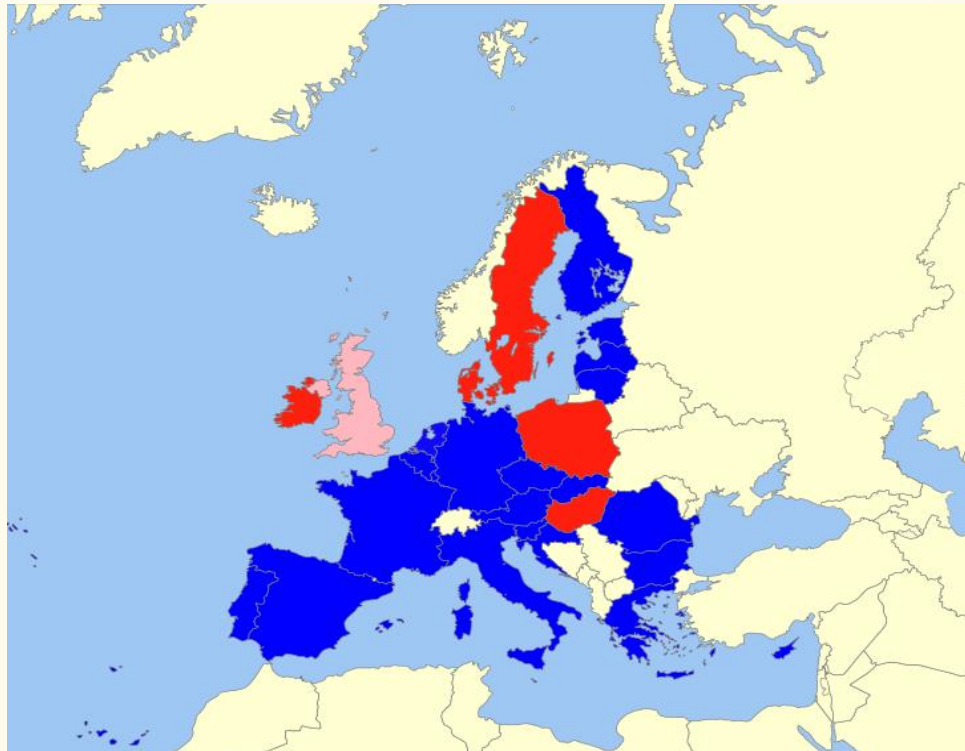


How does the EPPO exercise its competences?



