

Petar Novoselec*

COMPETENCES OF THE EUROPEAN PUBLIC PROSECUTOR**

Considering that the Croatian European Public Prosecutor will institute criminal proceedings before a Croatian court, it is necessary to determine the criminal offences provided for in the Croatian Criminal Code (CC) which will fall under his or her competence. According to Article 4 of Council Regulation (EU) 2017/1939, these are criminal offences affecting the financial interests of the Union provided for in Directive (EU) 2017/1371. **The Croatian CC already includes these criminal offences**, so there is no need for their extension. Although the descriptions of these criminal offences in the CC do not exactly match the descriptions in Directive (EU) 2017/1371, they already include criminal offences that affect the Union's financial interests, and thus there is no need for them to be **literally transposed** into the Croatian CC. The Directive's provisions serve only to interpret the provisions of the Croatian CC. This can be derived from Article 386 CC that states that it **contains** provisions that are in line with a list of European Union acts, which includes Directive (EU) 2017/1371 (under sub-paragraph 13), meaning that they are already part of Croatian criminal law. This is also in line with Article 141 paragraph 2 of the Constitution, which lays down that all the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia in accordance with the European Union *acquis communautaire*.

We can show this with examples of particular criminal offences provided for in Directive (EU) 2017/1371.

Article 3 paragraph 2 sub-paragraphs (a) and (b) of the above Directive include fraud that affects the Union's financial interests with regard to **EU expenditures**. This refers to subsidies provided by the EU. These subsidies are in some cases misappropriated in different ways by the beneficiaries, and, as a consequence, this has a detrimental effect on the EU budget. This is most fre-

* Petar Novoselec, PhD, *Professor emeritus*, Faculty of Law University of Zagreb.

** Presented at the Conference "Integration of the EPPO in National Criminal Justice Systems: Institutional, Procedural and Cooperative Challenges", held in Zagreb on 11-12 April 2019, co-financed by the Croatian Science Foundation under the project "Croatian Judicial Cooperation in Criminal Matters in the EU and the Region: Heritage of the Past and Challenges of the Future" (CoCoCrim).

quently done by the granting of funds on the basis of false or incomplete statements or documents, or by misapplying the funds for purposes other than those for which they were granted. It is difficult to subsume this type of fraud under a traditional type of fraud, including fraud in business dealings, which amounts to unlawful gain understood as a loss of assets. However, the damage caused to the EU exceeds the damage that is characteristic of traditional fraud. For this reason, as early as in 2007, the legislator included in CC/97 fraud to the detriment of the European Communities (Article 224 b) and abuse of office in relation to EU funds (Article 292 a). A year later, these provisions were deleted. **The legislator included this matter in CC/11 under the title Subsidy Fraud** (Article 258). This provision, in addition to fraud related to state subsidies, also includes subsidies and aid granted from European Union funds (Article 258 paragraph 5). This means that such a criminal offence is committed by whoever, with the aim that he or she or another person receive EU funds, provides false or incomplete information concerning the facts on which the decision on the granting of a subsidy depends, or fails to inform the EU of changes important for making the decision (Article 258 paragraph 1), or whoever uses the granted EU funds in a manner contrary to their intended use (Article 258 paragraph 2). All this is in line with the provisions of Article 3 paragraph 2 sub-paragraphs (a) and (b) of Council Directive (EU) 2017/1371. There is also a similar solution in German law. Section 264 paragraph 7 sub-paragraph 2 of the German Criminal Code lays down that subvention fraud also includes damage caused to the European Union, without listing individual types of such fraud.

The European Public Prosecutor's competences also include criminal offences in respect of Union **revenue**, namely, when they are committed under the conditions provided for in Article 3 paragraph 2 (c) and (d) of the Directive. In this case, the perpetrator will be liable for the criminal offence of evasion of tax and customs duty (Article 256 CC). Paragraph 4 of the same Article also prescribes that the perpetrator who reduces European Union funds by committing the acts described therein shall be prosecuted for this criminal offence, which means that all that has already been said in relation to subvention fraud is also valid in this case.

According to Council Directive (EU) 2017/1371 Article 4 paragraph 1, **money laundering** may also be included if this affects the Union's financial interests. This paragraph refers to Council Directive (EU) 2015/849 of 20 May 2015, which, in its Article 1 paragraph 3, lists acts that represent money laundering. These acts are not specifically described in Article 265 CC, amended in 2018. However, Article 386 CC does not mention Directive (EU) 2015/849 among the EU acts, but this Directive is referred to in Directive (EU) 2017/1371, which is included in Article 386 CC. This means that in interpreting money laundering, the courts are also obliged to take into account Directive (EU) 2015/849.

In Article 4 paragraph 2, Directive (EU) 2017/1371 also includes the **criminal offences of accepting and offering bribes**, which affect the financial interests of the Union. These criminal offences are also laid down in the Croatian CC – accepting a bribe (Article 293) and accepting a bribe in business dealings (Article 252), as well as offering a bribe (Article 294) and offering a bribe in business dealings (Article 253). All these offences also relate to the Union's financial interests, which can be derived from Article 386 CC, according to which the CC includes Directive (EU) 2017/1371. The Criminal Code is also in line with the definition of *public official* (Article 4 paragraph 4 of the Directive), because in its Article 87 paragraph 3, in addition to a *national official*, it also includes a *Union official*.

Title III of Directive (EU) 2017/1371 (General provisions relating to fraud and other criminal offences affecting the financial interests of the Union) raises the question of whether the Croatian CC is in line with the Directive, but this does not affect the competence of the European Public Prosecutor. **The competences of the European Public Prosecutor must be related to the criminal offences provided for in the existing Criminal Code, which include fraud committed against the Union's financial interests, through a special law.** The text above shows what these criminal offences are. Whether or not these criminal offences should also be listed in the Act on the European Public Prosecutor remains to be discussed.