

A FEW REMARKS ON POLAND'S ACCESSION TO THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

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Abstract. The European Public Prosecutor's Office (the EPPO) is a new independent body of the European Union, established by Council Regulation (EU) 2017/1939 for investigating, prosecuting and bringing to judgement crimes against the financial interests of the EU. The establishment of the European Public Prosecutor's Office via enhanced cooperation was due to a lack of unanimity among the EU Member States. In the first years of the EPPO's operation, Poland was a non-participating EU Member State. After the parliamentary elections in 2023, there was a clear change in the Polish government's attitude towards the European Public Prosecutor's Office, which resulted in steps being taken towards joining this institution. Since March 2024, Poland has been participating in the European Public Prosecutor's Office. The accession process required numerous measures to be taken at both national and EU level. This article presents the relations between Poland and the European Public Prosecutor's Office before and after joining, and discusses activities related to the accession process.

Keywords: European Public Prosecutor's Office; the EPPO; European cooperation in criminal matters; Poland as participating EU Member State; the financial interests of the EU.

INTRODUCTION

The European Public Prosecutor's Office (the EPPO) is a new independent public prosecution office of the EU, established with , for investigating, prosecuting and bringing to judgement crimes against the financial interests of the EU. The EPPO was established by Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, and began its operations on 1 June 2021. The work on the creation of the European Public Prosecutor's Office took many years, but for a long time the real chances of its establishment were minimal.

The idea of a European Public Prosecutor's Office was first included in the *Corpus Juris* project (1997) [Namysłowska 1999]. The concept of creating this body aroused considerable interest and became the subject

of lively scientific and political discourse. The deliberations with , concerned all issues related to the EPPO: the purposefulness of its establishment, its competences, structure, principles of functioning, and rules of cooperation with Member States and EU institutions [Dudzik 2022, 60]. However, the most important factor for the establishment of the EPPO was the adoption of the Treaty of Lisbon, which provided the legal basis for the creation of this body. Pursuant to Article 86(1) of the TFEU,¹ “in 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.” A further part of this provision sets out the procedure for establishing the EPPO, also providing for the option of using enhanced cooperation in this area, and indicates in a very general way the competences of the new body [Dudzik 2022, 60]. On 17 July 2013, the Commission published a proposed regulation regarding the establishment of the EPPO,² which sparked a renewed debate on the establishment of this institution. Many countries expressed their reservations through the so-called yellow card procedure [Tomczyk 2018, 186-88]. The Commission did not take the comments into account and decided to proceed with the proposal. In the course of subsequent legislative work, which lasted several years, certain modifications were made, but this did not result in all Member States approving the idea of establishing a European Public Prosecutor’s Office. For this reason, the establishment of the European Public Prosecutor’s Office was only possible via enhanced cooperation.

On 3 April 2017, sixteen Member States (Belgium, Bulgaria, the Czech Republic, Croatia, Cyprus, Germany, Greece, Finland, France, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain) gave notice of their intention to engage in enhanced cooperation to establish the EPPO. Shortly after, on 12 October 2017, the Council adopted Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (hereinafter Regulation 2017/1939).³ By that time, four more countries had joined enhanced cooperation (Austria, Estonia, Italy and Latvia) with two more (the Netherlands and Malta) joining after the adoption of the regulation. Therefore, when it commenced operations on 1 June 2021, the European Public Prosecutor’s Office was composed of 22 EU Member States, while the following countries remained outside

¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2016 OJ C 202/01.

² European Commission, Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office, Brussels, 17 July 2013, COM(2013) 534 final.

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

it: Poland, Hungary, Sweden, Denmark and Ireland.⁴ Since 2024, the group of countries participating in the European Public Prosecutor's Office's enhanced cooperation has expanded to include two more countries, as Poland and Sweden joined the European Public Prosecutor's Office this year.

1. POLAND AS A NON-PARTICIPATING EU MEMBER STATE

In the first years of the European Public Prosecutor's Office's operation, Poland remained outside it as a country not participating in enhanced cooperation. This meant that Poland was not bound by the provisions of Regulation 2017/1939, but as a Member State of the European Union, it was obliged to cooperate with the European Public Prosecutor's Office. The obligation of loyal cooperation stems from Article 4(3) TEU. Article 325 TFEU also stipulates that both the EU and its Member States are obliged to counter all activities affecting the financial interests of the Union, and that Member States are obliged to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests [Dudzik 2022, 64-65].

Initially, cooperation between Poland and the EPPO was not going well. According to the Polish government, there was no legal possibility of co-operation with the European Public Prosecutor's Office, as the provisions of the Code of Criminal Procedure regulated cooperation between Polish judicial authorities and the authorities of European Union Member States, and the European Public Prosecutor's Office is a body of the European Union, not a Member State.⁵ For this reason, Article 615a was introduced into the Code of Criminal Procedure,⁶ and since then, real and effective co-operation between Poland and the EPPO has begun.

