EPPO Caught Between EU and National Law: A Catch-22

Comments on the ECJ's Judgment in EPPO v. I.R.O and F.J.L.R (Case C-292/23)

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eucrim
European Law Forum: Prevention • Investigation • Prosecution

Article

ABSTRACT

On 8 April 2025, the Grand Chamber of the European Court of Justice (ECJ) delivered its second judgment interpreting the EPPO Regulation: EPPO v. I.R.O. and F.J.L.R. (Case C-292/23). This is the Court's first ruling on Art. 42(1) of the Regulation, which addresses the scope of ex post judicial review of EPPO procedural acts before national courts. The case arose from a Spanish preliminary reference concerning the compatibility of Ley Orgánica 9/2021 (the Spanish law implementing the EPPO Regulation) with Art. 42(1). In particular, the reference dealt with the Spanish law's limitations on judicial review of acts carried out by Spanish European Delegated Prosecutors.

The ECJ's judgment clarifies which acts undertaken by the EPPO must be subject to review by national courts. More broadly, it has implications for the effective judicial protection of individual rights in EPPO proceedings. This article first outlines the relevant background of the case and then the Court's main findings. It goes on to examine the judgment's effects and implications and argues that, while the Court's interpretation of Art. 42(1) fits well with the EPPO's institutional structure, its connection to the case law on Art. 263 TFEU may result in an overly narrow understanding of the acts susceptible to review. This in turn potentially clashes with the right to an effective remedy in Art. 47 of the EU Charter of Fundamental Rights.

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CITATION SUGGESTION

A. Hernández Weiss, "EPPO Caught Between EU and National Law: A Catch-22", 2025, Vol. 20(3), eucrim. DOI: https://doi.org/10.30709/eucrim-2025-016

Preprint eucrim 2025, Vol. 20(3)

ISSN: 1862-6947

https://eucrim.eu

I. Introduction

On 8 April 2025, the Grand Chamber of the European Court of Justice (ECJ) delivered its judgment in *EPPO v. I.R.O and F.J.L.R* (C-292/23). The case concerns the interpretation of Art. 42(1) of the EPPO Regulation[1] and the judicial review of procedural acts undertaken by the European Public Prosecutor's Office (EPPO) in the course of its investigations. Specifically, the Spanish referring court asked the ECJ whether a witness summons issued by a European Delegated Prosecutor (EDP) must be subject to judicial review by national courts. This is the second time that the ECJ has had to clarify the EPPO Regulation, particularly with regard to the design of procedural rights in EPPO investigations. The first case, *G.K. and Others* (C-281/22),[2] concerned the *ex-ante* judicial review of cross-border investigation measures (Art. 31 EPPO Regulation).[3] This case raises the issue of *ex-post* judicial control of the EPPO's "procedural acts".

Designing a system that ensures effective judicial protection of individual rights is at the heart of developing an Area of Freedom, Security and Justice based on the rule of law.[4] As an EU body with competence to undertake criminal investigations on the ground in Member States, designing the EPPO's system of judicial review was a tricky issue.[5] As an "indivisible body of the Union", the EPPO's procedural acts would, in principle, have been subject to judicial review before the CJEU under Art. 263-265 TFEU.[6] However, due to the EPPO's hybrid structure and reliance on national law, judicial review — both *ex ante* and *ex post* — is largely in the hands of national courts. Thus, the CJEU's role via preliminary references is essential to ensuring uniform application of the EPPO Regulation, as well as to exercising a certain degree of control over the EPPO's activities.[7]

With its ruling in *I.R.O and F.J.L.R*, the ECJ has further shaped the system of remedies in EPPO proceedings, highlighting the interplay between national law and EU law. The ECJ established that Art. 42(1) of the EPPO Regulation, which grants national courts competence to review the EPPO's "procedural acts with legal effects vis-à-vis third parties," must be given an autonomous and independent interpretation throughout the EU. Ultimately, the assessment of whether a specific act falls under the scope of that provision is left up to national courts. Although the procedures and modalities of judicial review are within the procedural autonomy of the Member States, they are limited by the Charter of Fundamental Rights of the European Union (the Charter) and the principles of effectiveness and equivalence. Accordingly, Member States are not required to provide for a direct appeal against EPPO acts, with indirect review by the trial court being sufficient in accordance with the right to an effective remedy enshrined in Art. 47 of the Charter. Nevertheless, the principle of equivalence requires that the same remedies be available in EPPO investigations as in similar national cases.

