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AFRADE Project (Agricultural FRAuds Detection)

EPPO – The revolution of the Art. 31 Reg. 2017/1939

17 June 2024, online

**Third Seminar: Challenges in Investigating Fraud Against
EU Agricultural Subsidies: Administrative and Criminal
Perspectives**

**Protecting EU
taxpayers' money
from criminals**



Cross-border investigations within the EPPO zone and cooperation with partners

- 1. Introduction to Article 31 of the EPPO Regulation**
- 2. Art. 31 in practice: The cycle of cross-border investigation**
- 3. Art. 31 in practice: The support provided by the Central Office**
- 4. Q&A**



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Introduction to Art. 31 of the EPPO Regulation

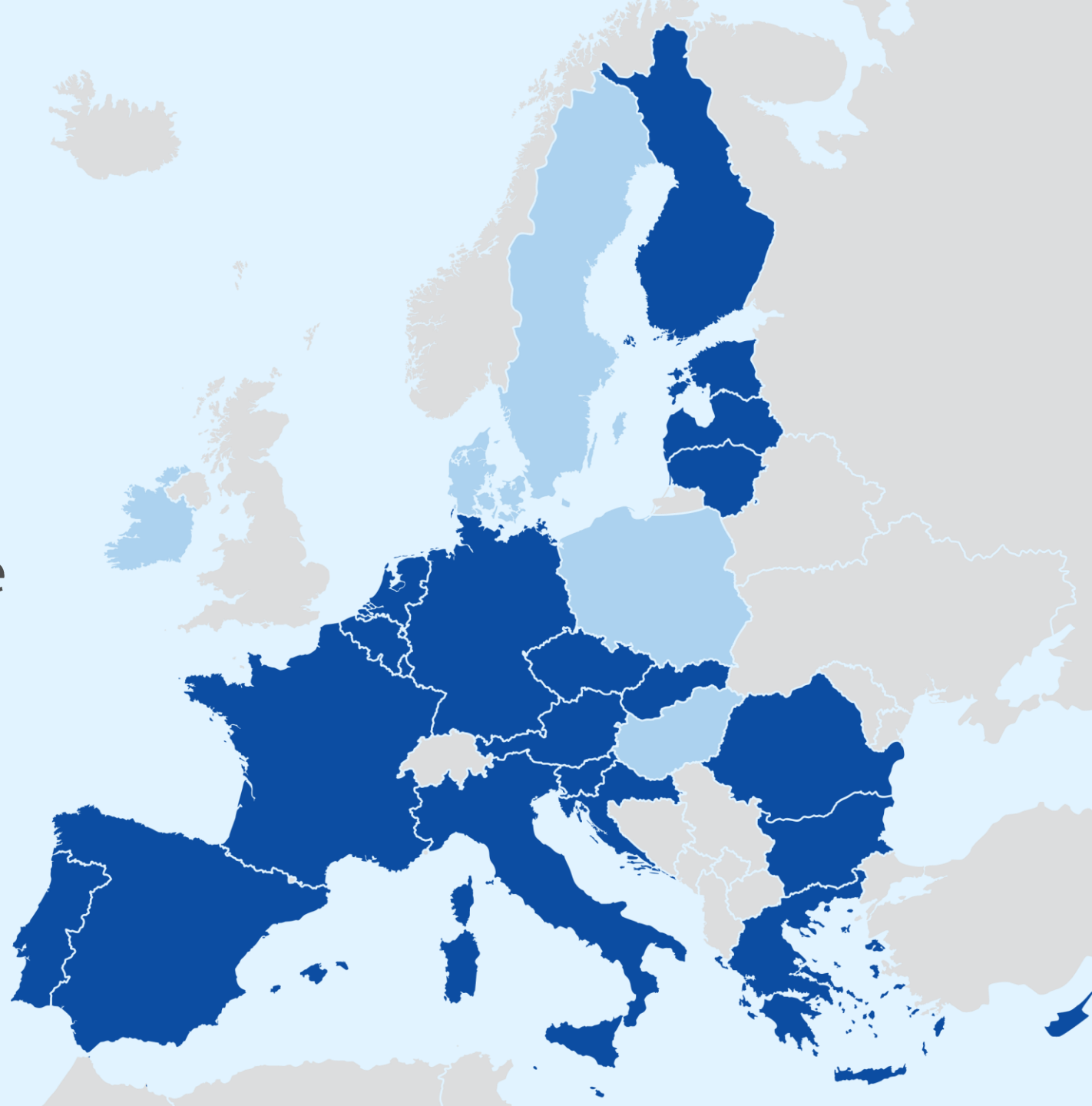
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Is it correct to talk about International Cooperation when the EPPO (and the art. 31) is involved?

- The concept of Single Office with a decentralized structure.
- The investigative measures are ***assigned*** by (H) EDP to the (A) EDP.



Art. 31 - Cross-border investigations

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

What are the measures available to the EDPs?

