

Cooperation with non-participating Member States (NPMS) and third states (TS)

Simon Drew

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NPMS (1): Overview

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Article 99

Common provisions

1. In so far as necessary for the performance of its tasks, the EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the Union in accordance with their respective objectives, and with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the authorities of third countries and international organisations.
2. In so far as relevant to the performance of its tasks, the EPPO may, in accordance with Article 111, directly exchange all information, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.
3. For the purposes set out in paragraphs 1 and 2, the EPPO may conclude working arrangements with the entities referred to in paragraph 1. Those working arrangements shall be of a technical and/or operational nature, and shall in particular aim to facilitate cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States.

NPMS (3): Art. 105

Article 105

Relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO

1. The working arrangements referred to in Article 99(3) with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.
2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO in order to facilitate cooperation in line with the EPPO's needs.
3. In the absence of a legal instrument relating to cooperation in criminal matters and surrender between the EPPO and the competent authorities of the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the Member States shall notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO, in their relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO.

TS (1): Overview

- History
- Article 23
- Article 99, 104
- Practical implementation

TS (2): Art. 23

Article 23

Territorial and personal competence of the EPPO

The EPPO shall be competent for the offences referred to in Article 22 where such offences:

- (a) were committed in whole or in part within the territory of one or several Member States;
- (b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or
- (c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

TS (3): Art. 104 (1-3)

Article 104

Relations with third countries and international organisations

1. The working arrangements referred to in Article 99(3) with the authorities of third countries and international organisations may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.
2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in third countries in order to facilitate cooperation in line with the operational needs of the EPPO.
3. International agreements with one or more third countries concluded by the Union or to which the Union has acceded in accordance with Article 218 TFEU in areas that fall under the competence of the EPPO, such as international agreements concerning cooperation in criminal matters between the EPPO and those third countries, shall be binding on the EPPO.

TS (4): Art. 104 (4)

4. In the absence of an agreement pursuant to paragraph 3, the Member States shall, if permitted under the relevant multilateral international agreement and subject to the third country's acceptance, recognise and, where applicable, notify the EPPO as a competent authority for the purpose of the implementation of multilateral international agreements on legal assistance in criminal matters concluded by them, including, where necessary and possible, by way of an amendment to those agreements.

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.

TS (5): Art. 104 (5)

5. In the absence of an agreement pursuant to paragraph 3 of this Article or a recognition pursuant to paragraph 4 of this Article, the handling European Delegated Prosecutor, in accordance with Article 13(1), may have recourse to the powers of a national prosecutor of his/her Member State to request legal assistance in criminal matters from authorities of third countries, on the basis of international agreements concluded by that Member State or applicable national law and, where required, through the competent national authorities. In that case, the European Delegated Prosecutor shall inform and where appropriate shall endeavour to obtain consent from the authorities of third countries that the evidence collected on that basis will be used by the EPPO for the purposes of this Regulation. In any case, the third country shall be duly informed that the final recipient of the reply to the request is the EPPO.

Where the EPPO cannot exercise its functions on the basis of a relevant international agreement as referred to in paragraph 3 or 4 of this Article, the EPPO may also request legal assistance in criminal matters from authorities of third countries in a particular case and within the limits of its material competence. The EPPO shall comply with the conditions which may be set by those authorities concerning the use of the information that they provided on that basis.

2020



Host Countries = PMS

Qualifiers = NPMS

Non-Qualifiers = TC

EURO 2020

Case Study (1): Facts

It is 2020. A high level official of the EU (Mr Fonctionnaire) is suspected of having defrauded his institution of EUR 9 million. The prosecution case is that initially he places the money in Santé Bank at Rond-Point Schuman, Brussels (Belgium is a participating member state in the EPPO). Then he moves the money to Sláinte Bank in Dublin (Ireland is a non-participating member state in the EPPO). Mr Fonctionnaire subsequently receives a tip-off that inquiries have been made by police officers with Sláinte Bank. Therefore Mr Fonctionnaire flies to Dublin and appears in person at Sláinte Bank. He gives instructions to move the money immediately to Cheers Bank in the British Virgin Islands ('BVI'), which is done. He then settles all EUR 9 million into a BVI trust. The trustees of that trust are Cheers Bank Trust Company. The EPPO decides to prosecute the case in Belgium. Mr Fonctionnaire remains in Ireland.

