



Strasbourg, 20/05/2019

[PC-OC/DOCS2019/PC-OC(2019)05 English only]

<http://www.coe.int/tcj>

PC-OC(2019)05

English only

EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

PC-OC

**Building cooperation in criminal matters with the European Public
Prosecutor's Office (EPPO)**

Non-paper by the European Commission services

*Presentation at the meeting of the Committee of Experts on the operation of
European Conventions on Cooperation in Criminal Matters (PC-OC)*

Council of Europe, Strasbourg, 29 May 2019

I. Introduction

On 20 November 2017, Council Regulation (EU) 2017/1939 on the establishment of the European Public Prosecutor's Office (EPPO)¹ entered into force. Not all Member States take part in the EPPO at this stage. Currently, 22 Member States² take part and the remaining six Member States³ may decide to take part, at any time they wish or in accordance with their special position in the Treaty of Lisbon.

The EPPO is being set up now and is expected to become operational in November 2020 at the earliest. It may exercise its competence with regard to offences committed after 20 November 2017.

II. The EPPO

The EPPO is an independent European prosecution office mandated to investigate, prosecute and bring to judgement crimes affecting the financial interests of the Union. This includes crimes such as fraud, corruption, money laundering or complex VAT carousels⁴, as well as crimes related to the participation in a criminal organisation, if the focus of the criminal activity of such a criminal organisation⁵ is committing crimes that affect the financial interests of the Union, and, lastly, any other criminal offence that is inextricably linked to a crime affecting the financial interests of the Union.

As regards the EPPO's personal and territorial competence, the Regulation provides that the EPPO is competent for offences that were committed in whole or in part within the territory of one or several Member States participating in the EPPO; or that were committed by a national of a participating Member State, provided that a participating Member State has jurisdiction for such offences when committed outside its territory, or that were committed outside the territories of one of the participating Member States by an EU official or other servant, provided that a participating Member State has jurisdiction for such offences.

The EPPO is the first Union body that has the power to conduct the criminal investigations and prosecutions as a single Office in all participating Member States. It consists of a central level located in Luxembourg, where the European Chief Prosecutor, the European Prosecutors from each participating Member State and support staff are located, and a decentralised level in all participating Member

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1–71.

² EU Member States participating in the EPPO are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain and Slovenia.

³ EU Member States not participating at this stage are: Denmark, Hungary, Ireland, Poland, Sweden and the United Kingdom. Among those 6 Member States, Sweden, Poland and Hungary can notify any time their wish to join EPPO, whereas Ireland and the UK have a special "opt-in" regime (Protocol 21), and Denmark a special "opt-out" (Protocol 22) regime.

⁴ The criminal offences falling within the material competence of the EPPO are defined in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41

⁵ As defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42–45.

States, where European Delegated Prosecutors carry out the work at the proximity of the crimes committed. In carrying out the investigations and prosecutions, the EPPO will work hand in hand with the national law enforcement authorities, such as the police, customs or tax authorities, and bring cases to judgement before the competent national courts. This makes the EPPO different from any national prosecution office, which are all confined to their national territory.

III. Relations with third countries and international organisations

Article 104 of the EPPO Regulation sets out the framework for developing the EPPO's relationship with third countries and international organisations. It provides for a step-by-step approach in order to facilitate cooperation in matters falling within the competence of the EPPO.

