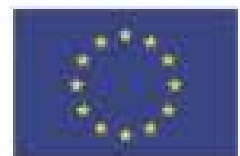
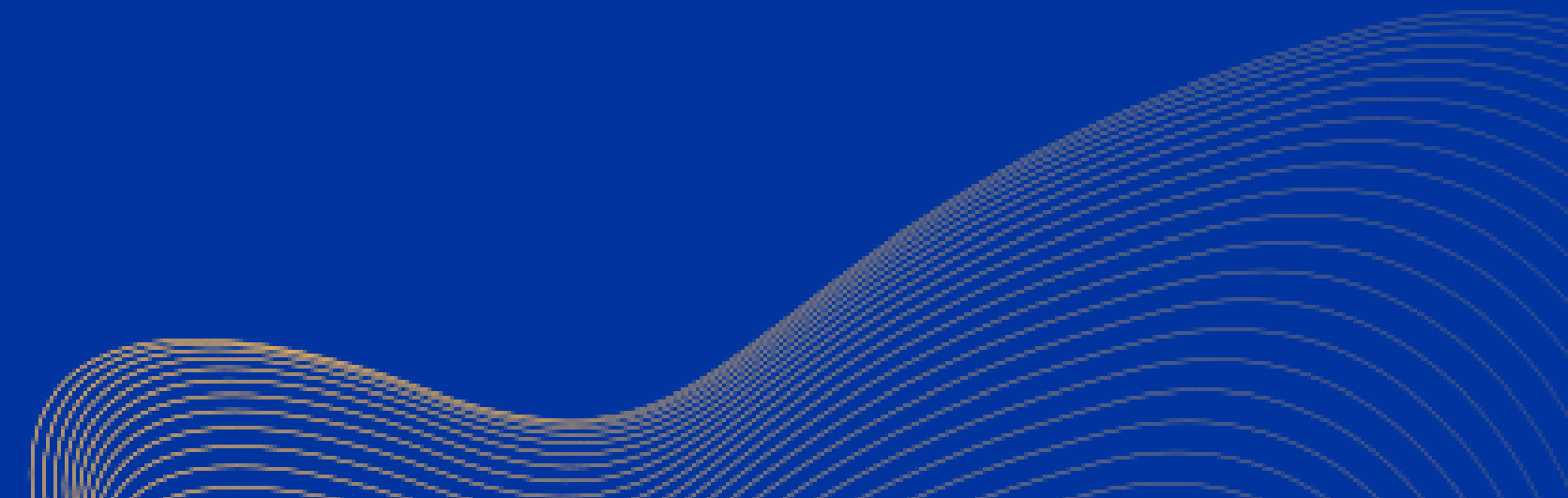


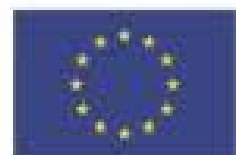
EPPO and EU Law

(Jean Monnet Centre of Excellence - STEPPO)



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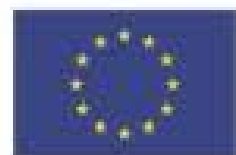
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THE EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

How enhanced cooperation
on the EPPO began, and paid off

LECTURER: Stefano Castellani
Procuratore Europeo Delegato



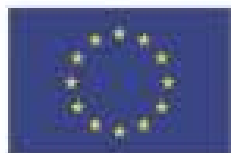
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The EPPO: a game-changer

As a supranational prosecution office, the EPPO has an unprecedented capacity to investigate and prosecute financial crime, using its 'helicopter view'. It can:

- ▶ carry out investigations across all participating Member States in a coordinated manner,
- ▶ rapidly exchange information,
- ▶ ensure the fast freezing or seizure of assets and, where necessary, request arrests.



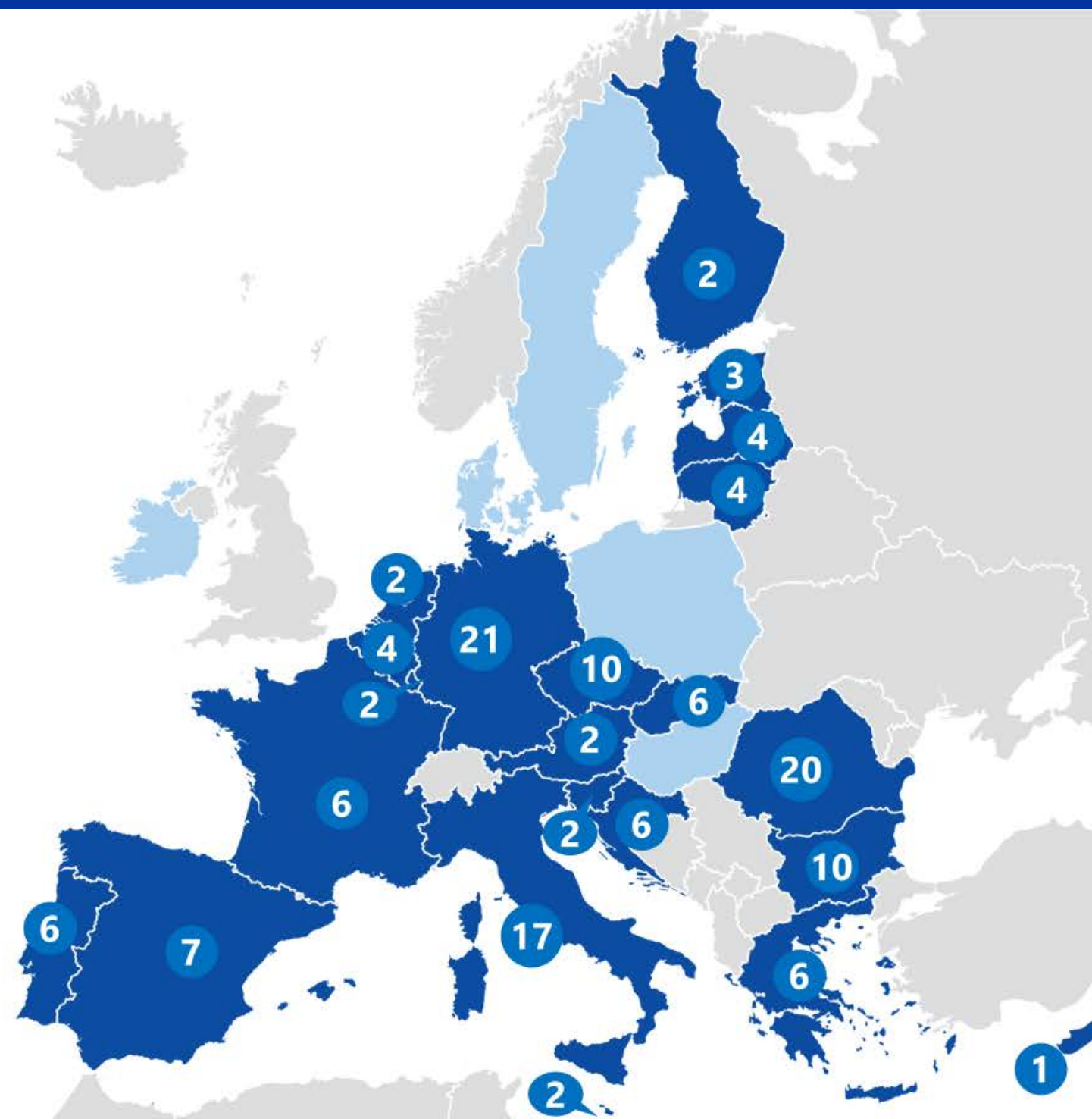
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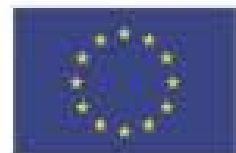