2. POLAND AS A PARTICIPATING EU MEMBER STATE

The 2023 parliamentary elections were a turning point in the approach to Poland's participation in the European Public Prosecutor's Office. Poland's accession to the European Public Prosecutor's Office was one of the election slogans of the Civic Platform (point 26 in the so-called 100 concrete measures for the first 100 days of government: "We will prepare Poland to join the European Public Prosecutor's Office in order to more effectively

⁴ Denmark and Ireland benefit from an opt-out clause in the area of EU freedom, security and justice.

⁵ See more: Dudzik 2022.

⁶ Act of 27 October 2022 amending the Act – Code of Criminal Procedure and the Act – Law on the Public Prosecutor's Office, Journal of Laws item 2582.

prosecute financial fraud, corruption, money laundering and cross-border VAT fraud"). Krisztina Karsai is undoubtedly right in saying that participation in the EPPO primarily appears as a political rather than a professional issue in Member States [Karsai 2020, 7]. It is therefore reasonable to conclude that Poland's decision to join the EPPO, as well as its earlier refusal, regardless of the arguments put forward, were primarily politically motivated.⁷

Poland's accession to the European Public Prosecutor's Office was one of the priorities of the new Minister of Justice, Prosecutor General Adam Bodnar. Therefore, on his first day in office (13 December 2023), he signed a request to send the relevant notification to the European Commission and the European Council, thus initiating the procedure for Poland's accession to the EPPO. On 27 December 2023, the Council of Ministers adopted this request at its meeting. On 5 January 2024, Poland notified the President of the European Commission and the Council of the European Union of its intention to join enhanced cooperation on the establishment of the EPPO. Following an analysis of the notification, on 29 February 2024 the Commission issued Decision 2024/807⁸ confirming Poland's participation in the EPPO. Poland became part of the European Public Prosecutor's Office on 20 March 2024, i.e. on the date of entry into force of Decision 2024/807.⁹

The next stage in Poland's accession to the EPPO was the selection, through competitions, of candidates for the position of Polish European Prosecutor¹⁰ and candidates for Polish delegated European prosecutors.¹¹ Three candidates were selected from among those who applied for the position of European Prosecutor: Agnieszka Adamowicz from the Regional Prosecutor's Office in Lublin, Grażyna Stronikowska from the National Prosecutor's Office and Paweł Wąsik from the Regional Prosecutor's Office in Poznań. In accordance with Article 16(2) and (3) of Regulation 2017/1939, the candidates nominated by Poland were assessed by a selection panel, and then on 12 December 2024, the Council of the EU, by a simple majority, selected and appointed Grażyna Stronikowska to the position of European Public Prosecutor for a six-year term.

Twelve candidates for Polish Delegated European Prosecutors, nominated by Poland, were presented to the College of the European Public Prosecutor's

⁷ See more: Dudzik 2022, 62-64.

⁸ Commission Decision (EU) 2024/807 of 29 February 2024 confirming Poland's participation in cooperation on the establishment of the European Public Prosecutor's Office, OJ EU L of 29.2.2024

⁹ Article 3 of Decision 2024/807

¹⁰ See <https://www.gov.pl/web/sprawiedliwosc/minister-sprawiedliwosci-prokurator-generalny-oglasza-nabor-kandydatow-na-urzad-prokuratora-europejskiego> [accessed: 14.06.2025].

¹¹ See <https://www.gov.pl/web/sprawiedliwosc/ogloszenie-o-naborze-kandydatow-na-urzad-delegowanego-prokuratora-europejskiego> [accessed: 14.04.2025].

Office through the European Chief Prosecutor.¹² In addition, the selection panel for candidates for the position of Delegated European Prosecutor drew up a reserve list of four candidates in case the College of the European Public Prosecutor's Office rejected the previously proposed candidates. On 16 December 2024, at the request of European Chief Prosecutor Laura Kóvesi, the European Prosecutor's Office decided to appoint eight European Delegated Prosecutors in Poland for a renewable five-year term (Article 17(1) of Regulation 2017/1939).¹³ This was only the first stage in the appointment of Polish delegated European prosecutors, as according to the Minister of Justice, there will ultimately be 20-22 of them,¹⁴ although it is sometimes suggested that there will be 24. There are also statements that there will ultimately be between 16 and 26,¹⁵ or even thirty. Initially, eight delegated European prosecutors performed their duties in Poland: three at the Office of the Delegated European Prosecutor at the Regional Prosecutor's Office in Warsaw¹⁶ and five at the Office of the Delegated European Prosecutor at the Regional Prosecutor's Office in Katowice.¹⁷ In October 2025, another eight candidates for delegated European prosecutors were selected.¹⁸ In accordance with the Regulation of the Minister of Justice of 25 March 2025 on the establishment of offices of the delegated European Public Prosecutor and the determination of their seats and areas of jurisdiction, four offices are ultimately to operate: the two indicated above, as well as in Lublin and Gdańsk.¹⁹

¹² See <https://www.gov.pl/web/sprawiedliwosc/lista-wylonionych-kandydatow-na-urzad-delegowanego-prokuratora-europejskiego-oraz-lista-rezerwowa-kandydatow-na-urzad-delegowanego-prokuratora-europejskiego> [accessed: 15.06.2025].