Europäische Rechtsakademie, Trier, 6-7 February 2020

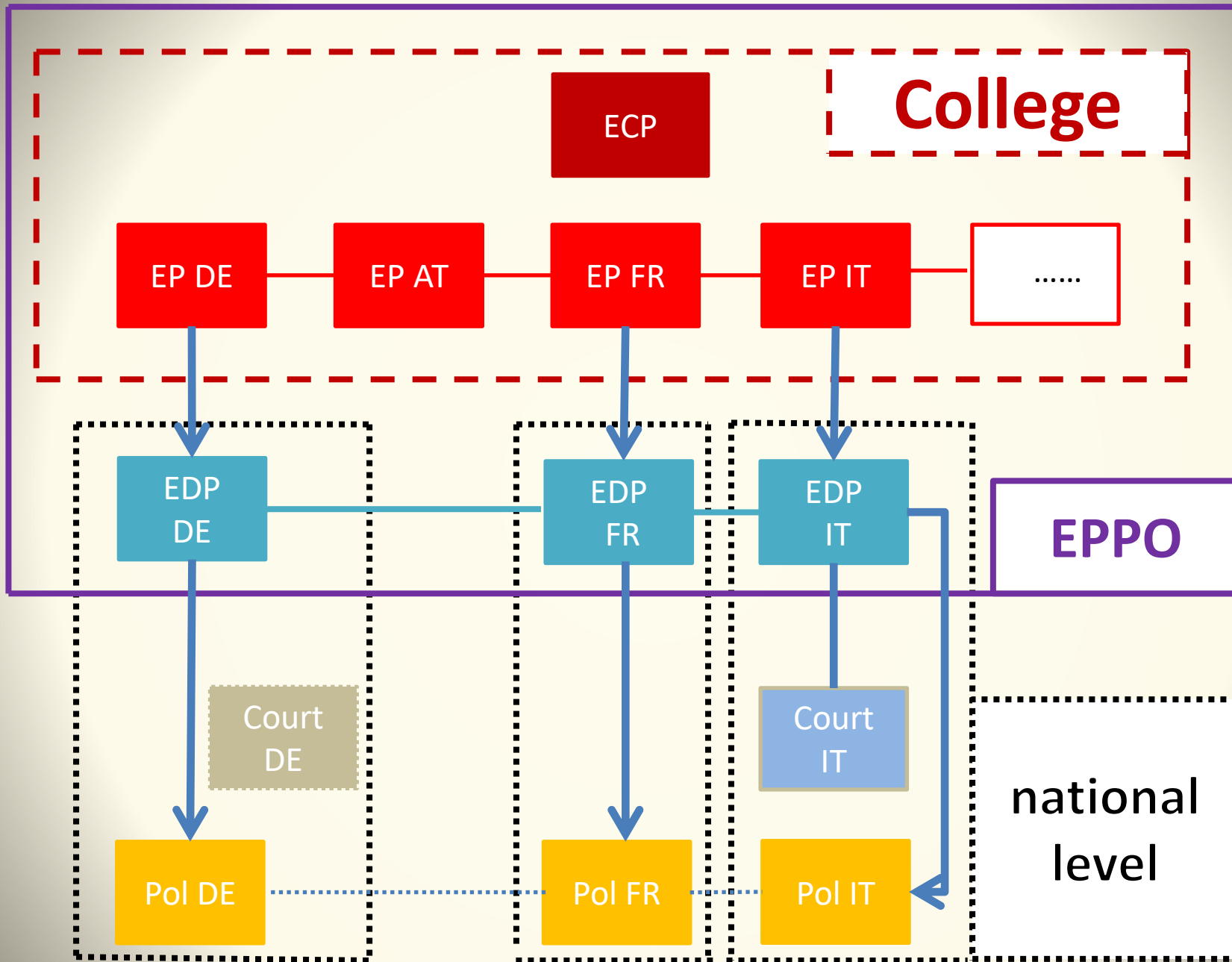
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Overview

- Reporting to the EPPO – how does a case become an EPPO case?
 - Reporting obligations
 - Preliminary evaluation
 - Information Channels
- Registration and verification of reports
 - Registration of reported conduct
 - Verification of information received
 - Internal case allocation and applicable national law
- Initiating an investigation / exercising the right of evocation
- Conducting investigations
 - Competence to conduct investigations
 - Investigation measures
 - Supervision and directing



Article 24 Reporting, ...

1. The **institutions, bodies, offices and agencies of the Union** and the **authorities of the Member States competent under applicable national law** shall **without undue delay report to the EPPO** any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3).
2. When a **judicial or law enforcement authority of a Member State** initiates an investigation in respect of a criminal offence for which the EPPO could exercise its competence in accordance with Article 22, Article 25(2) and (3), or (...) that authority shall **without undue delay inform the EPPO** so that the latter can decide **whether to exercise its right of evocation** in accordance with Article 27.

Recital # 52: Member States' authorities should set up a system that ensures that information is reported to the EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system.

Article 24 – preliminary evaluation

Article 24(1): “.... shall **without undue delay report to the EPPO** any criminal **conduct in respect of which it could exercise its competence**”.