European Delegated Prosecutors

● Active number of European Delegated Prosecutors: 143

February 2024





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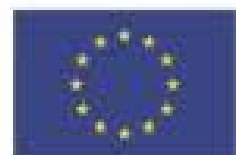


The concept of “Single Office”

Art. 8, par. 1, of Regulation 1939/2021 provides that:

*“the EPPO shall be an indivisible Union body operating as **one single Office** with a decentralized structure.”*

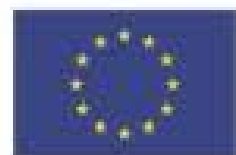
The EPPO is an independent **Judicial Authority**, organized at a central level (Central Office) and at a decentralized level.



Cross-border investigation

One case for all the MS - Allocation rule 26(2)

- If more Member states have jurisdiction;
- Case handled in a MS where the focus of the criminal activity is or where the bulk of the offences has been committed
- Justified deviation taking into account the following criteria, in order of priority:
 - (a) the place of the suspect's or accused person's habitual residence;
 - (b) the nationality of the suspect or accused person;
 - (c) the place where the main financial damage has occurred



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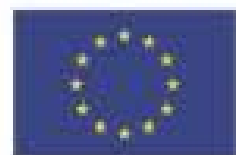


Legal Basis of cross-border investigations

Article 4 (3) Treaty on European Union

Articles 13, 30, 31, 32, 99-3 and 104 of EPPO Regulation (EU) 2017/1939 of 12 October 2017

Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order



Investigative Measures available to EDPs

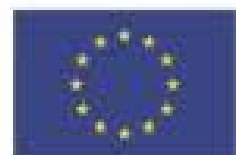
- *Section 2* of Regulation 1939/2017 introduces the instruments available to European Delegated Prosecutors within the scope of investigations assigned to them.
- Art. 30, par. 1, provides that: “*At least in cases where the offence subject to the investigation is punishable by a maximum penalty of 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: ...*”
- Par. 4 of the same article, provides that: “*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, in addition to the measures referred to in paragraph 1.*”

The article 31 of the EPPO Regulation

- Art. 31, par. 1, first part, of Regulation 1939/2017 provides that: “*The European Delegated Prosecutors shall act in **close cooperation** by **consulting each other in cross-border cases. ...**”.*
- The second part of this paragraph introduces a “**revolutionary provision**” in the field of international cooperation in criminal investigations:

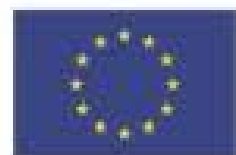
*“Where a measure needs to be undertaken **in a Member State other than of the handling European Delegated Prosecutor**, the latter European Delegated Prosecutor shall decide on the adoption of the necessary **European Delegated Prosecutor located in the Member State where the measure needs to be carried out.**”*





Investigative measures: single Prosecutor's Office vs mutual recognition

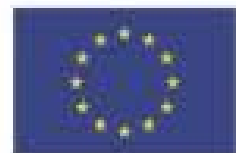
- **Art. 31 – Type of investigative measures**
- Measures listed in Art. 30 : at least 4 years punishment
 - *Searches and seizures*
 - *Production of any object or document, including stored computer data, encrypted, including banking and banking and traffic data*
 - *Freezing of instrumentalities or proceeds of crime*
 - *Interception of electronic communication*
 - *Tracking, tracing and controlled deliveries*
- Measures different from those listed in Article 30 : full assessment of proportionality
 - *If they do not require judicial authorisation and do not produce legal effects vis-à-vis third parties*
 - **can be steered by the EDPs easily and swiftly**



Investigative measures: single Prosecutor's Office vs mutual recognition

■ **Art. 31 – General principles**

- Art. 31 provides a new mechanism that replaces the mutual legal assistance and mutual recognition instruments;
- The justification and adoption of assistance measures are governed by the law of the handling European Delegated Prosecutor (Article 31.2 EPPO);
- The assisting EDP can trigger a process of consultation with the handling EDP and the supervisor European Prosecutor in the cases listed in art. 31(5);



Investigative measures: single Prosecutor's Office vs mutual recognition

■ **Art. 31 – Judicial authorization - Different scenarios**

a) Judicial authorization needed only under the law of the assisting EDP (31.3)

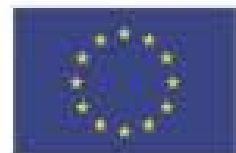
- The assisting EDP “*shall obtain the authorisation in accordance of the law of the Member state. If the authorisation is refused, the handling EDP shall withdraw the assignment*”;

b) Judicial authorization needed only under the law of the handling EDP

- The Handling EDP will obtain the authorisation and submit it to the assisting EDP(s) together with the assignment. (art.31.3)

c) Judicial authorization required in both Member states (handling/assisting)

- Article 31(3) does not expressly address these situations;
- What about recital 72 of EPPO Regulation “*..in any case there should be only one authorisation*”?
- Authorisation issued in both member states.

