



DIPARTIMENTO DI
GIURISPRUDENZA
SCHOOL OF LAW

THE EPPO and EU law: a step forward in integration



Co-funded by the
Erasmus+ Programme
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EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC 3: THE EPPO AND
NATIONAL AUTHORITIES –
CHALLENGES AND
OPPORTUNITIES

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JUDICIAL COOPERATION BETWEEN THE EPPO AND AUTHORITIES OF THIRD COUNTRIES AND NON- PARTICIPATING MEMBER STATES

15 MARCH 2023 (REMOTELY)



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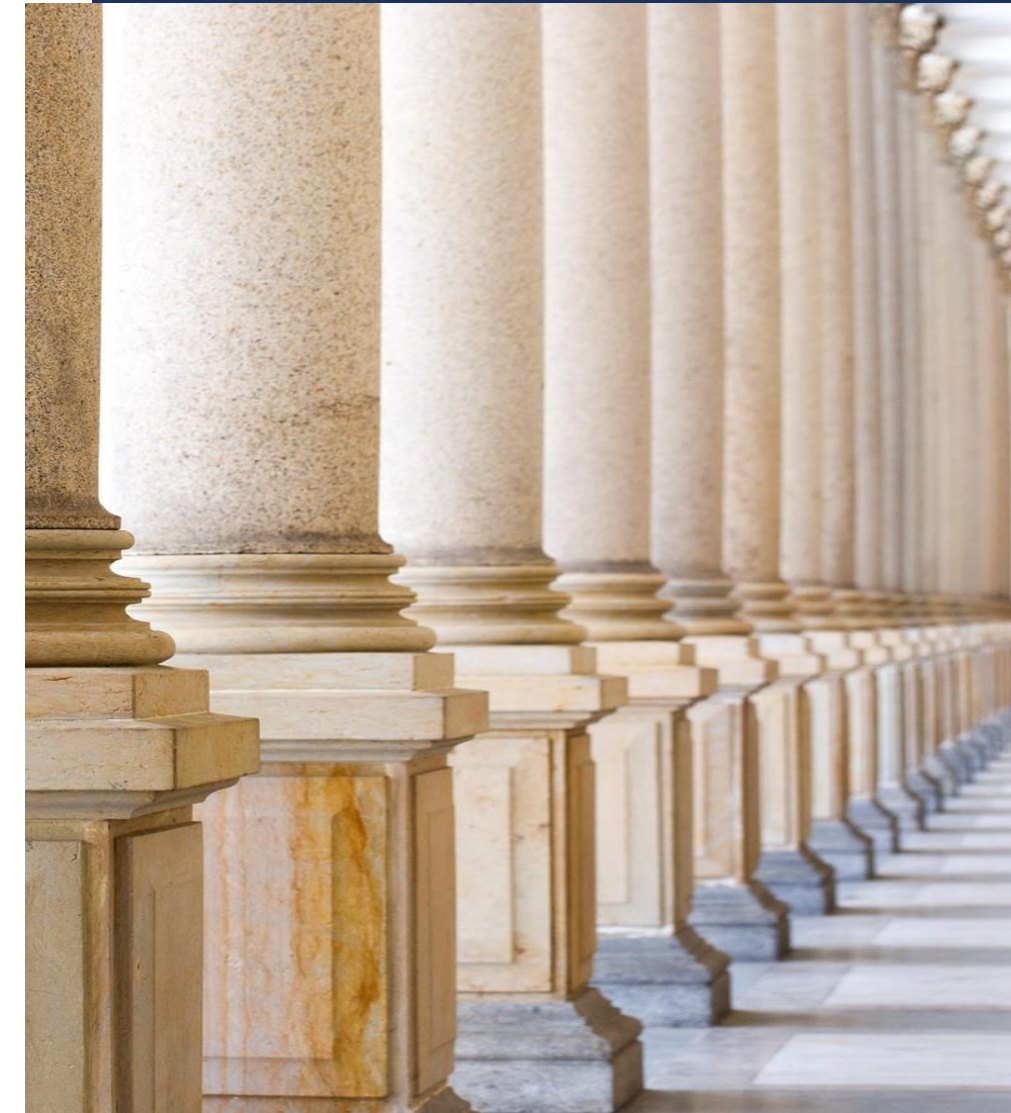
OUTLINE

