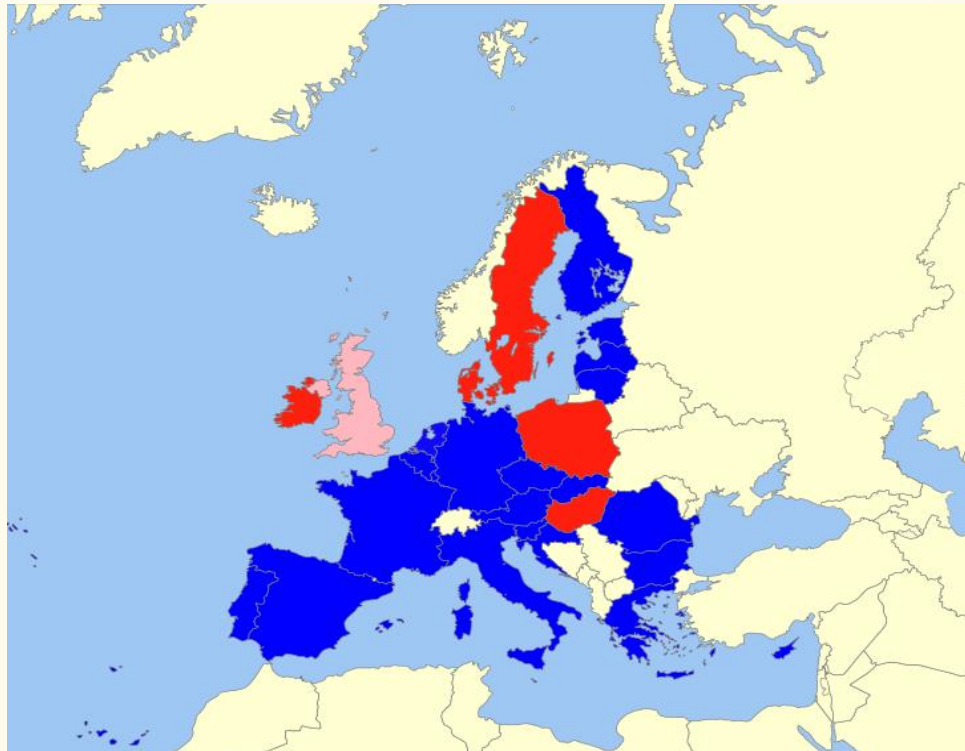


Introduction to the EPPO



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Overview

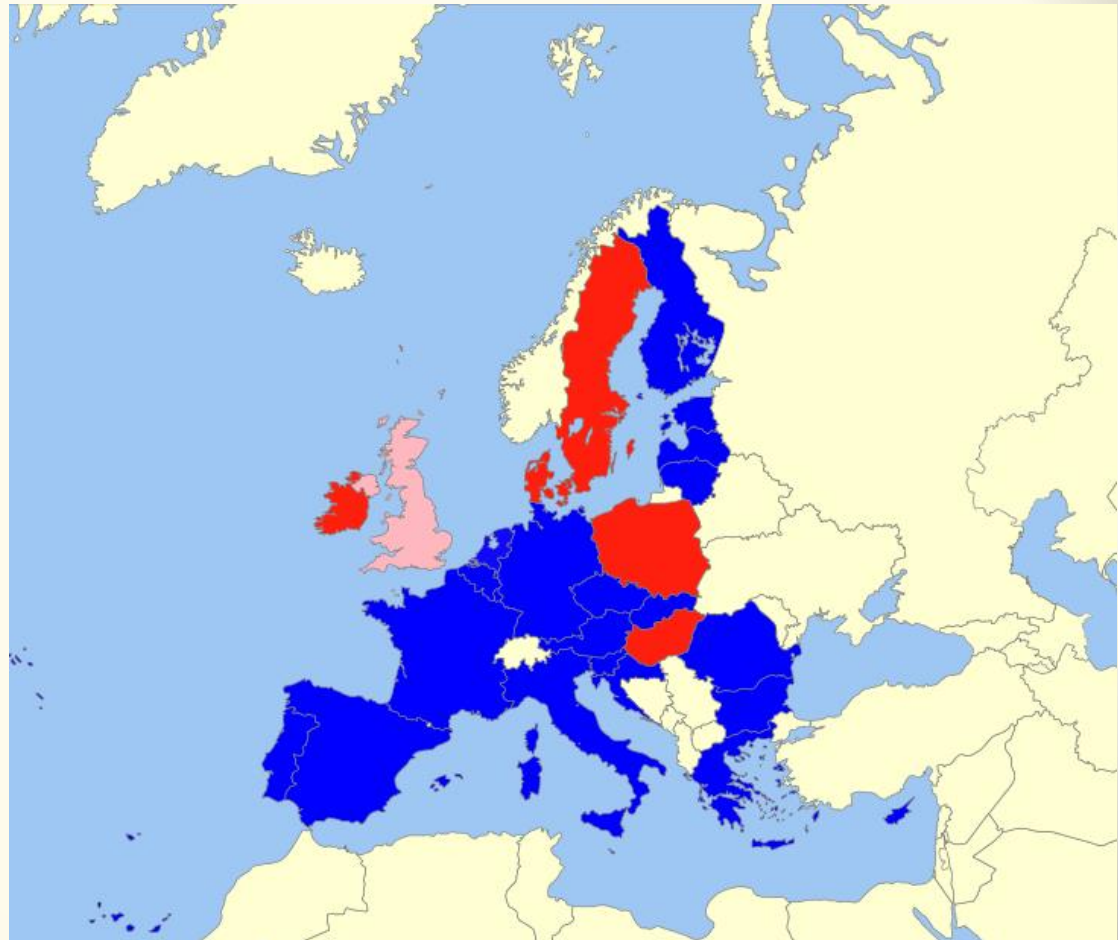
- Enhanced cooperation on the establishment of the EPPO
- Some major elements of the EPPO Regulation
 - The hybrid structure and the status of the EPPO
 - European Delegated Prosecutors leading the investigations
 - European Prosecutors and Permanent Chambers
 - Applicable criminal procedural law – Art. 5(3)
 - Material, territorial and personal competence of the EPPO
 - Limitations on exercising EPPO competences
- Possible extension of competences
- Current state of development – what else is left to do?

