

## Case Example – Basic Scenario

The police department in France is contacted by a private person (“whistle-blower”) who reveals to the police information about fraudulent activities carried out by an Austrian-German consortium of construction companies, with a joint office based in Hanover (Germany), that is involved in a major infrastructure project at Charles de Gaulle Airport (new terminal 4). The whistle blower believes that the project is partially financed by the European Union (EU). According to the information given by him, the consortium has been cooperating with an Italian engineering firm that has been contracted by the consortium to design the lay-out of the terminal’s sprinkler system. The whistle-blower also claims that the documentation he can provide to the police (several copies of manual files plus a USB stick) will prove the fact that the Italian engineering firm has been grossly overcharging the consortium for services they claim to have provided. The whistle-blower further claims that part of the money received by the Italian company as payments for their services has been paid as “kick-back” to Armin A., the consortium’s manager (an Austrian national working from the consortium’s joint office in Germany) on his personal account at a bank in Zurich.

*Note to trainer:*

- *This basic scenario involves different Member States and leaves open where the focus of the criminal activity is*
- *The mentioned Member States can be changed to other Member States (must be participating Member States).*
- *The seat of the consortium should be the Member State where the training takes place (in this example: Germany – see also the following parts of the case example: will be Member State of nationality of most suspects/accused and where focus of the criminal activity is).*

## Concluding investigations and taking the case to court

The European Delegated Prosecutor (EDP) in Berlin, Germany, was entrusted with the investigations as the handling EDP. The following persons have become suspects:

- Armin A.: the responsible consortium manager (Austrian) working from the consortium's joint office in Hanover,
- Bodo B.: another manager (German) at the consortium's joint office, and closest colleague of A. there, who was introduced to the scheme by A. when it was running, and whose responsibility was to check and co-sign invoices accepted by A.,
- Carlo C.: the Milan-based employee (Italian) of the Italian engineering firm, to whom A. seems to have proposed the "kick-back" scheme, to which he then agreed with A.,
- Dirk D.: a third manager (German) at the consortium's joint office, who had been asked by either A. or B. to co-sign invoices a few times, when the other one was not available, and he recognizes he did so although voicing his suspicion that the invoices may be over-charging but acquiesced after A. gave him a 3 000 Euro watch as a gift. D. has cooperated with the investigation, providing some relevant evidence.
  - The results of the investigations show that
- the Paris project was partially financed by the EU (30 % Union/70% French public funds),
- C. was the responsible within the Italian engineering firm to draft up and submit the invoices, which over-charged approx. 100 000 Euros in total,
- C. arranged that that an amount of approx. 50 000 Euros were falsely declared to be fees by a Swiss consulting firm and that they were transferred to A.'s bank account in Zurich,
- A. has not made any tax declarations regarding the funds received by him in his Swiss bank account.
  - Furthermore, a lawyer for D. has approached the handling EDP: D. is offering to testify against the other suspects and to compensate a part of the damage caused, i.e. at least the damage relating to the invoices co-signed by him. In return, he asks that no case is brought against him in court.

Questions:

- How should the handling EDP conclude his/her case against the four suspects?
- What would the exact charges be?
- What would be the competent court?
- What steps would the handling EDP have to take internally within EPPO?

*Note to trainer:*

- *See first part of case example and notes thereon.*
- *The Member State of the EDP should be changed to the participating Member State where the training takes place.*

- *The nationality of the suspects/accused A., B. and D. can be changed but at least one of them should hold a different nationality than the other two. The nationality of C. can also be changed but should be of the Member State where he and the engineering firm are based. All nationalities must be ones of participating Member States.*
- *Switzerland was chosen to illustrate that there may be jurisdiction of a third country and to introduce that country for a later part of the case focusing on international co-operation. Any other third country is possible, or it can also be changed to a participating or a non-participating Member State to facilitate the scenario.*

*The objective of this part is to discuss the different ways under the EPPO Regulation how to conclude the investigation phase (see Art. 10(3), 35(1)):*

- *Prosecution before a national court (Art. 36): The scenario aims at having A., B. and C. charged before a court. This can be a joint case against all three but does not need to. The most likely forum is Germany (or if changed: a different Member State with the seat of the consortium).*
- *The participants of the seminar could also discuss ensuing questions under their applicable national law, including procedural and defence rights: What would the exact charges be? What would be the competent court? What steps would the handling EDP have to take internally within EPPO? Would any of the accused require additional guarantees (e.g., interpretation) for the effectiveness of their defence rights? What would be the consequences if such procedural safeguards were not respected? Would the defence be able to cross-examine the whistle-blower during the trial and if not, could anonymity of the whistle-blower compromise the defence rights of the accused? Could this issue be raised by the defence and how? Would shortcomings in the application of procedural safeguards during trial necessarily lead to the annulment of the trial? And to the disregard of evidence? Could they be the basis for an appeal? Is it the role of the EDP to proactively ensure procedural guarantees are respected?*
- *Dismissal of a case (Art. 39): This could also be discussed. Case example would then need additions, e.g. death of a suspect, statutory limitation, prior final disposal, lack of evidence.*
- *Simplified prosecution procedure (Art. 40): The participants of the seminar should discuss whether D. is a candidate for a simplified procedure. This will involve a number of questions of national law (do such procedures exist under the applicable national law?, what are they?, would this case qualify?, what are the procedural steps?) and under Union law/the Regulation (does case meet the criteria of Art. 40?, what steps would the handling EDP have to take internally within EPPO?).*
- *Referral/transfer to national authorities (Art. 34): The discussion of the case example should also cover whether it may be justified to refer the case to the national level (Member State which is major contributor to project and thus incurred majority damage, in this example: France – entails complex issues of EU fiscal regulations and funding of national projects; Member State where accused reside and/or the suspects acted, in this example: Germany). The possible tax evasion matter can also be used to discuss EPPO competence over non-PIF offences/inextricably linked offences.*