

The investigative measures

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



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Introduction

Provisions/Principles

- Recital 70, 71
- Art. 28
- Art. 30

Preliminary question

Scenario no. 1:

Detailed provisions in the regulation of the measures and the procedures to obtain them: no space for national law (model rules of the University of Luxembourg)

Scenario no. 2:

Everything is left to national law

Scenario no. 3:

Basic provisions in the regulation and for the rest the national law completes

The solution

Recital no. 70:

It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the EPPO be able to gather evidence by using at least a minimum set of investigation measures, while respecting the principle of proportionality.

Introduction

The measures provided in the regulation should be available with regard to the offences that are within the mandate of the EPPO, at least where they are punishable by a maximum penalty of at least 4 years of imprisonment, for the purpose of its investigations and prosecutions, but may be subject to limitations in accordance with national law.

Introduction

In addition to the minimum set of investigation measures listed in this Regulation, European Delegated Prosecutors should be entitled to request or to order any measures which are available to prosecutors under national law in similar national cases.

Introduction

Availability should be ensured in all situations where the indicated investigative measure exists but may be subject to limitations in accordance with national law.

Background

Who undertakes the measures:

The European Delegated Prosecutor handling a case may, in accordance with the 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.

Background

Exception: art. 28 para 4

The supervising European Prosecutor, in exceptional cases, after having obtained the approval of the competent Permanent Chamber, may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State

Background

Exception: art. 28 para 4

When?

where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

Background

Exception: art. 28 para 4

When?

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

Background

Exception: art. 28 para 4

In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The measures

At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:

The measures

- a) Search
- b) Obtain the production of any relevant object or document
- c) Obtain the production of stored computer data
- d) Freeze instrumentalities or proceeds of crime
- e) Intercept of electronic communications
- f) Track and trace objects by technical means

Search

premises,
land,
means of transport,
private home,
clothes and
any other personal property or computer system

including any conservatory measures necessary to
preserve their integrity or to avoid the loss or
contamination of evidence

Production of relevant objects

Any relevant object or document either in its original form or in some other specified form

Role of national law to complete the provision

Production of stored computer data

Encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council

Freeze instrumentalities or proceeds of crime

Including assets that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

Interceptions of electronic communications

To and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using

Role of the national law

Use of the so called “Trojan horse”

Track and trace of objects

By technical means, including controlled deliveries of goods

Role of national law

Specific requirements

The investigation measures set out in the regulation may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

Specific requirements

Production of stored computer data
Interception of communications
Track and tracing objects

may be subject to further conditions, including limitations,
provided for in the applicable national law.

Specific requirements

In particular, Member States may limit the application of

Interception of communications
Track and tracing objects

to specific serious offences.

Definition of serious offences: PIF directive.

Notification of this limitation by the Member States to the EPPO in accordance with Article 117.

Further measures

In addition to the measures set out in the regulation:

the European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases

General requirements

The European Delegated Prosecutors may only order the measures under the regulation and the national law where there are:

- a) reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation,
- b) there is no less intrusive measure available which could achieve the same objective.

The procedures and the modalities for taking the measures shall be governed by the applicable national law.

Urgent measures

At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures in accordance with national law necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor.

The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.