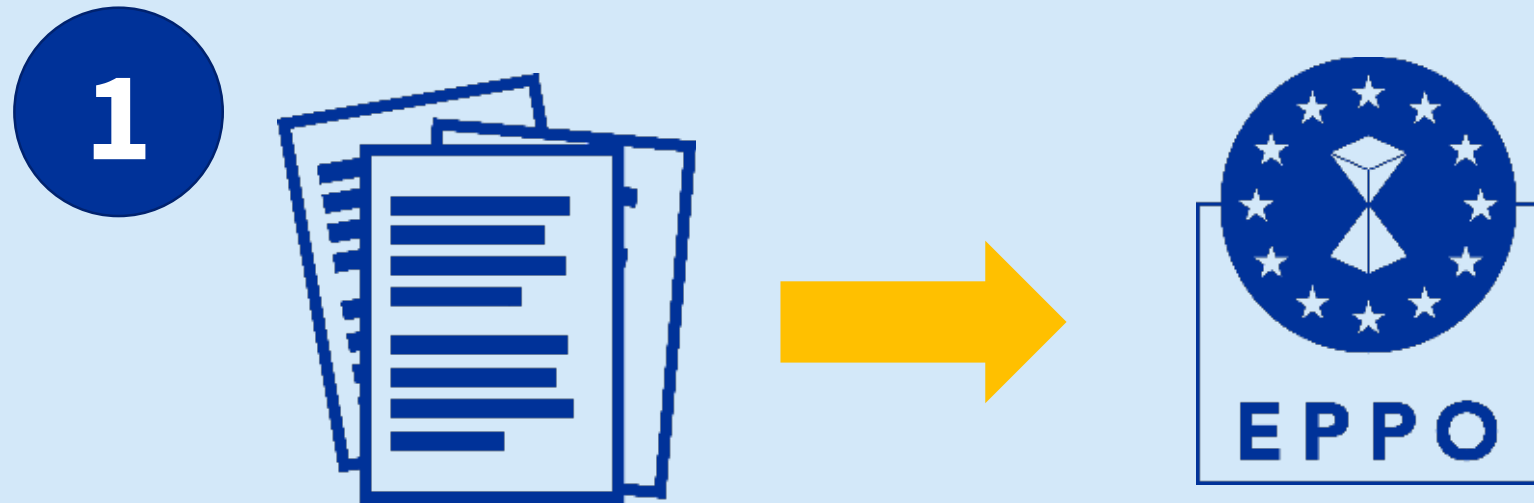


Investigative measures: single Prosecutor's Office vs mutual recognition

Art. 31 and EIO: practical aspects

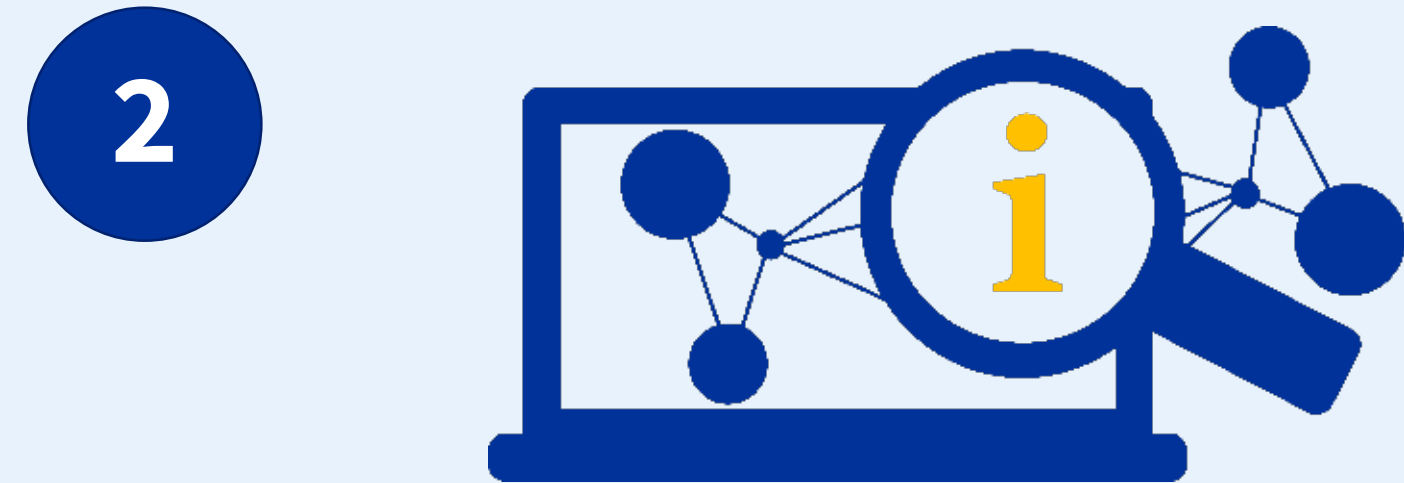
- The European Public Prosecutor transmits his or her request for assistance and receives the implementing acts via a secure transmission system 'CASE MANAGEMENT SYSTEM'
- The request for assistance shall state the time limit for performance
 - Failure to comply with the time limit for performance: intervention by the Permanent Chamber
 - In practice: consultation between European Delegated Prosecutors
- The EIO must be executed within 150 days: no legal consequences (Article 12 EIO)
- EIO and implementing acts are transmitted by any means (Articles 7, 13 EIO)

