effectiveness of cross-border investigations, and the consistent allocation of competence between the EPPO and the national prosecuting authorities.

Despite the growing interest in the EPPO in European legal doctrine, research has focused primarily on the institutional and procedural aspects of the EPPO. There has been considerably less attention devoted to the systematic analysis of conflicts of competence, and there is also a lack of a comprehensive analytical framework for determining the competent authority where competing grounds of competence exist. This gap in the literature is precisely what the present study seeks to address.

The present study analyses the competence of the EPPO and proposes a conceptual analytical framework for determining the competent authority in the event of conflicts of competence. On the basis of the identified gap in the literature, the study raises questions regarding the causes and types of conflicts of competence, the adequacy of the existing criteria, and the possibilities for their more consistent application. In order to answer the research questions posed, the article sequentially examines the legal framework governing the competence of the EPPO, the causes and types of conflicts of competence, the criteria for determining the competent authority, and the relevant case law.

2 METHODOLOGY

The aim of the present study is to analyse the legal nature, manifestations, and mechanisms for resolving conflicts of competence between the EPPO and the national prosecuting authorities in the context of EU law and national criminal procedural law.

The object of the study is the social relations arising in the exercise and allocation of criminal jurisdiction between the EPPO and the national prosecuting authorities.

The subject matter of the study is the legal framework, case law, and institutional mechanisms for resolving conflicts of competence between the EPPO and the national prosecution authorities, as well as the criteria that determine the competent authority within the framework of cross-border criminal proceedings.

The study seeks to answer the following main research questions:

> *RQ1. What are the main causes of conflicts of competence between the EPPO and the national prosecuting authorities?*
>
> *RQ2. To what extent does the current EU legal framework contain clear, predictable, and sufficiently structured criteria for the delimitation of competence?*

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RQ3. How does the case law of the CJEU and the Bulgarian courts contribute to the interpretation and practical resolution of conflicts of competence?

RQ4. Is it possible, on the basis of the existing system, to develop a conceptual framework for determining the competent authority in cases of conflicts of competence?

The formulated research questions determine the logic and structure of the study, with each subsequent part being directed towards their sequential clarification.

To achieve the aim of the study, the doctrinal, systematic, comparative, and case law methods were used.

Doctrinal legal analysis has been applied to examine the current legal framework of the EU, including the provisions of the TFEU, Regulation (EU) 2017/1939 and Directive (EU) 2017/1371[3].

Systematic and comparative analyses have been applied to clarify the interaction between EU law and the applicable national criminal procedural law in the exercise of the competence of the EPPO.

The analysis of the case law of the CJEU and Bulgarian case law has been used to assess the practical application of the rules governing the competence of the EPPO.[4] These methods make it possible to examine simultaneously the normative, institutional, and practical aspects of conflicts of competence.

The scientific contribution of the present study is expressed in three interrelated directions.

- An original classification of conflicts of competence between the EPPO and the national prosecuting authorities has been developed.
- The principal criteria for determining the competent authority where competing grounds of competence exist have been formulated.
- An original conceptual analytical framework has been proposed, which systematizes and determines the logical sequence for the application of these criteria in conflicts of competence between the EPPO and the national prosecuting authorities.

The study is limited by the relatively short period of operation of the EPPO and the still-developing case law of the CJEU and the Bulgarian courts on the issues under consideration. For this reason, some of the conclusions reached are of an analytical and prognostic nature and are subject to further development with the accumulation of new case law and institutional experience. Nevertheless, the conclusions reached are based on the current legal framework and the available case law and may serve as a basis for future research on the competence of the EPPO.

3 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.

4 Case no 6093/2024 Decision no 2077 (Sofia District Court, 30 April 2024).

3 DEVELOPMENT OF EUROPEAN CRIMINAL LAW AND THE ESTABLISHMENT OF THE EPPO

3.1. Evolution of European Criminal Law

Initially, criminal law was perceived as a sphere belonging entirely to national sovereignty; therefore, European integration was limited to intergovernmental cooperation between the Member States. The fight against cross-border crime was carried out through mutual legal assistance, extradition, and coordination between the national authorities, without the European Community possessing autonomous criminal law powers.[5]

The increase in cross-border crime, financial fraud against the EU budget, and organized crime called into question the effectiveness of the exclusively national model of criminal prosecution and necessitated closer coordination between the Member States.[6]

A significant turning point in the development of European criminal law occurred with the entry into force of the Treaty of Lisbon in 2009. For the first time, the primary law of the EU provided an explicit legal basis for the adoption of minimum rules concerning certain categories of criminal offences and sanctions, as well as for the establishment of institutional mechanisms for the protection of the financial interests of the Union.[7]

In European legal doctrine, the period following the Treaty of Lisbon is defined as a transition from intergovernmental cooperation to a model based on common standards, mutual recognition, and specialized supranational institutions, which exercise limited criminal law powers or coordinate the activities of the national authorities.[8] It is precisely this transformation that laid the foundations for the establishment of the EPPO.[9]

Consequently, the development of European criminal law represents not only an institutional expansion of the powers of the EU, but also a change in the manner in which criminal competence is allocated between the European and national levels. This transformation laid the foundations of the model of functionally allocated competence, which creates the preconditions for conflicts of competence between the EPPO and the national prosecuting authorities.

5 TFEU (n 1) arts 67, 82–86; Valsamis Mitsilegas, *EU Criminal Law* (2nd edn, Hart Publishing 2020) 19-38.

6 Mitsilegas (n 5).

7 TFEU (n 1) arts 82–86; Mitsilegas (n 5) 51-63.

8 Katalin Ligeti (ed), *Toward a Prosecutor for the European Union: A Comparative Analysis* (Hart Publishing 2013) vol 1.

