



Council of the
European Union

Brussels, 16 November 2020
(OR. en)

12989/20

LIMITE

EPPO 54
COPEN 324
FIN 861
GAF 60
CSC 309

NOTE

From: Presidency
To: Delegations

Subject: EPPO: Relations with Member States which do not participate in the enhanced cooperation on the establishment of the EPPO
- Consolidated text

Delegations will find attached a consolidated text, as it results following the informal videoconference of the Working Party on Judicial Cooperation in Criminal Matters (COPEN) on 13 November 2020. Amendments with respect to the Annex to note 12541/20 are marked with **bold/underline** and ~~striketrough~~.

As announced at the informal COPEN videoconference on 13 November 2020, the Presidency intends to present the text as set out in the Annex to this note as part of a Presidency report to the Permanent Representatives Committee and to the Council. Delegations are invited to provide any further comments on the text set out in the Annex by 18 November 2020 COB.

Background

1. At its informal video conference on 16 July 2020 the Working Party on Judicial Cooperation in Criminal Matters (COPEN) held a first exchange of views on issues relating to judicial cooperation between the European Public Prosecutor's Office (EPPO) and Member States which are not participating in the establishment of the EPPO. Delegations largely confirmed the indicative list of relevant legal instruments set out in note 9226/20, including, in particular, legal instruments on mutual recognition in respect of which the participating Member States are obliged under Article 105(3) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO Regulation')¹ to notify the EPPO as a 'competent authority'.
2. At the informal COPEN video conference on 22 September 2020 delegations considered a Presidency paper set out in the Annex to note 10504/20, which provided an analysis of legal issues that may arise in the application of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('the EIO Directive')² in the context of the relationship between the EPPO and judicial authorities of Member States which are not participating in the establishment of the EPPO. Delegations largely agreed with the content of that paper and supported the proposal to continue work on the subject with a view to eventually establishing consensus amongst all EU Member States on the analysis and conclusions set out therein. Following written comments received from two delegations, an amended text was presented as note 10504/1/20 REV 1 and received consensus at the informal COPEN video conference on 27 October 2020.

¹ OJ L 283, 31.10.2017, p.1

² OJ L 130, 1.5.2014, p.1

3. On the basis of note 11953/20, delegations furthermore discussed at the informal COPEN video conference on 27 October 2020 implications of the possible use of other EU legal instruments for the purpose of cooperation between the EPPO and Member States not participating in the enhanced cooperation on the establishment of the EPPO. Delegations were invited to present any additional comments by 5 November 2020. While no additional comments were received, the Presidency, taking into account discussions at the informal COPEN video conference on 27 October 2020, drafted a new consolidated text on the basis of note 10504/1/20 REV 1 (partially taken up) and note 11953/20 (12541/1/20 REV 1). Further to a request by some delegations, the Presidency enhanced that consolidated document, where appropriate, with draft model texts on possible notifications to be made by the participating Member States in accordance with Article 105(3) of Regulation (EU) 2017/1939, which are contained in the "Conclusion" for each EU legal instruments (not marked bold/underline).
4. Following the informal COPEN videoconference on 13 November 2020 the Presidency has now drafted a final consolidated text, as set out in the Annex to this note. Once reached agreement at technical level, the Presidency intends to include the consolidated text in a report to be submitted to the attention of the Permanent Representatives Committee and to the Council.

Introduction

1. In accordance with Article 105(3) of the EPPO Regulation, the participating Member States are obliged to ‘notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters’.
2. The purpose of this note is to clarify the requirements and legal consequences of such a notification of the EPPO as a judicial authority in respect of the relevant Union acts and their application between the EPPO and the non-participating Member States.
3. In light of the principle of sincere cooperation, both the EPPO and the competent authorities of the non-participating Member States should support each other with the aim of efficiently combatting crimes against the financial interests of the Union.
4. The EPPO Regulation ‘provides for a system of shared competence between the EPPO and national authorities’ of the participating Member States (c.f. recital 13 of the EPPO Regulation). Where the EPPO exercises its competence to investigate and prosecute PIF offences, it thus assumes the role otherwise performed by the competent national authorities, who, henceforth, are obliged to refrain from exercising their competence (Article 25(1) of the EPPO Regulation).
5. While established under the rules of enhanced cooperation, the EPPO is a ‘body of the Union’ (c.f. Article 3(1) of the EPPO Regulation). It is a competent authority in the participating Member States but not of the participating Member States.