After summarizing the facts of the case and the relevant legal framework (II.), as well as the ECJ's reasoning (III.), the implications of this ruling and a number of remaining questions will be discussed (IV.).

II. Facts of the Case and Legal Framework

In the case at hand, the EPPO was conducting an investigation into a Spanish company and its directors, I.R.O. and F.J.L.R, for subsidy fraud and falsification of documents.[8] The company had received EU funding for a project and had not adequately justified the direct personnel costs for two researchers, Y.C. and I.M.B.[9] In the context of this investigation, Y.C. and I.M.B. were summoned as witnesses by the Spanish EDP.[10] However, Y.C. had already testified before the *Juzgado de Primera Instancia e Instrucción no 1 de Getafe* (Court of First Instance and Preliminary Investigation No 1, Getafe, Spain), as the case had originated as a national investigation, which then became an EPPO case when the Spanish EDP exercised their right of evocation.

The lawyers representing I.R.O. and F.J.L.R challenged the EPPO's decision to summon Y.C., arguing that the measure was neither relevant nor necessary nor useful.[11] It was unclear, however, whether it was even possible to challenge the EDP's witness summons. Art. 90 of the applicable Spanish statutory law (*Ley Orgánica (LO) 9/2021*),[12] which implements the EPPO Regulation into Spanish law, restricts the possibility of appealing the EPPO's procedural acts to a certain number of exhaustively listed cases.[13] As an appeal against a witness summons is not expressly provided for under LO 9/2021, defendants cannot challenge these acts – at least not directly – before Spanish courts.

At the same time, Art. 42(1) of the EPPO Regulation provides that the EPPO's procedural acts, as well as failures to adopt such acts, which 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. While the EPPO Regulation does not further specify which acts fall under the scope of Art. 42(1), the *Juzgado Central de Instrucción no 6 de Madrid* (Central Court of Preliminary Investigation No 6, Madrid, Spain) – the referring court[14] – considered witness summons to be "acts which produce legal effects vis-à-vis third parties". First, the Spanish court highlighted that the summons had legal implications for the witnesses, who were obliged to appear and testify truthfully.[15] Second, the court was of the opinion that the summons could also affect the defendants' procedural rights. Incriminating evidence could be obtained and, given that Y.C. had already been questioned, their right to a trial without undue delay could be affected.[16] Moreover, in a similar national case, such a witness summons would have been open to appeal, as the investigation is led by the investigative judge in Spain, whose orders are, in principle, subject to appeal.[17] By contrast, investigations by the EPPO follow a different structural model – predominant in many EU Member States[18] – whereby the prosecution services are in charge of investigating and prosecuting the offence. In Spain, EPPO proceedings are thus subject to a special procedure that differs structurally from national proceedings.[19]

Against this background, the referring court stayed the proceedings and referred questions to the ECJ on the compatibility of the Spanish law with Art. 42(1) of the EPPO Regulation read in light of the Charter (Question 1), as well as with regards to the principles of equivalence and effectiveness (Questions 3 and 4). The referring court furthermore had doubts as to how such a provision, which precludes the judicial review of witness summons, was to be interpreted in light of Art. 7 of the Directive on the presumption of innocence[20] (the right to remain silent and not incriminate oneself) and Art. 48 of the Charter (Question 2). The ECJ, however, considered this second question to not directly pertain to the case at hand, as it concerned the possibility for the witness to bring an appeal, rather than the defendant, and thus deemed the question inadmissible.[21]

III. The ECJ's Reasoning

The ECJ began by recalling that, due to the specific nature and tasks of the EPPO as an EU body exercising the functions of a public prosecutor before national courts on the basis of national law —which sets it apart from any other EU body —, the EU legislature was conferred the power to design a specific system of judicial review applicable to the EPPO.[22] Such a system has been set up in Art. 42 of the EPPO Regulation, which provides for a sharing of competences between national courts, and the ECJ. Art. 42(1) awards national courts the competence to review "procedural acts that are intended to produce legal effects vis-à-vis third parties" in accordance with the modalities and procedures in national law,[23] while Art. 42(2) to (8) list the cases where the power of review lies with the ECJ.[24] To ensure a coherent division of labour between national courts and the ECJ, the concept of "procedural acts which produce legal effects vis-à-vis third parties" within the meaning of Art. 42(1) must be given an autonomous and uniform interpretation throughout the

