

## Cross-border investigations – case study

A small company A, based in Cairo Montenotte, a little town in Northern Italy on the border between Liguria and Piedmont, is advertising the organisation of training courses to facilitate young people to enter the labour market.

The courses are funded by the Ministry of Social Affairs, but the source of the funding is an EU instrument (European Social Fund).

Company A is awarded 120 000 euros for the project that should last two years. The goal of the project is to get at least 75% of the participants employed at the end of the courses.

Already at the end of the first year some participants complain about some shortcomings in the courses: the lessons are not regularly held because the trainers are changed very often, even at the last minute, the lessons' quality is very low, the premises where the courses take place are not properly equipped.

At the beginning of the second year it is already clear that the goal will not be achieved.

Some participants decide to inform the Guardia di Finanza about the situation.

The Guardia di Finanza takes some preliminary information from open sources.

It appears that the owner of the company A, Mr. Giovanni, also owns company B, based in Padova. Company B is active in the field of research on renewable energies and is also a beneficiary of EU funds.

In the application for the funds of the company A to the Ministry of Social Affairs, one pre-condition for the funding was that the beneficiary was not already receiving EU funds in any way.

Therefore, in the application the owner of company A did not disclose this situation.

At this stage, the Guardia di Finanza informs the competent EDP in Italy and an investigation is opened. The allegation is fraud in receiving EU funds.

The EDP delegates the Guardia di Finanza to expand the investigation, and it turns out that Mr. Giovanni, the owner of the company A and B is also a shareholder in three other companies: one in France, one in Bulgaria and one in Cyprus.

The companies in France and Bulgaria are equally beneficiaries of EU funds in projects related to alternative mobility in towns.

Regarding the cash flow, it seems that the money received from company A for the courses in Cairo Montenotte is sent from the bank account of company A to the bank account of the company C, based in Milan, and from it to the company D, based in Cyprus.

Company C is owned by Ms. Patrizia, the partner of Mr. Giovanni; company D is owned by Mr. Giovanni.

Mr. Giovanni has an apartment in Milan, but he lives in Bulgaria most of the year.

The Italian EDP searches the apartment of Mr. Giovanni and Ms. Patrizia in Milan, and takes the bank records available from the Italian banks.

He needs:

- to request the bank records of the account in Cyprus
- to search the premises of Mr. Giovanni in Bulgaria
- to interview witnesses on the project carried out in France
- to search the computers of the companies in France, Bulgaria and Cyprus.

**Q1. Which is the law applicable to the investigation so far?**

**Q2. To get the bank records, in Italy a judicial authorisation is necessary, while in Cyprus and order from the prosecutor is sufficient. Can the Italian EDP handling the case simply order the Cypriot bank to produce the bank accounts?**

**Q3. Under Cypriot law, the execution of an order to produce bank records require the presence of a witness, usually a bank employee. In Italy there is no provision about that. Do the Cypriot authorities have to follow Cypriot law or Italian law when executing the order from the Italian EDP, through the Cypriot EDP?**

**Q4. Under Italian law, the search of premises can be ordered by the prosecutor. Under Bulgarian law, judicial authorisation is necessary. Does the execution of the search ordered by the Italian EDP (through the Bulgarian EDP) require judicial authorisation?**

**Q5. Under French law, a witness can request to be assisted by a defence lawyer during his interview. In Italian law, there is no provision about that. The French EDP informs the Italian EDP about the request of the witnesses to be heard with a defence lawyer. Can the Italian EDP object to that?**

**Q6. Under Italian law, the measure “search of a computer system” is not specifically provided. The police can make a copy of the computer hard drive as a consequence of the search operations. Therefore, the Italian EDP order is “to search the premises, with the possibility to seize any relevant document, even on electronic device, including computer”. Can the “search of computer” be carried out in the other countries, under such a request?**