6. The EPPO's Delegated European Prosecutors (EDP/EDPs) 'shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment' (Article 13(1) of the EPPO Regulation). EPPO investigations are conducted by its EDPs, who may undertake the investigation measures 'on his/her own or instruct the competent authorities in his/her Member State' (Article 28(1) of the EPPO Regulation). The EPPO prosecutes cases at the courts of the Member States (Article 36 of the EPPO Regulation). The Member States' courts are also competent for the judicial review of procedural acts of the EPPO (Article 42(1) of the EPPO Regulation).
7. The EPPO is an 'indivisible Union body operating as a single Office'. Nevertheless, the EPPO has to observe territorial boundaries within the 'EPPO territory' as witnessed i.a. by the fact that the 'handling EDPs' may act only 'in their respective Member State' (Article 13(1) of the EPPO Regulation) and need to engage an 'assisting EDP' for measures to be taken in the territory of another participating Member State. Also, the national law, which may find subsidiary application in accordance with Article 5(3) of the EPPO Regulation, is the law of a particular Member State (i.e. that of the handling EDP, unless specified otherwise in the Regulation).
8. The EPPO may decide to reallocate a case from one Member State to another – however only under certain conditions (Articles 26(5) and 36(3) of the EPPO Regulation), taking into account specific criteria (Article 26(4) of the EPPO Regulation).
9. The EPPO and the EDPs acting on its behalf are competent to investigate and prosecute criminal offences in accordance with Articles 22, 23 and 25 of the EPPO Regulation. The EPPO has competence to undertake investigation measures (Article 30 of the EPPO Regulation) once it has decided to initiate an investigation (Article 26 of the EPPO Regulation) or to exercise its right of evocation (Article 27 of the EPPO Regulation).

I. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('the EIO Directive')³.

The EIO Directive provides for a mechanism of judicial cooperation between judicial authorities of the EU Member States. In accordance with Article 33(1)(a) of the EIO Directive, Member States are obliged to notify the Commission of 'the authority or authorities which, in accordance with its national law, are competent according to Article 2(c) and (d) when this Member State is the issuing State or the executing State'.

A. The EPPO as 'issuing authority'

1. When notified in accordance with Article 105(3) of the EPPO Regulation, the EPPO may act as 'issuing authority' as defined in Article 2(c)(i) of the EIO Directive and as referred to in numerous provisions of the EIO Directive.
2. The term 'competent authority of the issuing State' essentially means 'the issuing authority'. Thus, the term 'competent authority of the issuing State' refers to the EPPO (see, for example, Articles 5(3), 12(5) and (6), 24(5)(b) and 25(1) of the EIO Directive), acting through the handling EDP in that State. In some cases, the EPPO as issuing authority may, however, have to act in liaison with the competent national authorities of the Member State of the handling EDP (see, for example, Article 24(5)(b) of the EIO Directive).
3. The 'issuing State' is the Member State 'in which the EIO is issued' (c.f. Article 2(a) of the EIO Directive), in case of the EPPO thus the Member State of the handling EDP. Certain rights and obligations of the 'issuing State' may, however, also be exercised and may have to be observed by the EPPO (see, for example, Articles 9(5), 14(7), 17, 18, 19, 24(4) and (5)(d), 28(2) and 29(1) of the EIO Directive). Also, where the EIO Directive provides for data or evidence to be transferred 'to the issuing State' (c.f. Articles 13(1), 30(6) and 32(3) and (4) of the EIO Directive), this may apply to the EPPO or to a national authority of the issuing State acting on behalf of the EPPO in accordance with Article 28(1) of the EPPO Regulation.