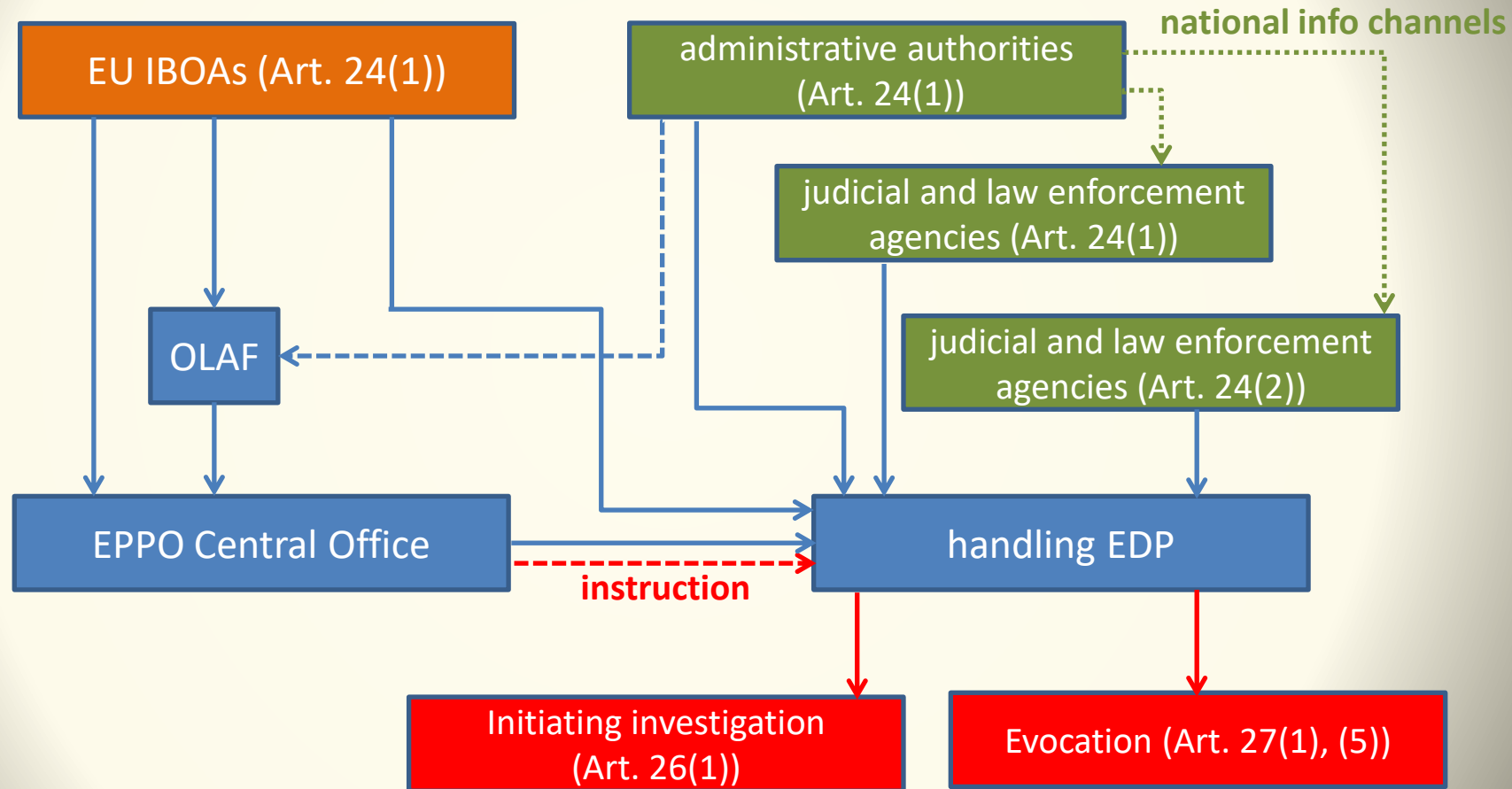
Recital # 51: “.... the national authorities of the Member States as well as institutions, bodies, offices and agencies of the Union should ... have in place **efficient mechanisms for a preliminary evaluation of allegations** reported to them.... “.

Recital # 53: “Compliance ... should be interpreted broadly to ensure that **national authorities report cases where the assessment of some criteria is not immediately possible**”.

Who should undertake such preliminary evaluation? The police/customs office that has received a report by a national administrative authority? Or a national prosecutor to whose attention the case was brought by the police/customs office?

- Where „an assessment of whether the criteria in Article 25(2) are met is not possible”, the EPPO shall be informed in accordance with paragraphs (1) or (2) (Article 24(5)).
- Where a judicial or law enforcement authority considers the offence to be outside of the EPPO’s possibility to exercise competence (Article 25(3)), it may initiate an own investigation, but has to report to the EPPO in accordance with Article 24(3).
- In both cases the EPPO may then exercise its right of evocation.

Information channels (Article 24)



Article 24(6) – Registration

Article 24(6): “Information provided to the EPPO shall be registered...”

Article 44(4): “ The case management system shall contain:

(a) a **register of information** obtained by the EPPO in accordance with Article 24, including any decisions in relation to that information,...”

Recital # 47: “The information in the **case management system should include information received** about possible offences that fall under the EPPO’s competence...”

- Purpose of registration of information; transparency; cross-referencing; monitoring; also: possible forwarding of information received (?)
- What shall be registered? Only a structured set of data (reporting authority or person, type of offence, place and time of offence, competent EDP etc.; decisions taken in respect of the information)? Or all information received (“pdf”)?
- Differentiate between reports received by Central Office and those received by EDPs?