Union.[25] The reference in Art. 42(1) to national law pertains only to the modalities and procedures under which such a review may be exercised, not to the acts which may be subject to review in the first place.[26]

The Court then established that "procedural acts" are to be understood in line with Recital 87 of the EPPO Regulation as acts that are carried out by the EPPO in the course of its investigations.[27] As to the question of whether these acts are to be regarded as having "legal effects vis-à-vis third parties", the Court highlighted that this expression corresponds to the criterion used in the first paragraph of Art. 263 TFEU (to determine the scope of acts that may be challenged before EU courts by way of an action for annulment) and must therefore be interpreted analogously.[28] Drawing on the case law on Art. 263 TFEU, the Court concluded that Art. 42(1) covers "all acts of a procedural nature intended to produce binding legal effects capable of affecting the interests of third parties by bringing about a distinct change in their legal position, including those adopted in the course of a criminal investigation procedure."[29] In line with Recital 87, the term "third parties" is to be interpreted broadly and include suspects, victims, and other persons who may be adversely affected by such acts. Specifically, the ECJ stressed that the EU legislature did not intend to restrict mandatory review of procedural acts to a certain *numerus clausus* but rather sought to extend the scope to include all acts that have legal effects vis-à-vis third parties.[30]

The question of whether a specific act, such as a witness summons, has binding legal effects cannot be answered in the abstract, however, but requires an assessment *in concreto* of the substance of the act and its effects with regard to the "third party", i.e., the person challenging that act, taking into account its content, the context it was adopted in, and the body that adopted it.[31] Given that both EU and national procedural rights apply in EPPO proceedings, the specific effects of any such procedural act will vary, depending on the jurisdiction within which it is taken.[32] Thus, in the words of the Court, as "the perimeter of procedural safeguards" granted to the various persons may vary according to national law, "the perimeter" of the procedural acts that these persons can challenge may consequently also vary.[33] It is therefore for the national court to assess, in light of the national procedural rules and in the context of the criminal investigation, whether the decision of an EDP summoning a witness to appear is intended to produce binding legal effects. Particularly, the (national) court must determine whether that decision is capable of affecting the interests of the person challenging it by bringing about a distinct change in their legal position, including by affecting their procedural rights.[34]

Should this question be answered in the affirmative, the act must be subject to review. However, this review does not necessarily have to be carried out by way of a direct appeal: indirect review by the trial court is sufficient to comply with the required level of protection set out in Art. 19 TEU and Art. 47 of the Charter.[35] Notwithstanding the foregoing, national procedural autonomy is limited in any case by the principles of equivalence and effectiveness. This means that the rules governing remedies in EPPO cases may neither be less favourable than those in similar national cases, nor may they render the exercise of rights guaranteed by EU law impossible or excessively difficult in practice. Therefore, if national law allows for direct appeal, this must also be provided for in EPPO cases.[36]

IV. What to Make of It?

This ruling further cements the reliance on national law and national courts in EPPO proceedings: not only will national courts review the acts, but they will ultimately also determine which acts are susceptible to review in the first place. While this makes sense in terms of the EPPO's setup and structure, it also perpetuates an uneven playing field with regard to procedural rights in proceedings led by an EU body. Besides the implications for the specific case and the Spanish legal order — which will clearly have to amend LO 9/2021— this decision raises broader questions about the standard set forth in Art. 42(1) of the EPPO Regulation. Firstly, the adequacy of the reliance on the case law on Art. 263 TFEU can be questioned.

Secondly, doubts can be raised as to the compatibility of the interpretation of Art. 42(1) with the right to effective judicial protection of Art. 47 of the Charter.

1. Implications for the Spanish legal order

While the ECJ does not expressly state that Spanish law is contrary to EU law, leaving that assessment to the referring court, it strongly points in this direction. First, the ECJ notes that Art. 42(1) of the EPPO Regulation is not to be seen as restricting the availability of remedies to a specific list or categories of acts, but rather it is meant to extend the (mandatory) judicial review to all EPPO procedural acts intended to produce binding legal effects. In this regard, Art. 90 of LO 9/2021 is already in contravention of Art. 42(1) of the EPPO Regulation.[37] Regardless of whether a witness summons is considered to have "binding legal effects" in this specific case, the principle of equivalence mandates that the same remedies be available in EPPO cases as in similar national cases. In this context, we can distinguish two possible scenarios in which judicial review must be provided for:

- The procedural act falls within the scope of Art. 42(1) of the EPPO Regulation;
- The procedural act does not fall within the scope of Art. 42 (1) but national law provides for remedies against such acts anyway.[38]

In a similar Spanish case, a witness summons would have been issued by the investigating judge and thus have been subject to appeal (see II. above).[39] The same must apply in EPPO cases, as the EPPO procedure cannot have the effect of limiting rights otherwise available in national cases.[40] With regards to the specific case at hand, the defendants should thus be able to challenge the witness summons issued by the EDP.[41]

2. On the standard of Art. 42(1) of the EPPO Regulation

The ECJ does not determine if a witness summons constitutes "a procedural act intended to have legal effects vis-à-vis a third party", leaving the final assessment up to the national courts, but it provides the parameters of the test to be performed. The ECJ interprets Art. 42(1) EPPO Regulation in line with its case law on Art. 263 TFEU concerning actions for annulment. At first glance, the standard set seems quite broad, as the Court holds, that the possibility of judicial review is not to be limited to a certain list of or category of acts.[42]

However, settled case law regarding the admissibility of actions for annulment establishes that only measures with **binding** legal effects are capable of affecting the interests of the applicant.[43] These are generally enforceable acts which create obligations for the addressees. In this context, the ECJ has held that preparatory or intermediate acts, such as "opinions" or "recommendations", whose purpose is to prepare a final decision, do not, in principle, constitute challengeable acts under Art. 263 TFEU.[44] In this sense, the ECJ has also considered whether an intermediate measure may also be indirectly challenged by contesting the final measure or decision it supports. In *Deutsche Post*, and more recently in *Poland v. European Parliament* the Court held that an intermediate measure could not form the subject of an action for annulment if its illegality could be remedied in an action against the final decision, as in this case the final annulment decision would provide sufficient effective legal protection.[45]

If we take the case law concerning acts adopted by OLAF as a reference, the CJEU has maintained quite a restrictive approach: OLAF acts are routinely not considered challengeable acts under Art. 263 TFEU.[46] For example, in the *Tillack* case, the CJEU ruled that the forwarding of information by OLAF to national authorities does not bring about a specific change in the applicants' legal position, as national authorities remain free to assess the information and determine the actions to be taken.[47] The CJEU has considered preparat-

ory measures to fall within the scope of Art. 263 TFEU, provided they have independent legal effects that are distinct from those of the final decision and also that an appeal against the final decision would not nullify these effects.[48] In *Tillack*, the CJEU highlighted that it was the national authorities who would have taken actions with binding legal effects, such as initiating investigations.[49]

Unlike OLAF, the EPPO has the competence to undertake criminal investigations on the ground, and many of its "preparatory acts", such as initiating investigations,[50] undertaking investigative measures, and granting or denying access to the case file,[51] should be considered challengeable acts according to the standard of Art. 263 TFEU – of course particularly where they affect fundamental rights and the rights of the defence. On the contrary, requests by the EDPs to perform investigative measures, which then have to be approved by the competent judge, would not constitute such challengeable acts.[52]

Against this background, the summoning of a witness can be seen as intending to produce **binding legal effects on the witness** by bringing about a distinct change in their legal position. A summons involves a third party in the proceedings as a witness, carrying certain obligations. Under Art. 410 of the Spanish Code of Criminal Procedure Code (*Ley de Enjuiciamiento Criminal* (LECrim), witnesses are legally compelled to testify, and Art. 420 stipulates that failure to appear can lead to fines or, in more serious cases, even criminal proceedings for obstruction of justice. Spain is not the only jurisdiction where this is the case; similar provisions apply in Germany, for example.[53] A parallel can be drawn with the ECJ's reasoning in *Gavanozov II*.[54] Although *Gavanozov II* did not concern Art. 263 TFEU, it addressed the issue of challenging a European investigation Order to hear a witness via video conference.[55] The ECJ held that the witness could rely on the protection of the right to an effective remedy of Art. 47 of the Charter, as the decision was capable of adversely affecting them.[56] Furthermore, as Advocate General *Bobek* pointed out in his opinion in *Gavanozov II*, witnesses may be third parties who do not have the option of indirectly challenging the "final" decision at trial.[57] A similar line of reasoning can therefore be applied in the present context.

