

EPPO Case Management System, Exchange/Links with National Systems, Access to Information

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



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Introduction

Chapter VII – Arts. 43 to 46 of Regulation 2017/1939 (EPPO Regulation), titled “**Processing of Information**” encompasses many different issues:

- Handling of information at EPPO central level
- Storing of information at EPPO central level
- Handling of case file by EDP
- Storing of information by EDP
- Access to file held at central level and to file held by EDP
 - for suspect/accused?, for other participants to the same criminal proceedings?, for other EDPs?, for Union institutions, bodies, offices and agencies?, for national authorities?
- Technical and practical issues:
 - Electronic or hard-copy/paper-based?; different levels of digitalization among Member States?
 - Storage capacity?, which servers will be used?
 - Diversity of case management systems among and also within (federalist) Member States?
- What is the applicable legal regime on data protection?

Introduction

Basic principle:

Article 5(3) EPPO Regulation:

“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.”

But what are the applicable rules for the processing of information?, in particular:

- on the EPPO Case Management System,
- on the exchange and links with national systems
- on the access to information held by EPPO

Question 1 - EDP case files

What does an EDP case file look like?

- a. EDPs work with the same case files they would use in their own domestic cases.
- b. All EDPs manage their case files in the same way and pursuant to the applicable provisions of the EPPO Regulation, with details laid down by the EPPO College in the internal rules.
- c. No EDP case files exist. EDPs handle all information relating to their case through EPPO's central electronic "Case management system".

Question 1 - and Answer

What does an EDP case file look like?

In principle, the most fitting answer seems a., (EDPs work with the same case files they would use in their own domestic cases), see **Article 43(2)** EPPO Regulation:

(2): “The **case file** shall be managed by the handling European Delegated Prosecutor **in accordance with the law of his/her Member State**.”

But that paragraph continues: “... The **internal rules** of procedure of the EPPO may include **rules on the organisation and management of the case files** to the extent **necessary to ensure the functioning of the EPPO as a single office**.”

The central CMS mirrors the EDP case file but the actual case file is that of the EDP, see Art. 43(3) EPPO Regulation:

(3): “The **case management system** of the EPPO shall include all information and evidence from the case file that may be **stored electronically**, in order to enable the Central Office to carry out its functions in accordance with this Regulation. The handling European Delegated Prosecutor shall ensure that the content of information in the case management system **reflects at all times the case file**, in particular that operational personal data contained in the case management system is erased or rectified whenever such data has been erased or rectified in the corresponding case file.”

And see also **Article 28**:

(1): “... The handling European Delegated Prosecutor shall **report through the case management system** to the competent European Prosecutor and to the Permanent Chamber **any significant developments** in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.”

Case Management System

Article 44 EPPO Regulation – **Case management system:**

(see similar provisions in Art. 23 Eurojust Regulation)

- (1): EPPO Case Management System (**CMS**), held and managed in accordance with the rules established in EPPO Regulation and in the EPPO internal rules of procedure
- (2): **purpose of CMS** – EPPO internal purposes
 - (a): support management of investigations and prosecutions conducted by the EPPO, in particular: internal information workflows, and supporting investigative work in cross-border cases;
 - (b): secure access to information on investigations and prosecutions at the Central Office and by the European Delegated Prosecutors (EDPs);
 - (c): cross-referencing of information and the extraction of data for operational analysis and statistical purposes;
 - (d): monitoring data protection by EPPO

See Articles 61 and 62 of the IRP – Internal Rules of Procedure (Decision 003/2020 of the College) on the CMS.

Case Management System

Article 44 EPPO Regulation – Case management system:

- (3): CMS may be linked to the EJM “secure telecommunications connection”, see Art. 9(2) and (3) of Council Decision 2008/976/JHA (EJM Decision) and Art. 23(3) Eurojust Regulation. .
 - only **optional to link CMS to EJM Secure Network Connection**;
 - same possibility as for Eurojust under Art. 23(3) of the Eurojust Regulation;
 - used in all participating Member States/your participating Member State?
- (4): EPPO CMS shall contain:
 - (a): **register** of information obtained by the EPPO in accordance with Article 24, including any decisions in relation to that information;
 - (b): **index** of all case files; shall not contain any operational personal data other than data needed to **identify cases or establish cross-links between different case files**
 - see Art. 23(2)(a) and (4) Eurojust Regulation, also providing for an “index”
 - (c): all **information from the case files** stored electronically in the case management system in accordance with Art. 45(3);

Question 2 - Link-up with national police

How do national police tasked with the investigations in an EPPO case by the handling EDP exchange information with the EDP, and vice-versa?