9 Lorena Bachmaier Winter (ed), *The European Public Prosecutor's Office: The Challenges Ahead* (Springer Nature 2018).

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3.2. Article 86 TFEU as the Constitutional Basis of the EPPO

Article 86 TFEU establishes the constitutional basis of the EPPO and outlines the principal limits of its competence.[10] The provision is intended to ensure more effective protection of the financial interests of the Union in the context of cross-border crime and differences in the national procedural systems.[11] Article 86 TFEU does not confer universal criminal competence upon the EPPO, but rather introduces a model of functionally allocated competence between the European and the national levels.[12] This model is further developed in Regulation (EU) 2017/1939.[13]

A particular feature of the model under Article 86 TFEU is that the EPPO was established through the mechanism of enhanced cooperation due to the lack of the necessary unanimity among the Member States for its establishment.[14] For this reason, the EPPO exercises its competence only in the participating Member States. This limitation acquires particular significance in the case of cross-border offences affecting the financial interests of the EU that involve both participating and non-participating Member States. In such cases, the interaction between the EPPO and the national authorities is carried out in accordance with the applicable rules of EU law, which may create the preconditions for competing grounds of competence and difficulties in determining the competent authority.[15]

Furthermore, Article 86 TFEU limits the competence of the EPPO to offences affecting the financial interests of the EU. Regulation (EU) 2017/1939 governs the organization and the exercise of that competence, while Directive (EU) 2017/1371 defines the offences falling within its material scope.[16] The thus-defined model of functionally allocated competence creates the preconditions for conflicts between the EPPO and the national prosecuting authorities. For this reason, conflicts of competence should be regarded as a structural consequence of the multi-level model of criminal law integration, rather than as incidental practical difficulties.

10 TFEU (n 1) art 86.
11 Council Regulation (EU) 2017/1939 (n 2) recs 12–15; Mitsilegas (n 5).
12 TFEU (n 1) art 86; Mitsilegas (n 5).
13 Council Regulation (EU) 2017/1939 (n 2).
14 Ligeti (n 8).
15 Mitsilegas (n 5).
16 Directive (EU) 2017/1371 (n 3).

4 LEGAL FRAMEWORK OF COMPETENCE

4.1. EU Legal Framework

The legal framework governing the competence of the EPPO is characterized by a multi-level normative structure, built upon the interaction of primary and secondary EU law, as well as the national legal systems of the participating Member States. On the one hand, Article 86 TFEU constitutes the constitutional basis for the establishment of the EPPO and outlines the limits of its competence. On the other hand, Regulation (EU) 2017/1939 specifies the content of that competence, while Directive (EU) 2017/1371 defines the substantive scope of the offences affecting the financial interests of the Union.[17] For this reason, the analysis of the current legal framework should sequentially examine the primary and secondary law of the EU.

4.1.1. Constitutional Framework of Competence: Article 86 TFEU

Article 86 TFEU constitutes the primary legal basis for the competence of the EPPO.[18] It defines its purpose, outlines the constitutional limits of its competence, and provides for its establishment through the mechanism of enhanced cooperation.

4.1.2. Secondary EU Law and the Normative Limits of Competence

The constitutional framework established by Article 86 TFEU finds its specific normative development in the secondary law of the EU, primarily in Regulation (EU) 2017/1939 and Directive (EU) 2017/1371. The two acts form a unified legal framework, in which the Regulation governs the institutional organization of the EPPO and the rules governing the exercise of its powers, while the Directive defines the substantive scope of the offences falling within the competence of the EPPO.[19] It is precisely within this normative framework that the criteria for determining the competence of the EPPO are specified.

Article 22 of Regulation (EU) 2017/1939 is of particular importance for determining competence, as it limits the material competence of the EPPO to offences affecting the financial interests of the EU, as defined in Directive (EU) 2017/1371. In this way, the competence of the EPPO is determined through the functional link between the specific offence and the financial interests of the Union, which requires an individual assessment in each particular case.

In that assessment, Directive (EU) 2017/1371 is of decisive importance. It introduces minimum rules concerning the constituent elements of offences affecting the budget of the

17 Council Regulation (EU) 2017/1939 (n 2) arts 22–25; Directive (EU) 2017/1371 (n 3).

18 TFEU (n 1) art 86.

19 Council Regulation (EU) 2017/1939 (n 2); Directive (EU) 2017/1371 (n 3).

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EU, including fraud, corruption, misappropriation of funds, money laundering, and serious cross-border VAT fraud. However, the Directive does not aim at the complete unification of national criminal law, but at minimum harmonization, which leaves the Member States discretion as to the manner of transposition of its provisions.[20]

Minimum harmonization creates practical difficulties in determining the competent authority. Although the material scope of the offences is harmonized at the level of the EU, the individual Member States retain differences both in the national constituent elements of offences and in the procedural rules governing their investigation. Consequently, the secondary law of the EU defines the normative limits of the competence of the EPPO and the mechanisms for its exercise, but their practical application requires an individual assessment in determining the competent authority.[21]

An additional element of the normative framework is constituted by the rules laid down in Articles 24 and 25 of Regulation (EU) 2017/1939, which govern the notification of the EPPO and the criteria for the exercise of its competence. These provisions are intended to prevent competition between European and national criminal prosecution by granting the EPPO the right to determine whether to exercise its competence in the specific case. Nevertheless, the normative criteria do not always allow for the unambiguous resolution of complex cross-border cases, especially where there are multiple interconnected offences or competing grounds of competence.[22] Consequently, these provisions reduce the risk of conflicts of competence, without excluding it completely.[23]

4.2. National Legal Framework

The national legal framework plays a key role in the practical exercise of the powers of the EPPO, as it is through it that European rules are integrated into the national criminal justice systems.