³ OJ L 130, 1.5.2014, p. 1.

4. Where the EPPO acts as issuing authority, any reference to the ‘national law of the issuing State’ should be interpreted as a reference to Union law, in particular the EPPO Regulation, as well as to the national law of the Member State of the handling EDP, to the extent the latter is applicable in accordance with Article 5 paragraph 3 of that Regulation.
5. Where, in accordance with Articles 26(5) or 36(3) of the EPPO Regulation, a case is reassigned to an EDP of another Member State, any evidence transferred by the executing authority on the basis of an EIO issued by the EPPO may be forwarded to the competent EDP of that other Member State.
6. Where the EPPO obtains operational personal data on the basis of an EIO from a non-participating Member State, the EPPO will be obliged to observe specific processing conditions provided for by the executing authority in accordance with Article 9(3) and (4) of Directive (EU) 2016/680.

B. The EPPO as ‘executing authority’

1. The EPPO may act as ‘executing authority’ where it has the ‘competence to recognise an EIO and ensure its execution’ (c.f. Article 2(d) of the EIO Directive). Thus the EPPO may act as ‘executing authority’ by providing information or evidence which the EPPO has obtained already or may obtain following the initiation of an investigation ~~in the area of~~within its competence. The EPPO has no competence to undertake investigation measures on the basis of an EIO where it either has no competence to undertake an investigation in respect of the offence in question (Articles 22, 23 and 25 of the EPPO Regulation) or has decided to refrain from doing so (Articles 27(7) and 34(3) of the EPPO Regulation).
2. The term ‘competent authority of the executing State’ may refer to the EPPO (Article 16(1) of the EIO Directive), the Member State of the handling EDP (Article 9(1) of the EIO Directive) or to both, the handling EDP and the national authorities of his/her Member State acting in accordance with Article 28(1) of the EPPO Regulation (Article 13(1) of the EIO Directive).

3. The ‘executing Member State’ means the Member State ‘executing the EIO, in which the investigative measure is to be carried out’ (c.f. Article 2(d) of the EIO Directive), in case of the EPPO thus the Member State of the handling EDP who is requested to make available information or evidence obtained by the EPPO in the course of its own investigations (Articles 5(2) and (3) and 11(1)(b) and (f) of the EIO Directive). In other situations, the phrase may, however, apply to the EPPO itself (Articles 15(1)(a) and 21(1) of the EIO Directive) or to both, the handling EDP and/or the national authorities of his/her Member State acting in accordance with Article 28(1) of the EPPO Regulation (Article 13(3) and (4) of the EIO Directive).
4. Where the EPPO acts as executing authority, any reference to the ‘national law of the executing State’ should be interpreted as a reference to Union law, in particular the EPPO Regulation, as well as to the national law of the Member State of the handling EDP to the extent the latter is applicable in accordance with Article 5 paragraph 3 of that Regulation.
5. Where the EPPO acts as ‘executing authority’, any reference to the ‘territory of the executing State’ (such as in Articles 9(4) and (5), 11(1)(e), 17 and 21 of the EIO Directive) should be interpreted as a reference to the territory of the Member State of the handling EDP.
6. Where an EIO is addressed to the EPPO as executing authority, it should be transmitted to the Central Office of the EPPO. In urgent cases it may be transmitted directly to the handling EDP, in which case a copy should be sent to the Central Office. Where a participating Member State has made use of Article 7(3) of the EIO Directive, any requirement to transmit an EIO via that Member State’s central authority does not apply to an EIO in respect of which the EPPO may act as executing authority.