Article 24(6) – Verification (process)

Article 24(6): “Information provided to the EPPO shall be verified in accordance with its internal rules of procedure. The verification shall assess whether, **on the basis of the information provided in accordance with paragraphs 1 and 2, there are grounds to initiate an investigation or to exercise the right of evocation**”.

- Responsibility for verification? Should be an **EDP, who would be competent to initiate an investigation** (c.f. criteria in Article 26(4)) or to exercise a right of evocation (c.f. criteria in Article 27(6))
- Thus information received by the **Central Office or by a receiving EDP, who would not be the competent EDP** should be forwarded to the competent EDP (how?)
- Any **role for the Central Office** in verifying the information (aside from the competent Chamber’s role in accordance with Articles 26(3) and 27(6))?
- Verification “**on the basis of the information received**”: but possible **preliminary investigations** (e.g. Article 24(9), Article 43) – but no investigation measures.
- In case of Article 24(2)/Article 27: should the national authority (upon request) **send the case file** to the verifying EDP before he/she takes a decision on evocation?

Article 24(6) – Verification (criteria)

Article 24(6): “Information provided to the EPPO shall be verified in accordance with its internal rules of procedure. The verification shall assess whether, **on the basis of the information provided in accordance with paragraphs 1 and 2**, there are **grounds to initiate an investigation or to exercise the right of evocation**”.

- Verify what?
 - ✓ Are the **conditions for material, territorial and personal competence of the EPPO** met – c.f. recital number 49?
 - ✓ Are the conditions for exercising EPPO competence met (Article 25)?
 - ✓ Has a **case already been initiated** by the EPPO or by a national authority?
 - ✓ Are there any **legal impediments** for conducting investigations/prosecutions (Article 39; applicable national law)?
- In case of Article 24(1) and 26(1): are there **reasonable grounds to initiate an investigation** (in accordance with applicable national law)? – legality principle
- In case for Article 24(2) and 27(1): Are there **grounds to exercise (an existing) right of evocation?** – legality principle does not apply (“whether to”; recital # 66)

Article 26 – internal allocation of cases

Principle condition for initiating an investigation:

Art. 26(1)): Investigation can be initiated by an EDP of a **Member State** which according to its national law **has jurisdiction over the offence.**

Principle for a possible choice of EDP / allocation of cases:

Art. 26(4): competence of the EDP from the Member State where the focus of the criminal activity is (**territory**)

Deviation from the principle where duly justified, 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.**

Possible subsequent reallocation (or merging/splitting of cases) by decision of the Permanent Chamber: if “in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4” (Art. 26(5)).

Article 26(1) – grounds to initiate

“Where there are **reasonable grounds to believe** that an offence within the competence of the EPPO ... has been committed, a **European Delegated Prosecutor** ... shall **initiate an investigation** and **note this in the case management system.**”

Article 45(1): “Where the EPPO decides to open an investigation in accordance with this Regulation, the **handling European Delegated Prosecutor shall open a case file.** ... Once an investigation has been opened, the **information from the register** referred to in Article 44(4)(a) **shall become part of the case file.**”

- “Note this” in the CMS (Article 26(1))
- Inform **the authority that reported** in accordance with Articles 24(1) or (2) (c.f. Article 26(2)) (in case of Article 24(2), not Article 26 (1) and (2) but Article 27 (1) should apply)
- Inform **competent national authorities** (Articles 25(5) and 26(7)) (who are they?)
- Reports received by the EDP become **part of the EPPO case file kept by the EDP**
- Also: Reports received by the Central Office (or a not-competent EDP), to be forwarded to the competent EDP **as originals**
- Any **accompanying documents** (possible evidence) to be used in the investigation may (at some point) become part of the case file in accordance with national law.

