

The European Public Prosecutor's Office

Investigations of the EPPO

ERA – Trier

Overview

- Basic Principles – Art. 5
- Organisation of the EPPO – Art. 10, 12, 13
- Conducting the Investigation – Art. 28(1)
- Urgent Measures – Art. 28(2)
- Reallocation to another EDP of the same MS or to the EP – Art. 28(3)(4)
- Lifting privileges or immunities – Art. 29
- Investigation Measures and other Measures – Art.30
- Pre-trial Arrest and cross-border Surrender – Art. 33

Basic Principles – Art. 5

1. “The EPPO shall ensure that its activities respect the rights enshrined in the **Charter**.”
2. The EPPO shall be bound by the principles of **rule of law and proportionality** in all its activities.
3. The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.
4. The EPPO shall conduct its investigations in an **impartial manner** and shall seek all relevant evidence whether inculpatory or exculpatory.
5. The EPPO shall **open and conduct investigations without undue delay**.
6. The competent **national authorities shall actively assist** and support the investigations and prosecutions of the EPPO. Any action, policy or procedure under this Regulation shall be guided by the principle of **sincere cooperation**.”

Organisation of the EPPO (Art. 10, 12, 13)

For the purpose of the investigations of the EPPO three main stakeholders can be identified:

- European Delegated Prosecutor (EDP)
- European Prosecutor (EP)
- Permanent Chamber

Organisation of the EPPO (Art. 13)

European Delegated Prosecutor

- initiates and conducts the investigation,
- has to follow instructions given by EP or Chamber (Art. 13 (1)) → EDP may ask Chief to review (rec #34)
- has reporting obligations throughout the investigation etc. to Central Office (e.g. Art. 28(1))
- submits the indictment to court
- represents the prosecution on behalf of the EPPO during main trial as well as appeal procedures (Art. 13(1)),

Organisation of the EPPO (Art. 12)

European Prosecutor

- is in charge of supervision
- shall present summaries of the cases to the Chamber etc. (Art. 12 (1)),
- functions as liaison and information channel between the Permanent Chambers and the EDP (Art. 12(5)),
- may give instructions to EDP (Art. 12(3)),
- special review mechanism (Art. 12 (4)):
“Where the national law ... provides for the internal review of certain acts within the structure of a national prosecutor’s office, the review of such acts taken by the EDP shall fall under the supervisory powers of the supervising EP ... without prejudice to the supervisory and monitoring powers of the Permanent Chamber.”

Organisation of the EPPO (Art. 10)

Permanent Chamber

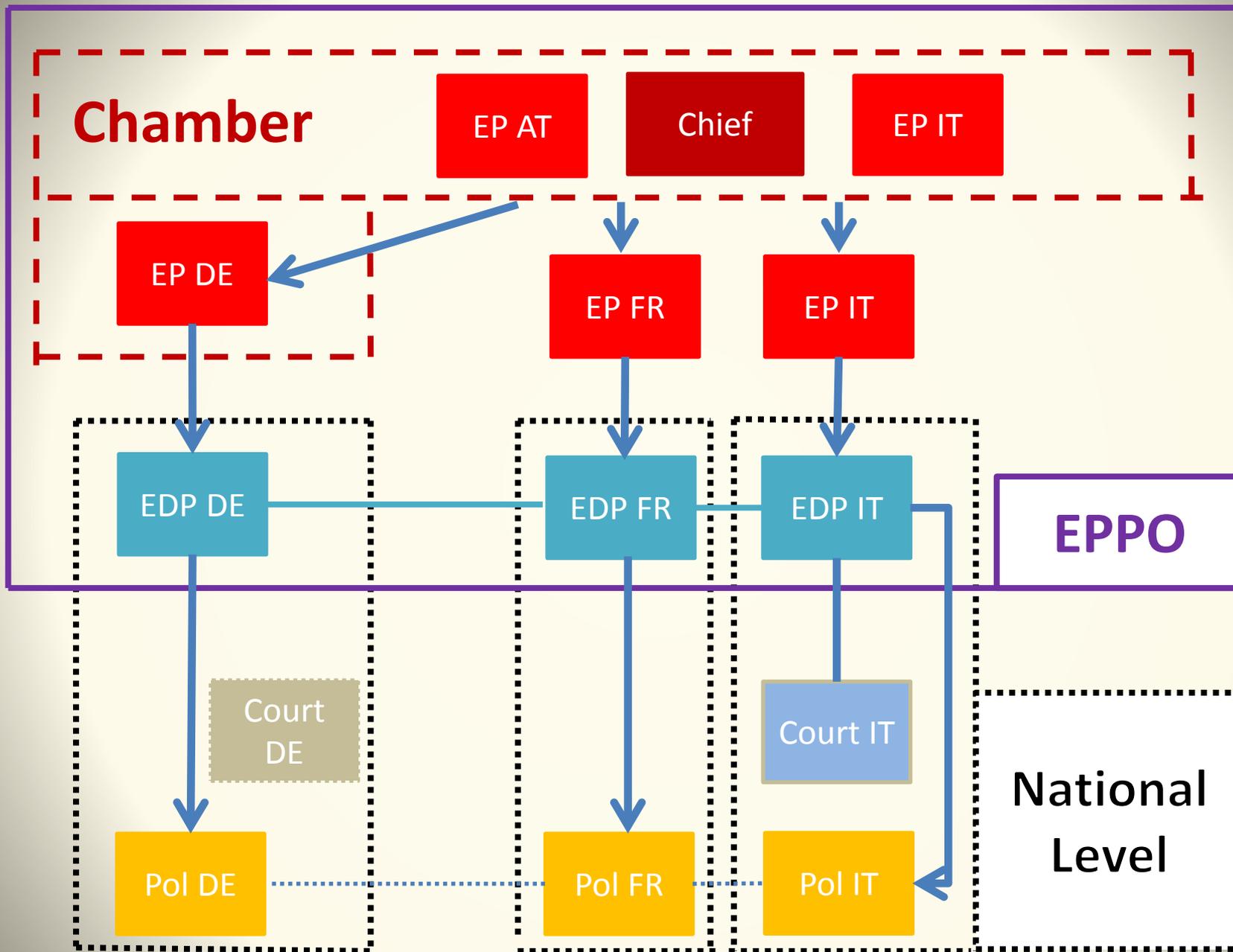
- monitors and directs the investigations and prosecutions conducted by the EDP (Art. 10(2)),
- may give instructions (via EP) in compliance with applicable national law to the handling EDP, where it is necessary for the efficient handling of the investigation or prosecution, in the interest of justice, or to ensure the coherent functioning of the EPPO (Art. 10(5))
- reallocates the case in accordance with Art. 26(5) (= another EDP of another MS) or Art. 28(3) (= another EDP of the same MS) (Art. 10(4) e)
- approves decision of EP to conduct investigation him/herself (Art. 10(4) f)