Although the competence of the EPPO derives directly from EU law, its exercise is inevitably carried out within the framework of the national institutions and in compliance with the national procedural rules, insofar as Regulation (EU) 2017/1939 does not provide otherwise.[24]

In the Republic of Bulgaria, this integration has been effected through amendments to the Judiciary Act, by which the European Delegated Prosecutors have been incorporated into the structure of the Prosecutor's Office, while, in the exercise of their functions, they act as organs of the EPPO in accordance with Regulation (EU) 2017/1939.[25]

20 Directive (EU) 2017/1371 (n 3); Ligeti (n 8).
21 Mitsilegas (n 5) 245-50.
22 Council Regulation (EU) 2017/1939 (n 2) arts 24, 25.
23 Mitsilegas (n 5).
24 Council Regulation (EU) 2017/1939 (n 2).
25 Law of the Republic of Bulgaria on Judicial System [2007] SG 24, art 136(8)-(9) <https://www.justice.government.bg/home/normdoc/2135560660> accessed 20 April 2026.

The dual institutional status of the European Delegated Prosecutors is one of the most characteristic features of the legal model of the EPPO. On the one hand, the European Delegated Prosecutors apply the national criminal procedural law and use the national investigating authorities. On the other hand, in the exercise of the powers of the EPPO, they are bound by the instructions and decisions of the Permanent Chambers, the European Chief Prosecutor, and the EPPO as an institution. Consequently, their procedural status combines elements of the national and the European legal regime.[26]

To guarantee the institutional independence of the European Delegated Prosecutors, the Bulgarian legislator has provided for special rules regarding their status. The Judiciary Act excludes the possibility of national administrative heads and the prosecutors of the higher-level prosecution offices from exercising hierarchical control over their activities when they act in their capacity as European Delegated Prosecutors. In this way, the institutional independence of the EPPO in the exercise of its powers is guaranteed.[27]

At the procedural level, the interaction between European and national law is implemented through the application of the provisions of the Criminal Procedure Code, insofar as Regulation (EU) 2017/1939 does not contain special rules. The investigation, gathering of evidence, judicial review, and the procedural rights of the participants are governed primarily by national procedural law.

At the same time, all procedural actions must comply with the requirements of the Regulation and the principles of EU law, which forms a complex model of the parallel application of the European and the national legal frameworks.[28]

The interaction between European competence and national procedural law creates the preconditions for conflicts of competence. Although material competence is determined by EU law, its practical exercise passes through national institutions and procedural mechanisms, as a result of which the national legal framework has a direct influence on the determination of the competent authority in particular proceedings.[29]

4.3. Interaction between EPPO and National Authorities

The interaction between the EPPO and the national authorities is carried out through the mechanisms for notification, coordination, and determination of competence provided for in Regulation (EU) 2017/1939. Through them, it is determined whether the particular

26 Ligeti (n 8); Mitsilegas (n 5).

27 Law of the Republic of Bulgaria on Judicial System (n 25) art 136 (11).

28 Council Regulation (EU) 2017/1939 (n 2); Law of the Republic of Bulgaria on Judicial System (n 25); Criminal Procedure Code of the Republic of Bulgaria [2005] SG 86 <https://justice.government.bg/home/normdoc/2135512224> accessed 20 April 2026.

29 Council Regulation (EU) 2017/1939 (n 2); Mitsilegas (n 5).

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case falls within the competence of the EPPO or should remain within the competence of the national authorities.[30]

The practical functioning of this model presupposes constant coordination between the EPPO and the national prosecution authorities through the exchange of information, joint conduct of the investigation, and exercise of powers in accordance with Regulation (EU) 2017/1939 and the applicable national law. In this process, difficulties may arise in the delimitation of competence, which are the subject of the following section.[31]

Consequently, it is precisely in the process of interaction between the EPPO and the national authorities that practical issues related to the delimitation of competence may arise. This necessitates an analysis of the factors that determine the competent authority in the individual situations.[32]

4.4. Structural Limitations of the Existing Legal Framework

Although the current legal framework establishes a stable basis for the functioning of the EPPO, it does not entirely eliminate the difficulties arising from the model of functionally allocated competence. These structural limitations account for a significant part of the conflicts between the EPPO and the national prosecution authorities.[33]

4.4.1. Uncertainty in the Delimitation of Competence

One of the main practical problems of the current system is the lack of sufficiently clear and comprehensive criteria for the delimitation of competence between the EPPO and the national prosecution authorities. Although Regulation (EU) 2017/1939 defines the material scope of the competence of the EPPO and contains rules regarding the exercise of its powers, it does not comprehensively regulate all possible situations in which competing grounds of competence may arise.[34]

The practical determination of the competent authority requires the combined application of Article 86 TFEU, Regulation (EU) 2017/1939, Directive (EU) 2017/1371, and the applicable national procedural law. As a result, competence is determined through an overall assessment of normative and factual circumstances, including the nature of the offence, its connection with the financial interests of the EU, and the cross-border elements of the case.[35]

30 Council Regulation (EU) 2017/1939 (n 2) arts 24, 25; Mila Ivanova, *International Cooperation in Criminal Matters* (Burgas Free University 2026) 253-82 [in Bulgarian].
31 Council Regulation (EU) 2017/1939 (n 2) art 25; Mitsilegas (n 5)
32 Ligeti (n 8); Mitsilegas (n 5).
33 Council Regulation (EU) 2017/1939 (n 2); Directive (EU) 2017/1371 (n 3); TFEU (n 1) art 86.
34 Council Regulation (EU) 2017/1939 (n 2) arts 22–25; Mitsilegas (n 5).
35 Council Regulation (EU) 2017/1939 (n 2); Directive (EU) 2017/1371 (n 3); TFEU (n 1) art 86; Law of the Republic of Bulgaria on Judicial System (n 25).