Conclusion: The participating Member States should update their notification to the Commission in accordance with Article 33(3) of the EIO Directive as follows:

1. ‘In accordance with Article 33 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (‘the EIO Directive’) [name of the Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor’s Office, hereby notifies the European Commission that the European Public Prosecutor’s Office (‘EPPO’), in the exercise of its competences, as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is competent to act as issuing authority as defined in Article 2(c)(i) of the EIO Directive. The EPPO furthermore is competent to act as executing authority as defined in Article 2(d) EIO Directive for the purpose of providing information or evidence which the EPPO has obtained already or may obtain following the initiation of an investigation ~~in the area of~~ **within** its competence.’
2. ‘Where a European Investigation Order is addressed to the EPPO as executing authority, it should be transmitted to the Central Office of the EPPO. In urgent cases it may be transmitted directly to a Delegated European Prosecutor in [name of the Member State]. In this case a copy should be sent to the Central Office of the EPPO. [The notification made in accordance with Article 33(1)(c) of the EIO Directive, requiring European Investigation Orders to be transmitted via the Central Authority, shall not apply to European Investigation Orders issued by or addressed to the EPPO.]⁴’

⁴ The text in square brackets should be used by Member States that have made use of the second sentence of Article 7(3) of the EIO Directive and require the EIOs to be transmitted via their central authority(ies).

II. Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders

1. Regulation (EU) 2018/1805⁵ could be of relevance for the EPPO in respect of freezing orders, whereas the EPPO will not be in a position to issue confiscation orders as it is competent only until the case has been finally disposed of (Article 4 of the EPPO Regulation).
2. The Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders issued by another Member State (cf. Article 1(1) of Regulation 2018/1805). The term ‘issuing State’ means the Member State in which a freezing order is issued (cf. point (6) of Article 2 of Regulation 2018/1805). An ‘issuing authority’ may be ‘a judge, court, or public prosecutor competent in the case concerned’ (cf. point (8)(a)(i) of Article 2 of Regulation 2018/1805).
3. In accordance with Article 24(1) of Regulation 2018/1805, each Member State ‘shall inform the Commission of the authority or authorities as defined in points (8) and (9) of Article 2 that are competent under its law in the cases where that Member State is the issuing State or the executing State, respectively’. Such notification is to be done by 19 December 2020. Where Member States make use of Article 24(2) of Regulation 2018/1805 by designating one or more central authorities to be responsible for the administrative transmission and reception of freezing certificates, these Member States should clarify that this role of their central authority does not apply to freezing orders issued by a European Delegated Prosecutor (EDP) of that Member State.
4. The EPPO should – in the same way as national prosecution services – be able to act as issuing authority in respect of freezing orders which an EDP may ~~render order~~ or request in accordance with Article 30(1)(d) of the EPPO Regulation, irrespective of whether the freezing certificate to be transmitted in accordance with Article 4(1) of Regulation 2018/1805 is based on a freezing order adopted under national law by the EPPO itself or by a judge/court of the Member State of the handling EDP.

⁵ OJ L 303, 28.11.2018, p. 1

5. Where an EDP acts as issuing authority, the Member State of the handling EDP is the ‘issuing State’ as referred to in point (6) of Article 2 of Regulation 2018/1805.
6. There is no need to designate the EPPO also as possible executing authority even where the offence under investigation in the issuing State is an offence defined in the PIF Directive. Where a national authority of a participating Member States receives a freezing order and where the facts underlying that order could constitute an offence within the competence of the EPPO in accordance with Articles 22, 23 and 25 of the EPPO Regulation, that national authority should observe its reporting obligations set out in Article 24(1) of the EPPO Regulation.

The executing authority of that Member State, when deciding on the recognition and execution of the freezing order, should liaise with the EPPO with regard to possible grounds for non-recognition and non-execution or the postponement of execution (Articles 8 and 10 of Regulation 2018/1805) and treat the interests of the EPPO in avoiding interference with its investigations in the same way as it would treat such interests of its own national authorities.

Conclusion: In their notifications to be made to the Commission in accordance with Article 24(1) of Regulation (EU) 2018/1805, participating Member States should include the following text (or update a notification already made accordingly):

1. ‘In accordance with Article 24(1) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, [name of the Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor’s Office, hereby notifies the European Commission that the European Public Prosecutor’s Office (‘EPPO’), in the exercise of its competences, as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is competent to act as issuing authority as defined in point (8) of Article 2 of Regulation (EU) 2018/1805 for the purpose of issuing freezing orders and freezing certificates as defined in that Regulation.’