- a. National police tasked with an EPPO case will be given read/write electronic access to the EDP's case file to the extent permitted by the handling EDP.
- b. This exchange is managed through the national systems. The EDP and his/her case file are linked to the national system as provided for by national law.
- c. The EDPs will not be linked with the national police systems. He/he will receive information from police and then enter it into his/her case file and the EPPO case management system, or retrieve material from them and transmit it to police.

Question 2 - and Answer?

How do national police tasked with the investigations in an EPPO case by the handling EDP exchange information with the EDP, and vice-versa?

The EPPO Regulation does not provide for CMS access to national police, i.e. answer a. seems incorrect. Whether answer b. or c. applies, depends on the implementation in the participating Member State.

Article 43:

- (2): “The **case file** shall be managed by the handling European Delegated Prosecutor **in accordance with the law of his/her Member State**.
- The **internal rules** of procedure of the EPPO may include **rules on the organisation and management of the case files** to the extent **necessary to ensure the functioning of the EPPO as a single office**.

Access to the case file by suspects and accused persons as well as **other persons involved in the proceedings** shall be granted by the **handling European Delegated Prosecutor in accordance with the national law of that Prosecutor’s Member State.**”

Article 5:

- (3): “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.”

Question 3 - Internal access to case files through the CMS

Who can access the EDP's case file?

- a. All EPPA members (European Chief Prosecutor, European Prosecutors, and all of the European Delegated Prosecutors) if they demonstrate their justified interest.
- b. The European Chief Prosecutor without further conditions, all other EPPA members (European Prosecutors and European Delegated Prosecutors) if they demonstrate their justified interest.
- c. The supervising European Prosecutor and the competent Permanent Chamber only.
- d. The supervising European Prosecutor only.
- e. The supervising European Prosecutor and the competent Permanent Chamber without further conditions, European Delegated Prosecutors if they demonstrate their justified interest.

Question 3 - and Answer

Answer e. is correct, but note that the national law of the handling EDP governs the test of justified interest. Internal access to case files within EPPO is thus quite restricted.

Article 46 EPPO Regulation:

“The European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors and the European Delegated Prosecutors shall have direct access to the register and to the index.”

“The **supervising European Prosecutor** as well as the **competent Permanent Chamber** shall, when exercising their competences in accordance with **Articles 10 and 12**, have direct access to **information stored electronically in the case management system**. The **supervising European Prosecutor** shall also have **direct access to the case file**. The **competent Permanent Chamber** shall have access to the case file **at its request**.”

“Other **European Delegated Prosecutors** may request access to information stored **electronically in the case management system as well as any case file**. The **handling European Delegated Prosecutor shall decide** on granting such access to other European Delegated Prosecutors **in accordance with applicable national law**. If the access is not granted, the matter may be referred to the competent Permanent Chamber. The competent Permanent Chamber shall, to the extent necessary, hear the European Delegated Prosecutors concerned and then decide in accordance with applicable national law as well as this Regulation.”

“The **internal rules of procedure** of the EPPO shall set out **further rules regarding the right to access**, and the procedure to establish the level of access to the case management system by the European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors, the European Delegated Prosecutors and the staff of the EPPO, to the extent required for the performance of their duties.”

Question 4 - Access to databases by the EPPO

Can EDP access the criminal records database in your Member State?

- a. Yes, directly and under the same conditions as national prosecutors.
- b. Yes, directly but without restriction that would apply to national prosecutors (e.g., if data has been blocked for witness protection purposes, information would still have to be revealed to EDP).
- c. No, not directly, but EDP can task national police which can.

Question 4 - and Answer

Can EDP access the criminal records database in your Member State?

- a. Yes, directly and under the same conditions as national prosecutors.
- b. Yes, directly but without restriction that would apply to national prosecutors (e.g., if data has been blocked for witness protection purposes, information would still have to be revealed to EDP).
- c. No, not directly, but EDP can task national police which can.

Answer a. is correct, although this does not rule out to instruct police, see c.

Article 43 EPPO Regulation:

(1): “**European Delegated Prosecutors** shall be able to obtain any relevant information stored in **national criminal investigation and law enforcement databases**, as well as other **relevant registers of public authorities**, under the **same conditions** as those that apply under **national law in similar cases.**”

Thank you for your attention

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