



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 18 SEPTEMBER 2024

AMENDING THE DECISION 006/2022 OF 26 JANUARY 2022 ADOPTING GUIDELINES ON THE APPLICATION OF ARTICLE 31 OF REGULATION (EU) 2017/1939

The College of the European Public Prosecutor's Office (EPPO),

Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), hereinafter "the EPPO Regulation", and in particular Articles 9(2), 31, 32, 91 and 114 thereof,

Having regard to Decision 006/2022 of the College of the EPPO of 26 January 2022 adopting Guidelines on the application of Article 31 of the EPPO Regulation,

Considering the outcome of the discussions within the Working Group established in preparation of those initial Guidelines, and the Working Group for their revision in light of the different legal and practical developments that have emerged since, including the judgment of the Court of Justice of the European Union (the 'CJEU') of 21 December 2023 in C-281/22, *G.K. and others (Parquet Européen)* ('the judgment in C-281/22'),

HAS ADOPTED THIS DECISION:

Sole Article

(1) The Annex to the Decision 006/2022 of the College of the EPPO of 26 January 2022 adopting Guidelines on the application of Article 31 of Regulation (EU) 2017/1939 is hereby amended and replaced with the Annex to this Decision, which forms an integral part of this Decision.

(2) This Decision shall enter into force on the date of its adoption.

Done at Luxembourg on 18 September 2024.

On behalf of the College,

Laura Codruța KÖVESI

European Chief Prosecutor

ANNEX

GUIDELINES

on the application of Article 31 of the EPPO Regulation

I. Preliminary Remarks and Disclaimer

1. According to its mandate pursuant to Article 9(2) of the EPPO Regulation, the College of the EPPO adopts these Guidelines taking into account general issues arising from individual cases during the practical application of Article 31, including the judgment of 21 December 2023 of the Court of Justice of the European Union ('CJEU') in Case C-281/22, *G.K. and others (Parquet Européen)*, ECLI:EU:C:2023:1018 ('the judgment in Case C-281/22').
2. The main aim of these Guidelines is to ensure a uniform practice within the European Public Prosecutor's Office ('EPPO') in the framework of Article 31 and other relevant provisions of the EPPO Regulation, which created a new mechanism for the EPPO cross-border investigations.
3. These Guidelines express the position of the College of the EPPO on the interpretation of certain provisions of the EPPO Regulation at the moment of the adoption of the Guidelines. They should be subject to evaluation in the case of major or recurring practical or legal issues that may arise in the course of their practical application, in particular issues that the Permanent Chambers, European Prosecutors, or European Delegated Prosecutors (EDP) (through their supervising European Prosecutor) may report.
4. The investigative measures assigned in accordance with Article 31 of the EPPO Regulation are usually procedural acts of the EPPO that produce legal effects vis-à-vis third parties. Recital 88 of the EPPO Regulation specifies that "[w]hen national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation". Therefore, in case of doubts on the interpretation of Article 31, the EPPO should always request the competent court in the Member State concerned to take decisions in line with recital 88 of the EPPO Regulation which states that "[a]s underlined in the case-law of the Court of Justice, national courts should always refer preliminary questions to the Court of Justice when they entertain doubts about the validity of those acts vis-à-vis Union law".¹

¹ See CJEU, judgment of 6 October 1982, 283/81, *CILFIT and Others*, ECLI:EU:C:1982:335, paragraph 7, on the obligation of national courts to refer to the CJEU (and paragraphs 10, 13-14, 16 on the recognised exceptions).