Cross-border investigations: how they work

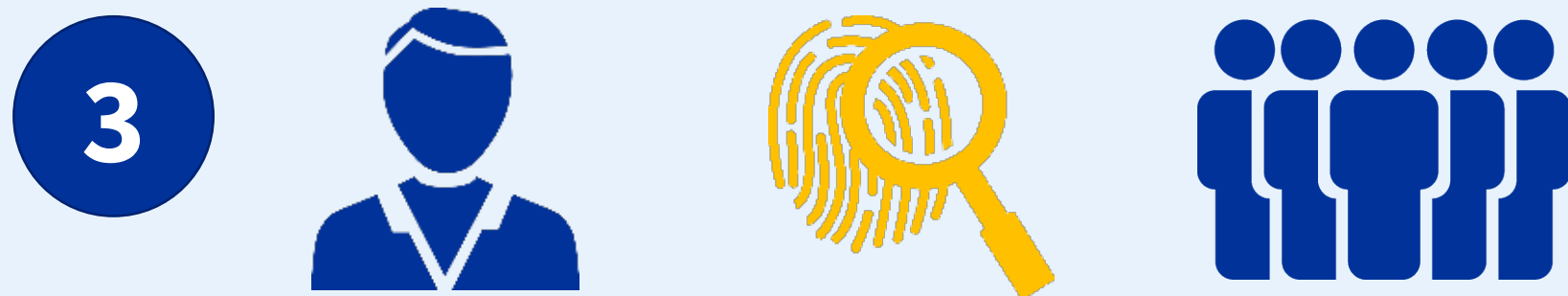


The EDP identifies the necessity to execute an investigative measure in a different MS

- Informs competent **European Prosecutor** in Luxembourg.
- Electronic transmission of the execution request.

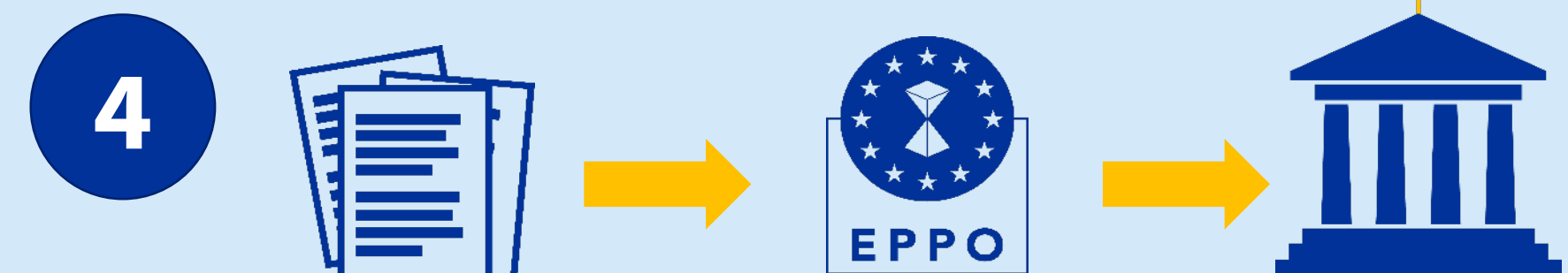


The assisting **European Prosecutor** of the MS where measures needs to be executed (who seats in Luxembourg) **allocates** the measure to an assisting EDP.



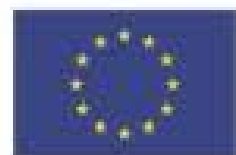
II The Assisting EDP executes the requested measure

- Requested measures executed upon instructions, unless of a conflict with fundamental principles in national law.
- Execution following national rules of the executing EDP.
- Direct execution or execution via a National Authority.



The requesting EDP receives the “results” of the requested measure

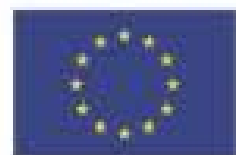
- Direct communication between the EDP’s Offices.
- Constant communication on the results of the measures.
- Results directly usable as evidence in front of a Court.



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ECJ Case C-281/22
G. K. and Others (Parquet européen)
The judgment of 21 December 2023

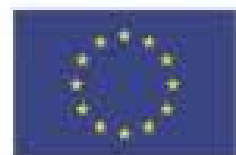


The judgment of 21 December 2023

Articles 31 and 32 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

must be interpreted as meaning that the **review conducted in the Member State of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate only to matters concerning the enforcement of that measure, to the exclusion of matters concerning the justification and adoption of that measure; the latter matters must be subject to prior judicial review in the Member State of the handling European Delegated Prosecutor in the event of serious interference with the rights of the person concerned guaranteed by the Charter of Fundamental Rights of the European Union.**