The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30:

- ▶ **search** any premises, land, means of transport, private home, clothes and any other personal property or computer system, and **take any conservatory measures** necessary to preserve their integrity or to avoid the loss or contamination of evidence;
- ▶ **obtain the production** of any relevant object or document either in its original form or in some other specified form;
- ▶ **obtain the production of stored computer data**, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law;
- ▶ **freeze instrumentalities or proceeds of crime**, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation;
- ▶ **intercept electronic communications** to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;
- ▶ **track and trace an object** by technical means, including **controlled deliveries of goods**.

Extensions and limitations

- ▶ 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 of Art. 30;
- ▶ The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where **there is no less intrusive measure available which could achieve the same objective**.
- ▶ The handling European Delegated Prosecutor may **order or request the arrest or pre-trial detention of the suspect or accused person** in accordance with the national law applicable in similar domestic cases.
- ▶ Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a **European Arrest Warrant**

First incipit of the Art. 31 + (2)

The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases.

Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.



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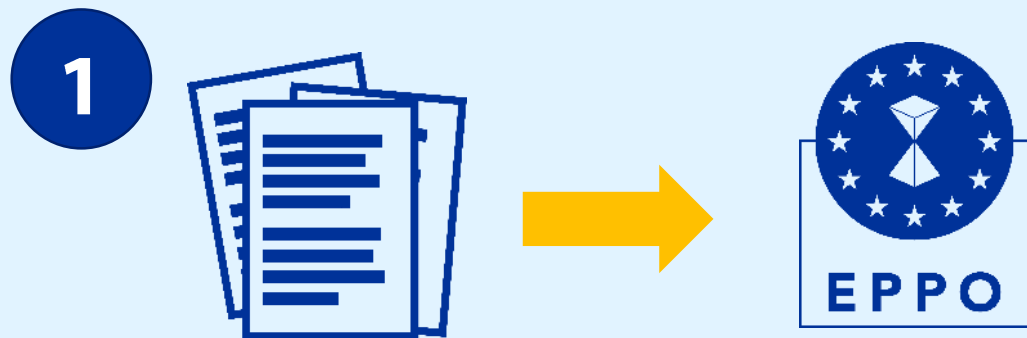
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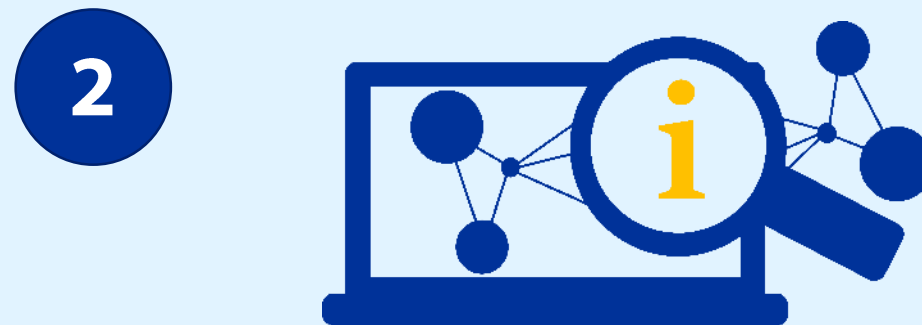
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Cross-border investigations: how they work



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

- Informs competent **European Prosecutor** in Luxembourg.



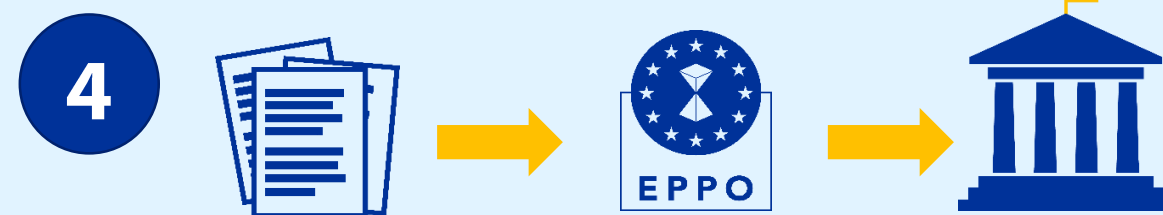
The assisting **European Prosecutor** of the MS where measures needs to be executed (who seats in Luxembourg) **allocates** the measure to an assisting EDP.

Electronic transmission of the execution request.



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 assisting EDP.
- Direct execution or execution via a National Authority.



The handling 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.



Art. 30 (5) + Art. 31 (2) + Art. 32

The procedures and the modalities for taking the measures shall be governed by the applicable national law.

The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor.

The assigned measures shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

Guidelines regarding different investigation measures

☐ Measures that do not require judicial authorization

- ▶ The assignment (in English) is simply exchanged/executed swiftly between EDPs through a dedicated [template](#).