An additional difficulty arises from the fact that a significant part of the criteria provided for in Regulation (EU) 2017/1939 are of an evaluative nature. Concepts and criteria such as "offences affecting the financial interests of the Union," "inextricably linked offences," or the assessment of whether the EPPO is in a better position to investigate or to conduct criminal prosecution require a specific legal assessment in each individual case and cannot be applied mechanically. This inevitably leaves room for differing interpretations by both the EPPO and the national authorities.[36] This problem becomes particularly apparent in complex cross-border investigations, in which different grounds of competence may simultaneously be applicable. In such cases, normative uncertainty hinders the predictable determination of the competent authority.[37]

Consequently, the principal problem is not the lack of a legal framework, but the absence of a sufficiently clearly structured system of criteria for the predictable delimitation of competence. This normative uncertainty constitutes a significant factor in the emergence of conflicts of competence and confirms the need for a conceptual analytical framework for their resolution.

4.4.2. Divergences in National Implementation

One of the essential characteristics of the current regime is that the exercise of the powers of the EPPO takes place within the framework of multiple national criminal procedural systems. Although Regulation (EU) 2017/1939 is directly applicable in all participating Member States, the procedural autonomy of the Member States determines the application of national legislation to matters in respect of which the Regulation refers to it.[38] Consequently, the European Delegated Prosecutors exercise their powers in accordance with Regulation (EU) 2017/1939 and, in the absence of specific regulation, apply the national procedural law. In this way, a single proceeding is based simultaneously on European and national procedural rules, which gives rise to differences in the practical application of the regime of competence.[39]

An additional complication arises from the minimum harmonization introduced by Directive (EU) 2017/1371. Although the Directive harmonizes the minimum standards concerning offences affecting the financial interests of the EU, it does not lead to the complete unification of substantive criminal law. The Member States retain discretion with regard to the transposition and individual elements of criminal law regulation. As a result, the same factual conduct may be classified differently in the individual Member States, which affects the determination of the competent authority.[40]

36 Ligeti (n 8); Mitsilegas (n 5).
37 Council Regulation (EU) 2017/1939 (n 2) arts 24, 25; Mitsilegas (n 5).
38 Council Regulation (EU) 2017/1939 (n 2); Mitsilegas (n 5).
39 Council Regulation (EU) 2017/1939 (n 2) arts 5, 13 and 28.
40 Directive (EU) 2017/1371 (n 3); Ligeti (n 8).

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Differences in national procedural mechanisms are of no less importance. The conditions for carrying out individual investigative procedural actions, the judicial review of the acts of the European Delegated Prosecutors, the rules concerning the admissibility of evidence, and the time limits for carrying out procedural actions continue to be governed predominantly by national law. Consequently, the practical exercise of the powers of the EPPO is not entirely uniform in all participating Member States.[41]

These differences become apparent in cross-border investigations, where European Delegated Prosecutors from several Member States participate in a single proceeding. Although the central structure of the EPPO ensures coordination between them, the individual procedural actions continue to be carried out in accordance with the national legislation of the respective State. This creates conditions for differing interpretations of the procedural rules and difficulties in the delimitation of competence between the European and national levels.[42]

Consequently, the differences between national legal systems have a direct impact on the practical exercise of the competence of the EPPO and remain a significant factor in the emergence of conflicts of competence.

4.4.3. Limited Judicial Guidance

The limited case law concerning the competence of the EPPO constitutes the third significant structural limitation of the current legal framework. Due to the relatively short period of operation of the EPPO, the judicial interpretation of the key provisions of Regulation (EU) 2017/1939 is still in the process of being developed. This applies in particular to the provisions concerning the material competence, the right of the EPPO to exercise its right of evocation, cross-border investigations, and judicial review of the actions of the European Delegated Prosecutors.[43]

The judgment in Case C-281/22 is of particular importance, as it clarifies certain aspects of judicial review in the context of the cross-border investigations by the EPPO. However, the judgment does not provide a comprehensive answer regarding the delimitation of competence between the EPPO and the national authorities.[44]

The limited scope of the case law means that a number of practical issues remain unresolved, including the criteria for determining whether a particular offence falls within the

41 Council Regulation (EU) 2017/1939 (n 2); Criminal Procedure Code (n 28); Law of the Republic of Bulgaria on Judicial System (n 25).

42 Council Regulation (EU) 2017/1939 (n 2) arts 31, 32; Mila Ivanova, 'European Investigation Order' (2018) 25 BFU Journal of Legal Studies 129 [in Bulgarian].

43 Ligeti (n 8); Mitsilegas (n 5).

44 Council Regulation (EU) 2017/1939 (n 2); Case C-281/22 *GK and Others* (CJEU Grand Chamber, 21 December 2023) ECLI:EU:C:2023:1018.

competence of the EPPO, "inextricably linked offences," and the relationship between the competence of the EPPO and already instituted national proceedings.

At the national level, case law is also developing gradually. The Bulgarian courts are already considering issues related to the procedural actions of the European Delegated Prosecutors, but this case law has not yet established consistent criteria regarding conflicts of competence.