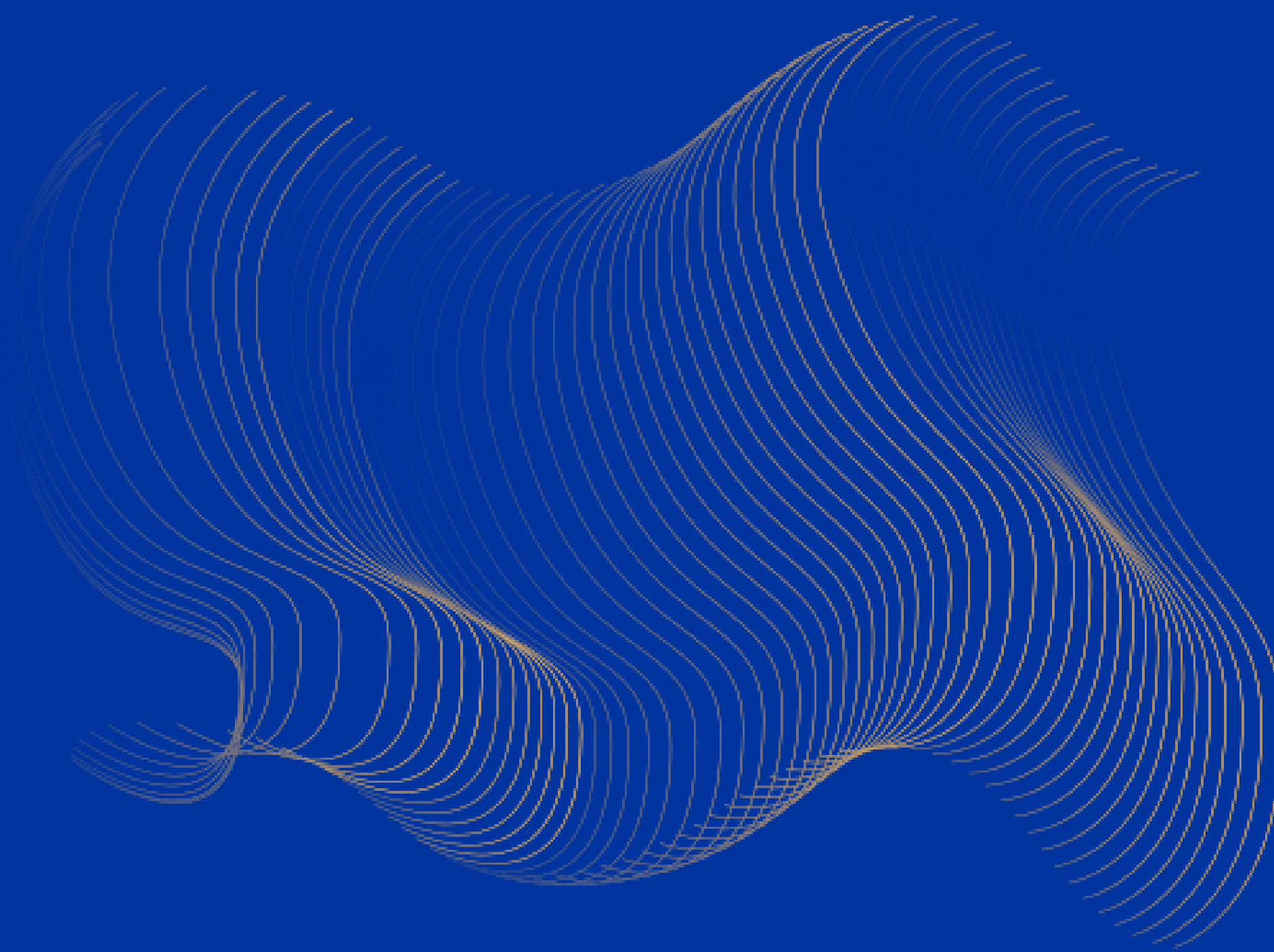
(operative part of judgment/"dispositif", see also para. 38 of judgment: "three questions, which it is appropriate to examine together")

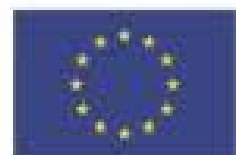


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COOPERATION WITH NON PARTICIPATING MS AND THIRD COUNTRIES



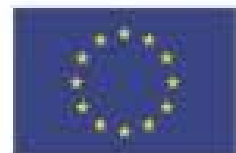


Cooperation with non-participating Member States:

- ▶ Judicial cooperation is based on EU instruments for which the EPPO is notified as the competent authority pursuant to Article 105(3) of the EPPO Regulation.
- ▶ In addition, working arrangements can be signed with relevant national authorities, pursuant to Articles 99 and 105(2) of the EPPO Regulation.

Working arrangements:

- Office of the Prosecutor General of Hungary – entered into force on 6 April 2021
- Danish Ministry of Justice – entered into force on 31 August 2023



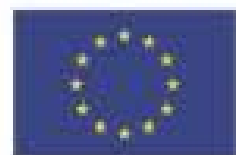
Cooperation with third countries:

Judicial cooperation is based either on agreements concluded by the Union/to which the Union is a Party (Art. 104 paragraph 3 EPPO Regulation; e.g. EU-UK TCA, UNTOC, UNCAC), international agreements to which the participating Member States are Parties (Art. 104 paragraph 4 EPPO Regulation; e.g. 1959 Convention on Mutual Legal Assistance), the national powers of the EDPs (Article 104 paragraph 5 EPPO Reg.), or reciprocity or international courtesy (Article 104 paragraph 5).

Working arrangements signed by the EPPO:

- Prosecutor General's Office (Ukraine) (18 March 2022)
- Prosecutor General's Office of the Republic of Albania (4 July 2022)
- Prosecutor General's Office of the Republic of Moldova (13 July 2022)
- United States Department of Justice and Department of Homeland Security (26 July 2022)
- Supreme State Prosecutor's Office Montenegro (22 September 2022)
- Prosecution service of Georgia (28 September 2022)
- State public prosecutor's office of North Macedonia (24 October 2022)
- Special Anti-Corruption and Organised Crime Structure of the Republic of Albania (29 June 2023)
- National Anti-Corruption Bureau of Ukraine (3 July 2023)
- Working Arrangement on the Cooperation between the EPPO and the Prosecutor's Office of Bosnia and Herzegovina (21 November 2023)