I. Cooperation with authorities of third countries

- *Legal avenues as foreseen in the EPPO Regulation*
- *The impact of the EPPO's unique organisational model*
- *Current situation*

II. Cooperation between the EPPO and authorities of non-participating Member States (NPMS)

- *Legal avenues as foreseen in the EPPO Regulation*
- *Principle of sincere cooperation*
- *State of play*



I. COOPERATION WITH THE THIRD COUNTRIES: (I) LEGAL AVENUES AS PER EPPO REGULATION

- **Mutual legal assistance (MLA):**
 - ✓ 1. **International agreements on cooperation in criminal matters with the EPPO concluded by the Union or to which the Union has acceded (Article 104 paragraph 3);**
 - ✓ 2. **International agreements (mainly multilateral conventions) to which the participating Member States are Parties (Article 104 paragraph 4);**
 - ✓ 3. **In absence of an agreement pursuant to Article 104(3) or of a recognition pursuant to Article 104(4) of the EPPO Regulation:
 - 3.1. the **handling European Delegated Prosecutor may have recourse to his/her powers as national prosecutor** (Article 104 paragraph 5, first sub-paragraph);
 - 3.2. the EPPO may also request legal assistance in criminal matters from authorities of third countries in a particular case and within the limits of its material competence, relying on **reciprocity or international curtesy** (Article 104 paragraph 5, second sub-paragraph, recital 109 of the EPPO Regulation).**
- **Extradition:** the handling European Delegated Prosecutor has to request the competent national authority of his/her Member State to issue an extradition request in accordance with applicable treaties/national law.

I. COOPERATION WITH THE THIRD COUNTRIES: (2)

IMPACT OF THE EPPO'S UNIQUE MODEL

- The EPPO is an independent EU (prosecutorial) body, **recognised as Prosecution office in all participating Member States**
- The **European Delegated Prosecutors** in the Member States:
 - *“have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them” (Article 13 paragraph 1 EPPO Regulation;-*
 - *remain from the time of their appointment as European Delegated Prosecutors until dismissal, active members of the public prosecution service or judiciary of the respective Member States which nominated them (Art. 17 paragraph 2 EPPO Regulation).*

I. COOPERATION WITH THIRD COUNTRIES:

4. RELATION WITH THE EPPO'S TERRITORIAL COMPETENCE

- The EPPO is competent for:
 - Offences committed, in whole or in part, in a participating Member State.
 - Offences committed anywhere by a national of a participating Member State, or by an EU official.

I. JUDICIAL COOPERATION WITH THIRD COUNTRIES:

(5) CURRENT SITUATION AS REGARDS TREATIES APPLICABLE TO THE EPPO

- There is no international agreement concluded by the Union with a third country regulating **expressly** the cooperation in criminal matters with the EPPO, **except for the EU-UK Trade and Cooperation Agreement of 30 December 2020**, for which the EPPO has been notified as competent authority.
- **The Union is a Party to the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against transnational organised crime (UNTOC).** The updated declarations of competence, notifying the EPPO as competent authority, were registered by the depositary on 13 October 2022: **For crimes falling within their scope, the EPPO may use these universal instruments as a basis for cooperation with EUROMED countries.**
- Few MLA bilateral agreements concluded by the Union with the US (25.06.2003), Norway and Iceland (2006) Japan (2009) signed prior the establishment of the EPPO: EPPO not yet notified under these agreements, process ongoing for EU – Japan Agreement.

I. JUDICIAL COOPERATION WITH THIRD COUNTRIES:

(6) EPPO'S COMPETENCE UNDER THE COE 1959 CONVENTION

- Under the CoE instruments, the **EPPO shall be treated equally with prosecution offices of the Member States**, for the following reasons:

I. its unique organisation model:

- it is an EU body (prosecution office), but **recognised as prosecution office in all participating MS,**
- **EPPO EDPs are members of the national prosecution services and have (at least) the same powers as national prosecutors.**

2. the participating MS* have recognised and notified the EPPO as competent authority for the CoE 1959 Convention and its additional Protocols

Out of the EUROMED countries, Israel is a party to the 1959 Convention, which can therefore serve as basis for MLA between this country and the EPPO.

