

## Case Example – Basic Scenario

A police department in France is contacted by a private person (“whistle-blower“) who reveals to the police information about fraudulent activities carried out by an Austrian-German consortium of construction companies, with a joint office based in Hanover (Germany), that is involved in a major infrastructure project at Charles de Gaulle Airport (new Terminal 4). The whistle-blower believes that the project is partially financed by the European Union (EU). According to the information given by him, the consortium has been cooperating with an Italian engineering firm that has been contracted by the consortium to design the lay-out of the terminal’s sprinkler system. The whistle-blower also claims that the documentation he can provide to the police (several copies of manual files plus a USB stick) will prove the fact that the Italian engineering firm has been grossly overcharging the consortium for services they claim to have provided. The whistle-blower further claims that part of the money received by the Italian company as payments for their services has been paid as “kick-back” to Armin A., the consortium’s manager (an Austrian citizen working from the consortium’s joint office in Germany) to his personal account at a bank in Zurich.

*Note to trainer:*

- *This basic scenario involves different Member States and leaves open where the focus of the criminal activity is*
- *The Member States mentioned can be changed to other Member States (must be participating Member States).*
- *The seat of the consortium should be the Member State where the training takes place (in this example: Germany – see also the following parts of the case example: will be Member State of nationality of most suspects/accused and where focus of the criminal activity is).*

## Cross-border investigations within the EPPO, Cooperation between EPPO and other partners (non-participating EU Member States, EU authorities, third states)

The European Delegated Prosecutor (EDP) in Berlin, Germany, was entrusted with the investigations as the handling EDP. Armin A., the responsible consortium manager working from the consortium's joint office in Hanover, and Carlo C., the Milan-based employee (Italian) of the Italian engineering firm, to whom A. seems to have proposed the "kick-back" scheme, to which he then agreed with A., have become suspects. C. was the responsible within the Italian engineering firm to draft up and submit the invoices, which over-charged approx. 100 000 Euros in total. He seems to have arranged that an amount of approx. 50 000 Euros were falsely declared to be fees by a Swiss consulting firm and that they were transferred to A.'s bank account in Zurich.

A. has travelled to his holiday domicile in Hungary. It appears that he has decided not to return to Germany, given the pending investigations against him by the handling EDP in Germany.

The handling EDP is convinced that more documentary evidence needed to prove his/her case can be found on the premises of the Italian engineering firm and C.'s home at Milan.

The Swiss liaison officer at EPPO in Luxembourg has informed the EPPO Central Office that Swiss authorities have been able to trace 20 000 Euros that were transferred from one account of the Italian engineering firm to the Zurich bank account. The Swiss liaison officer mentions as well that the Swiss Public Prosecutor intends to carry out investigation because of money laundering. In the meantime, Irish authorities have confirmed that incriminating e-mail correspondence is stored in an e-mail account on a server held by Microsoft Ireland.

The police investigators tasked with the case have received information about close connections of A. to the USA, where his wife is from. The handling European Delegated Prosecutor (EDP) has reasonable doubts whether A. will stay at his current whereabouts.

What measures are available to the handling EDP in order

- a) to ensure A.'s appearance before court,
- b) to carry out a search of the premises of the Italian engineering firm and C.'s home at Milan,
- c) to freeze the account at the Zurich bank and
- d) to obtain subscriber, transactional and content data from the Microsoft e-mail account?

- e) to trace the current whereabouts and future travels of A.,
- f) to coordinate parallel measures in the other Member States/third countries?

Should the Swiss authorities ask for information about their money laundering investigations, would the handling EDP be able to answer to such a request? If so: What would be the relevant procedures and the applicable conditions?

*Note to trainer:*

- *See foregoing parts of case example and notes thereon.*
- *The State of the holiday domicile (Hungary in this example) can be changed but should be an EU Member State to make the European Arrest Warrant applicable. The Member State of the pending investigations by the handling EDP should be the Member State where the seminar takes place (in this example: Germany) and to which surrender will be need to try him there. Hungary was chosen to raise the issue of cooperation with non-participating Member State (others, to which it can be exchanged, would be Denmark, Ireland, Poland, or Sweden). Choosing a participating Member State is possible and would reduce complexity on this point.*
- *The Member State where the handling EDP suspects the documentary evidence can be changed to any other participating Member State (but should be aligned with the basic scenario), which allows to discuss intra-EPPO / EPD to EDP cooperation (assignment under Art. 31 and enforcement of cross-border measure under Art. 32).*
- *Switzerland and Ireland, from which cooperation will be sought, can be exchanged but were chosen to discuss cooperation with a third country as well as with a non-participating Member State.*
- *The USA could also be exchanged – to any other third country/INTERPOL member, which allows to discuss location/arrest requests via the INTERPOL channel and an extradition request.*
- *It could also be discussed to involve Eurojust, in particular for coordination efforts with authorities in non-participating Member States.*

*The objective of this part is to discuss the legal bases and other issues on cross-border/international cooperation requests by the handling EDP to other participating Member States, to non-participating Member States, and to third countries:*

- *Question a) firstly aims at the European Arrest Warrant. The participants of the seminar will be acquainted with Art. 33(2). They will have to discuss how the handling EDP can apply for an EAW and transmit it to the Member State of A. 's holiday residence according to the Regulation and, in particular, to the national law applicable to the handling EDP. Procedural rights of the arrested person in EAW proceedings (interpretation, information, legal assistance, legal*

*aid; in accordance with EU Directives/national law) could also be considered during the discussion.*

- *Secondly, question a) can be used to address extradition and, along with question c), in general MLA with third countries (Art. 104(3)-(5)).*
- *Question b) deals with standard investigative/MLA measures vis-à-vis another participating Member State. This allows a broad discussion of Arts. 31, 32 of the EPPO Regulation (how do intra-EPPO assignments work?, which kind of judicial authorisation is needed?), and if time allows, the drafting of an Art. 31 assignment.*
- *Question d) raises the issue of cooperation with non-participating Member States (Art. 105), one of which is Ireland (others are Denmark, Hungary, Poland, and Sweden). These Member States may have liaison officers seconded in accordance with Art. 99(3) agreements, and EPPO may have designated contact points in these Member States.*
- *Question e) could serve as a basis to discuss how the EPPO/EDPs can make use of the Schengen Information System and tracing fugitives through INTERPOL.*
- *Question f) addresses the issues of how Eurojust, its liaison/contact point system, Europol, or other international networks can be involved in EPPO investigations.*
- *With the last question, the participants could discuss how EPPO/EDPs can respond to incoming MLA requests.*