Conducting the Investigation – Art. 28(1)

“The European Delegated Prosecutor handling a case may, **in accordance with this Regulation and with national law**, either **undertake the investigation measures** and other measures on his/her own **or instruct** the competent authorities in his/her Member State. **Those authorities** shall, **in accordance with national law**, ensure that **all instructions are followed** and **undertake the measures** assigned to them. The handling European Delegated Prosecutor shall **report through the case management system** to the competent European Prosecutor and to the Permanent Chamber any **significant developments** in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.”

Conducting the Investigation – Art. 28(1)

- Prosecutorial systems throughout the EU vary considerably; in some MS police authorities are more involved/have more powers than in other MS → handling EDP has to remain responsible for the investigation
- Executive powers lie with national authorities → EPPO/EDP cannot conduct an arrest, house search etc.; BUT: EDP may summon witnesses/accused etc., EPPO may provide expertise, technical assistance (search tools!)
- “competent national authority” most likely police etc but not national prosecution service → EPPO is meant to replace national prosecution service (BUT: cf. para 2!); extended arm of EPPO? → consequences for judicial review
- “Instructions are followed” – “in accordance with national law”: national law may provide limits to instructions that prosecutor can give, no review of EPPO measures, authorities that are not competent must also not follow instructions
- report via CMS on “significant” developments: e.g. new suspects, performance of investigative measure (rec #35), lifting of immunities, reallocation of case, merging/splitting cases