* as of 14.03.2023, 17 out of the 22.

JUDICIAL COOPERATION WITH THIRD COUNTRIES:

(7) SWITZERLAND - UNILATERAL RECOGNITION UNDER DOMESTIC LAW

- **As of 15 February 2023, the EPPO cooperates with the competent authorities of Switzerland on the basis of the applicable law of Switzerland**, namely the Federal Act of 20 March 1981 on international mutual legal assistance in criminal matters (fr. *entraide penale internationale*).
- Recognition of the EPPO as a competent authority under the domestic law by the Ordinance on cooperation with the European Public Prosecutor's Office, adopted by the Swiss Federal Council on 21 December 2022.

JUDICIAL COOPERATION WITH THIRD COUNTRIES:

(8) SCOPE AND NATURE OF WORKING ARRANGEMENTS

- Article 99, Article 104(1 & 2) EPPO Regulation.
- Scope and added value: Facilitating judicial cooperation and exchange of information, including by nomination of EPPO contact points in third countries and possibility for the latter to second liaison officers to the EPPO's headquarters.
- Some constraints:
 - the working arrangements are not treaties (binding international agreements): the WAs are binding only for the respective national authority and for the EPPO, not for the Union, its Member States or the third country concerned;
 - the WAs cannot serve, *per se*, as basis for transfer of personal data.

JUDICIAL COOPERATION WITH THIRD COUNTRIES: (9) WORKING ARRANGEMENTS SIGNED WITH AUTHORITIES OF NON-EU COUNTRIES

- **Working arrangements acknowledging that the EPPO is competent under the CoE legal instruments** have been concluded with competent authorities from:
 - Ukraine (18.03.2022);
 - Albania (4.07.2022);
 - Republic of Moldova (13.07.2022);
 - Montenegro (22.09.2022);
 - Georgia (28.09.2022);
 - North Macedonia (24.10.2022).
- MoU and WA signed with the US Department of Justice and Department of Homeland Security, came into effect on 26.07.2022: use of national powers and appropriate channels as per the applicable treaty between the respective MS and the US

COOPERATION WITH THE NPMS: (I) INTRODUCTION

❑ Who are the “NPMS”?



decided not to join the enhanced cooperation, but may join at any time. SE expressed its will to join soon the EPPO.



Protocol no. 22 to TFEU



Protocol no. 21 to TFEU

- ❑ The NPMS are not bound by the EPPO Regulation. Nevertheless, they have an obligation of sincere cooperation (Article 4 TUE)

COOPERATION WITH THE NPMS: (2) SINCERE COOPERATION BASED ON EXISTING EU LAW

- Article 99, Article 105(1 & 2):
- ✓ Working arrangements with relevant authorities of NPMS, in particular on exchange of strategic information, secondment of LO to the EPPO, designation of EPPO Contact Points in these MS.
- Article 105(3): operational judicial cooperation based on EU acts and other instruments for which the Member States notified the EPPO as a competent authority.

COOPERATION WITH THE NPMS:

(3) STATE OF PLAY

- WA signed with the Office of the Prosecutor's General of Hungary in March and April 2021.
- Ongoing negotiations aiming to conclude WAs with the relevant authorities of Ireland, Poland and Denmark.
- As of 27 December 2022, Poland recognised the EPPO as a competent authority under the relevant EU instruments (amendments to the Polish Criminal Procedure Code).
- Ireland not yet able to cooperate with the EPPO: possible recognition under national law later in 2023.

CONCLUSIONS / SUMMARY FOR HIGH SCHOOL STUDENTS

- ❑ Cooperation in criminal matters between the EPPO and third countries is based on:
 - Agreements concluded by the EU or to which the EU has acceded;
 - Multilateral conventions to which the participating Member States are Parties
 - bilateral treaties concluded by the participating Member States.
- ❑ Cooperation in criminal matters between the EPPO and non-participating MS is based on existing EU acquis
- ❑ Working Arrangements concluded by the EPPO with relevant authorities are meant to facilitate the application of the binding legal framework.



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THANK YOU FOR YOUR ATTENTION!

Dr. Florin-Răzvan RADU

Principal Legal Officer, Legal Service, EPPO

razvan.radu@epo.europa.eu

www.epo.europa.eu