2. [‘The notification made in accordance with Article 24(2) of Regulation (EU) 2018/1805, requiring freezing certificates to be transmitted via the Central Authority, does not apply to freezing certificates issued by the EPPO.’]⁶

III. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

1. In accordance with Article 1(1) of Council Framework Decision 2002/584/JHA (the ‘EAW Framework Decision’)⁷, the European arrest warrant is ‘a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person’. An issuing judicial authority ‘shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State’ (Article 6(1) of the EAW Framework Decision). Each Member State ‘shall inform the General Secretariat of the Council of the competent judicial authority under its law’ (Article 6(3) EAW Framework Decision). Also, Member States may designate a central authority and may make that authority responsible for the administrative transmission of EAWs (Article 7 of the EAW Council Framework Decision).
2. In accordance with Article 33(2) of the EPPO Regulation, the handling EDP may ‘issue or request the competent authority of that Member State to issue’ an EAW. This provision, however, is applicable in relation to other participating Member States only, whereas Article 105(3) also applies to the EAW Framework Decision (‘cooperation in criminal matters and surrender’).

⁶ The text in square brackets should be used by Member States that have made use of the Article 24(2) of the Regulation and require that the transmission of request shall be done via their central authority(ies).

⁷ OJ L 190, 18.7.2002, p. 1

3. In line with the principle that also applies in the case of Article 33(2) of the EPPO Regulation, the question of whether an EDP is authorised to issue an EAW or may only request the competent authority of that Member State to issue an EAW depends on the national law of that Member State. Where in accordance with national law an EDP is authorised to issue an EAW, the respective Member States should clarify this by notifying the General Secretariat of the Council (Article 6(3) of the EAW Framework Decision).
4. There is no scope for the EPPO to act as executing authority in respect of an EAW, as this is outside the sphere of competence of the EPPO. Where a national authority of a participating Member State receives an EAW and where the facts underlying that EAW could constitute an offence within the competence of the EPPO in accordance with Articles 22, 23 and 25 of the EPPO Regulation, that national authority should observe its reporting obligations set out in Article 24(1) of the EPPO Regulation. When deciding on the recognition and execution of the EAW, the executing authority should liaise with the EPPO and treat the interests of the EPPO in avoiding interference with its investigations in the same way as it would treat such interests of its own national authorities.
5. Where in accordance with national law a handling EDP is competent to issue an EAW, that EAW should be considered a judicial decision issued by that Member State (cf. the wording of Article 1(1) EAW Framework Decision). Where the EAW Framework Decision refers to the ‘issuing Member State’, this should thus be interpreted as a reference to the Member State of the handling EDP and the eventual surrender will take place to that Member State (and not to the EPPO). Where the handling EDP considers giving a guarantee in accordance with Article 5(3) of the EAW Framework Decision, the handling EDP should do so only with the consent of the competent national authorities.

Conclusion: Where the national law of a participating Member State allows prosecutors to issue EAWs (or where the national law specifically provides that their EDP's are competent to do so), the Member State should update its notification to the General Secretariat of the Council in accordance with Article 6(1) of the Framework Decision as follows:

1. 'In accordance with Article 6(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, [name of the Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor's Office, hereby informs the General Secretariat of the Council that the European Public Prosecutor's Office ('EPPO'), in the exercise of its competences, as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is competent to act as issuing authority as defined in Article 6(1) of Council Framework Decision 2002/584/JHA.'
2. ['The designation made in accordance with Article 7(2) of Council Framework Decision 2002/584/JHA, requiring European Arrest Warrants to be transmitted via the Central Authority shall not apply to European Arrest Warrants issued by the EPPO.']*⁸

IV. Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

1. In accordance with Article 1(1) of Council Framework Decision 2002/465/JHA⁹, 'competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team'. Council Framework Decision 2002/465 does not provide for any notification of 'competent authorities'. Also, the EPPO Regulation does not specifically address the possibility of the EPPO acting as a competent authority in respect of joint investigations teams (JIT) agreements.