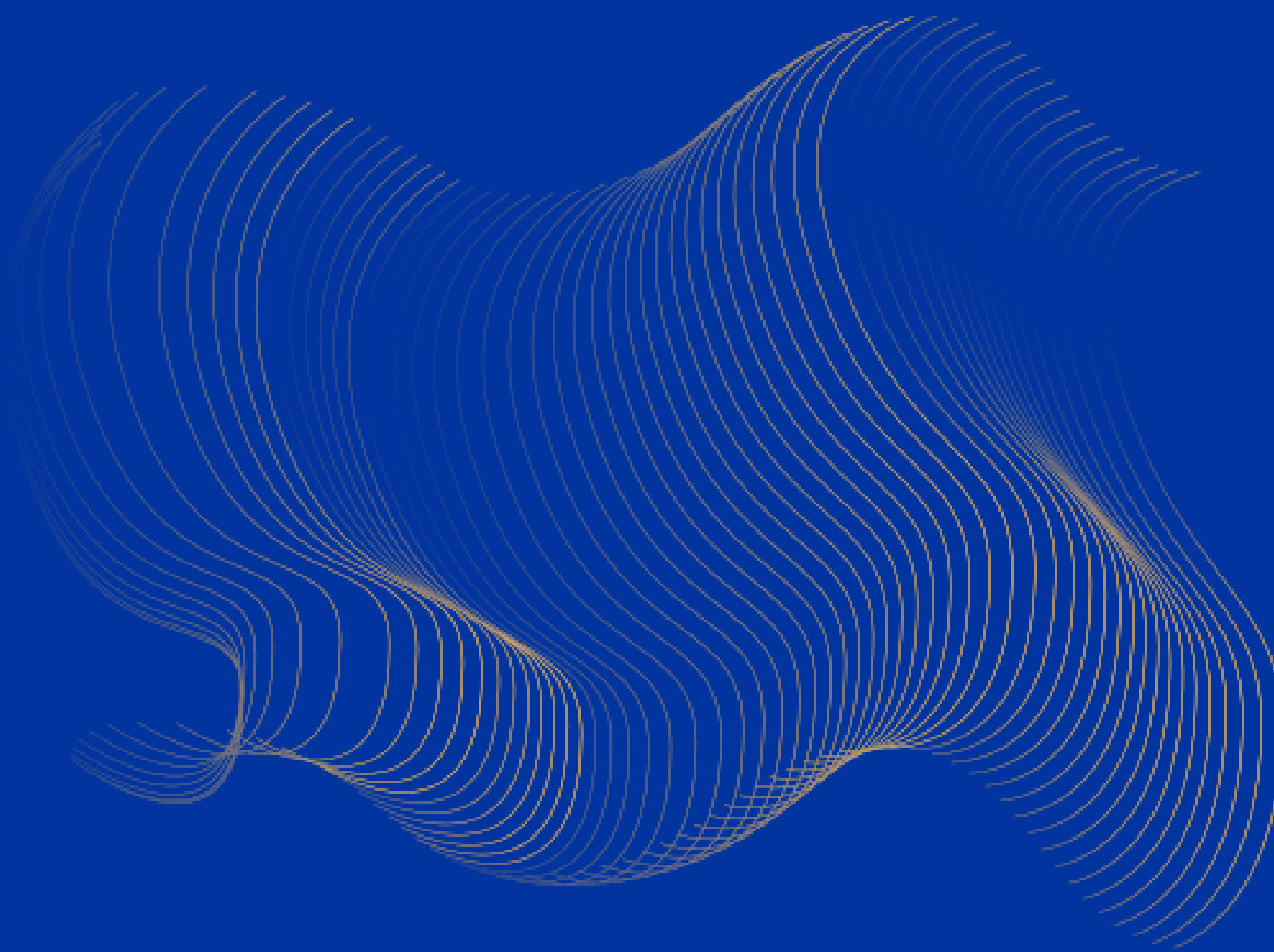
Ongoing: Serbia, Moldova National Anticorruption Centre



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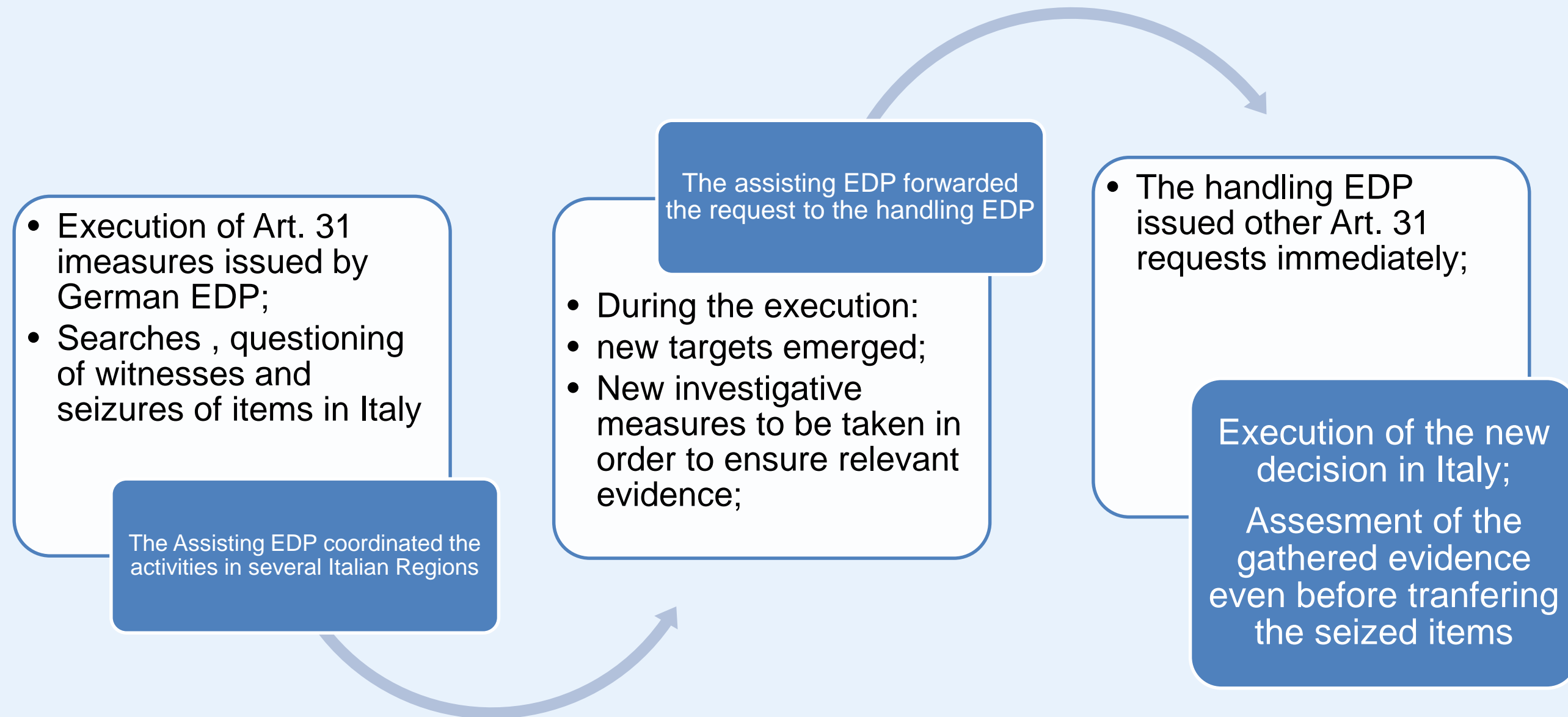


