

Explanatory note – Cooperation with national authorities

The cooperation with the national authorities is essential for the EPPO functioning. The EPPO has to rely on the national authorities as it does not have resources to cover whatever is necessary to carry out its functions.

It also derives from the fact that the regulation has shaped the EPPO as a body that has competence only on some limited offences (the PIF offences) and does not have exclusive competence even on them. Therefore it may happen that the national authorities have to deal with connected offences or that the problems deriving from this sort of concurrent competence must be faced.

The cooperation takes place at different levels; if we want to divide into great sectors, we could identify one sector about the exchange of information and one sector on the operational stage, in the course of the investigation.

The information flow involves the transmission of the first information on the allegations.

When any national authority comes into possession of information on allegations that might fall into the EPPO competence, it has to inform the EPPO “without delay” by forwarding the information. The transmission is instrumental to allow the EPPO assessing the information to exercise its competence.

“National authority” has to be interpreted as any authority potentially entitled to deal with the information, therefore not only judicial authorities but also law enforcement bodies, such as the police, the customs authorities, the tax authorities, and the administrative bodies dealing with management of the EU funds.

The EPPO must be informed in any case, not only when the national authorities receive the information before starting any investigation, but also when the information comes to their attention during an ongoing investigation.

Moreover, the EPPO must also be informed in those cases referred to in article 25 para 3 in which the offence falls into the EPPO competence, but some factual elements suggest that the national authorities are more entitled to deal with the case.

The information mechanism also has to work on the opposite side: when the EPPO is aware of an allegation that might fall into the national authorities’ competence, it shall inform them without delay.

The issue on transfer of information, which can also result in the transfer of evidence corroborating the information, is very sensitive, as it may involve the evolution of the investigation from the administrative stage to the criminal stage.

The EPPO regulation does not mention such an issue, therefore it is left to national law, unless the EPPO governs some practicalities of it in the internal rules of procedure.

In some countries, such as Italy for example, when the administrative authority is investigating an allegation, and elements suggesting that the allegation could be relevant at criminal level emerge, it has to immediately suspend the administrative enquire and continue it under the procedural criminal law, with the consequent guarantees. If it doesn’t act in that way and later on transmits the information to the EPPO, the EPPO might receive the “poisoned fruit” consisting of pieces of evidence not legally acquired.

On these issues some reflections might be appropriate.

The operational cooperation involves the behaviour of the EPPO and the national authorities during the investigation.

When the EPPO is assessing the information to exercise its competence, the national authorities will abstain from taking any decision on the investigation, except the possibility to undertake urgent measures.

In any case, before taking any decision on the exercise of competence, the EPPO may consult the national authorities for clarification on the content of the information.

When the EPPO decides to exercise its competence, the national authorities will send the file and will stop any investigative action on the allegation. If the EPPO does not exercise its competence, the case remains with the national authorities, but they still have to inform the EPPO again, should new elements emerge during the investigation that might determine the EPPO competence.

Another kind of cooperation of the EPPO with the national authorities involves the execution of the investigative measures undertaken in the EPPO investigation.

The EPPO does not have its own judicial police, therefore it necessarily has to rely on the national judicial police. They may be instructed on the execution of the measures by the EDP handling the case, and they are obliged to assist them.

The same will happen with the European Prosecutor in the exceptional cases they will be dealing with the investigation (art. 28 para 4).

The EPPO, in particular the Permanent Chamber, shall refer the case to the national authorities also when the investigation reveals that no criminal offence under the EPPO competence has been committed (art. 34).

When the case involves damage of less than 100 000 euros and there is no specific need for the EPPO to look into the case, it may decide to leave it to the national authorities. The rules to govern such a situation must be adopted by the college, but art. 34 of the regulation already provides for a detailed description of the mechanism.

The case study

The case is about a VAT fraud in which an intense exchange of information between the EPPO takes place and in which PIF offences and non PIF offences are at stake, so that specific decisions have to be taken with respect to each of them.

The VAT cases have some issues, because only a small amount of VAT is transferred to the EU budget, the rest being a revenue of the national budget. Therefore, when it comes to establishing the amount of the damage, it has to be clarified whether only the EU part of VAT has to be considered, or the entire amount. At present, there is no provision or specific indication on that.

Regarding the question of the case study, whether the EPPO can use the evidence acquired by the national authorities during the search and transmitted to it, in principle the EPPO can certainly use such evidence.

In the case study, nothing suggests that the evidence has been illegally acquired by the national authorities.

The quiz

Question 1:

right answer is b), according to the wording of the regulation. the EPPO must first be informed; consultations are possible, but only after the transmission of the information, when the EPPO has to decide whether to exercise its competence or not

Question 2:

right answer is a), according to the wording of the regulation

Question 3:

right answer is c); this is what the regulation provides

Question 4:

right answer is b); it is consistent with the principle of alternative competence between the EPPO and the national authorities

Question 5:

right answer is a); the consultation is just a possibility and not an obligation, therefore answer c) is incorrect

Question 6:

right answer is a); it is in line with the principle of cooperation between the EPPO and the national authorities

Question 7:

right answer is c); the regulation does not provide any rule on this issue, which is governed by national law

