

Luxembourg, 22 July 2021

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NOTE

To the attention of: **JITs Network Secretariat**

Subject: **EPPO's participation in JITs**

In the framework of the update of the JIT Practical Guide¹, the JITs Network Secretariat has requested the EPPO to provide a contribution, to be added to Annex II of the Guide, on the mission and tasks of the EPPO and the legal basis for its participation in JITs.

Mission and tasks

The European Public Prosecutor's Office (EPPO) is the independent public prosecution office of the European Union², responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the Union. These include, *inter alia*, several types of fraud, cross-border VAT fraud with damages above 10 million euro, corruption, money laundering, etc.

The EPPO undertakes investigations, carries out acts of prosecution and exercises the functions of prosecutor in the competent courts of the participating Member States, until the case has been finally disposed of.

Currently, 22 Member States participate in the enhanced cooperation. So far, Hungary, Poland and Sweden have decided not to join the EPPO. Denmark and Ireland do not take part in the EPPO Regulation in accordance with their respective Protocols to the TFEU.

The Central Office of the EPPO consists of the European Chief Prosecutor and 22 European Prosecutors, one from each participating Member State, who together form the EPPO College. Moreover, at decentralised level, each participating Member State has at least two European Delegated Prosecutors (EDPs), responsible for conducting the investigations in their home country.

¹ Council document 6128/17 of 8 February 2017.

² See Council Regulation 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO.

The EPPO will work closely with the Member States which do not participate in the enhanced cooperation and with third countries in cases where it can exercise its competence. The EPPO will also work hand-in-hand with EU institutions and other bodies, offices and agencies in its activities. Working arrangements have been concluded, *inter alia*, with Eurojust, Europol and OLAF.

Legal basis for the EPPO's participation in JITs

Cross-border investigations in Member States participating in the EPPO

In cross-border investigations between Member States participating in the EPPO, there is no need for JITs or judicial cooperation requests for gathering evidence or freezing of assets³, as the EPPO will operate directly in the territory of those Member States on the basis of a *sui generis* regime that foresees an obligation for the assisting EDP to execute investigation measures assigned to him by the handling EDP in accordance with Articles 31 and 32 of the EPPO Regulation.

Cross-border investigations in EPPO cases involving non-participating Member States

The EPPO can set up JITs and be an active member of JITs in EPPO cases involving Member States of the Union that do not participate in the EPPO, i.e. Denmark, Hungary, Ireland, Poland and Sweden. In that respect, Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigations teams (the FD) should be considered a sufficient legal basis for the setting up of JITs.

A notification by the participating Member States on the basis of Article 105(3) of the EPPO Regulation in order to recognise the EPPO as a competent authority for the purpose of implementing this FD should not be necessary⁴ as the FD does not provide for any notification of 'competent authorities'. Where the EPPO exercises its competence to investigate and prosecute PIF offences, it should be understood that it is assuming the role otherwise carried out by the competent national authorities⁵ and, therefore, the possibility of setting up JITs with non-participating Member States could be considered.

The non-participating Member States and their authorities should be in a position to accept participating in such JITs without any further formality, particularly taking into account the principle of sincere cooperation (Article 4 TEU) and the duty to cooperate for the protection of the EU budget (Article 325 TFEU). From the side of the EPPO, either the competent EDP or EDPs (or a European Prosecutor in accordance with Article 28(4) of the EPPO Regulation) could act as

³ Except for the situations referred to in Article 31(6) of the EPPO Regulation.

⁴ In this respect, see the Presidency report on the relations of the EPPO with the Member States which do not participate in the enhanced cooperation, Council document 13147/1/20 REV1 LIMITE, p. 17.

⁵ See Article 25(1) of the EPPO Regulation.

leader of the team or members of the team in accordance with Article 1(3) of the FD that should apply, *mutatis mutandis*, to the EPPO.

Cross-border investigations in EPPO cases involving third countries

The EPPO can also set up JITs and be an active member in EPPO cases involving third countries, provided that there is a legal basis.

In accordance with Article 104 of the EPPO Regulation, that legal basis could either be an international agreement with one or more third countries concluded by the Union or, in the absence of such agreement, a relevant multilateral international agreement where Member States have recognised and notified the EPPO as a competent authority for the purpose of the implementation of that agreement.

International multilateral instruments that could be used, in principle, as a legal basis would be the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Article 20), for which the participating Member States will notify the EPPO as a competent authority, as well as the United Nations Convention against Transnational Organised Crime (Article 19) and the United Nations Convention against Corruption (Article 49), to which the Union is a Party and will notify the EPPO as a competent authority.

As a fallback option, the EDPs may seek recourse to their powers as a national prosecutor and request assistance from the authorities of third countries, including the possibility of setting up a JIT, on the basis of international agreements concluded by their Member State or based on the applicable national law.