PRACTICAL EXAMPLES



Case scenario

Investigative measures – Art. 31



Case scenario

Execution of EAW – Legal Framework

- Directive 2013/48

- Directive 2016/1919

Article 10

The right of access to a lawyer in European arrest warrant proceedings

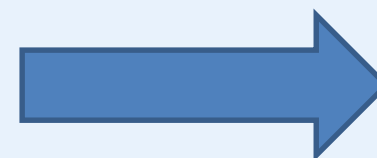
1. Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.
2. With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:
 - (a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;
 - (b) the right to meet and communicate with the lawyer representing them;
 - (c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.
3. The rights provided for in Articles 4, 5, 6, 7, 9, and, where a temporary derogation under Article 5(3) is applied, in Article 8, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in the executing Member State.

4. The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

Article 5

Legal aid in European arrest warrant proceedings

1. The executing Member State shall ensure that requested persons have a right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or until the decision not to surrender them becomes final.
2. The issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice.

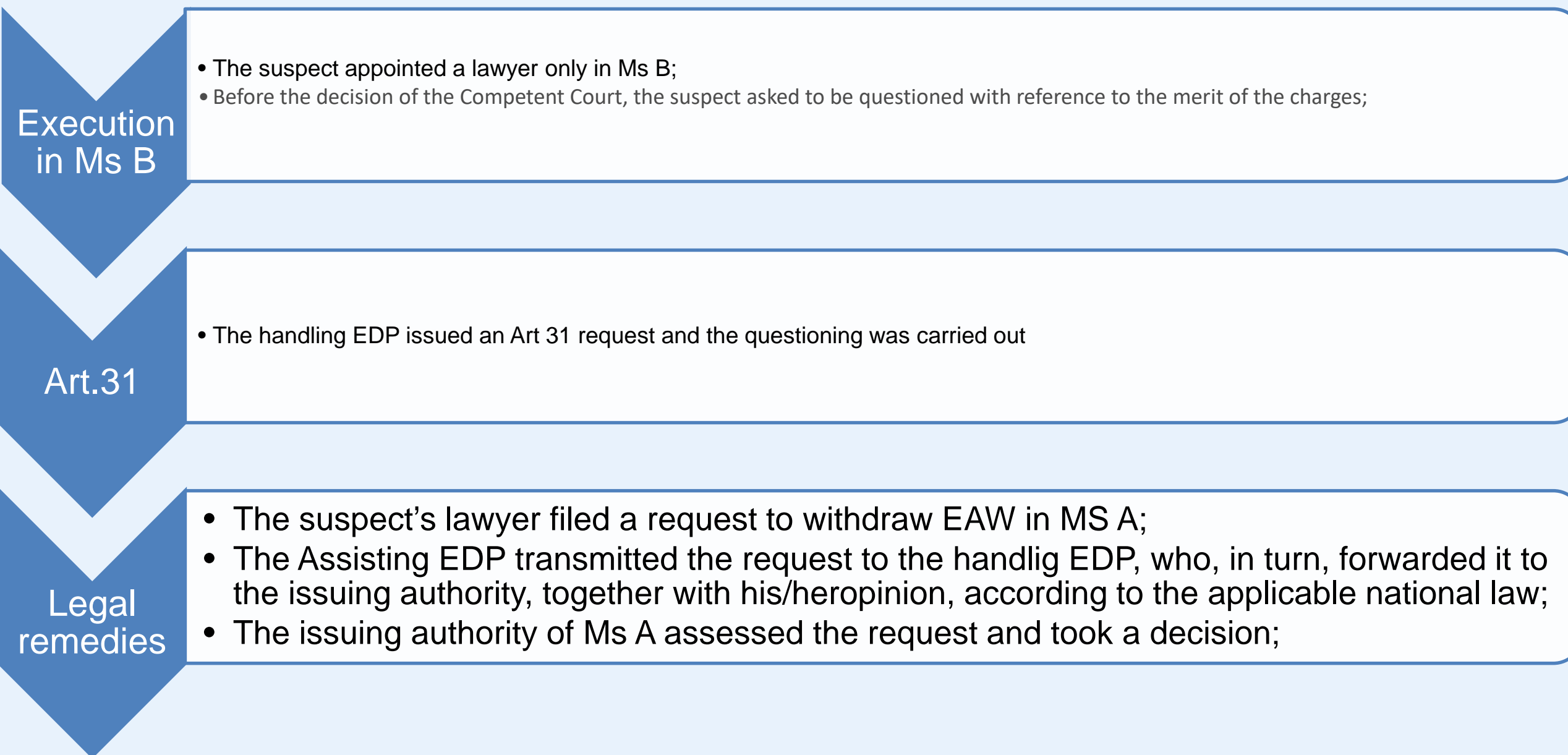


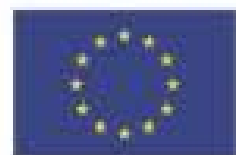
Limited role of the lawyer in the issuing Member State

Case scenario

Execution of EAW – What happened in practice

- Handling EDP in Ms A/Assisting EDP Ms B;
- EAW issued in Ms A against a citizen of Ms B