EPPO - Territory

Participating MSs



Non-Participating MSs



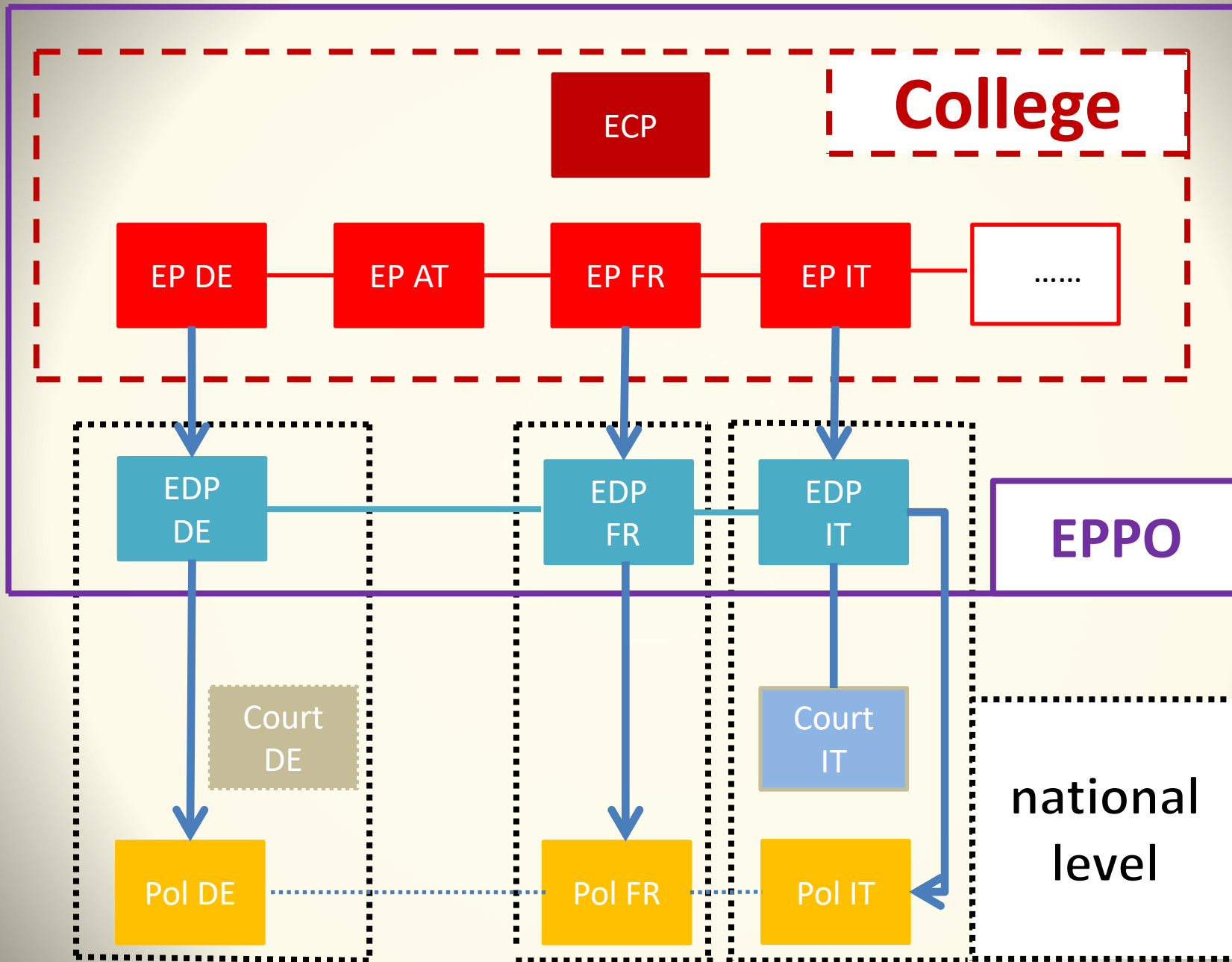
Enhanced cooperation

Article 2(1)

'Member State' means, except where otherwise indicated, in particular in Chapter VIII, a Member State which participates in enhanced cooperation on the establishment of the EPPO, as deemed to be authorised in accordance with the third subparagraph of Article 86(1) TFEU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU;

Recital #9