- Article 99 of the EPPO Regulation is a useful starting point. It provides that the EPPO may conclude working arrangements with “[...] the authorities of third countries and international organisations.” Article 104(1) stipulates that these working arrangements may concern “the exchange of strategic information and the secondment of liaison officers to the EPPO”. Article 104(2) states further that the EPPO may, in agreement with the competent authorities concerned, designate “contact points in third countries in order to facilitate cooperation in line with the operational needs of the EPPO.” Given that these working arrangements are of a technical or administrative nature, they may be concluded relatively swiftly.
- As a next step, if the EPPO wishes to go further in order to establish more formal international cooperation with third countries, it must proceed along the pathway of options beginning at Article 104(3).
- Article 104(3) provides that international agreements, either concluded by the Union with one or more third countries, or to which the Union has acceded in accordance with the procedure set out in Article 218 of the Treaty on the Functioning of the European Union in areas within the EPPO's competence, shall be binding on the EPPO.
- Without such an agreement, cooperation can be ensured pursuant to Article 104(4) by the participating Member States, which shall recognise and, where applicable, notify the EPPO as a competent authority to implement multilateral international agreements on legal assistance in criminal matters. Such recognition and subsequent notification by the participating Member States is subject to the acceptance of a third country that is party to the same international agreement. Where necessary and possible, the international agreement could be amended accordingly. The Member States may also notify the EPPO as a competent authority for the purpose of the implementation of other international agreements on legal assistance in

criminal matters concluded by them, including, by way of an amendment to those agreements.

- Should any of these steps prove unsuccessful, Article 104(5) also foresees that the European Delegated Prosecutors handling a case may resort to their powers as national prosecutors to request legal assistance in criminal matters from authorities in third countries on the basis of international agreements concluded by the Member State they are located in, or applicable national law and, where required, through the competent national authorities. This means that the European Delegated Prosecutor makes use of his/her powers as national prosecutor in order to establish cooperation with the authorities of a third country for the purposes of the EPPO. To that end, the European Delegated Prosecutor, who acts in his/her capacity of national prosecutor, shall inform and endeavour to obtain the consent from the authorities of third countries that the evidence collected will be used by the EPPO for its purposes.
- As a last resort, the EPPO may rely on reciprocity or international comity and request legal assistance in criminal matters from authorities in third countries in a particular case within the limits of its material competence and subject to possible conditions set by the authorities of the third countries (Article 104(5), second subparagraph). Accordingly, Article 104(6) clarifies that subject to the other provisions of the Regulation and, where applicable, the relevant national law, the EPPO may provide the competent authorities of third countries with information or evidence for investigations which is already in the possession of the EPPO via the European Delegated Prosecutor handling a case.

Furthermore, Article 104(7) provides that the handling European Delegated Prosecutor may request the competent authority of his/her Member State to issue an extradition request in accordance with applicable treaties and national law.

Finally, it is important to note that the EPPO may transfer operational personal data to a third country only where the conditions laid down in Articles 80 to 83 of the EPPO Regulation are met.

IV. Conclusions

In conclusion, there is significant scope for the EPPO to reach out to various third countries in order to establish cooperation in criminal matters.

It should be ensured that the EPPO will be in a position to make use of the existing instruments of the Council of Europe, in particular the European Convention on Mutual Assistance in Criminal Matters, once it takes up its investigatory and prosecutorial functions, tentatively as of November 2020. Discussions to that end should be launched between the Member States of the Council of Europe and the Commission.

A successful cooperation between the EPPO and third countries should lead to the desired progress in the practical application of international agreements to gather evidence and provide other valuable assistance for the authorities in third countries and the EPPO alike.

Members of Council of Europe	
EU	Third State
<i>EPPO Member State</i>	
Austria	Albania
Belgium	Andorra
Bulgaria	Armenia
Croatia	Azerbaijan
Cyprus	Bosnia and Herzegovina
Czech Republic	Georgia
Estonia	Iceland
Finland	Liechtenstein
France	Republic of Moldova
Germany	Monaco
Greece	Montenegro
Italy	North Macedonia
Latvia	Norway
Lithuania	Russian Federation
Luxembourg	San Marino
Malta	Serbia
Netherlands	Switzerland
Portugal	Turkey
Romania	Ukraine
Slovak Republic	
Slovenia	
Spain	
<i>Non-EPPO Member State</i>	
Denmark	
Hungary	
Ireland	
Poland	
Sweden	
United Kingdom	