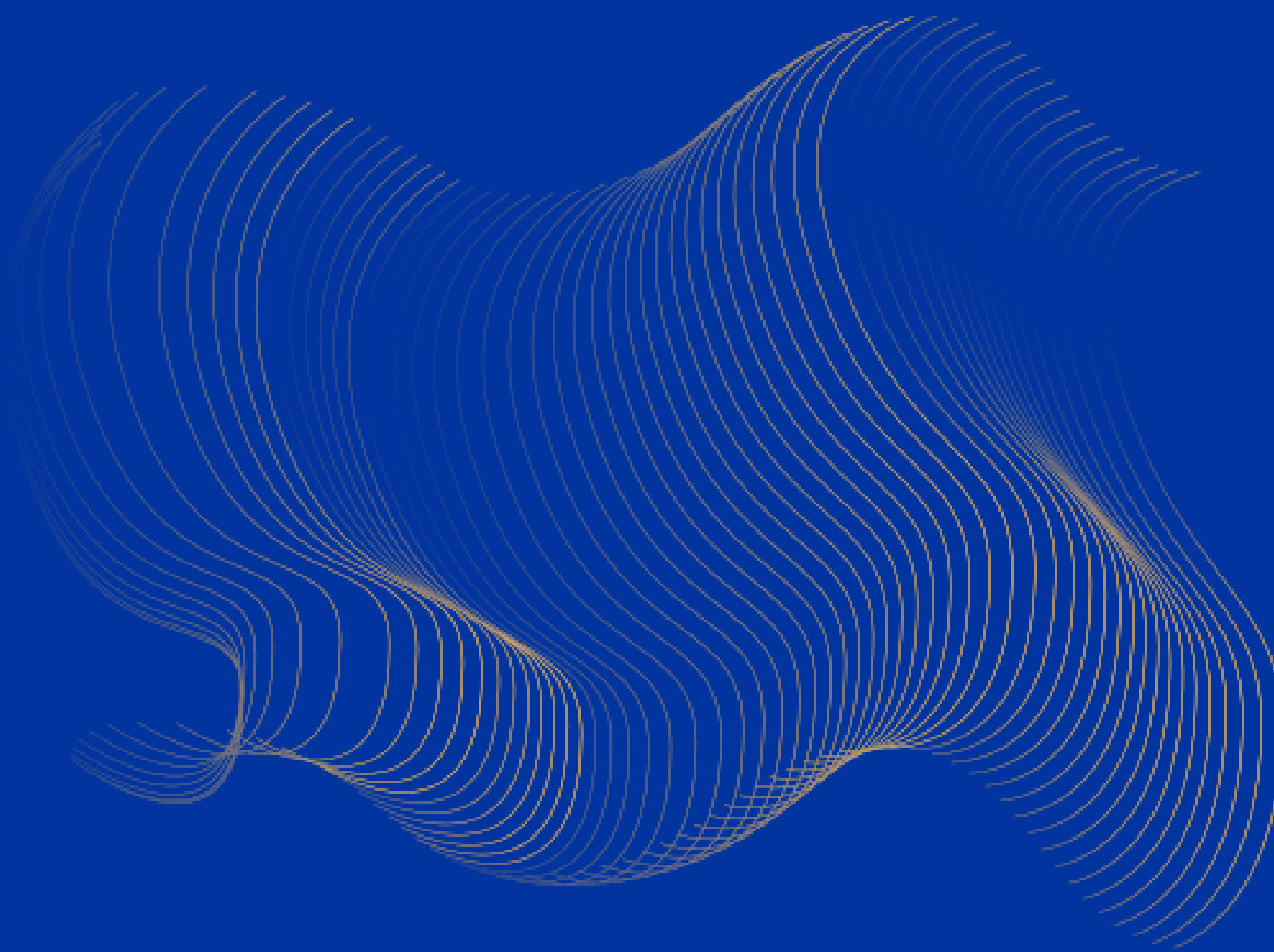


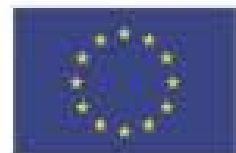


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STEPPO IN NUMBERS





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EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

2022 IN NUMBERS

1117



Active
investigations

€14.1
billion



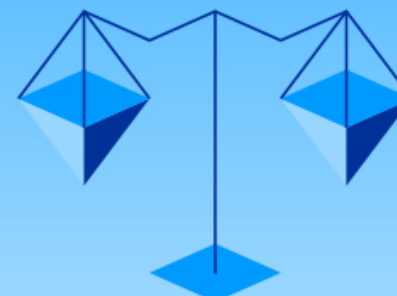
Estimated
total damages

€359.1
million



Freezing
orders

87

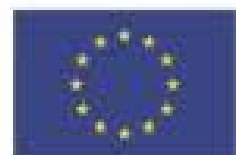


Indictments

20



Convictions



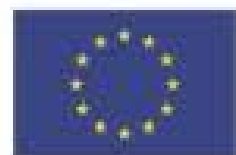
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Reports and complaints received in 2022

- ▶ 103 from EU institutions, bodies, offices and agencies
- ▶ 1 258 from national authorities
- ▶ 1 924 from private parties

- ▶ Out of 3 318 crime reports received in 2022, 58% came from private parties.



Conclusions

The creation of an EU body like the EPPO has enhanced effectiveness and efficiency of the cooperation on the fight against transnational PIF Offences.

Positive results can be noticed reading the statistics of the EPPO's first months of operations.

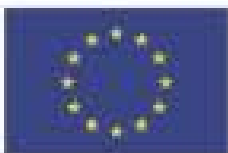
Practical solutions on the concrete forms of "coordination" are currently being tested, to improve the procedures.

Most of the consequences of the implementation of the concept of the "single Office" are still to be explored.

Offences which have no borders may be persecuted as such.

Cooperation among European Delegate Prosecutors may be instrumental to strengthen our European common Identity.

Model which may be usable as instrument against other categories of offences which cause a strong social alarm?



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THANK YOU

Stefano Castellani