A different view can be taken with regard to the possible **binding legal effects on the defendants**. In the preliminary reference request at hand, the Spanish court identified two potential effects: First, summoning the witness (to be questioned) could infringe the defendants' right to a trial within a reasonable time, since it would involve a second round of questioning of the same witness. Second, the questioning could lead to the collection of incriminating evidence against the defendants. This does not really showcase binding legal effects on the defendants' legal position. In fact, gathering both incriminating and exonerating evidence is part of prosecutors' tasks in most civil law systems, and does not, as such, constitute a binding effect on the defendants' procedural position.[58]

As an interim conclusion, it should be noted that Art. 263 TFEU gives the CJEU the power to review the legality of the actions of EU bodies, offices or agencies. Art. 42(1) of the EPPO Regulation attributes a function that would otherwise be performed by the CJEU to national courts. From this perspective, it is coherent for the ECJ to interpret Art. 42(1) in light of its case law on Art. 263 TFEU. At the same time, case law on Art. 263 TFEU can only provide limited guidance, however, as it mainly concerns administrative and antitrust law.[59] Thus, while Art. 263 TFEU can inform the interpretation of Art. 42(1) of the EPPO Regulation, a context-sensitive approach appears warranted for EPPO acts, particularly given their potential impact on individual rights. This brings us to our third point: the interplay between Art. 42(1) and Art. 47 of the Charter.

3. On the compatibility of the Art. 42(1) standard with Art. 47 of the Charter

At a more general level, the compatibility of the standard set in Art. 42(1) of the EPPO Regulation, with the right to an effective remedy in Art. 47 of the Charter, may be called into question. According to the ECJ's

interpretation of Art. 42(1), a procedural act is subject to judicial review where it constitutes an act capable of producing binding legal effects vis-à-vis the person challenging it. If such judicial review is available, at least indirectly, this would be compatible with Art. 47 Charter. Beyond this, the Court does not elaborate further on the relationship between Art. 42(1) of the EPPO Regulation and the standard of protection in Art. 47 Charter.

As an EU body, investigations led by the EPPO fall within the scope of the Charter (Art. 51(1) Charter). The right to an effective remedy enshrined in Art. 47(1) of the Charter encompasses both the right to judicial review of acts where rights secured by EU law may have been infringed and the right to obtain appropriate redress where such an infringement is established. In this regard, the right to judicial review of the EPPO's procedural acts thus arises from the Charter itself. In general, the ECJ has interpreted Art. 47 of the Charter quite broadly, stating that its protection can be relied on not only where EU fundamental and individual rights are at stake but also *where an act can adversely affect a person.*[60] In this sense, any procedural act by the EPPO would, in principle, be susceptible to – at least indirect – judicial review in line with Art. 47 of the Charter, provided that it could adversely affect the person challenging the act.[61] In my view, the threshold in such a case is lower than that of "binding legal effects". In any case, Art. 47 of the Charter does not constitute an absolute right and may be subject to limitations in accordance with Art. 52(1) of the Charter.

In its case law on Art. 263 TFEU, which informs the interpretation of Art. 42(1) (see above, point 2), the CJEU has not considered the lack of remedies before national courts to be relevant in determining the scope of acts that can be challenged by way of an action for annulment.[62] Specifically, the ECJ has ruled that Art. 47 of the Charter cannot lead to an expansion of the Court's jurisdiction as set out in the Treaties.[63] The context of Art. 42(1) of the EPPO Regulation is, however, somewhat different. The purpose of that provision is specifically to attribute powers to national courts that would otherwise reside with the CJEU.[64] Furthermore, not only procedural acts within the scope of Art. 42(1) must be challengeable before national courts, but also those for which domestic remedies already exist via the principle of equivalence. In this regard, the EPPO Regulation has already resulted in an "expansion" or "redistribution" of competence,[65] which suggests that a more flexible approach may be warranted.

This is further reinforced by the specific nature of the EPPO. As the ECJ itself has emphasised, the EPPO differs from all other EU bodies, including OLAF, Europol, and the European Commission, by its very nature. It adopts measures that, by their very nature, will infringe upon fundamental and individual rights. Even if these measures are not considered to have "binding" legal effects according to the standard of Art. 263 TFEU, such measures could still very well "adversely affect" those involved and should therefore fall within the scope of judicial review.