⁸ The text in square brackets should be used by Member States that have made use of Article 7(2) of the Framework Decision and require EAWs to be transmitted via their central authority(ies).

⁹ OJ L 162, 20.6.2002, p. 1

2. The reference in Article 1(1) to ‘Member States’ should be considered to include situations where the EPPO is conducting an investigation in a participating Member State. Therefore, it should be considered possible for the EPPO to participate in the setting up of a JIT and to sign a JIT agreement for that purpose, where appropriate in addition to and/or in liaison with the competent national authorities of the Member States of the EDPs involved.
3. Reference to the ‘territory of the Member States setting up the team’ should in the case of the EPPO be considered a reference to the Member States of the EDPs involved (or the respective European Prosecutor in accordance with Article 28(4) of the EPPO Regulation). The EPPO may participate in the JIT by supplying, where appropriate, one or more EDPs (or a European Prosecutors in accordance with Article 28(4) EPPO Regulation) to act as ‘leader of the team’, ‘members of the team’ and ‘seconded members’ (Article 1(3) of Council Framework Decision 2002/465).
4. Reference in Articles 2 and 3 to ‘officials from a Member State’ should be considered to include the EDPs (or the European Prosecutors in accordance with Article 28(4) of the EPPO Regulation) involved in the JIT, and the liability of the Member States specified in Article 3 should in respect of the EDPs (or EPs) be considered the liability of the EPPO.

Conclusion: There is no need to undertake any notification.

V. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

1. Council Framework Decision 2003/577/JHA¹⁰ may still find application in respect of freezing orders to be addressed to DK and IE.
2. Council Framework Decision 2003/577/JHA does not specifically provide for the need to notify ‘competent authorities’; nevertheless, the majority of Member States have done so, though only in respect of the authorities acting as executing authorities. In respect of the term ‘issuing authority’, Article 2(a) of Framework Decision 2003/577 refers to judicial authorities ‘as defined in the national law of the issuing State’. The ‘issuing State’ is the Member State in which the freezing order is issued.
3. The EPPO may be considered to be a judicial authority competent to act as issuing authority in accordance with Council Framework Decision 2003/577. Where Member States have made notifications regarding which of their judicial authorities they consider to be a competent authority for the purpose of issuing a freezing order, these Member States should also include the EPPO in that notification. As in the case of Regulation (EU) 2018/1805, there is no scope to consider the EPPO a possible executing authority (cf. section II.6 above).
4. Where the EPPO issues a freezing order in accordance with Framework Decision 2003/577, the provisions of this Framework Decision should be interpreted as applying to the EPPO in the same way as the corresponding provisions of Regulation 2018/1805.

Conclusion: Where a participating Member State has made a notification to the General Secretariat of the Council regarding which of its authorities it considers ‘issuing authorities’, that Member State should update its notification by clarifying that the EPPO is also considered a possible ‘issuing authority’ in accordance with the Framework Decision.

¹⁰ OJ L 196, 2.8.2003, p. 45

VI. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

1. Council Framework Decision 2008/829/JHA¹¹ (the Framework Decision) lays down rules ‘according to which one Member State recognises a decision on supervision measures issued in another Member State’ (Article 1).
2. In accordance with Article 6(1) of the Framework Decision, each Member State shall inform the General Secretariat of the Council ‘which judicial authority or authorities under its national law are competent to act [...] in the situation where that Member State is the issuing State or the executing State’. In accordance with Article 7 of the Framework Decision, Member States may also designate a central authority and determine that this authority is responsible for the administrative transmission of supervision orders (Article 7(1) and (2)).
3. In accordance with Article 4 of the Framework Decision, the term ‘issuing State’ means ‘the Member State in which a decision on supervision measures has been issued’.
4. The EPPO should be enabled to issue a supervision order where appropriate in the course of conducting its investigations. Participating Member States should thus inform the General Secretariat of the Council accordingly. There is no scope for the EPPO to act as executing authority. Where a Member State has designated a central authority to be responsible for the administrative transmission and reception of supervision orders, the Member State should now clarify that this role of the central authority does not apply to supervision orders issued by an EDP of that Member State.

