

Recorded Discussion

Advanced Module 3



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EPPO at a glance



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- Began operations in 2021
- Result of long negotiations between the European Commission and the Member States
- Integration in criminal matters is based on the **principles of mutual trust and mutual recognition**

EPPO at a glance



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General Criteria: Article 26(4) and (5) of the EPPO Regulation

→ EPPO must choose the forum based on where the focus of the criminal activity is or the where the bulk of the offences were committed

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Legal uncertainty



EPPO can deviate in **duly justified cases**

- Suspect or accused person's habitual residence;
- The nationality of the suspect, or
- Accused person and place where the main financial damage has occurred

Choice of Forum & Rule of Law



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→ Choice of forum determines the applicable law which can vary by Member State



Has direct implications for the:

- Foreseeability
- Legal certainty
- Fundamental rights

Mr. Mitsilegas (Professor of the School of Law and Social Justice at the University of Liverpool) highlighted that:

1. The EPPO provisions governing this aspect incorporate concepts that are not clear enough, such as 'the bulk' of the offences being committed' and do not define what constitutes a decision 'in the general interest of justice'.
2. They grant the EU body a high degree of discretion.

Consequently, the defendant faces uncertainty regarding the principle of legality and foreseeability of the sentence and his/hers exercise of defence rights, as this depends on discretionary decisions.

Respecting Fundamental Rights



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Article 41 EPPO Regulation

→ Establishes that the activities of the EPPO shall be carried out in **full compliance** with the rights of suspects and accused persons as enshrined in the Charter of Fundamental Rights

Right to interpretation and translation

Right to legal aid

Right to information

Presumption of Innocence

Right of access to a lawyer

Right to remain silent

Respecting Fundamental Rights



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General Rule

EPPO procedural acts intended to produce legal effects vis-à-vis third parties are subject to **review by national courts under national law**. The same applies where the EPPO, in breach of a legal duty, fails to adopt procedural acts intended to produce legal effects vis-à-vis third parties.

CJEU's limited jurisdiction in reviewing EPPO acts is based on the idea that the EPPO is a **"national" authority**, requiring a strong link between the EPPO operations and the domestic legal orders.

Article 42(2) EPPO Regulation

- Allows national courts to send preliminary references to the CJEU but excludes questions on the validity of the procedural acts of the EPPO regarding national procedural law. This is a consequence of the fact that these acts are governed by a national criminal procedure, rather than EU law.
- The competent national judge would be the authority with jurisdiction to assess this aspect.



CJEU can review the validity of the procedural acts based on EU Law

EPPO as a national authority

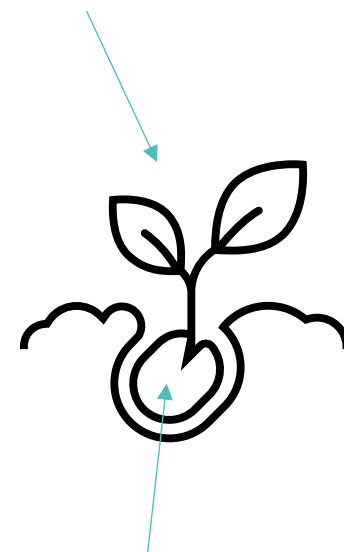


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The Commission expressly referred to the EPPO as national authority for the purpose of the judicial review of its acts of investigation and prosecution. This idea is based on the fact that the EPPO exercises its functions in, and in accordance with the domestic judicial systems.

Moreover, the prosecution deploys its effects in the legal orders of the Member States. Therefore, the Union legislator concluded that both the specific nature of the EPPO's task and its structure, which differed from all other bodies, required the introduction of a new legal regime designed for that specific purpose.

The EPPO deploys its effects in the legal orders of the Member States.



The EPPO is a Union body with competence to prosecute certain offences committed against the Union's financial interests, which are better achieved at Union level.

Right to effective judicial protection



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→ Each national judge is the guardian of the fundamental rights recognised by EU law. The defendant's access to a **review by the CJEU** can largely depend on the national court conducting the initial review.

→ Challenging to assess whether the current review system is **effective in practice** in correcting or remedying invalid forum choice at this early stage of EPPO operations.

→ MS also differ in how they refer preliminary rulings



Action for annulment

CJEU has limited role in actions for annulment of EPPO
Acts under Article 263 TFEU



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Article 42(3) EPPO Regulation

CJEU has limited role in actions for annulment (Article 263 TFEU) of EPPO procedural acts intended to produce legal effects vis-à-vis third parties. It has jurisdiction where:

Exception>>> An **EPPO decision to dismiss a case is challenged directly on grounds based upon EU law**, a person to whom that decision is addressed or to whom that decision is of direct and individual concern may challenge it before the General Court of the European Union.



Deviated from the standard treaty stem
by restricting access to the CJEU

This reflects the idea that national courts
are the primary actors carrying out judicial
review

Role of the CJEU is kept to the review of
EU law