Consequently, at the present time, the case law performs predominantly a fragmented function. Although it clarifies certain procedural issues, it still does not provide sufficient criteria for the resolution of conflicts of competence. It is precisely this absence that underscores the importance of a consistent doctrinal analysis in the interpretation of the current legal framework. Until consistent case law of the CJEU and the national courts is established, the determination of the competent authority will depend to a significant extent on the systematic interpretation of Regulation (EU) 2017/1939.[45]

4.4.4. Interim Conclusions

The analysis carried out demonstrates that the current legal framework governing the competence of the EPPO establishes a stable normative basis but does not entirely overcome the practical difficulties in the delimitation of competence between the EPPO and the national prosecution authorities.[46]

On the basis of this conclusion, three main structural limitations of the current model may be identified. First, the legal framework does not contain sufficiently detailed criteria for the unambiguous delimitation of competence in all practical situations. Second, the differences in the transposition and application of EU law by the Member States lead to divergent procedural solutions in similar factual circumstances. Third, the still limited case law of the CJEU and the national courts does not provide sufficiently stable guidance for the consistent resolution of emerging conflicts of competence.[47]

These characteristics demonstrate that conflicts of competence cannot be explained solely through the analysis of individual legal provisions.[48] They constitute an inherent consequence of the model of functionally allocated competence adopted in EU law, rather than a result of the absence of a legal framework. Consequently, the resolution of such conflicts requires not only the interpretation of the applicable legal provisions but also a systematic approach based on clearly defined criteria for the delimitation of competence.

45 Council Regulation (EU) 2017/1939 (n 2).
46 TFEU (n 1) art 86; Council Regulation (EU) 2017/1939 (n 2); Directive (EU) 2017/1371 (n 3).
47 Council Regulation (EU) 2017/1939 (n 2) arts 22, 25, 31 and 42; Case C-281/22 (n 44).
48 Ligeti (n 8) 15-42; Mitsilegas (n 5) 231-46.

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The following section builds upon the normative analysis by presenting the author's conceptual analytical framework, including a classification of conflicts of competence and the principal criteria for determining the competent authority.

5 CONFLICTS OF COMPETENCE BETWEEN THE EPPO AND NATIONAL PROSECUTING AUTHORITIES

Conflicts of competence constitute one of the principal practical manifestations of the model of functionally allocated competence between the EPPO and the national prosecution authorities. The present section develops the author's classification of these conflicts and outlines the principal criteria for determining the competent authority.

5.1. Classification of Conflicts of Competence

Conflicts of competence between the EPPO and the national authorities do not arise due to the absence of a legal framework, but rather due to the interaction between the European and national levels in the exercise of criminal prosecution. Therefore, they should be regarded as structural elements of the current EPPO model, rather than isolated practical difficulties.[49]

Traditionally, conflicts of competence are classified as positive or negative. This distinction retains its significance within the framework of the EPPO, but it is not sufficient to encompass the complexity of the relationship between the EPPO and the national prosecution authorities. For this reason, the present study proposes a broader analytical classification based on the nature of the competing grounds of competence, the normative preconditions for their emergence, and their practical manifestation.

First, positive conflicts arise where the EPPO and the national prosecution authority simultaneously claim competence in respect of the same offence. This occurs most frequently in the case of offences of a mixed nature, which affect both the financial interests of the EU and national-protected interests. Such cases create a risk of parallel proceedings, duplication of procedural acts, and conflicting decisions.[50]

Second, negative conflicts arise where neither the EPPO nor the national authorities accept competence in a particular case. Although such situations are less frequent, they may lead to delays in the investigation, procedural uncertainty, and a risk of de facto impunity.[51]

Alongside the traditional distinction between positive and negative conflicts, the analysis of the practical functioning of the EPPO makes it possible to distinguish other types of conflicts of competence.

49 TFEU (n 1) art 86; Council Regulation (EU) 2017/1939 (n 2); Mitsilegas (n 5) 231-46.
50 Council Regulation (EU) 2017/1939 (n 2) arts 22, 25; Directive (EU) 2017/1371 (n 3); Ligeti (n 8) 303-25.
51 Council Regulation (EU) 2017/1939 (n 2) arts 22–25.

From the perspective of their territorial scope, a distinction may be drawn between domestic conflicts, arising within a single participating Member State, and cross-border conflicts, involving several jurisdictions. Cross-border conflicts are more complex, as they require compliance with both Regulation (EU) 2017/1939 and the national procedural legislation.

From a functional perspective, a distinction may also be drawn between conflicts arising in the determination of the competent authority and conflicts arising in the exercise of already established competence. The first group arises during the initial assessment of whether the particular offence falls within the material and territorial scope of the EPPO. The second group manifests itself during the course of the investigation, when disputes arise concerning the carrying out of procedural actions, the collection of evidence, or the coordination between European Delegated Prosecutors and the national authorities.

The proposed author's classification demonstrates that conflicts of competence are not limited to the distinction between positive and negative conflicts. They constitute a multi-layered phenomenon, determined by the normative structure of the EPPO, national differences, and the specific nature of cross-border proceedings. Therefore, their resolution requires the application of a clearly structured system of criteria for determining the competent authority.

5.2. Criteria for Determining the Competent Authority

Following the identification of the types of conflicts of competence, the criteria for determining the competent authority should be clarified. Regulation (EU) 2017/1939 does not contain a unified system of criteria for determining the competent authority in all types of conflicts of competence; therefore, competence is determined through a combined assessment of interrelated criteria.[52]

The first criterion is the material criterion, which requires it to be established whether the particular offence falls within the scope of offences affecting the financial interests of the EU, as defined in Directive (EU) 2017/1371 and the references thereto in Regulation (EU) 2017/1939. This criterion constitutes the first and mandatory condition for the competence of the EPPO to arise.[53]

The second criterion is the territorial criterion, which takes into account the place where the offence was committed, the Member State in whose territory the criminal prosecution is conducted, and the participation of the respective Member State in the enhanced cooperation mechanism. In the case of cross-border offences, this criterion acquires particular significance, as a single offence may be connected with several national jurisdictions.

52 ibid; TFEU (n 1) art 86.
53 ibid; Mitsilegas (n 5).

