



DIPARTIMENTO DI
GIURISPRUDENZA
SCHOOL OF LAW

THE EPPO and EU law: a step forward in integration



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EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

TOPIC I: THE ROAD TO EPPO

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EPPO AND THE CJEU



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THE RELATIONSHIP BETWEEN THE EPPO AND THE CJEU

- The relationship between the EPPO and the Court of Justice of the European Union (CJEU) is regulated by the **art. 42, Regulation 2017/1939** of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').



THE RELATIONSHIP BETWEEN THE EPPO AND THE CJEU

According to this provision, the Court of Justice shall have jurisdiction, in accordance with Article 267 TFEU, to give 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;
- 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



WHAT IS A PRELIMINARY RULING?

Question on EU Law:
interpretation or validity of EU
institutions' acts



THE RELATIONSHIP BETWEEN THE EPPO AND THE CJEU

- EPPO cannot refer a preliminary ruling to CJEU because the preliminary ruling is reserved for **NATIONAL judicial authorities** (art. 267 TFEU).



THE RELATIONSHIP BETWEEN THE EPPO AND THE CJEU

Furthermore, the CJEU has jurisdiction:

1. in any dispute relating to **compensation for damage caused by the EPPO.**
2. in any dispute concerning **arbitration clauses contained in contracts concluded by the EPPO.**
3. in any dispute concerning **staff related matters.**
4. on the **dismissal of the European Chief Prosecutor or European Prosecutors.**

THE RELATIONSHIP BETWEEN THE EPPO AND THE CJEU

- **Art. 42(1) Regulation 2017/1939:**

“Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to **review by the competent national courts** in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation”

- **Application for annulment and application for failure to act** cannot be brought against an act of EPPO.

CJEU CASES INVOLVING EPPO

- Since the beginning of the EPPO activity (1st June 2021), EPPO has been involved in two cases in front of the Court of Justice of the European Union (CJEU).



CASE I: C-603/21

- *Applicant:* WO
- *Defendant:* EPPO
- Case filed on 14 September 2021.



CASE I: C-603/21



- This case was decided on 25 April 2022, with the **order of the General Court (First Chamber)**.
- The Court dismissed the action because “the **Court does not have jurisdiction** to hear and determine the application brought by the applicant [...] and in which, in any event, the applicant has himself acknowledged that he had **not provided information to demonstrate the alleged damage**”.

CASE II: C-281/22

- This case concerns an investigation on biodiesel imports from Bosnia-Herzegovina into Germany and Austria conducted by an EDP in Munich.
- The importing company had evaded payment of customs duties amounting to EUR 1,295,000 by making false customs declarations. As a result, the German EDP ordered a search and seizure of the accounting documents at the premises of the Austrian company and its director, which was the final recipient of the imported biodiesel.

CASE II: C-281/22

- **The preliminary ruling was** referred to on 25 April 2022 by an Austrian Court (Oberlandesgericht Wien).
- Appeals against the court approvals of the warrants of the Austrian European Delegated Prosecutor to search the residential and business premises of the appellant and to seize items.
- Still pending.



CASE II: C-281/22



- This is the **first preliminary ruling concerning an interpretative question on Regulation 2017/1939**.
- CJEU has been asked to **interpret art. 31 and 32** Regulation 2017/1939 concerning the possibility to conduct **transnational investigation through the network of EDPs** (European Delegated Procurators)

CASE II: C-281/22

Two questions have been raised:

1. Does the assisting EDP have **to examine all substantive requirements** relating to the requested investigative measure?
2. If the admissibility of the search warrant has already formed the subject of a judicial review in the Member States of the main EDP, what should be the **content of the examination by the court of the Member State in which the measure has to be implemented?**



CASE II: C-281/22

- The case is **still pending**.
- Yesterday (Monday 27th February 2023) the hearing at the CJEU took place.



THANK YOU



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