¹³ The following prosecutors were appointed: Katarzyna Furczyk, Magdalena Guga, Tomasz, Michał Jandziak, Łukasz Klimas, Bolesław Laszczak, Agnieszka Marcińczyk, Małgorzata Turlewicz, Przemysław Walat. Decision of the European Prosecutor's Office of 16 December 2024 on the appointment of delegated European prosecutors in the Republic of Poland: <https://www.eppo.europa.eu/en/documents/documents?page=2> [accessed: 15.06.2025].

¹⁴ See <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/9810650,bodnar-okolo-20-prokuratorow-bedzie-delegowanych-do-prokuratury-europ.html> [accessed: 15.06.2025].

¹⁵ Statement by Adam Bodnar on 31 March 2025, <https://www.gov.pl/web/pr-warszawa/otwarcie-biura-delegatury-prokuratury-europejskiej-przy-prokuraturze-regionalnej-w-warszawie> [accessed: 15.06.2025].

¹⁶ Magdalena Guga, Łukasz Klimas, Małgorzata Turlewicz.

¹⁷ Katarzyna Furczyk, Tomasz Jandziak, Bolesław Laszczak, Agnieszka Marcińczyk, Przemysław Walat.

¹⁸ Michał Choroba, Joanna Garus, Jolanta Piwowarska, Małgorzata Szczęsna (Warsaw Office), Agnieszka Kępka (Lublin Office), Anna Wolska-Bagińska (Gdańsk Office), Jacek Bilewicz and Joanna Pawlik-Czyniewska, <https://www.gov.pl/web/prokuratura-krajowa/wyniki-konkursu-wylaniajacego-prokuratorow-na-kandydatow-na-urzad-delegowanego-prokuratora-europejskiego> [accessed: 15.11.2025].

¹⁹ Regulation of the Minister of Justice of 25 March 2025 on the establishment of offices of the delegated European Public Prosecutor and the determination of their seats and areas of jurisdiction, Journal of Laws, item 376.

Poland's accession to the European Public Prosecutor's Office necessitated legislative changes. Although Regulation 2017/1939, which regulates the status and activities of the European Public Prosecutor's Office, is directly applicable, certain issues required regulation in national law. Thus, on 12 December 2024, a government bill was submitted to the Sejm, which was passed by the Sejm on 24 January 2025.²⁰ Pursuant to the aforementioned Act, four legal acts were amended: the Act of 28 January 2026 – Law on the Public Prosecutor's Office,²¹ the Act of 6 June 1997 – Code of Criminal Procedure,²² the Act of 18 December 1998 – on court and prosecutor's office employees²³ and the Act of 27 August 2004 on healthcare services financed from public funds.²⁴ It is worth noting that the need to introduce appropriate changes had already been recognised in the literature [Dudka 2024, 50-55; Głogowska 2024, 218-22; Stronikowska 2024, 34-39]. Considering the enormous change associated with the introduction of a new procedural body into the Polish criminal process and the systemic changes in the structure of the public prosecutor's office, it is reasonable to conclude that the scope of the changes is relatively small. This is due to the fact that the provisions establishing the European Public Prosecutor's Office are contained in a regulation that is directly applicable.

CONCLUSIONS

Poland's path to the European Public Prosecutor's Office was not straightforward. Initially, Poland decided not to participate in the creation of this new institution. It was only after three years of the European Public Prosecutor's Office's operation that the situation changed. Regardless of all the arguments for and against the decision to join the European Public Prosecutor's Office, it must be said that it was revolutionary. A completely new European body with unique status and powers appeared in the Polish system of legal protection authorities. Therefore, it was necessary for Poland to take a number of administrative, organisational and legal steps. The legislative changes, preceded by an analysis of doctrinal views and the experiences of other countries, seem to be entirely justified. However, it is worth waiting for a more detailed assessment of them, observing their application in practice.

²⁰ Act of 24 January 2025 amending certain acts in connection with the accession of the Republic of Poland to enhanced cooperation in the field of the European Public Prosecutor's Office, Journal of Laws, item 304.

²¹ Journal of Laws of 2024, item 390.

²² Journal of Laws of 2025, item 46.

²³ Journal of Laws of 2018, item 577.

²⁴ Journal of Laws of 2004, item 146 as amended.

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