V. Conclusion

It remains to be seen how national courts will apply the ECJ's ruling in *EPPO v. I.R.O and F.J.L.R* and what effect the ruling may have on the system of remedies in EPPO proceedings. For the time being, the Court has clarified the broad meaning of Art. 42(1) EPPO Regulation as "challengeable acts", but many questions remain. One such question concerns the classification of specific acts within the definition provided by the ECJ. Another concerns the adequacy of the standard set out in Art. 263 TFEU for EPPO investigations and its relationship to Art. 47 of the Charter. A broader interpretation of the criteria is surely called for – an interpretation possibly more in line with Art. 47 of the Charter.

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1. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO), OJ L 283, 31.10.2017, 1 (henceforth: EPPO Regulation).↩
2. ECJ, 21 December 2023, Case C-281/22, *G.K. and Others (Parquet européen)*, [ECLI EU:C:2023:1018].↩

3. On this judgement, see H.H., Herrnfeld, "Yes Indeed, Efficiency Prevails: A Commentary on the Remarkable Judgment of the European Court of Justice in Case C-281/22 G.K. and Others (Parquet européen)", (2023) *eucrim*, 370-380; M. Caianiello, "Sometimes the More is less. Transnational investigations in the EPPO System After the Judgment of the EU Court of Justice", (2024) *European Journal of Crime, Criminal Law and Justice*, 87-104; A. Venegoni, "The EPPO Faces its First Important Test: A Brief Analysis of the Request for a Preliminary Ruling in G. K. and Others", (2022) *eucrim*, 282–285.↩
4. ECJ, 23 April 1986, Case C-294/83*, Les Verts v. Parliament,* [EU:C:1986:166], para. 23.↩
5. See, *inter alia*, on the system of judicial review of EPPO investigations: H.H. Herrnfeld, in: Herrnfeld/Brodowski/Burchard, *European Public Prosecutor's Office: Article-by-Article Commentary*, 2021, Art. 42; V. Costa Ramos, "The EPPO and the equality of arms between the prosecutor and the defence", (2023) 14(1) *New Journal of European Criminal Law* (*NJECL*), 43-70; V. Mitsilegas, "European prosecution between cooperation and integration: The European Public Prosecutor's Office and the rule of law", (2021) 28(2) *Maastricht Journal of European and Comparative Law (MJ),* 245-264, 259 et seq; V. Mitsilegas and F. Giuffrida, "The European Public Prosecutor's Office and Human Rights," in: W. Geelhoed et. al (eds.), *Shifting Perspectives on the European Public Prosecutor's Office*, 2018, pp. 59-98, 83.↩
6. Herrnfeld, *op. cit.* (n. 5), Art. 42, mn. 12.↩
7. Cf. also ECJ, 22 Oktober 1987, Case C-314/85, *Foto-Frost v Hauptzollamt Lübeck-Ost,* [EU:C:1987:452], para. 16: "(…) requests for preliminary rulings, like actions for annulment, constitute means for reviewing the legality of acts of the Community institutions".↩
8. ECJ, 8 April 2025, Case C-292/23, *EPPO v I.R.O and F.J.L.R.,* [ECLI:EU:C:2025:255], para. 19 et seq.↩
9. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 19 and 20.↩
10. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 23.↩
11. Ibid.↩
12. Ley Orgánica 9/2021, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea (Organic Law 9/2021 implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), of 1 July 2021, BOE No 157, 2 July 2021, p. 78523 (henceforth: LO 9/2021).↩
13. According to Art. 90 of the LO 9/2021, the decrees ("decisions/orders") ordered by the EDP during the investigative procedure may only be challenged before the *Juez de Garantias* ("Judge of Garanties") in the cases expressly established by this law.↩
14. As per Art. 65 (5) of the Organic Law of the Judiciary (*Ley Organica del Poder Judicial* (LOPJ)), the Central Court of Preliminary Investigation (*Juzgado Central de Instrucción*) is the supervisory court in EPPO proceedings, responsible for appeals against the first instance courts.↩
15. See Auto ("Order") Juzgado Central de Instrucción Nr. 6, 26 April 2023, available at: <https://curia.europa.eu/juris/showPdf.jsf;jsessionid=45417B170DB88939F77248F0DE16CBF7?text=&docid=275263&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=12686409>, paras. 63 et seq; for an English version see the summary of the request for a preliminary ruling in case C-292/23, 3 May 2023, <https://infocuria.curia.europa.eu/tabs/document?source=showPdf.jsf&text=&docid=275263&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8522681>, paras. 12 et seq. See also Art. 410 of the Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal* (LECrim)), which establishes the obligation to appear, Art. 433 of the LECrim, which establishes the obligation to tell the truth, and Art. 420 of the LECrim, which provides for penalties in case of non-appearance.↩
16. See Auto Juzgado Central de Instrucción Nr. 6, 26 April 202, *op. cit* (n. 15) paras. 70 and 71; For an English version see the summary of the request for a preliminary ruling, *op. cit* (n. 15), para. 15↩
17. See Art. 216 of the LECrim.↩
18. This procedural model has been the subject of much debate in Spain, with a reform potentially underway, as the Spanish Government approved a draft reform of the Code of Criminal Procedure, (*Proyecto de Ley Orgánica de Enjuiciamiento Criminal* (LOECrim), on 28 October 2025. The reform would hand power to lead and direct the criminal investigation over to the prosecution service. If approved by the Spanish Parliament, the reform would come into force in January 2028.↩
19. On the challenges of this structural difference, see A. Hernández López, "Settlement of conflicts of competence between the European Public Prosecutor's office and national authorities: The Spanish case, in: B. Ubertazzi (ed.), *The EPPO and the Rule of Law*, 2024, pp. 99-118.↩
20. Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, 1.↩
21. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 37-41.↩
22. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 48.↩
23. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 54.↩
24. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 55-56.↩
25. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), , para.58.↩
26. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 53.↩
27. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 60.↩
28. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 61.↩
29. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras. 62 and 63.↩
30. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 63.↩
31. ECJ , *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), paras.67-69.↩
32. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 71.↩
33. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 72.↩
34. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para.75.↩
35. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 76.↩
36. ECJ, *EPPO v I.R.O and F.J.L.R., op. cit.* (n. 8), para. 82 et seq.↩

