

International Cooperation

Working with the EPPO at decentralised level –
Training materials for prosecutors and investigating judges



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EPPO: International Cooperation

Regulation (EU) 2017/1939 (“EPPO Regulation”)

CHAPTER X

PROVISIONS ON THE RELATIONS OF THE EPPO WITH ITS PARTNERS

Art. 99: Common provisions

Art. 100: Relations with Eurojust

Art. 101: Relations with OLAF

Art. 102: Relations with Europol

Art. 103: Relations with other institutions, bodies, offices and agencies of the Union

Art. 104: Relations with third countries and international organisations

Art. 105: Relations with non-participating Member States

Relations with other institutions, bodies, offices and agencies of the Union

Article 99 EPPO Regulation:

- (1): **cooperative relations** with
 - **institutions, bodies, offices or agencies of the Union;**
 - **authorities of non-participating Member States;**
 - **authorities of third countries and international organisations;**
- (2): EPPO may directly **exchange all information**, but:
unless otherwise provided for in this Regulation
 - see Arts. 31 to 33 for “intra-EPPO” cooperation
 - See Arts. 100 to 102 for relationship with major European Union Justice/Home Affairs partners
 - see Art. 103 for other Union institutions/offices/agencies
 - see Arts. 104 and 105 for “real MLA”/cooperation with third countries/international organisations
- (3): **working arrangements**, but: only of a **technical and/or operational nature**, **no basis for exchange of personal data**, nor legally binding effects on the Union or its Member States
 - See Article 66 of the IRP – Internal Rules of Procedure (Decision 003/2020 of the College) on the working arrangements.

EPPO: International Cooperation

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CHAPTER V

**RULES OF PROCEDURE ON INVESTIGATIONS, INVESTIGATION MEASURES,
PROSECUTION AND ALTERNATIVES TO PROSECUTION**

SECTION 2

Rules on investigation measures and other measures

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Art. 31: Cross-border investigations

Art. 32: Enforcement of assigned measures

Art. 33: Pre-trial arrest and cross-border surrender

Cross-border investigations among participating Member States

Article 31 EPPO Regulation:

(1): **handling European Delegated Prosecutor decides on the adoption of necessary measure; assigns it to an assisting European Delegated Prosecutor located in the Member State where the measure needs to be carried out.**

(2): any measures available to handling European Delegated Prosecutor in accordance with Article. 30

(3): in principle, only judicial authorization in one Member State

(4): assisting EDP undertakes the assigned measure, or instructs national authorities, see also **Article 32**

(5), (7), (8): **no strict grounds of refusal, resolution mechanism within EPPO**

- New system *sui generis* for intra-EPPO cooperation
- As a rule: **legal instruments on mutual recognition or cross-border cooperation**, e.g. European Investigation Order or 2000 EU Convention on Mutual Assistance in Criminal Matters **not applicable within participating Member States;**

Exception: (6): assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation

Cross-border investigations among participating Member States

Article 31 EPPO Regulation:

(6): if the **assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation**, the **European Delegated Prosecutors** concerned may, in agreement with the supervising European Prosecutors concerned, **have recourse to such instruments**.

Examples:

Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters

- Articles 22 and 23: Temporary transfer of persons held in custody for the purpose of carrying out an investigative measure
- Article 24: Hearing by videoconference or other audiovisual transmission

Using the **European Arrest Warrant** is governed by **Article 33 EPPO Regulation**.

In relation to **non-participating Member States**, EU instruments on mutual recognition or cross-border cooperation are applicable through the notification of EPPO as a competent authority, **Article 105 EPPO Regulation**.

