

The judicial review in EPPPO Regulation in the light of Art. 47 Charter of Fundamental Rights

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EPPO Structure

- EPPO Regulation

- Legal basis art. 86 TFEU

EPPO **single Office** with decentralised structure

Central Office in Luxembourg : College, Permanent Chambers,
European Chief Prosecutor, European Prosecutors

Decentralised level in MS : European Delegated Prosecutors (EDPs)



EPPO Competences

investigating, prosecuting and bringing to judgment perpetrators/accomplices to

- criminal offences affecting the financial interests of the Union in Directive 2017/1371, as implemented by national law, (VAT fraud only cross border and over 10 million Euros) and under conditions also inextricably linked offences to these
- participation in a criminal organization, if the focus of the criminal activity is to commit the offences in Directive 2017/1371



EPPO Competence

- Shared with MS but with a right of evocation
- EPPO exercises competence by
 - initiating an investigation or
 - using its right of evocation of case in hands of MS authorities



Judicial review in EPPO Regulation (art. 42)

By **national courts** in accordance with national law

- of procedural acts of the EPPO /failures of the EPPO to adopt procedural acts that *are intended to produce legal effects vis-à-vis third parties* (Art. 42)
- ❑ procedural acts taken in the performance of its functions of investigating, prosecuting or bringing to judgement (also choice of forum decisions at the latest at the trial stage)



Judicial review in EPPO Regulation (art. 42)

Are intended to produce legal effects vis-à-vis third parties.

- CJEU's cumulative criteria in interpreting the admissibility condition in art. 263 TFEU, which has the same wording as Article 42(1) of the EPPO Regulation apply also in the interpretation of Art. 42 (1) (*Commission v SRB C-551/22 par. 65* , *Opinion of Advocate General Collins C-292/23 par. 46*)

Criteria whether

- the act has binding legal effect and
- it brings a distinct change in the legal position of the party concerned.



Judicial review in EPPO Regulation (art. 42)

In order to ascertain whether an act produces such effects it is necessary to:

- examine the substance of that act and
- assess its effects in the light of objective criteria, such as its content, taking into account, as appropriate, the context in which it was made and the powers of the institution, body, office or agency that adopted it.



Judicial review in cross border investigations

CJEU Judgment of *G.K. and others* 21. 12. 2023 –
C-281/22

- “the review conducted in the MS of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate **only to matters concerning the enforcement of that measure**, to the exclusion of matters concerning the **justification and adoption of that measure**; the latter matters must be subject to prior judicial review in the Member State of the handling European Delegated Prosecutor”



Judicial review in EPPO Regulation (art. 42)

By Court of Justice through preliminary rulings concerning:

- (a) *the validity of procedural acts* of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law;
- (b) *the interpretation or the validity of provisions* of Union law, including EPPO Regulation;
- (c) *the interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence* between the EPPO and the competent national authorities.



Judicial review in EPPO Regulation (art. 42)

By Court of Justice directly

- the decisions of the EPPO to *dismiss a case*, in so far as they are contested directly on the basis of Union law,



Effective judicial protection Art. 47 Charter

Effective judicial protection

- Article 47 of the Charter corresponds to Articles 6 and 13 of the ECHR, it provides more extensive protection compared to the ECHR provisions .

After the entry into force of the Lisbon Treaty, the CJEU held that the principle of effective judicial protection, which it had developed as early as the 1980s, is affirmed in Article 47(1) of the Charter.

- Article 47(1) of the Charter enshrines this right, while Article 19 TEU mandates the obligation for MS to establish a system of legal remedies ensuring effective judicial protection in areas of Union law



Effective judicial protection Art. 47 Charter

- **Effective judicial protection** as a principle reinforces the correct application of Union law, while as a right, it requires another right arising from EU law to be protected before it can be activated
- the institutional function of Article 19 TEU, from which the CJEU has inferred institutional guarantees (including independence) that national courts should fulfill in order to provide effective judicial protection *C-64/16 - Associacao Sindical dos Juizes Portugueses Judgement.*



Compatibility of judicial review of EPPO acts with art. 47 Charter

Can national courts through the preliminary ruling procedures stipulated in Art. 42 (2) EPPO Regulation *effectively* review the EPPO decisions?

CJEU Stan v. EPPO

- Declared inadmissible action against Decision by Permanent Chamber to bring the case to judgement brought directly before CJEU
- Rejected recourse to a broad interpretation of Art. 42 allowing for direct judicial review by CJEU because it was not compatible with the wording of the provision at issue
- “and that even the principle of interpretation in conformity with a rule of superior binding force cannot serve as the basis for an interpretation that is contra legem (par. 30)”.



Concluding remarks

Apart from the cases that an EPPO act is judged by a last instance national court or by any national court if it considers there are grounds for its invalidity,

- it lies in the discretion of national courts whether to refer the case to the CJEU for preliminary ruling.
- As a result, in all these cases the EPPO act will be judicially reviewed by national courts according to national law. That's why the question of whether the current framework can ensure effective judicial protection of EPPO acts cannot be answered *in abstracto*. It depends on each national legal order to take all necessary measures so that EPPO acts are reviewed effectively by national courts.