This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in enhanced cooperation on the establishment of the EPPO, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.



European Delegated Prosecutors

Art. 13 (1)

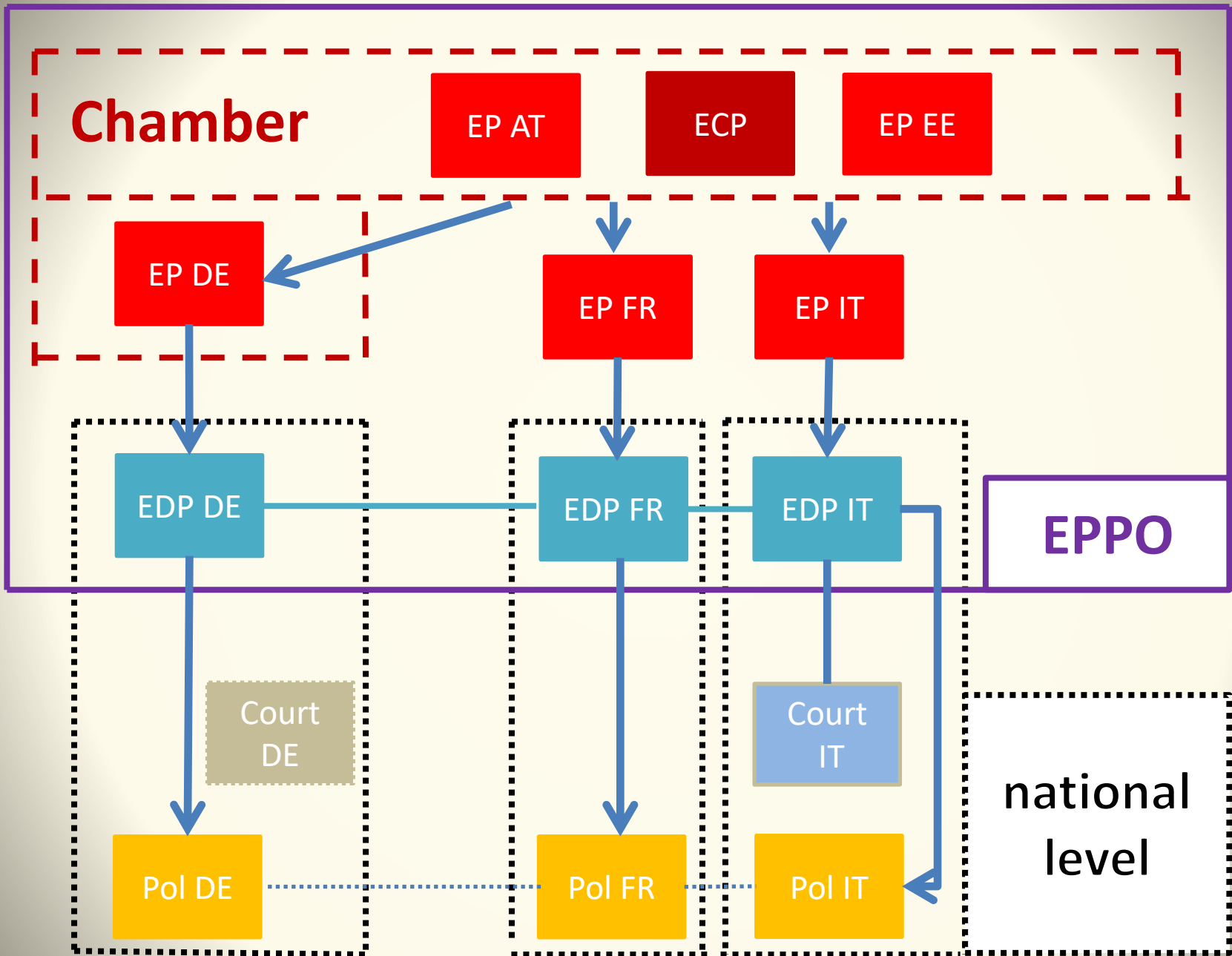
The European Delegated Prosecutors shall act on behalf of the EPPO **in their respective Member States** and shall have the **same powers as national prosecutors** in respect of investigations, prosecutions and bringing cases to judgment, **in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.**