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The third criterion is the functional criterion. It requires an assessment of which authority is in a better position to conduct the investigation effectively, taking into account the location of the evidence, the connection between the offences, and the need for coordination.[54]

The fourth criterion is the procedural criterion, which manifests itself in the course of the criminal proceedings. In certain cases, the competence initially determined correctly may need to be reconsidered due to newly emerged factual circumstances, a change in the subject matter of the accusation, or the establishment of additional offences falling within the competence of the EPPO. Consequently, the determination of the competent authority constitutes a dynamic process that may change during the course of the investigation.

Alongside the aforementioned criteria, the principle of effectiveness has an integrating significance. It serves as a general guiding principle in their application by ensuring that the proceedings are conducted by the authority that can ensure the most effective criminal prosecution and prevent parallel proceedings, procedural delays, and conflicting decisions.[55]

The following subsection examines the practical difficulties in the application of these criteria.

5.3. Challenges in Applying the Criteria

Although the current legal framework contains rules relevant to the determination of the competent authority, their practical application continues to give rise to difficulties. They arise not only from the content of the individual provisions but also from the need for the criteria to be applied simultaneously in different national legal systems.[56]

One of the principal challenges is the risk of parallel criminal proceedings. In the case of complex cross-border offences, it is not always possible, already at the initial stage of the investigation, to determine unequivocally whether competence belongs to the EPPO or to the national authorities. This may lead to the duplication of procedural actions, delays in the proceedings, conflicting decisions, and the risk of violating the principle of *ne bis in idem*.[57]

Additional difficulties arise from the differences between the national procedural systems. Although the EPPO functions as a single institution of the EU, the investigation is conducted in accordance with the national procedural law of the participating Member

54 Council Regulation (EU) 2017/1939 (n 2) arts 25, 26 and 31; Mitsilegas (n 5).
55 Case C-281/22 (n 44); Council Regulation (EU) 2017/1939 (n 2); Ligeti (n 8).
56 Council Regulation (EU) 2017/1939 (n 2) arts 22–25.
57 Council Regulation (EU) 2017/1939 (n 2) arts 24, 25 and 31; Mitsilegas (n 5).

States. This leads to differences in procedural actions, judicial review, time limits, and the admissibility of evidence.[58]

The case law of the CJEU is gradually overcoming some of these difficulties. The judgment in Case C-281/22 *G.K. and Others* clarifies the allocation of judicial review in cross-border investigations, but it does not resolve all the practical issues related to the delimitation of competence.[59]

National case law is also gradually developing. The Bulgarian courts recognize the procedural powers of the European Delegated Prosecutors in accordance with Regulation (EU) 2017/1939 and national legislation; however, the case law still does not provide sufficiently consistent solutions to all issues related to conflicts of competence.[60]

The practical difficulties outlined above demonstrate that the normative criteria, in themselves, do not always ensure the predictable determination of the competent authority. This justifies the need for the consistent application of the proposed analytical framework.

5.4. Author's Conceptual Analytical Framework

The analysis conducted demonstrates that the current legal framework does not contain a sufficiently clearly structured system of criteria for determining the competent authority.[61] Therefore, the present study proposes the author's conceptual analytical framework, based on the step-by-step application of the systematized criteria for determining the competent authority.

The framework is based on the understanding that the determination of the competent authority constitutes a sequential process of legal assessment. Each subsequent criterion is applied after the preconditions for the preceding one have been established, which limits the risk of positive and negative conflicts of competence.

First, it must be established whether the particular offence falls within the material scope of the offences affecting the financial interests of the EU, in accordance with Directive (EU) 2017/1371 and Article 22 of Regulation (EU) 2017/1939. If the answer is negative, competence remains within the national prosecution authorities.[62]

58 Mila Ivanova, 'Admission, Execution and Sending of the Acts for Implying Measures for Procedural Compulsion that are Different from these Which Demand an Arrest' (Administrative Law - Contemporary Trends in Jurisprudence and Doctrine: National Scientific Roundtable, University of Economics, Varna, 20 April 2018) 172.

59 Case C-281/22 (n 44).

60 Case no 10950/2023 Decision no 3873 (Sofia District Court, 15 August 2023); Case no 6093/2024 (n 4).

61 TFEU (n 1) art 86; Council Regulation (EU) 2017/1939 (n 2); Mitsilegas (n 5).

62 TFEU (n 1) art 86; Council Regulation (EU) 2017/1939 (n 2).

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Next, the territorial criterion is taken into account, including the place where the offence was committed, the participating Member States, and the connection of the case with the enhanced cooperation mechanism.

Furthermore, a functional assessment should be carried out to establish which authority has the best capacity to conduct an effective investigation, having regard to the location of the evidence, the necessary coordination, and the possibility for the proceedings to be concentrated within a single jurisdiction.[63]

Where necessary, competence is subject to reassessment upon a change in the factual circumstances or the establishment of new offences, which takes into account the dynamic nature of the investigation.

Finally, the principle of effectiveness guides the overall assessment where several authorities possess potential competence, with preference to be given to the authority that can ensure the most effective criminal prosecution while guaranteeing procedural rights.[64]

The proposed conceptual analytical framework does not amend the existing legal framework but systematizes the existing criteria for determining the competent authority in their logical sequence. In this way, it contributes to a more consistent and predictable application of Regulation (EU) 2017/1939, while at the same time enhancing legal certainty and reducing the risk of conflicts of competence.

6 JUDICIAL PRACTICE ON CONFLICTS OF COMPETENCE

The case law specifies the application of the criteria for determining the competent authority established by Regulation (EU) 2017/1939 and contributes to the consistent delimitation of competence between the EPPO and the national prosecution authorities. Although it does not create new rules on competence, it clarifies the application of the existing legal framework.