Relations with Eurojust

Article 100 EPPO Regulation:

(1): mutual cooperation **within their respective mandates**;

- Art. 22 EPPO Regulation
- Arts. 2 to 5 Eurojust Regulation

(2): EPPO may associate Eurojust **in operational matters**;

- **sharing information**, including **personal data**, on its investigations;
 - in accordance with the relevant provisions of Regulation
 - see Arts. 45, 46, 47(3), 53, 54
- Eurojust may support in the **transmission of EPPO decisions or requests** for mutual legal assistance to, and execution in, **non-participating Member States / third countries**
 - see Arts. 31 to 33 for “intra-EPPO” cooperation
 - see Arts. 104 and 105 for cooperation with third countries/international organisations

Relations with Eurojust

Article 100 EPPO Regulation:

(3): indirect **hit/no-hit access** to information in each other's case management systems, i.e. information if a match has been found;

➤ see also Art. 50(5) Eurojust Regulation

(4): EPPO may rely on the **support and resources of the administration of Eurojust**

➤ Eurojust may provide services of common interest to the EPPO

➤ Background: Art. 86(1) ("Council ... may establish a European Public Prosecutor's Office from Eurojust")

➤ but: EPPO in Luxembourg, Eurojust in The Hague

- details: **Arrangement** between EPPO and Eurojust
- Art. 50(6) Eurojust Regulation, mirroring Art. 100(4) of EPPO Regulation

Relations with Eurojust

Article 50 of Eurojust Regulation (EU) 2018/1727, in essence:

- (1): mirroring largely identical Art. 100(1) of EPPO Regulation (mutual cooperation within respective mandates)
- (2): Eurojust shall treat **requests for support from the EPPO** without undue delay, and, where appropriate, shall treat such requests **as if from a national authority** competent for judicial cooperation;
- (3): Eurojust shall make use of the **Eurojust national coordination** system, as well as relations established with **third countries**, including its **liaison magistrates**
- (4): in operational matters relevant to the EPPO's competences, Eurojust shall inform / associate EPPO
 - sharing information on its cases, including personal data; but:
 - requesting the EPPO to provide support

Relations with OLAF and EUROPOL

Question:

Which of the following authorities can an EDP task with undertaking investigatory measures for his/her case?

- a. National police
- b. OLAF
- c. Europol
- d. All of the above

Relations with OLAF and EUROPOL

Question: Which of the following authorities can an EDP task with undertaking investigatory measures for his/her case?

Correct answer: a. - EDP work with the national investigation officers.

a. National police - Art. 28(1) EPPO Regulation:

Handling EPD “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**. Those **authorities** shall, in **accordance with national law**, ensure that all instructions are followed and undertake the measures assigned to them.”

the **competent authorities in his/her Member State**: can be police but also customs or tax investigation officers – depending on national law

b. OLAF - see Art. 101 EPPO Regulation; OLAF does not carry out criminal investigations, but concededly unclear what supporting or complementing the EPPO’s activity encompasses

c. Europol - see Art. 102 EPPO Regulation; Europol does not carry out criminal investigations, but concededly unclear what analytical support for EPPO encompasses

Relations with OLAF

Article 101 EPPO Regulation:

- (1): mutual cooperation **within their respective mandates**;
- (2): **no parallel OLAF administrative** investigations into the same facts as underlying EPPO investigations;
- (3): EPPO may **request OLAF**, in accordance with OLAF's mandate, to **support or complement the EPPO's activity**
- (4): **EPPO** may provide **relevant information to OLAF** where the EPPO has decided not to conduct an investigation or has dismissed a case;
 - purpose: enable administrative action by OLAF in accordance with its mandate;
 - see Art. 39(4) EPPO Regulation , see also Art. 36(6) EPPO Regulation , no equivalent in Art. 40EPPO Regulation ?
- (5): indirect **hit/no-hit access** for EPPO to OLAF's case management system
 - no specific EPPO provisions in **OLAF Regulation** (EU, Euratom) 883/2013
 - but 2018 COM Proposal (COM/2018/338 final) to amend OLAF Regulation in order to adapt to EPPO (currently in final stages of legislative procedure)

Relations with OLAF

Article 101 EPPO Regulation :

- (3): EPPO may **request OLAF**, in accordance with OLAF's mandate, to **support or complement the EPPO's activity** – see Art. 12e of COM Proposal (COM/2018/338 final) to amend OLAF Regulation
 - (a) providing **information, analyses** (including forensic analyses), **expertise** and **operational support**
 - (b): facilitating **coordination** competent **national administrative authorities and bodies of the Union**
 - (c): **administrative investigations**
 - but: **no investigative operative support?**
 - in principle: EDP rely on national investigators; see Art. 28(1): handling EPD “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**. Those **authorities** shall, in **accordance with national law**, ensure that all instructions are followed and undertake the measures assigned to them.”

