

The opening of the EPPO investigations - case study

Case study:

Company A, based in Italy, is participating in a tender procedure launched by the European Commission to provide the capital of an African country with a new hydric system, in the framework of a programme to support the development of this African state.

Company A is a holding company, with some branches in other EU Member States. The company participating in the tender is one of the branches, based in Spain, company B.

Company B is 100% owned by the company A.

Company B is awarded the tender, also on the basis of the technical documents explaining the work, and it starts receiving a first installment from the Commission. The money is transferred from a bank account of the Commission in Brussels to the bank account of the company B, in Spain.

During the works, the African authorities complain about some shortcomings in the execution. In particular, several losses of water from the pipelines are reported even before the works are completed.

A first technical check by the African authorities show that the material used by company B for the pipelines is not of the same quality as the one mentioned in the technical document submitted to the Commission. The material used in the works is much cheaper than the one mentioned in the technical document.

A further check by the Commission confirms the allegation.

The Commission suspends further payment, drafts a report and sends it to OLAF.

Company B, however, alleges it was victim of fraud, as it didn't realise that the material was different to the one that was ordered from the supplier. Company B submits a complaint to the Spanish authorities, as it is based in Spain.

After receiving the report from the Commission, OLAF immediately sends it to the EPPO, as they believe that the facts amount to the criminal offence of fraud in using EU funds, committed by company B.

The Spanish authorities are aware that, in connection with the same facts, the OLAF file has been sent to the EPPO and they decide to also send the complaint by company B to the EPPO.

Questions:

Q1. The questions, at this stage, are: What does the EPPO do after receiving these two reports? Does it first verify the information or does it first register it? Which EDP should register the information?

A1. The EPPO has to register the information immediately. In this case, more than one EDP may be entitled to register the case. The EDP in Spain, as company B is based there and the money has been received in that country. The EDP in Belgium, because in Belgium the damage occurred (the money was transferred from a Belgian account of the victim) and the documents with the alleged false information were presented in Belgium.

In this case, we assume that the EDP in Belgium registers the information under article 26 para 4. The registration takes place in the CMS and from that point the EDP is in charge of the case.

At this point, the EDP in Belgium verifies the information under article 24 para 6.

Q2. What can the EDP do at this stage, after the registration and before deciding on the opening of the investigation, in order to verify the reliability of the information?

A2. The regulation doesn't say anything about that, except that "the information shall be verified in accordance with the internal rules of procedure".

At this stage, therefore, there is no clear answer to this question, until the rules of procedure are approved.

However, it is reasonable to believe that in this phase the EDP won't be able to undertake intrusive measures, such as searches or interceptions, but he might interview people or request further information.

In the present case, we assume that after receiving the tender documents from the Commission, the EDP realises that the offer for the tender was submitted upon instructions of holding company A, based in Italy.

After reading the documents, the EDP believes that there are reasonable grounds to open an investigation. The assessment is necessarily also carried out under the national law on opening a criminal case, as the regulation does not contain any definition of "reasonable grounds".

The complaint by B, at this stage, appears to be a different version of the facts than that of the suspect, but it is not enough to verify the suspicions of fraud committed by B, maybe in cooperation with the mother company A.

Therefore the EDP in Spain opens the investigation, after exercising the right of evocation on the file sent by the Spanish national authorities.

He shall note the ruling of opening the investigation in the CMS and shall inform the Spanish authorities and the Commission (that reported the first information).

We assume that the development of the investigation shows that the mother company A was fully involved in the fraudulent scheme against the Commission.

At the end of the investigation, the issue on which EDP should file the indictment will emerge, under article 26 para 4 and 5.