Art. 13 (3)

The European Delegated Prosecutors **may also exercise functions as national prosecutors**, to the extent that this does not prevent them from fulfilling their obligations under this Regulation.

Art. 28 (1)

The European Delegated Prosecutor handling a case may, **in accordance with this Regulation and with national law**, either **undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State.**



Article 5 (3) – applicable national law

Principle:

The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.

Special rule: Article 31 on cross-border investigations within the EPPO territory

Article 22 – Material competence of the EPPO

- (1) The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are **provided for in Directive (EU) 2017/1371, as implemented by national law**, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards **offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371**, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are **connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million**.
- (2) The EPPO shall also be competent for offences regarding participation in a **criminal organisation as defined in Framework Decision 2008/841/JHA**, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in paragraph 1.
- (3) The EPPO shall also be competent for **any other criminal offence that is inextricably linked** to criminal conduct that falls within the scope of paragraph 1 of this Article. The competence with regard to such criminal offences may only be exercised in conformity with Article 25(3).

PIF-offences (PIF-Directive (EU) 2017/1371)

- **Fraud affecting the Union's financial interests**
 - in respect of (other) **expenditures** (Article 3(2)a)) – expl.: ERFD
 - in respect of **procurement related expenditures** (Article 3(2)b))
 - in respect of (other) **revenues** (Article 3(2)c)) – expl.: customs
 - in respect of **VAT revenues** (Article 3(2)d), Article 2(2)) – thus only where connected with the territory of two or more Member States and involving a total damage of at least 19 Million €
- **Money laundering** in respect of property derived from PIF offences (Article 4(1))
- **Active and passive corruption** (Article 4(2))
- **Misappropriation when committed by a public official** (Article 4(3))

Framework Decision 2008/841/JHA

Article 1

- (1) 'criminal organisation' means a **structured association**, established over a period of time, of **more than two persons acting in concert with a view to committing offences** which are punishable by ... to obtain, directly or indirectly, a financial or other material benefit.
- (2) 'structured association' means an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure.