II. General principles

5. Article 31 of the EPPO Regulation creates a self-standing, *sui generis*, legal basis for the EPPO cross-border investigations. Due to the fact that the EPPO is operating “as one single Office with a decentralised structure”, this new “assignment mechanism” replaces, as a rule², for cross-border investigations amongst participating Member States, both the mutual legal assistance and mutual recognition instruments.
6. The practical application of Article 31 cannot be more cumbersome, bureaucratic and time-consuming than the application of the Union acts giving effect to the principle of mutual recognition, such as the Directive 2014/41 regarding the European Investigation Order (“EIO Directive”)³ or the Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders (“Regulation 2018/1805”)⁴. The CJEU confirmed that a degree of efficiency, at least as high as that ensured by the above mentioned mutual recognition legal instruments, ought to be ensured in the implementation of Article 31.⁵
7. As stated unequivocally in its paragraph 1, Article 31 establishes a framework for close cooperation and regular consultation between the EDPs in EPPO cross-border cases. Therefore, the EDPs and the European Prosecutors concerned should always act in close cooperation and regularly consult each other with the aim to find the most effective and efficient ways of carrying out the respective cross-border investigation, avoiding unnecessary bureaucratic burden and ensuring a cost and time-effective mechanism.
8. Article 31(2) of the EPPO Regulation stipulates that the justification and adoption of the measures is governed by the law of the Member State of the handling EDP.
9. Where, in accordance with Article 31(3), first sub-paragraph, judicial authorisation is required under the law of the Member State of the assisting EDP, the assisting EDP should obtain the authorisation in accordance with the law of his/her Member State and, if authorisation is refused, the handling EDP has to withdraw the assignment.
10. Where, in accordance with Article 31(3), third sub-paragraph, the law of the Member State of the assisting EDP does not require a judicial authorisation, but the law of the handling EDP requires it for that type of measure, the handling EDP has to obtain the authorisation

²As an exception, paragraph 6 of Article 31 allows the EDPs concerned to have recourse to mutual recognition/mutual legal assistance instruments, only if “*the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation.*” See Section V. of these Guidelines, paragraphs 32-34.

³ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJEU L 130/1.5.2014.

⁴ 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, OJEU L 303/28.11.2018.

⁵ See, inter alia, paragraphs 67 and 68 of the judgment in C-281/22.

from the competent court⁶ of his/her Member State. If the authorisation is granted, the handling EDP has to submit it to the assisting EDP together with the assignment. Then, the assisting EDP should undertake the assigned measure in accordance with the assignment and the law of his/her Member State.

11. The handling and assisting EDPs should apply the judgment in C-281/22 to the effect that the court of the Member State of the assisting EDP may only examine aspects related to the enforcement of the measure, and not the justification and adoption of the measure.⁷ In particular, where the laws of both Member States concerned require the judicial authorisation of a measure assigned pursuant to Article 31 of the EPPO Regulation, there should always be only one judicial authorisation on the merits (i.e. concerning the justification and adoption of the measure, as well as its proportionality), in the Member State of the handling EDP, while the judicial authorisation by the competent court in the Member State of the assisting EDP should only examine aspects related to the enforcement of the measure in that Member State.⁸
12. The EPPO Regulation does not contain specific provisions on legal remedies in the framework of Article 31. However, Article 42(1) of the Regulation fully applies in respect of procedural acts issued or decisions adopted in this context that produce legal effects vis-à-vis third parties. Article 47 of the EU Charter of Fundamental Rights and other rights guaranteed by it apply to the assignment and the enforcement of measures under Article 31 of the EPPO Regulation.
13. According to the judgment in C-281/22, "*prior judicial review*" must be available in the Member State of the handling EDP "*in the event of serious interference with the rights of the person concerned guaranteed by the Charter of Fundamental Rights of the European Union*".⁹
14. Bearing in mind that Article 31 of the EPPO Regulation creates a new legal framework for EPPO cross-border investigations, different from the traditional judicial cooperation legal instruments, the corresponding costs, including for translation, where applicable, should, in principle, be borne by the EPPO, in light of recital 113, to the extent these are costs "*which are caused only due to the EPPO having assumed responsibilities for investigation and prosecution*".¹⁰

⁶ The term 'court' used in this document also encompasses the legal systems where a single judge, as for example an investigation judge or a judge of the guarantees, is competent to issue the order.

⁷ See the first half of operative part of the judgment in C-281/22 (as quoted in paragraph 6 above) and its paragraphs 71 and 72.

⁸ See footnote 7 to these Guidelines and paragraphs 44, 71 and 72 of the judgment in C-281/22.