Relations with Europol

Article 102 EPPO Regulation :

- (1): working arrangement on cooperation modalities;
- (2): EPPO shall be able to obtain, at its request, **any relevant information held by Europol**, concerning any offence **within EPPO's competence**;
 - EPPO may also ask Europol to provide analytical support to a specific investigation conducted by the EPPO
 - **analytical support**, but: no investigative support?
 - in principle: EDP rely on national investigators; see Art. 28(1): handling EPD “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**. Those **authorities** shall, in **accordance with national law**, ensure that all instructions are followed and undertake the measures assigned to them.”
 - no specific EPPO provisions in **Europol Regulation (EU) 2016/794**

Relations with other institutions, bodies, offices and agencies of the Union

Article 103 EPPO Regulation:

- (1): **cooperative relationship with the Commission; agreement setting out the modalities;**
 - but **without prejudice to the proper conduct and confidentiality of its investigations**
- (2): EPPO shall **provide sufficient information** in order to allow them to take **appropriate measures**
 - (a) administrative/precautionary measures
 - (b) intervention as a civil party in the proceedings
 - (c) administrative recovery /disciplinary action
- for both (1) and (2): relevance of **national law of Member State of EDP?**, e.g, on general rules of procedure and on confidentiality of criminal proceedings, or on standing of Union body/office/agency as party in criminal proceedings?

Relations with third countries and international organisations

Question:

What is the legal basis for an EDP to seek and receive assistance from the competent prosecutor in the United States of America?

- a. EPPO Regulation for EPPO, non-treaty based for US
- b. Bilateral treaty EPPO/US
- c. The Agreement on mutual legal assistance between the European Union and the United States of America of 2003
- d. Only possible if bilateral treaty between the US and the Member State of the handling EDP exists, e.g. US/Italy 1982, US/Netherlands 1983, US/Spain 1992, US/France 1998, US/ Germany 2003

Relations with third countries and international organisations

Article 104 EPPO Regulation:

(1): **working arrangements** referred to in Article 99(3); but these only cover exchange of **strategic information** and the **secondment of liaison officers**

(2): EPPO may designate **contact points** in third countries;

➤ See Article 67 of the IRP on contact points.

(3): **international agreements** on cooperation between Union and third countries? (see answer b.)

(4): **If no such specific (new) legal instrument**: Recourse to multilateral international agreements?

See answer c. - but will treaty parties/Member States/cooperating State recognise/notify EPPO as a competent authority?

(5): **recourse to powers of a national prosecutor** from handling EDP's Member State to request legal assistance from authorities of third countries (treaty-based, non-treaty based)

(6): EPPO may **provide** the competent authorities of third countries or international organisations **with information or evidence which is already in the possession of the EPPO**

Relations with third countries and international organisations

Article 104 EPPO Regulation:

(4): If no specific (new) legal instrument:

- (participating) Member States shall recognise EPPO as a competent authority for the purpose of multilateral international agreements on legal assistance in criminal matters, or their bilateral agreements
- shall notify EPPO as a competent authority for the purpose of multilateral international agreements on legal assistance in criminal matters, or their bilateral agreements
- if permitted under the relevant international agreement and subject to the third country's acceptance
- where necessary and possible, by way of an amendment to those agreements
- E.g.: **Council of Europe Conventions**, EU-US MLA Agreement, bilateral MLA agreements

But: **Possible** under the legal framework of such instruments? Will **third countries** recognize EPPO?