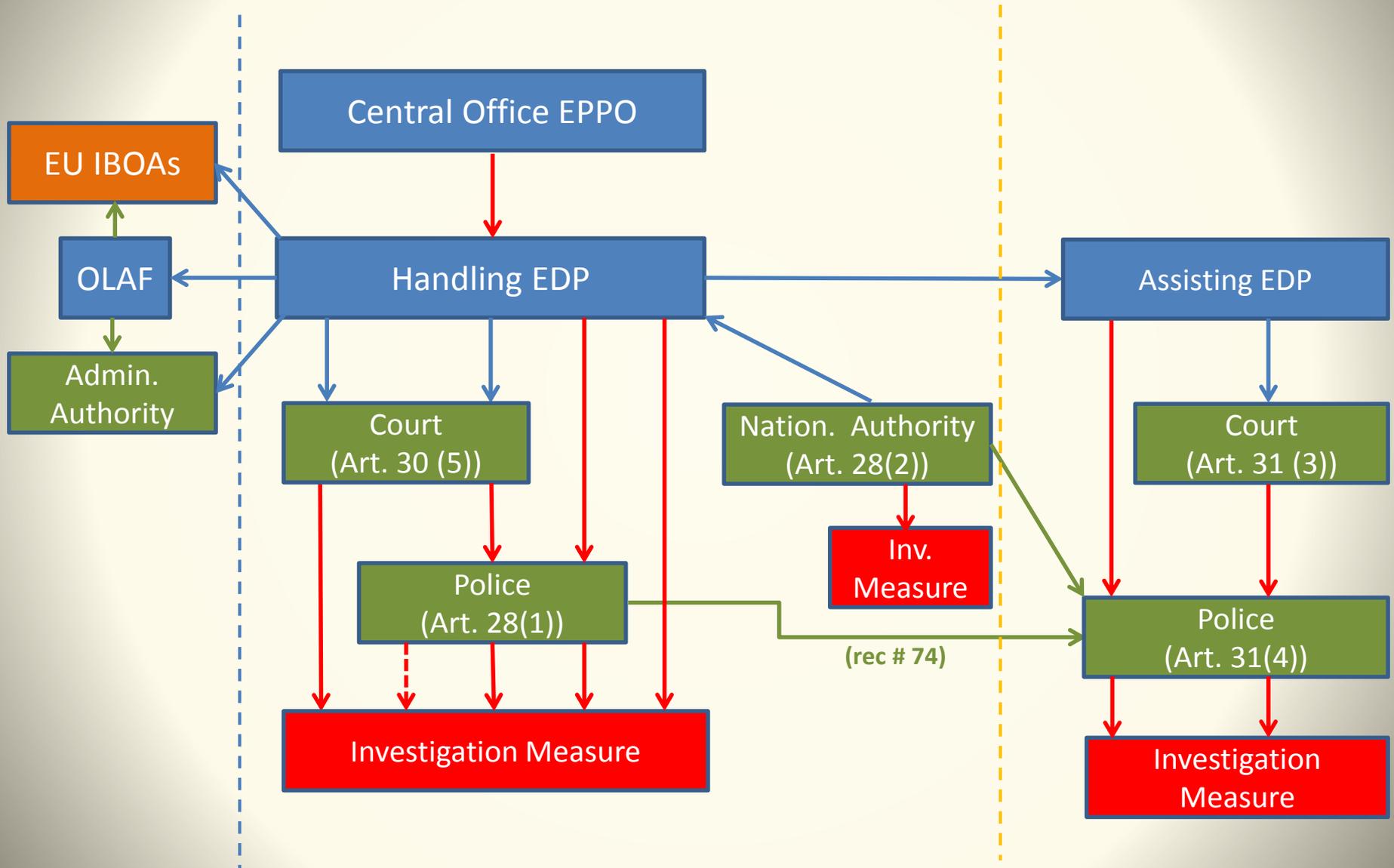
Urgent measures – Art. 28(2)

“At any time during the **investigations conducted by the EPPO**, the competent **national authorities** shall take **urgent measures** in accordance with national law necessary to ensure **effective investigations** even where **not specifically acting under an instruction** given by the handling European Delegated Prosecutor. The national authorities shall **without undue delay inform the handling European Delegated Prosecutor** of the urgent measures they have taken.”

Urgent Measures – Art. 28(2)

- Unclear if EPPO will be working 24/7
- In case of an arrest during the weekend, national prosecution service can submit the necessary requests to court
- Unlike para 1, para 2 also addresses prosecution services
- Prerequisites: Urgency + measure necessary for effective investigation
- National authority is acting on its own behalf → judicial review!

Conducting the investigation (Art. 28)



Reallocation to another EDP of the same MS or to the EP – Art. 28(3)(4)

- **Reallocation to another EDP of the same MS**, if handling EDP
“(a) cannot perform the investigation or prosecution; or
(b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.”
- **Reallocation to the EP** is possible only in **exceptional cases** „where this appears to be **indispensable** in the **interest of the efficiency to the investigation or prosecution** by reasons of one or more of the following criteria:
 - (a) the **seriousness** of the offence, in particular in view of its possible repercussions at Union level;
 - (b) when the investigation concerns **officials** or other **servants** of the **Union** or **members of the institutions** of the Union; (cf rec #59)
 - (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

Lifting privileges or immunities – Art. 29

1. Where the investigations of the EPPO involve persons protected by a **privilege or immunity under national law**, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the **European Chief Prosecutor** shall make a reasoned **written request** for its lifting **in accordance with the procedures laid down by that national law**.

→ immunities due to international treaties have to be ratified (= national law)

2. Where the investigations of the EPPO involve persons protected by **privileges or immunities under the Union law**, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the **European Chief Prosecutor** shall make a reasoned **written request** for its lifting **in accordance with the procedures laid down by Union law**.

Investigation Measures and other Measures – Art.30

- At least in cases where the offence ... is punishable by a max. 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: searches, production order, production of bank data, traffic data (not retained data), freezing order, telephone interception, track/trace objects by technical means
- additionally the EDP shall be entitled to request or to order any other **measures that are available to prosecutors under national law** in similar national cases
- procedures and the modalities for taking the measures shall be governed by the applicable national law

Investigation Measures and other Measures – Art.30

Measures shall only be ordered “where there are reasonable grounds to believe that the specific measure ... might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective”

- necessity and proportionality requirement
- will apply directly
- no such requirement for arrest/pre trial detention (cf. Art. 33) but general proportionality requirement in Art. 5(2)

Pre-trial Arrest and cross-border Surrender – Art. 33

“1. The **handling EDP** may **order or request** the **arrest or pre-trial detention** of the suspect or accused person in accordance with the national law applicable in similar domestic cases.

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the **handling EDP** is located, the latter shall **issue or request** the competent authority of that Member State to issue a **EAW** in accordance with Council Framework Decision 2002/584/JHA.”

Thank you for your attention

Questions?