⁹ See the second half of operative part of the judgment in C-281/22 and its paragraphs 73-75. For more details, see paragraph 28 below.

¹⁰ For more details, see paragraphs 43-47 below.

III. Close cooperation and regular consultation between the EDPs and EPs concerned

15. Article 31 of the EPPO Regulation goes beyond cross-border cooperation under the existing “mutual recognition” instruments. Irrespective of their Member State of origin, the EDPs are prosecutors belonging to the same prosecution office and not authorities of different countries. This should be reflected in the manner of assigning and carrying out cross-border investigations within the meaning of Article 31 of the EPPO Regulation.
16. Therefore, the EDPs concerned should work closely and consult each other from the early stage of preparing a cross-border investigation. The handling and the (potentially) assisting EDP should discuss all relevant legal and practical matters involved, including, but not limited to, the specific requirements of the laws of the Member States concerned, aspects related to judicial authorisation/judicial review in the respective Member States, and the situations referred to in Article 31(4) and (5) of the EPPO Regulation. In addition, where necessary, the supervising European Prosecutors concerned should also consult each other on a regular basis during the cross-border investigation.
17. By making full use of all possibilities of regular consultation offered by Article 31 of the EPPO Regulation, the EPPO may avoid undue delays or failures in the execution of the assigned measures. As appropriate and in particular when the planned measures are of complex nature, the handling EDPs should consider contacting the other EDPs to discuss a planned assignment before submitting it. The EDPs should agree on a feasible timeline for the execution of said measures.
18. The assisting EDPs should acknowledge receipt of the assignment, unless execution is likely to happen swiftly and without need for further input. They should contact the handling EDP proactively when they anticipate that
 - the Article 31 assignment will not be executable,
 - the Article 31 assignment needs to be amended or complemented,
 - another less intrusive measure could achieve the same result,
 - the execution will be delayed or and the documents sent in support could be improved, in addition to the grounds listed in Article 31(5).
19. Examples could be that the assisting EDP communicates to the handling EDP
 - translation requirements for untranslated documents,
 - that he/she extends the deadline set by the handling EDP,
 - that the assignment will be executed and completed in more than one step or by more than one assisting EDP.
20. In accordance with the second sentence of Article 31(2), the handling EDP should always inform his/her supervising European Prosecutor when assigning a measure to one or several EDPs from another Member State. As a rule, unless the execution of the measure is urgent, it should be the European Prosecutors who allocate the assignment to the

individual assisting EDP. If the assignment is a subsequent one from the same case, the handling EDP may issue it directly to the same assisting EDP; in such case, the EDPs concerned should inform their supervising European Prosecutors.

21. In accordance with Article 31(5), the assisting EDP should inform his/her supervising European Prosecutor when he/she considers that one of the situations mentioned in that paragraph occur. EDPs are encouraged to engage with each other and, as appropriate, the supervising European Prosecutors in order to solve the matter bilaterally.
22. As a rule, one assisting EDP should act as the point of contact for the handling EDP, rather than splitting the assignment to two or more assisting EDPs from the same Member State.

IV. Justification and adoption of the measure

23. As confirmed by the CJEU in the judgment in C-281/22¹¹, the justification and adoption of the assigned measure is exclusively governed by the law of the Member State of the handling EDP, as provided for in paragraph 2 of Article 31. Moreover, in accordance with the first paragraph of Article 31, it is for the handling EDP to decide on the adoption of the measure, which implies that it is for him/her to provide the justification of the respective measure, and not for the assisting EDP.
24. Consequently, for the justification and adoption in his/her Member State, the handling EDP should provide in the assignment sufficient elements on the necessity and proportionality of the measure. The extent of the justification provided will depend on the nature and complexity of the measure.
25. Pursuant to Article 31(3), first sub-paragraph, if judicial authorisation is required only under the law of the Member State of the assisting EDP, the assisting EDP should obtain that authorisation. In such cases, it is recalled that, according to the judgment in Case C-281/22, the review conducted by the assisting EDP or by the competent court in the Member State of the assisting EDP *"may relate only to matters concerning the enforcement of that measure, to the exclusion of matters concerning the justification and adoption of that measure"*.¹²
26. Pursuant to the last sub-paragraph of Article 31(3), in case the law of the Member State of the assisting EDP does not require judicial authorisation, but the law of the Member State of the handling EDP so requires, the latter will obtain the authorisation and submit it to the assisting EDP(s) together with the assignment. As previously mentioned, in these situations usually the national legislation allows the assisting EDP to execute himself/herself the measure. The execution should be based only on the set of facts and legal qualifications covered by the assignment and by the judicial authorisation obtained

¹¹ See paragraph 11 above.