Assess the practical and legal issues that must be overcome before the matter is brought to court.

[Disclaimer: This case study is for educational purposes only. Its content is fictional and any similarity to real people, organisations or situations is coincidental]

Case Study (2): Facts

- obtain evidence from the Ireland (NPMS) and the BVI (TS)
- apply for extradition of Mr Fonctionnaire from Ireland (NPMS)
- obtain the assets from the BVI (TS)

Who tipped off Mr Fonctionnaire; any potential criminal offences that attach to any conduct by the banks; consideration of seizing the assets; and gathering evidence in Belgium are not to be considered for the sake of brevity

Case Study (3): Diagram



Case study (4): EUR 9 Million

- Success for EPPO is recovery of assets from the BVI. COM communication accompanying July 2013 proposal:
“[EPPO] increase[s] the chances of conviction **and the recovery of criminal proceeds through confiscation**”

Case study (5): Evidence Ireland

- We need: Bank statements, mandates, transfer instructions, etc.
- Ireland not part of the European Investigation Order
- Assistance from the 1959 Convention and additional protocols
- The request could potentially come from the Belgian European Delegated Prosecutor ('designated state' under s.4 of Irish Criminal Justice (Mutual Assistance) Act 2008 ('2008 Act'))
- Evidence taken e.g. under s.63 and 75 of 2008 Act

Case study (6): Extradition Ireland

- Mr Fonctionnaire is in Dublin. We need him in Belgium
- The European Arrest Warrant ('EAW')
- Belgium to make request to Ireland
- Irish European Arrest Warrant Act 2003 ('2003 Act'): Belgian EAW issued to Irish Central Authority

Case study (7): BVI

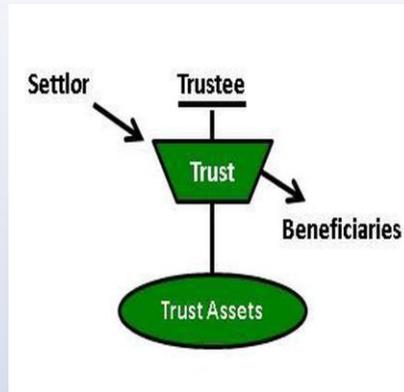
- The Crown Dependencies (Guernsey, Jersey, and the Isle of Man), and the UK Overseas Territories (**British Virgin Islands**, Cayman Islands...) are not part of the UK
- The Crown Dependencies and the UK Overseas Territories are wholly responsible for executing requests within their own jurisdictions

[Source: UK Home Office 2015]



Case study (8): Trust BVI

- What is a trust?: A **trust** is a legal relationship when a person (**settlor**) places assets under the control of another person (**trustee**) for the benefit of **beneficiaries**
- Cheers Bank Trust Company is the **trustee**
- Mr Fonctionnaire is the **settlor**
- Unknown persons are the **beneficiaries**
- EUR 9 is the **trust assets**



Case study (9): Evidence BVI

- We need: Letter of wishes, trust deed, bank account details where assets are held, etc.
- [Virgin Islands] Criminal Justice (International Co-operation) Act, 1993 - Section 5(1)

*"This section has effect where the Governor receives from... a prosecuting authority [outside the BVI] or from any other authority [outside the BVI] which appears to him to have the function of making requests of the kind to which this section applies a request for assistance in obtaining **evidence** in the Virgin Islands in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory."*

Case study (10): Confiscation BVI

- We need to seize and confiscate the money
- [Virgin Islands] Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order, 1996 – Section 5(5)a

“[A Restraint order] *may be made only on an application by or on behalf of the government of a designated country.....[if an external forfeiture order not yet made]*”

Conclusions

- Journey

Investigation, arrest, extradition, seizure, evidence, indictment, trial, conviction, appeal (sentence/conviction), confiscation, appeal (confiscation).

- Not always simple
- Important to finalise how the EPPO will get evidence, extradition, assets, etc. from NPMS and TS before it becomes operational

