

AG Gives Opinion on Judicial Review of EPPO's Procedural Acts

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News

On 4 October 2024, Advocate-General *Anthony Michael Collins* delivered his [opinion](#) in case [C-292/23](#) (*European Public Prosecutor's Office v I.R.O., F.J.L.R.*). It is the second case before the ECJ that concerns the interpretation of [Regulation 2017/1939](#) implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO Regulation"). The case at issue is a request for a preliminary ruling from the *Juzgado Central de Instrucción n° 6 de la Audiencia Nacional* (Central Court of Preliminary Investigation No 6 of the National High Court, Spain) and targets the interpretation of Art. 42(1) of the EPPO Regulation headed "judicial review".

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Facts of the case and legal question

The case concerns an appeal of the accused persons against the legality of witness summonses. The summonses in question had been issued by a European Delegated Prosecutor (EDP) to two third parties to attend as witnesses at the criminal trial of the accused. While summonses issued by national public prosecutors provide for the possibility of an appeal under Spanish law, Spanish law does not foresee an appeal where an EDP issues such summonses. Therefore, the Spanish court referred the case to the Court of Justice asking whether this situation – the unreviewable character of the EDP measure under national law – is compatible with, *inter alia*, Art. 42(1) of the EPPO Regulation, read against the background of Art. 47 of the Charter of Fundamental Rights of the EU, the second subparagraph of Art. 19(1) TEU, and the principles of equivalence and effectiveness.

Art. 42(1) of the EPPO Regulation states that "[p]rocedural 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 Advocate General's opinion

In his opinion, Advocate-General (AG) *Collins* pertains to the question of whether the ordered summoning of the third parties as witnesses is a "procedural act of the EPPO that is intended to produce legal effects vis-à-vis third parties" in the sense of Art. 42(1) of the EPPO Regulation. It thus falls to be determined whether the aforementioned summonses have legal effect vis-à-vis the accused, a scenario that would constitute a violation of Art. 42 of the EPPO Regulation, Art. 47 CFR, and other principles of EU law.

AG *Collins* first argues that said term in Art. 42(1) is an autonomous concept of EU law which requires that it be interpreted in a uniform manner throughout the European Union.



Second, he states that the concept of "acts intended to produce legal effects vis-à-vis third parties" must be interpreted in accordance with the same criteria as developed for Art. 263 TFEU - the EU's primary law provision that makes it possible to take action before the CJEU challenging the legality of EU legal acts. The AG takes the view, however, that the question as to whether a decision by an EDP to summon a third party to appear as a witness is a procedural act intended to produce legal effects vis-à-vis a person under investigation cannot be assessed and answered in a general and an abstract manner. He proposes that the ECJ should not take a general position on the question, but it is rather for the national court to examine the substance of the decision 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 body that adopted it.

If the national court were to find the decision in question is an act that falls within the scope of Art. 42(1) of the EPPO Regulation, the decision must be subject to judicial review. The type of judicial review (direct or indirect) must respect the principles of effectiveness and equivalence.

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