¹² See paragraph 11 above.

by the handling EDP, transmitted with the assignment, without any other supporting documents.

27. Where judicial authorisation is required in both Members States, the division between the judicial authorisations in the two Member States follows what has been laid out in paragraph 11 above.
28. Whether the handling EDP is entitled to order and assign the measure him/herself or must first request the measure from another authority (i.e. a court), follows from the law of the Member State of the handling EDP (Article 30(1) and (4) of the EPPO Regulation). Possible requirements for prior judicial review or judicial authorisation, as they may exist or not, are governed by the national law that is applicable in the individual case.¹³
29. The handling EDP should always indicate whether the judicial authorization is required by his/her national law or, if applicable, that it will follow later.
30. The assignment of the measure pursuant to Article 31 is the essential procedural act that the handling EDP should send to the assisting EDP (within the CMS) and which, when judicial authorisation is required in the Member State of the assisting EDP, should be provided to the competent court of the latter. Since Article 31 does not foresee the content of the assignment, the latter should contain as a minimum the following elements:
 - the object of and reasons for the assignment;
 - the necessary information available on the person(s) concerned;
 - the justification of the necessity and proportionality of the measure;
 - a summary of the facts that are the object of the investigation or proceedings, the legal qualification of the facts as well as the applicable provisions of the EPPO Regulation and the criminal law of the handling EDP;
 - a description of the investigation measures(s) assigned and the evidence to be obtained;
 - information on the existence of reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, while there is no less intrusive measure available which could achieve the same objective as per Article 31(5) of the EPPO Regulation;
 - where applicable, the formalities and procedures of the handling EDP's national law according to which the assigned measure needs to be carried out.

For a uniform practice within the EPPO in respect of the content of the assignment, a template, following these guidelines and as prepared by the Central Office, should be used by all handling EDPs.

31. For these measures, the assignment from the handling EDP to the assisting EDP(s), as well as the judicial authorisation of the measure (as applicable, see paragraphs 25-29 above), the assisting EDP should indicate whether translations are needed, and if so, into which

¹³ See also paragraph 4 and footnote 1 of these Guidelines on the obligation of national courts to refer to the CJEU for the interpretation of Union law.

language. If necessary, in particular in order to comply with procedural requirements of the law of the Member State of the assisting EDP, the handling EDP should provide for their translation, in line with the principles set out in paragraphs 44-47 of these Guidelines.

V. Recourse to mutual recognition/cross-border cooperation instruments

32. For all investigation measures or other measures listed in Article 30 of the EPPO Regulation that need to be undertaken in a participating Member State other than the Member State of the handling EDP, EDPs should, as a rule, use assignments within the meaning of paragraphs 1 and 2 of Article 31. Only as an exception, Article 31(6) allows them to have recourse to legal instruments on mutual recognition or cross-border cooperation if the measure *“does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation”*, as read in the light of recital 73 of the EPPO Regulation.
33. One example for such a recourse could be a freezing order under Regulation 2018/1805, if the freezing measure does not exist in a purely domestic situation, but would be available under Regulation 2018/1805 because none of the Article 8 non-recognition/non-execution grounds applies.
34. In application of Article 31(6), the concerned EDPs should seek prior agreement with the supervising European Prosecutors.