Relations with third countries and international organisations

Article 104 EPPO Regulation:

(5): **recourse to powers of a national prosecutor** from handling EDP's Member State to request legal assistance from authorities of third countries (treaty-based, non-treaty based)

- on the basis of international agreements concluded by that Member State
 - Do such agreements exist?
- or applicable national law
 - What is the applicable national law?
- where required, through the competent national authorities
 - Which are these national authorities?
 - What are the formal requirements?
 - What powers do the competent national authorities have over such EPPO requests?

Relations with third countries and international organisations

Article 104 EPPO Regulation :

(5): EPPO may request legal assistance in criminal matters from authorities of third countries **in a particular case** and **within the limits of its material competence**

- What if reciprocity is required?
- EPPO shall **comply with the conditions** which may be set by those authorities concerning the use of the information that they provided on that basis.
 - Role of national judiciary?

Relations with third countries and international organisations

Question:

Can an EDP respond to the following assistance requests from the competent Swiss prosecutor in a Swiss corruption case?

- a. Transmit statements made by a witness that were taken by the EDP during EPPO investigations.
 - 1. No. / 2. Yes, but only if Swiss case involves a PIF offence. / 3. Yes, and it does not need to involve a PIF offence.

- b. Hear a witness on the Swiss charges and take his/her statements.
 - 1. No. / 2. Yes, but only if Swiss case involves a PIF offence. / 3. Yes, and it does not need to involve a PIF offence.

- c. Arrange to have suspect who is in provisional detention in an EPPO case temporarily transferred to Switzerland to question him/her there.
 - 1. No. / 2. Yes, but only if Swiss case involves a PIF offence. / 3. Yes, and it does not need to involve a PIF offence.

Relations with third countries and international organisations

Article 104 EPPO Regulation:

(6): EPPO may **provide** the competent authorities of third countries or international organisations **with information or evidence which is already in the possession of the EPPO**

- No hearing of new witnesses - first alternative under b. would be correct
- Does not need to involve PIF crimes – third alternative under a. would be correct
- What if reciprocity is required?
- After consulting the Permanent Chamber, handling EDP shall decide on any such transfer of information or evidence **in accordance with the national law of his/her Member State and EPPO Regulation**
 - What does EPPO Regulation state?

(7): **Extradition:** handling EDP **may request the competent authority of his/her Member State to issue an extradition request** in accordance with applicable treaties and/or national law.

- Role of national competent authority?
- EPPO not competent for incoming extradition requests - first alternative under c. would be correct

Cooperation with non-participating Member States

Question:

What is the legal basis for an EDP to seek assistance from the competent judicial authority in Ireland?

- a. For EPPO: EPPO Regulation; for Ireland: Council Act of 29 May 2000 Mutual Assistance in Criminal Matters between the Member States of the European Union
- b. Working agreement between EPPO und Ireland.
- c. Cooperation agreement between EU and all the non-participating Member States.
- d. Article 325 of the Treaty on the Functioning of the European Union

Cooperation with non-participating Member States

Article 105 EPPO Regulation:

(1): **working arrangements** referred to in Article 99(3); but these only cover exchange of **strategic information** and the **secondment of liaison officers** – answer b. would be incorrect

(2): EPPO may designate **contact points** in these Member States;

(3): **legal instrument** on cooperation between EPPO and non-participating Member State? – this would be answer c., but no such legal instrument exists (yet)

If no such specific (new) legal instrument: Member States shall notify the **EPPO as a competent authority** for the purpose of Union acts on judicial cooperation

answer a. is therefore correct from point of view of EPPO Regulation, but:

- Only **participating Member States** under such an obligation to designate EPPO and thus equate EPPO with their own judicial authorities. Art. 325 no sufficient obligation for criminal cooperation, thus answer b. would be incorrect.
- Compatible with Art. 82 TFEU? – only addresses **authorities of Member States**
- Will non-participating Member States recognise EPPO?

Thank you for your attention

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