Article 2

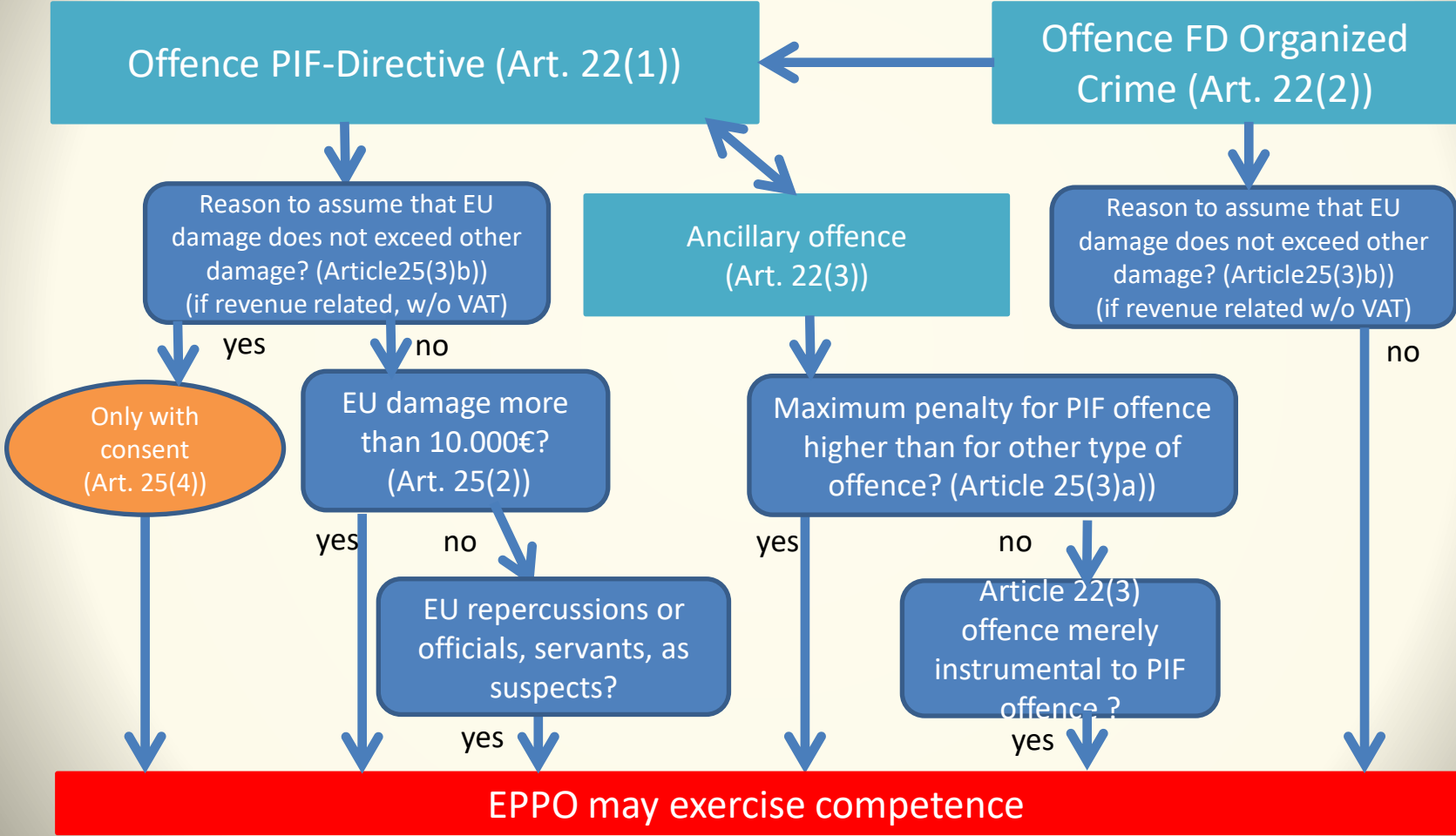
- (a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, **actively takes part in the organisation's criminal activities**, ..., knowing that such participation will contribute to the achievement of the organisation's criminal activities;
- (b) conduct by any person **consisting in an agreement** with one or more persons that an activity should be pursued, **which if carried out, would amount to the commission of offences** referred to in Article 1, **even if that person does not take part in the actual execution of the activity.**

Article 23 – Territorial and personal competence

The EPPO shall be competent for the offences referred to in Article 22 where such offences:

- (a) were committed in whole or in part **within the territory** of one or several Member States;
- (b) were **committed by a national** of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or
- (c) were committed outside the territories referred to in point a) by a **person who was subject to the Staff Regulations of Officials or to the Conditions of Employment**, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

Article 25 Exercising of competence by the EPPO



Commission communication of September 2018

Proposal to extend EPPO competence to cross-border terrorist crimes

Legal Basis Article 86(4) TFEU

The **European Council** may, at the same time or subsequently, **adopt a decision amending paragraph 1** in order to extend the powers of the European Public Prosecutor's Office **to include serious crime having a cross-border dimension** and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, **serious crimes affecting more than one Member State**. The **European Council shall act unanimously after obtaining the consent of the European Parliament** and after consulting the Commission.

- Gaps in the investigation and prosecution of cross-border terrorist crimes?
- The EPPO can address the existing gaps?
- Impact of the extension of competences on the EPPO and other agencies
- Next steps?

Current state of development – what is left to do?

- ✓ Establishment of a selection panel (Art. 14(3) and 16(2))
- ✓ Appointment of interim Administrative Director (Article 20(1))
- Appointment of the European Chief Prosecutor (Article 14(3))
- Appointment of the European Prosecutors (Article 16(1))
- Determine number of EDPs (Article 13(2) and appoint persons (Article 17)
- Appointment of other staff
- Infrastructure in Luxembourg and IT development (CMS)
- Draft internal rules of procedure (Article 21) and other rules (Articles 95, 96(4) and 114)
- Training – internal at EPPO and external in Member States
- Implementing legislation and other measures in Member States