VI. ENFORCEMENT OF THE ASSIGNED MEASURE

35. During enforcement, EDPs should continue to apply the principles of close cooperation and regular consultation, as outlined in Section III. above.
36. According to Article 32, the EPPO Regulation and the law of the Member State of the assisting EDP govern the enforcement of the assigned measure. The assisting EDP should aim to comply with the formalities and procedures indicated by the handling EDP to the extent possible under his/her Member State's law.
37. The assisting EDP should practically apply the principle enunciated in the judgment of the CJEU in C-281/22, that the examination in his/her Member State is, at any time, restricted to aspects related to the enforcement of the measure and does not extend to its justification or adoption.¹⁴ The enforcement of an assigned measure may involve a

¹⁴ See paragraphs 8 and 11 above.

procedural act or decision by or on behalf of the assisting EDP, affecting the rights of third parties, that may therefore become subject to review by the competent national courts in the assisting EDP's Member State in accordance with Article 42(1) of the EPPO Regulation.¹⁵

38. In line with the "single office" concept of the EPPO and the harmonised *sui generis* system for EPPO cross-border investigations created with Articles 31 and 32, the assisting EDP should, as a rule and unless specified otherwise by the handling EDP, make the documents or objects collected in execution of an assignment, as well as any other documents related to it, available to the handling EDP without undue delay. This is notwithstanding possible judicial remedies. The EDPs should inform each other of the lodging of such judicial remedies.
39. The assisting EDP should, in addition to the transmission of the evidence or other documents produced by the execution of the assignment, provide the handling EDP with a report on the results of the execution. This report, drawn up by the assisting EDP or upon his/her instruction, should be in English, provide information on how the assigned measure has been carried out and contain at least:
- the reference number of the assignment issued by the handling EDP,
 - whether, when, by whom and, if not completely, to what extent the measure has been carried out,
 - to whom, through which channel and when this material is being or will be sent.

The report should also contain, if appropriate in the individual case,

- a table of contents and a general description of the documents/data/storage means obtained,
- a brief summary of the results (at least by way of reference to a police report) and, if applicable, the place (attachment, file, section, page) where the evidence or information can be found.

For a uniform practice within the EPPO in respect of the content of the assignment, a template, following these guidelines and as prepared by the Central Office, should be used by all assisting EDPs.

40. Evidence seized in original paper format or through certified hard copies, or devices and other objects gathered as evidentiary materials, should not be routed through the Central Office, but transmitted directly to the handling EDP or, if agreed so with the handling EDP, to the national competent authorities instructed by the handling EDP, in accordance with the applicable rules or practices in the handling EDP's Member State in equivalent national cases.
41. The handling and assisting EDPs should consult with each other and agree on the means of transmission of the documents and/or seized storage devices, related to the execution of the assisting measure(s) in line with relevant national legislation or practices.

¹⁵ See paragraph 12 and 13 above.

42. Wherever possible, documents in execution of an assignment, including the assisting EDP's report on the results of the execution, should be transmitted via "EPPO Doc" only. Where the report was drafted by a national competent authority tasked with the execution, the assisting EDP should upload it in the "EPPO Doc" folder accompanied by a transmission note. It is the decision of the handling EDP whether and how to incorporate the mentioned documents or information in the case file that he/she manages, and it is his/her responsibility to ensure the content e-Case file in the CMS accordingly.

VII. EXPENDITURE RELATED TO THE APPLICATION OF ARTICLE 31

43. While, in principle, the provisions of Article 91(5) and (6) of the EPPO Regulation also apply to EPPO cross-border investigations, there are reasons of legal and practical nature supporting the thesis stated in paragraph 14 of these Guidelines, namely that the expenditure related to the application of Article 31 should be borne by the EPPO to the extent that it consists in costs *"which are caused only due to the EPPO having assumed responsibilities for investigation and prosecution"*.
44. To fall under the EPPO budget within the meaning of Article 91(5), first sub-paragraph, of the EPPO Regulation, the expenditure must be directly linked to the application of Article 31 and relate to activities that are unique to EPPO cases and would not have arisen if the case were investigated by the competent national authorities. Such examples are costs incurred for:
- a) organising and carrying out coordination meetings, at the EPPO's headquarters or on the territory of a participating Member State, in particular for the preparation of Article 31 assignments, including costs related to these meetings to cover for
 - the participation of the concerned EDP(s);
 - missions of EPPO staff and of representatives of the national authorities;
 - interpretation;
 - videoconferencing.
 - b) the execution of investigation measures assigned pursuant to Article 31, meant to cover for
 - the participation, including mission related costs, of the handling EDP(s) and/or the representative(s) of the national authorities of the handling EDP Member State;
 - the participation, including mission related costs, of EPPO staff;
 - costs for shipping items that result from the execution of Article 31 assignments;