37. See B. Vidal Fernández, "Control jurisdiccional de los actos de la Fiscalía Europea: Artículo 42 Reglamento de la Fiscalía Europea" in: (2023) *Revista de Estudios Europeos, n.º Extraordinario monográfico 1*, 38. He had previously argued (prior to this preliminary reference) that Art. 90 of LO 9/2021 contravened Art. 42(1) and must therefore be disapplied by national courts.↩
38. See Recital 87 of the EPPO Regulation.↩
39. The decision to summon a witness can be subject to a "*recurso de reforma*" before the same court that ordered it.↩
40. See R. Esser, "§ 12 Rechtsschutz", in: Herrnfeld/Esser (ed.), *Europäische Staatsanwaltschaft, Handbuch,* 2022, mn. 42.↩
41. See also, in this sense, J. Öberg, "Effective Remedies and Procedural Autonomy – Judicial Review of Actions by the European Public Prosecutor (C-292/23, EPPO v I.R.O and F.J.L.R)", *EU Law Live,* 23 April 2025, p. 16. Öberg finds that the ECJ has given the national court strong reasons to grant this remedy and considers it a significant undermining of national procedural autonomy, since it would clearly offer a remedy against the EPPO's actions in this case, which does not exist today according to national Spanish law. However, in my view, the ECJ does not require Spanish law to create any new remedies but rather to extend existing remedies to EPPO cases and, in that sense, reinforces more than undermines national procedural autonomy. The follow-up decision by the referring Spanish court was not known to the author at the time of writing; either the decision is still pending or it has not been published in publicly available databases.↩
42. See ECJ, 31 March 1971, Case C-22/70, C*ommission* v *Council* (European Agreement on Road Transport (ERTA)), para. 42; ECJ, 25 June 2020, Case C-14/19, *European Union Satellite Centre (SatCen) v. Council of the European Union*, para. 69.↩
43. ECJ, 4 October 1991, Case C-117/91, *Bosman v. Commission*, para. 13; ECJ, 9 December 2004, Case C-123/03 *P, Commission v. Greencore*, para. 44; ECJ, 11 November 1981, Case 60/81, *IBM v. Commission*.↩
44. ECJ, 9 July 2020, Case C-575/18 P, *Czech Republic v Commission*, paras. 61 and 62; ECJ, 13 October 2011, Joined Cases C-463/10 P and C-475/10 P, *Deutsche Post AG, Federal Republic of Germany v European Commission,* para. 50.↩
45. ECJ, *Deutsche Post, op. cit.* (n. 44), para. 53; See also more recently ECJ, 3 June 2021, Case C-650/18, *Poland v. European Parliament*, para. 46↩
46. See V. Mitsilegas, *EU-Criminal Law after Lisbon,* 2016, p. 117; M. Rodopolous and K. Pantazatou, "Judicial Protection against OLAF's Acts: in Search of Effectiveness", (2013) *Hellenic Review of European Law, International Edition*, 133.↩
47. CFI, 4 October 2006, Case T-193/04, *Hans-Martin Tillack v Commission of the European Communities,* [EU:T:2006:292], para. 69 et seq.↩
48. ECJ, *Deutsche Post, op. cit.* (n. 44), para. 54.↩
49. CFI, *Tillack v Commission, op. cit.* (n. 47), paras. 69 and 70.↩
50. Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 35. According to Herrnfeld, decisions undertaken by the EPPO, such as the decision to initiate an investigation/or exercise its right of evocation, would not, in principle, be acts subject to mandatory judicial review pursuant to Art. 42(1). Instead, judicial review should be granted if there has been an infringement of fundamental and procedural rights. Mitsilegas, (2021) 28 *MJ*, *op. cit.* (n. 5), 261 adopts a broader approach, considering that EPPO decisions including the initiation of investigation and prosecution, the merging or reallocation of cases, and decisions on choice of forum or conflicts of jurisdiction would fall under the scope of Art. 42(1), as per the parameters of Art. 263 TFEU. I would also tend to agree with Mitsilegas.↩
51. Esser, *op. cit.* (n. 40), mn. 39.↩
52. Also, in this sense, Esser, *op. cit.* (n. 40), mn. 67.↩
53. See sections 49 and 50 of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*).↩
54. ECJ, 11 November 2021, Case C-852/19*, Gavanozov II*, [ECLI:EU:C:2021:902], para. 47; see also Opinion of Advocate General Bobek, 29 April 2021, Case C-852/19, *Gavanozov II*, [ECLI:EU:C:2021:346], para. 97.↩
55. On *Gavanozov II* see: A. Weyembergh, "About the Gavanazov II and HP judgments of the CJEU on the European Investigation Order Directive: strengthening the judicial protection in the issuing Member State", in: EJ20 Anniversary essays, 2022, < https://www.eurojust.europa.eu/20-years-of-eurojust/gavanazov-ii-and-hp-judgments-cjeu-european-investigation-order>; V. Costa Ramos, "*Gavanozov II* and the need to go further beyond in establishing effective remedies for violations of EU fundamental rights", *EU Law Live,* 22 November 2021; A. Hernandez Weiss, "Effective protection of rights as a precondition to mutual recognition: Some thoughts on the CJEU's Gavanozov II decision", (2022) 13(2) *New Journal of European Criminal Law* (*NJECL*),180-197.↩
56. ECJ, *Gavanozov II*, *op. cit.* (n. 54), para.47.↩
57. AG Bobek, *op. cit.* (n. 54), para. 52.↩
58. In this sense, see also: Öberg, *EU Law Live,* 23 April 2025, *op. cit.* (n. 41), p. 15.↩
59. See Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 34. The type of acts that are the subject of case law on Art. 263 TFEU differ quite substantially from the type of procedural acts and measures adopted by the EPPO because they refer more to "legal" acts, i.e., regulatory acts. A lot of the discussions surrounding Art. 263 TFEU focus on the changeability of "soft law" acts, which are not comparable to decisions/acts undertaken in the course of criminal procedure.↩
60. ECJ, 16 May 2017, Case C-682/15, *Berlioz-Investment Fund*, [ECLI:EU:C:2017:373], paras. 51 and 52; ECJ*, Gavanozov II*, *op. cit.* (n. 54), para. 46.↩
61. The ECJ has consistently held that "indirect judicial review" is sufficient: See ECJ, 7 September 2023, Case C-209/22, *Rayona Prokuratuura Lovech* [ECLI:EU:C:2023:634] or ECJ, 26 January 2023, Case C-205/21, *V.S.*, [ECLI:EU:C:2023:49].↩
62. CFI, *Tillack v Commission, op. cit.* (n. 47), para.80.↩
63. ECJ, Case C-575/18 P, *Czech Republic v Commission*, *op. cit*. (n. 44), paras. 52-53.↩
64. Herrnfeld, *op. cit.* (n. 5), Art. 42, mn. 5 and 12.↩
65. See also, in this sense, Herrnfeld, *op. cit.* (n. 5), Art. 42, para. 33.↩

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by
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