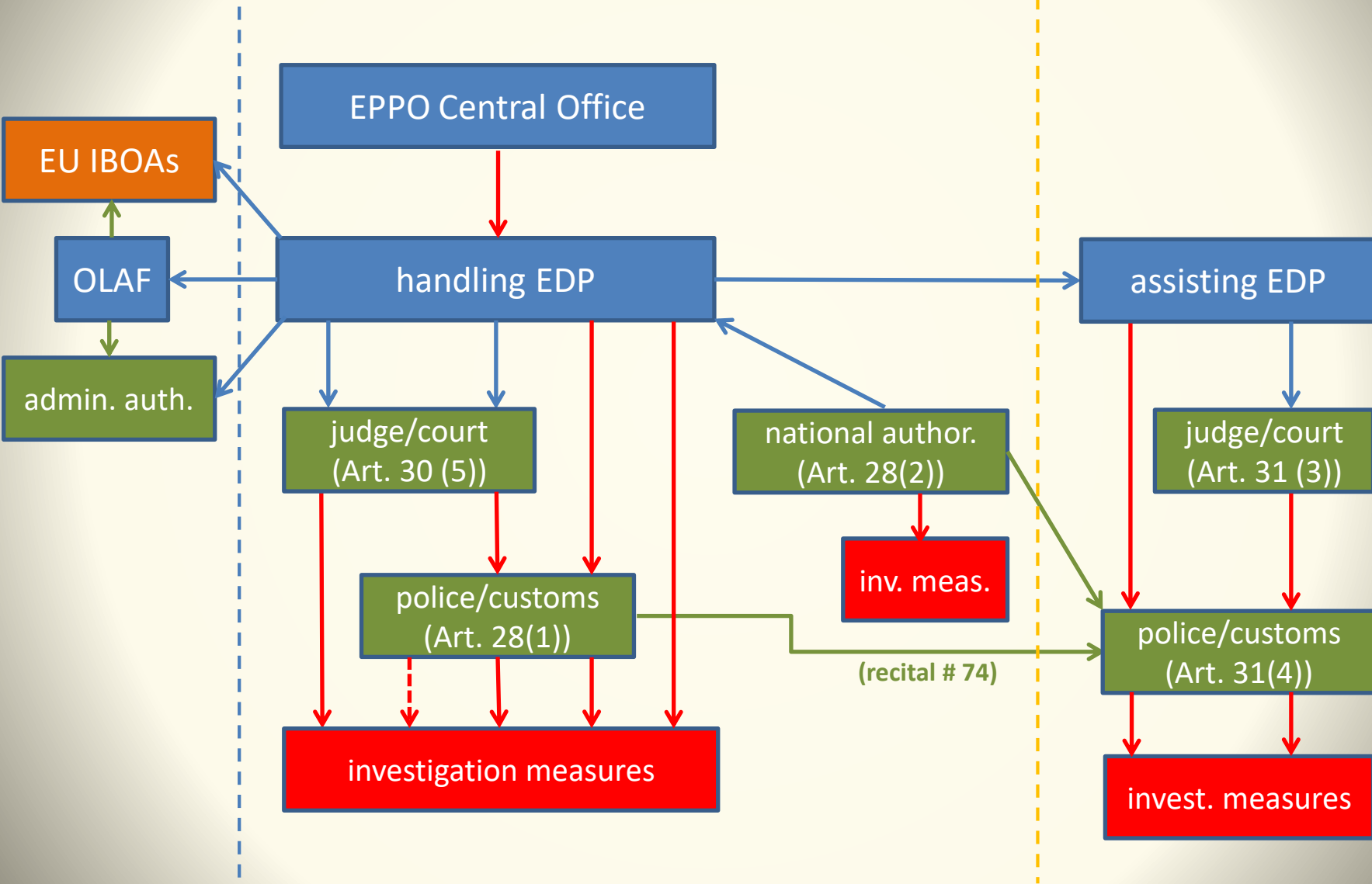
Article 27(1) – grounds to exercise right of evocation

“Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its **decision on whether to exercise its right of evocation...**”.

Article 45(1): “Where the EPPO decides to ... exercise its right of evocation in accordance with this Regulation, the **handling European Delegated Prosecutor shall open a case file.** ... Once an investigation has been opened, the **information from the register** referred to in Article 44(4)(a) **shall become part of the case file.**”

- Decision on right of evocation **to be taken by an EDP “from any Member State whose competent authorities have initiated an investigation...”** (Article 27(6)) and have informed the EPPO thereof in accordance with Article 24(2)
- EDP to inform the **competent authority that had reported the case** in accordance with Articles 24(2) and request **transfer of the file** (Article 27(5)) to the EDP
- This notion includes a **“transfer of proceedings”** as well as the actual **transmission of the case file**, which will become the EPPO case file
- Decisions under Article 27(1) have ***erga omnes* effect** also in respect of other national authorities (c.f. Article 25(1)); however, perhaps not in respect of Article 27(5); thus **EPPO may have to request a national authority to (also) provide a report** in accordance with Article 24(2) – c.f. Article 27(3)