- c) translations, where applicable and in line with the principles set out in paragraph 45 of these Guidelines, of Article 31 assignments and of all eventual related documents, including those resulting from the execution of the measure by the assisting EDP.
45. In respect of the translation of an Article 31 assignment and of all related files and documents, the EDPs should comply with the following priority criteria, in line with the necessity to ensure a sound financial management and cost-efficiency of the budget of the EPPO in accordance with Article 95 of the EPPO Regulation and the EPPO Financial Rules¹⁶:
- a) All the relevant files and documents should, as a principle, be translated via machine translation, unless one of the exceptions listed in point d) of this paragraph apply.
 - b) The handling EDP, before translating the assignment and enclosed files and documents (if any) into (one of) the language(s) of the Member State of the assisting EDP, should clarify (see paragraph 31 of these Guidelines) whether this is required by law, also in consideration of Article 31(2) of the EPPO Regulation as interpreted by the CJEU.¹⁷
 - c) The handling EDP, before translating the report on the execution of the measures received from the assisting EDP into the language of his/her own Member State, and accordingly enclosed files and/or documents (if any), should assess whether this is required by law. As regards enclosed files and documents, the handling EDP should carry out an assessment of what is effectively relevant for the investigation and needs to be translated. For this purpose, the EDP should use machine translation and/or request the assistance of the EPPO Central Office.
 - d) If a more accurate translation of the report or enclosed files and/or documents is necessary, or there are legal constraints that prevent the use of machine translation, the EDPs should assess whether the use of the ordinary method for translation used in similar situations at national level is advantageous in respect of timing and costs, as opposed to the recourse to the Translation Centre of the bodies of the European Union (Centre de traduction des organes de l'Union européenne, CdT). The costs related to the translation carried out at national level should be reimbursed by the EPPO in accordance with the agreement entered into with the concerned Member State;
 - e) In their requests for translation to the CdT, the EDPs should confirm that the translation is required in the framework of activities pursuant to Article 31 of the EPPO Regulation;
 - f) The EDPs should use the urgent procedure for translation by the CdT only in specific and justified cases.

¹⁶ Decision 002/2021 of the College of the EPPO of 13 January 2021, as amended by Decision 023/2023 of the College of the EPPO of 19 April 2023.

¹⁷ See paragraphs 11, 25 and 37 of these Guidelines.

46. The costs that the competent national authorities would normally incur if they investigated the case themselves rather than the EPPO, should be considered as falling within the scope of Article 91(5), second sub-paragraph, of the EPPO Regulation and not as operational expenditure of the EPPO under the first sub-paragraph of Article 91(5). Hence, the EPPO should not bear such costs.
47. In accordance with Article 91(5) of the EPPO Regulation and without prejudice to Article 91(6), the Member States remain responsible for the costs they would have anyway incurred if the measure would have been executed under the mutual recognition or mutual legal assistance regime, such as costs incurred by any national authority during the execution of a measure on the territory of that Member State. Thus, the costs related to the carrying out by the national law enforcement authorities (LEA), on the territory of the Member State of the assisting EDP, of measures assigned under Article 31 of the EPPO Regulation, should be covered by the respective national authorities. Such examples of such costs that remain for the national authorities, unless they are exceptionally costly and reimbursed by the EPPO pursuant to Article 91(6) of the EPPO Regulation, are:
- costs of any investigation measures carried out in the territory of the Member State of the assisting EDP;
 - any other costs incurred by the national LEA exclusively in the territory of that Member State of the assisting EDP;
 - costs related to judicial proceedings in that Member State.