☐ Measures that require judicial authorization

- ▶ In the MS of the EDP(H)
 - *The latter will obtain the authorization and attach it to the assignment (without any other supporting document).*
- ▶ In the MS of the EDP(A)
 - *The EDP(H) will submit the judicial authorization for the measure (if subject to legal remedies) together with the assignment. Unless otherwise agreed, both documents shall be translated in the language of the EDP(A).*

☐ No other supporting document needs to be transmitted.

☐ The assignment needs to be substantiated.

College Guidelines on Art. 31

- ▶ The practical application of Article 31 cannot be more cumbersome, bureaucratic and more time-consuming than the application of the Union acts giving effect to the principle of mutual recognition, such as the “EIO Directive” or the Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders.
- ▶ In principle, the assisting EDP should not have to provide the competent court of his/her Member State with more or different supporting evidence and documents than what the national prosecutor currently does when, i.e. executing a European Investigation Order (EIO), and the same legal practice should be applied. In line with the principle that the justification and adoption of the measures is governed by the law of the Member State of the handling EDP, the competent court of the Member State of the assisting EDP should not require more supporting evidence or documents, and not assess the “justification” and the “substantive reasons” for undertaking the measure. Meaning the necessity and proportionality of the requested measure.
- ▶ Where both the law of the Member State of the handling EDP and the law of the Member State of the assisting EDP require judicial authorization, the systematic interpretation of the EPPO Regulation would lead to the conclusion that “in any case there should be only one authorization”, as stated in recital 72. However, having only one judicial authorization would create a serious legal gap because competent judicial authorities would not be in a position to assess the substantive reasons of the measure.
- ▶ The gap in respect of legal remedies would represent a serious concern. The EPPO Regulation does not contain specific provisions on legal remedies in the framework of Article 31. However, Article 42(1) of the Regulation fully applies in respect of procedural acts issued or decisions adopted in this context that produce legal effects vis-à-vis third parties. More importantly, Article 47 of the EU Charter of Fundamental Rights applies, and legal remedies must be granted in respect of the substantive reasons of the measure in the Member State of the handling EDP.
- ▶ Therefore, recital 72 of the EPPO Regulation cannot be applied in all situations, because it would be in violation of Article 47 of the EU Charter of Fundamental Rights and of Article 42(1) of the EPPO Regulation.

General principles – College Guidelines

- ❑ The application of Article 31 should be at minimum **as effective as mutual recognition instruments**.
- ❑ The **substantive reasons and conditions** for adopting any cross-border measure are governed by the **law of the issuing Member State**:
 - ▶ Those reasons and conditions can be challenged only in that Member State.
 - ▶ The Court at assisting level should not assess the "justification" and the "substantive reasons" for authorizing the measure.
 - ▶ The latter should not require more supporting evidence/documents than currently for an EIO.
- ❑ The College encourages **close cooperation and regularly consultation between EDPs** in order to ensure the most effective execution of the measures and avoiding unnecessary bureaucratic burden.
- ❑ The College acknowledges that the **principle of one judicial authorization cannot be applied in all situations** (double judicial authorization may be required, absence of legal remedy).

ECJ case C-281/22 – Opinion of the Advocate General and Final Ruling

- ▶ *“...The EPPO Regulation should be understood as allowing the court of the assisting European Delegated Prosecutor to review only the aspects related to the execution of an investigative measure, and to accept the assessment by the handling European Delegated Prosecutor that the measure is justified...”;*
- ▶ *“...the EPPO was intended to be **an efficient mechanism** in the fight against crimes damaging the EU’s financial interests, including cross-border investigations. Full judicial review in the Member State of the assisting European Delegated Prosecutor would result in the EPPO cross-border investigations being a less efficient system than intended...”;*
- ▶ *...Thus, allowing the court of the Member State of the assisting European Delegated Prosecutor **to review only the aspects related to the execution of an investigative measure** ensures that the EPPO efficiently performs its tasks, and does not endanger the protection of fundamental rights...”.*



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The support from the Central Office

▶ Example of activities:

- ▶ Draft reports on specific requests of the EPD (analysis of documents, analysis of bank accounts, analysis on flow of money and reconciliation with documents like invoices/CMRs/other documents, etc.);
- ▶ Draft reports in accordance to internal investigations and analysis (CMRs, CMSs queries, ex officio cases, etc.);
- ▶ Cross-matching in ongoing investigations;
- ▶ Perform missions to support ongoing investigations;
- ▶ Organization of coordination meetings and action days, at the central or decentralize level;
- ▶ Participation in action days;
- ▶ Contact and support National Authorities and LEAs in performing their activities;
- ▶ Facilitate activities in cross-border cases (facilitate the cooperation among Law Enforcements of different Countries; identify point of contacts in other member States on behalf of the EDPs; collection of documents on behalf of the EDPs/Law Enforcement of other Countries; organization of meetings with EDPs and Law Enforcements to discuss aspects of the investigations, etc.;
- ▶ Close cooperation also after the action day;
- ▶ Provide testimony in Courts;
- ▶ Working together to get to an **EPPO** successful investigation.



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Questions and Answers

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