6.1. Case Law of the Court of Justice of the European Union

The case law of the CJEU gradually clarifies the parameters of the interaction between the EPPO and national prosecution authorities.[65]

Of particular importance is the judgment in Case C-281/22, in which the Court held that the assessment of the necessity and justification of cross-border investigative measures is carried out in accordance with the law of the Member State of the handling European

63 Council Regulation (EU) 2017/1939 (n 2) arts 25, 26 and 31.
64 Case C-281/22 (n 44); Council Regulation (EU) 2017/1939 (n 2).
65 Mitsilegas (n 5).

Delegated Prosecutor, whereas judicial review in the assisting Member State is limited to issues relating to the execution of those measures.[66]

The judgment is based on the understanding that Regulation (EU) 2017/1939 allocates responsibility between the handling European Delegated Prosecutor and the assisting European Delegated Prosecutor in accordance with the principles of mutual trust and mutual recognition. Therefore, judicial review in the assisting Member State should be limited to the execution of the assigned measure, whereas the assessment of its justification and necessity belongs to the Member State of the handling European Delegated Prosecutor. In this way, the Court limits the risk of duplication of judicial review and contributes to the more consistent application of Regulation (EU) 2017/1939 in cross-border investigations.

6.2. National Judicial Practice

Alongside the case law of the CJEU, Bulgarian case law also contributes to clarifying the interaction between the EPPO and national prosecution authorities.

Illustrative in this regard is Decision No. 3873 of 15 Aug 2023 of the Sofia District Court, in which it is held that the European Delegated Prosecutor is the competent authority under national law when requesting the disclosure of banking secrecy in connection with the investigation of offences affecting the financial interests of the EU. The Court reaches this conclusion after holding that the European Delegated Prosecutor has procedural competence pursuant to Article 13(1) of Regulation (EU) 2017/1939, and therefore the request was made by a competent authority within the meaning of Regulation (EU) 2017/1939 and the national legislation.

Only after this assessment does the Court carry out an independent review of the necessity and proportionality of the requested measure, allowing the disclosure of banking secrecy only to the extent justified.[67]

Decision No. 2077 of 30 April 2024 of the Sofia District Court further develops this approach by holding that judicial authorization is required only for information constituting banking secrecy within the meaning of Article 62(2) of the Credit Institutions Act. The Court bases this conclusion on the distinction between the special regime for the disclosure of banking secrecy under the Credit Institutions Act and the general procedural order under Article 159(1) of the Criminal Procedure Code, which applies to information not falling within the scope of banking secrecy.[68]

Although Bulgarian case law is still limited, it is gradually establishing standards for the application of Regulation (EU) 2017/1939 and specifying the criteria for determining the competent authority in national proceedings.

66 Case C-281/22 (n 44).
67 Case no 10950/2023 (n 60).
68 Case no 6093/2024 (n 4).

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6.3. Contribution of Judicial Practice to Determining Competence

The analysis of the case law of the CJEU and the national courts demonstrates that judicial practice is gradually specifying the criteria for determining the competent authority and supporting the consistent application of Regulation (EU) 2017/1939. Although the case law is still limited, its further development will be of substantial importance for the more predictable determination of the competent authority and for the consistent delimitation of competence between the EPPO and the national prosecution authorities.

7 CRITICAL EVALUATION AND FUTURE DEVELOPMENT

The analysis conducted allows for a comprehensive assessment of the current legal framework of the EPPO's competence and for outlining the main directions for its future development.

The analysis conducted demonstrates that the current EPPO system provides the necessary legal basis for the protection of the financial interests of the EU, but the practical determination of the competent authority in complex cross-border proceedings continues to present difficulties. Although the case law of the CJEU and the national courts gradually specifies the application of individual criteria, it does not establish sufficiently consistent standards for resolving conflicts of competence.

The current EPPO framework creates the necessary institutional conditions for the protection of the financial interests of the EU, but it does not provide a fully clear and predictable system for determining the competent authority in complex cross-border proceedings.[69]

An additional difficulty arises from the hybrid institutional model of the EPPO, which combines centralized strategic management with the application of national procedural regimes. Although this model facilitates cross-border criminal prosecution, it simultaneously preserves the differences between the national procedural systems.[70]

The case law of the CJEU gradually contributes to clarifying certain aspects of competence; however, it still does not provide comprehensive standards for resolving all practical scenarios.[71]

However, the main problem is not the lack of normative regulation, but the absence of a sufficiently consistent mechanism for applying the competence criteria in complex cross-border proceedings. This precisely justifies the need for a more consistent application of the criteria for determining the competent authority.

69 Mitsilegas (n 5).

70 Michele Simonato and Katalin Ligeti, 'The European Public Prosecutor's Office: Towards a Truly European Prosecution Service?' (2013) 4(1-2) New Journal of European Criminal Law 7.

71 Mitsilegas (n 5).

Based on the analysis conducted, the main directions for the more consistent determination of the competent authority can be outlined.

First, the determination of the competent authority should be based on the consistent application of the material, territorial, functional, and procedural criteria.[72]

Second, early coordination between the EPPO and the national authorities is essential for limiting the risk of parallel proceedings and procedural delays.[73]

Finally, this study proposes that, in the practical determination of the competent authority, the author's conceptual analytical framework should be applied, as it systematizes the applicable criteria in a logical sequence and contributes to limiting the risk of conflicts of competence, as well as enhancing legal certainty and the effectiveness of criminal prosecution.