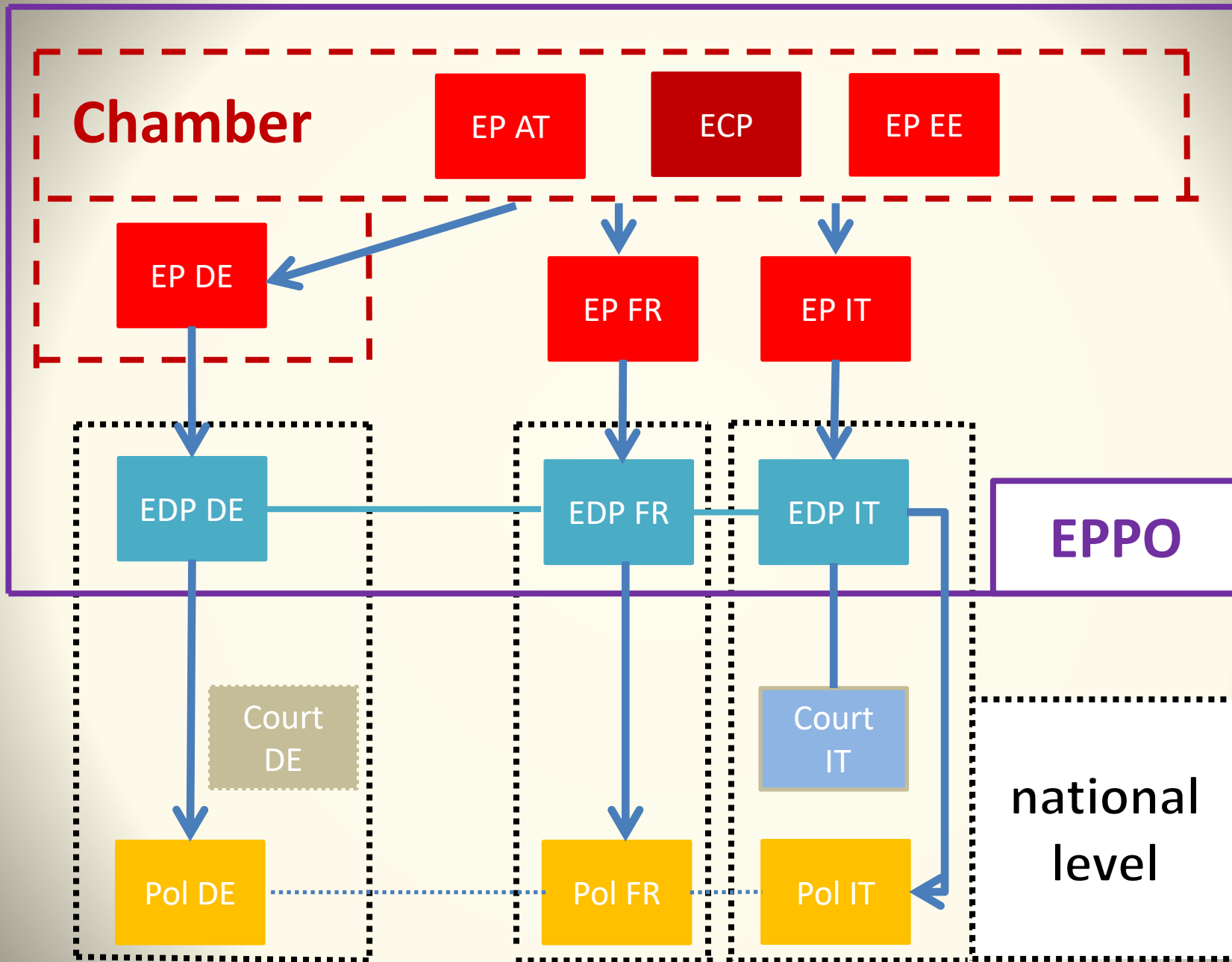
Conducting investigations (Article 28)



Article 30 Investigation measures

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 EDPs are entitled **to order or request** the following investigation measures: ... [**list of measures**]

- If reasonable grounds to believe that the specific measure might provide information or evidence useful to the investigation
- and if no less intrusive measure available
- Procedures and modalities for taking the measures shall be governed by the applicable national law
- may be subject to conditions in accordance with the applicable national law if the latter are explicitly foreseen for specific categories of persons or professionals legally bound by an obligation of confidentiality.
- MSs may limit the application of to specific serious offences



EPPO

national level