¹¹ OJ L 294, 11.11.2009, p. 20

Conclusion: Participating Member States should update their notification made to the General Secretariat of the Council in accordance with Article 6(1) of the Council Framework Decision as follows:

1. ‘In accordance with Article 6(1) of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, [name of the Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor’s Office, hereby informs the General Secretariat of the Council that the European Public Prosecutor’s Office (‘EPPO’), in the exercise of its competences, as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is competent to act as issuing authority in accordance with Framework Decision 2009/829/JHA.’
2. [‘The designation made in accordance with Article 7(2) of Council Framework Decision 2009/928/JHA, requiring supervision orders to be transmitted via the Central Authority, shall not apply to Supervision Orders issued by the EPPO.’]¹²

VII. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 including the Protocol thereto of 16 October 2001

1. The EU MLA Convention of 2000¹³ is still applicable for measures not covered by the EIO Directive and in relations with DK and IE.
2. The Convention’s purpose was to supplement the provisions and facilitate the application of inter alia the 1959 Council of Europe Convention in relations between the Member States of the European Union.

¹² The text in square brackets should be used by Member States that have made use of Article 7(2) of the Framework Decision and require supervision orders to be transmitted via their central authority(ies).

¹³ OJ C 197, 12.7.2000, p. 3

3. The provisions of the Convention may apply to the EPPO as requesting or requested authority in the same way as the 1959 Convention and its protocols may apply in relations between the EPPO and third countries.
4. In accordance with Article 24 of the Convention, each Member State, when giving its notification on ratification, was required to make a statement naming its authorities ‘which, in addition to those already indicated in the European Mutual Assistance Convention [...], are competent for the application of this Convention’. In particular, Member States were required to name the authorities competent to act as central authority (Article 6) and those competent for the purpose of applying the Convention’s provisions on requests for interception of telecommunications (Articles 18 to 20).
5. In accordance with Article 6(1) of the Convention, ‘requests shall be made directly between judicial authorities with territorial competence for initiating and executing them’.
6. The declarations to be made by the participating Member States to the Council of Europe in respect of the 1959 MLA Convention (as set out in document 11385/20), in principle, also apply in respect of the relevant provisions of the EU MLA Convention of 2000. Member States may, however, need to update their declarations made in accordance with Article 24 of the EU MLA Convention of 2000 in respect of other authorities than those competent under the 1959 MLA Convention such as in view of the EPPO’s competence under Article 18, 19 and 20 of the EU Convention of 2000 (c.f. its Article 24(1)(e)).
7. For the purpose of application in relations between the EPPO and DK and IE, the provisions of the EU MLA Convention of 2000 should, where appropriate, be interpreted – mutatis mutandis – along the same lines as the corresponding provisions of the EIO Directive (cf. document 10504/20 and section I. above).

Conclusion: Participating Member States should update their notification made to the General Secretariat of the Council in accordance with Article 24(1) of the Convention as follows:

1. ‘In accordance with Article 24(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (“the Convention”), the declaration made to the Council of Europe by [name of the Member State] on [date of notification to the Council of Europe to be made in accordance with document 11385/20] in respect of the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols also applies to this Convention.’
2. ‘In accordance with Article 24(1) of the Convention [name of the Member State], declares that the European Public Prosecutor’s Office (‘EPPO’), in the exercise of its competences, as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is competent to issue requests in accordance with Article 18 of the Convention and to act as competent authority in accordance with Article 19(2) and Article 20(1) **to (5)** of the Convention.’
3. ‘Requests addressed to the EPPO as requested authority, should be transmitted to the Central Office of the EPPO. In urgent cases they may be transmitted directly to a Delegated European Prosecutor in [name of the Member State]. In such cases a copy should be sent to the Central Office of the EPPO.’ **‘[The notification made in accordance with Article 24(1)(b) of the Convention, requiring requests or communications to be transmitted via the Central Authority, shall not apply to requests or communications issued by or addressed to the EPPO.]’**¹⁴

¹⁴ The text in square brackets should be used by Member States that have made use of Article 24(1)(b) of Convention and require, in accordance with Article 6 of the Convention, that the transmission be done via their central authority(ies).

