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Danilo Ceccarelli

Editorial

EDITORIAL

AUTHOR

Danilo Ceccarelli

Senior Coordinator
European Public Prosecutor's Office

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Dear Readers,

Cross-border cooperation between prosecuting authorities in Europe can still be a challenging effort in 2019. Within the EU, in spite of the many improved tools available to prosecutors, such as the European Investigation Order, cooperation is still very much a matter of the willingness and readiness of the requested country to cooperate and of the allocation of resources. In fact, the EU's legal framework in this field is still based on the decision of the requested (judicial or prosecuting) authority to execute the requested activity, even when fundamental rights are not at stake. The basics of the legal system of judicial cooperation in criminal matters in the EU still rest to a large extent on the principles foreseen by the CoE Convention on Mutual Assistance in Criminal Matters concluded in Strasbourg in 1959. This Convention is also the fundamental legal tool for cooperating with European countries that are not part of the EU, including countries involved in the EU's neighbourhood and enlargement policy. The EU has been providing assistance and implementing actions in these countries for a long time already, thus supporting reform and democratic consolidation. This activity entails the use of funds from the EU's budget – any possible misuse or embezzlement of these funds, corruptive actions, or fraud would harm the EU's financial interests.

When OLAF contacted the Italian investigative and prosecuting authority in a case of transnational corruption, cooperation was certainly smooth in Italy and action was quickly taken. OLAF's final report and recommendations advised the immediate initiation of a criminal investigation at Milan Prosecutor's Office. The cross-border investigation in this case involved four different EU countries and, most importantly, a non-EU neighbour country, North Macedonia, where EU funds had been misused through corruptive actions. As any "best practice" handbook would suggest, the first and most important step towards cooperation is establishing contact. It was therefore important to involve the competent Skopje Prosecutor's Office through an effective channel. The Italian prosecutors could resort to the EU agency specifically tasked for this activity: since Eurojust works closely with liaison magistrates from several non-EU countries, including North Macedonia, the Italian prosecutors therefore requested that Eurojust would facilitate and coordinate a parallel investigation between Italy and North Macedonia, including the reciprocal legal assistance.

Eurojust's professionalism, experience, and network proved invaluable to the success of the investigation. All the actors were present at the coordination meeting in The Hague, first and foremost OLAF, whose contribution to the case was of the essence. Practical, operational, and legal issues were dealt with and resolved. The main legal issue was the transfer of evidence from OLAF to North Macedonia's prosecution, which was not admissible pursuant to Article 11 of the OLAF Regulation, since this provision applies to EU member States only. However, admissible evidence gathered by OLAF had been handed over to Milan prosecution service. Therefore, the Italian authorities could transfer said evidence to the North Macedonian prosecutor, pursuant to the 1959 CoE Convention and to a recent bilateral agreement signed by the two countries. Coordinated action was undertaken by the respective prosecution offices, and the exchange of information followed. This complex investigation is still ongoing, and it will certainly require further coordination. Nonetheless, productive contacts, also in person, between the Italian and the North Macedonian prosecutors, OLAF, and Eurojust have been permanently established, and channels of communication are being actively maintained. Direct contact and communication, as well as the capability of the EU agencies to liaise with and coordinate authorities even from non-EU countries, once again proved to be the key to the success of transnational investigations.

Danilo Ceccarelli

Sostituto Procuratore – Public Prosecutor

Procura della Repubblica presso il Tribunale di Milano - Milan Prosecutor's Office

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