The analysis conducted demonstrates that the effective resolution of conflicts of competence requires not only normative rules but also a consistent analytical approach to their application.[74]

In this regard, the present study proposes an author's conceptual analytical framework based on the consistent application of the material, territorial, functional, and procedural criteria in determining the competent authority. The framework systematizes these criteria in a logical sequence that supports their practical application. The proposed approach contributes to a more predictable delimitation of competence, limitation of conflicts between the EPPO and the national authorities, and strengthening of legal certainty in cross-border criminal proceedings.[75]

In this sense, the author's conceptual analytical framework represents the main scientific contribution of the present study, as it proposes a systematized approach for determining the competent authority in the application of the existing legal framework.

8 CONCLUSIONS

The present study analyses the competence framework of the EPPO in the context of the interaction between the European and national levels in the prosecution of offences affecting the financial interests of the EU. The study demonstrated that the competence of the EPPO is based on a model of functionally distributed competence between the European and national levels.

72 Council Regulation (EU) 2017/1939 (n 2).
73 Mitsilegas (n 5).
74 ibid
75 Council Regulation (EU) 2017/1939 (n 2).

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The current legal framework provides the necessary conditions for the functioning of the EPPO, but it does not always allow for a sufficiently clear and predictable delimitation of competence. This creates conditions for positive and negative conflicts of competence, particularly in complex cross-border proceedings.

The scientific contribution of the present study consists in the development of a conceptual analytical framework for conflicts of competence between the EPPO and the national prosecution authorities. In this regard, the study proposes an author's classification of conflicts, a system of criteria for determining the competent authority, and their sequential application. The proposed framework does not amend the existing legal framework but rather supports its more consistent and predictable application.

Conflicts of competence represent a structural consequence of the model of functionally distributed competence, rather than an incidental practical problem. Therefore, their effective resolution requires the combination of a clear legal framework, consistent case law, and the systematic application of the author's conceptual analytical framework in determining the competent authority.

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Summary: 1. Introduction. – 2. Methodology. – 3. Development of European Criminal Law and the Establishment of the EPPO. – *3.1. Evolution of European Criminal Law. – 3.2. Article 86 TFEU as the Constitutional Basis of the EPPO.* – 4. Legal Framework of Competence. – *4.1. EU Legal Framework. – 4.2. National Legal Framework. – 4.3. Interaction between EPPO and National Authorities. – 4.4. Structural Limitations of the Existing Legal Framework.* – 5. Conflicts of Competence between the EPPO and National Prosecuting Authorities. – *5.1. Classification of Conflicts of Competence. – 5.2. Criteria for Determining the Competent Authority. – 5.3. Challenges in Applying the Criteria. – 5.4. Author's Conceptual Analytical Framework.* – 6. Judicial Practice on Conflicts of Competence. – *6.1. Case Law of the Court of Justice of the European Union. – 6.2. National Judicial Practice. – 6.3. Contribution of Judicial Practice to Determining Competence.* – 7. Critical Evaluation and Future Development. – 8. Conclusions.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

КОНФЛІКТИ КОМПЕТЕНЦІЇ МІЖ ЄВРОПЕЙСЬКОЮ ПРОКУРАТУРОЮ ТА НАЦІОНАЛЬНИМИ ОРГАНАМИ ПРОКУРАТУРИ

Міла Іванова

АНОТАЦІЯ

Передумови. *Створення Європейської прокуратури (ЄП) відповідно до статті 86 Договору про функціонування Європейського Союзу (ДФЄС) започаткувало нову модель кримінально-правової інтеграції в межах Європейського Союзу (ЄС), засновану на функціональному розподілі компетенції між ЄП та національними органами прокуратури. Хоча Регламент (ЄС) 2017/1939 встановлює правові засади, що регулюють компетенцію ЕРРО, визначення компетентного органу в складних транскордонних справах залишається джерелом суттєвих правових та практичних викликів. Відсутність достатньо структурованого підходу до застосування критеріїв визначення компетенції може призвести до конфліктів компетенції, що негативно впливає на правову визначеність, процесуальну ефективність і дієвий захист фінансових інтересів ЄС.*

Методи. *У статті застосовано доктринальний метод правового дослідження на основі системного аналізу первинного та вторинного права ЄС, зокрема статті 86 ДФЄС, Регламенту (ЄС) 2017/1939 та Директиви (ЄС) 2017/1371. Робота поєднує доктринальний та системний аналіз правової бази, яка регулює компетенцію ЄП, із дослідженням судової практики Суду справедливості Європейського Союзу та відповідної судової практики Болгарії. Особливу увагу приділено взаємодії між нормами законодавства ЄС і національного законодавства, а також практичному застосуванню критеріїв визначення компетентного органу у транскордонних кримінальних провадженнях.*

Результати та висновки. *Проведений аналіз свідчить про те, що конфлікти компетенції є структурним наслідком передбаченої законодавством ЄС моделі функціонального розподілу повноважень, а не поодинокими процесуальними аномаліями. Незважаючи на те, що Регламент (ЄС) 2017/1939 визначає правові межі компетенції ЄП, він не забезпечує достатньо чітких і передбачуваних критеріїв для встановлення компетентного органу в усіх складних транскордонних справах. Науковий внесок дослідження полягає у запропонованій автором класифікації конфліктів компетенції, структурованій системі критеріїв визначення компетенції та авторській концептуальній аналітичній моделі визначення компетентного органу. Ця модель сприяє більш послідовному й передбачуваному застосуванню Регламенту (ЄС) 2017/1939 і забезпечує вищий рівень правової визначеності та ефективності під час визначення компетентного органу — ЄП чи національного органу прокуратури.*

Ключові слова: *Європейська прокуратура (ЕРРО), конфлікти компетенції, компетентний орган, критерії визначення компетенції, Регламент (ЄС) 2017/1939, європейське кримінальне право, співробітництво судових органів.*

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