



Eurojust Guidelines on How to Prosecute Investment Fraud

This leaflet accompanies the Eurojust Guidelines on How to Prosecute Investment Fraud. These guidelines detail the legal and operational issues that prosecutors may come across when investigating and prosecuting investment fraud cases, and outline the support which can be provided by both Eurojust and Europol. This leaflet, which is translated into all official EU languages, provides a summary of the main challenges identified and sets out the main practical guidelines. The [full version of the guidelines](#) is available in English only.



The challenges

- ▶ The organised crime groups (OCGs) engaged in fraudulent investment schemes tend to carry out their criminal activities across multiple jurisdictions, seeking to avoid effective prosecution.
- ▶ The masterminds and other suspects high up in the hierarchy, such as top sellers and managers, must be identified.
- ▶ Investment fraud investigations generally involve a huge number of victims.
- ▶ The financial investigations can be challenging because of the large number and the complexity of the financial transactions to be analysed and because straw men are used to set up companies and open bank accounts.
- ▶ Investment fraud cases often involve links to non-EU countries, mostly as locations of call centres, but also as places of residence of OCG members high up in the hierarchy and/or as money-laundering destinations.

Practical guidelines

How to ensure successful coordination and cooperation

- ▶ As a first step, it is necessary to gain an overview of parallel or linked investigations at national and international levels (grouping victims by platform). Europol can provide support in identifying transnational links and gaining an overview of the scope of the case.
- ▶ In countries with victims, territorial jurisdiction is largely determined by the place of residence of the victims, often resulting in multiple prosecution offices working on a case at national level. A solution could be to centralise proceedings at national level.
- ▶ With suspects operating in multiple jurisdictions, there could be a risk of conflict of jurisdiction. It is therefore vital to ensure a centralised and coordinated approach, not only at national but also at international level.
- ▶ At an early stage, the authorities involved could discuss and decide which country will prosecute whom and on the basis of which facts. For common suspects there is significant benefit in determining a priority to prosecute at an early stage, and in any case prior to an action day.
- ▶ In light of the ne bis in idem principle, particular attention must be paid to the possible impact on linked/parallel proceedings when top-level suspects are prosecuted.
- ▶ Countries with victims could discuss the possible centralisation of the proceedings in one country.



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How to investigate money flows and recover defrauded funds

Particular emphasis should be placed on the recovery of defrauded funds, as early discovery and timely intervention are essential to avoid dissipation. All possible channels should be used to trace and freeze the money as soon as possible.

- ▶ Related freezing certificates based on Regulation (EU) 2018/1805 should be issued as soon as possible.
- ▶ National Financial Intelligence Units should be involved as early as possible.
- ▶ The national Asset Recovery Offices in the Member States play a central role in identifying proceeds of crime.
- ▶ The support services available from the European Financial and Economic Crime Centre at Europol should be utilised.
- ▶ Victims should be advised early on that they may still be able to initiate a recall process by contacting their bank directly.

Eurojust's support

- ▶ Eurojust's assistance may be requested at any stage, by any of the judicial authorities involved.
- ▶ Eurojust can organise a dedicated coordination meeting in a case at any stage in an investigation/prosecution.
- ▶ Eurojust can help set up a JIT, assist during a JIT's operational phase and provide JIT funding.
- ▶ Eurojust can set up a coordination centre in a particular case to facilitate the coordinated and simultaneous execution of measures in multiple countries during an action day.
- ▶ Eurojust can facilitate cooperation with non-EU countries.

How to deal with a huge number of victims

- ▶ At an early stage, national authorities could (if legally possible) send a questionnaire to victims, asking whether they would like to provide answers to the questions in written form and join the criminal proceedings to pursue compensation.
- ▶ It can be helpful to categorise the victims of investment fraud.
- ▶ For reasons of procedural economy, it may be advisable to focus on victims above a certain threshold of damage.
- ▶ During the trial stage, selected victims representing the different categories could be heard in person.






How to cooperate in the framework of a joint investigation team

It is necessary to keep a possible joint investigation team (JIT) focused and manageable; therefore, it is advisable to have only a limited number of parties in the JIT.

How to conduct action days successfully

- ▶ It is important to involve all key countries in action days to avoid the destruction of crucial evidence.
- ▶ A priority to prosecute should preferably be decided on for common suspects prior to an action day to avoid any infringement of the *ne bis in idem* principle.
- ▶ National authorities may decide to focus on specific aspects and, for example, tackle call centres located in various countries first, or to prioritise the measures to be executed.
- ▶ Eurojust can set up dedicated coordination centres in support of action days to ensure a coordinated and simultaneous execution of measures in multiple countries.
- ▶ Europol can support action days through the deployment of mobile offices, a universal forensic extraction device and a virtual command post.

The fundamentals of investment fraud cases

Complexity of facts	Supra-regional and international connections	Victims	Damages	Common suspects
<p> Identifying parallel/linked investigations at national and international levels</p> <p>➔</p> <p>Seek support from Europol for:</p> <ul style="list-style-type: none"> • intelligence gathering and analysis • operational meetings <p>Seek support from Eurojust for:</p> <ul style="list-style-type: none"> • <u>coordination meetings</u> • possible centralisation of proceedings at national level 	<p> Coordinating at international level</p> <p>➔</p> <p>Seek support from Eurojust for:</p> <ul style="list-style-type: none"> • coordination meetings • the exchange of information, mutual legal assistance requests and mutual recognition requests (e.g. <i>European Investigation Orders</i>) • cooperation with <u>non-EU countries</u> • <u>establishment and funding of joint investigation teams</u> • <u>coordinated action days</u> 	<p> Managing large numbers of victims from across the world</p> <p>➔</p> <p>Seek support from Eurojust for:</p> <ul style="list-style-type: none"> • possible centralisation of proceedings at international level • sending questionnaires to victims and categorising them (as far as legally possible) <p><u>Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime</u></p>	<p> Investigating money flows and recovering defrauded funds</p> <p>➔</p> <p>Seek support from Europol and Eurojust for:</p> <ul style="list-style-type: none"> • actions involving <u>Financial Intelligence Units, Asset Recovery Offices, CARIN</u> • <u>Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders</u> • issuance of <u>Freezing Certificates</u> or <u>Confiscation Certificates</u> 	<p> Avoiding conflicts of jurisdiction/<i>ne bis in idem</i> situations</p> <p>➔</p> <p>Seek support from Eurojust for:</p> <ul style="list-style-type: none"> • Coordination of efforts and decision on who should prosecute whom and for which facts – especially in relation to the top-level of an Organised Crime Group <p><u>Eurojust Guidelines for deciding 'Which jurisdiction should prosecute?'</u></p>



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