VIII. Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings

1. Consideration should be given to the possibilities to apply of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings¹⁵ (the Framework Decision).
2. The broad concepts of obligatory or facultative jurisdiction (Article 11 of 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) and of the territorial and personal competence of the EPPO (Article 23 of the EPPO Regulation) will frequently lead to situations where both the EPPO and the authorities of a non-participating Member State have competence to investigate and prosecute a case.
3. Such parallel investigations by the EPPO and the authorities of a non-participating Member State may be appropriate in a particular situation. Unnecessary parallel investigations and duplication of efforts should, however, be avoided as much as possible. This may require an appropriate consultation mechanism between the EPPO and the non-participating Member States, as well as possibilities for the parties involved to act in accordance with the conclusions reached as a result of such consultation.
4. The Framework Decision provides for such a mechanism of cooperation ‘between the competent authorities of two or more Member States conducting criminal proceedings’ (Article 1(1)).

¹⁵ OJ L 324, 15.12.2009, p. 42

5. In accordance with point (b) of Article 3, the term ‘competent authority’ means ‘a judicial authority or another authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of this Framework Decision’. In accordance with Article 4(2), ‘each Member State shall inform the General Secretariat of the Council which authorities under its national law are competent to act in accordance with this Framework Decision’. Member States may also designate a central authority responsible for the administrative transmission and reception of requests. In order to enable the EPPO to act as competent authority, participating Member States should amend their declarations.
6. Under Article 26(1) of the EPPO Regulation, the EPPO is obliged to initiate an investigation in certain circumstances (‘legality principle’ – recital 66) and the EPPO Regulation does not specifically provide for a possibility to close a case on the grounds that the same case is being, or has been, investigated also by the authorities of a non-participating Member State.
7. Recital 12 of the Framework Decision provides: “In the common area of freedom, security and justice, the principle of mandatory prosecution, governing the law of procedure in several Member States, should be understood and applied in a way that it is deemed to be fulfilled when any Member State ensures the criminal prosecution of a particular criminal offence”. The principle of legality applying to the EPPO could therefore be interpreted in the sense that, should the EPPO agree that the relevant criminal offence would be better investigated or prosecuted (e.g. because of the advanced stage of the investigations) in a non-participating Member State, the EPPO would be entitled to put its investigations on hold.
8. A dismissal of the case by the EPPO is provided for where the suspect’s or accused person’s case has already been finally disposed of in relation to the same acts – point (f) of Article 39(1)). This provision also applies where such final disposal of the case takes place in the non-participating Member State.

Conclusion: Participating Member States should update their notification made to the General Secretariat of the Council in accordance with Article 4(2) of the Framework Decision as follows:

1. 'In accordance with Article 4(2) of Council Framework Decision 2009/948/JHA of 30 October 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, [name of the Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor's Office, hereby informs the General Secretariat of the Council that the European Public Prosecutor's Office ('EPPO'), in the exercise of its competences, as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is a 'competent authority' as defined in point (b) of Article 3 of Framework Decision 2009/948/JHA.'
2. ['The designation made in accordance with Article 4(3) of Council Framework Decision 2009/948/JHA, requiring all communications to go through the Central Authority, shall not apply to investigations conducted by the EPPO.]¹⁶

¹⁶ The text in square brackets should be used by Member States that have made use of Article 4(3) of the Framework Decision and require the transmission to be done via their central authority(ies).