

ECJ Judgment on Judicial Review of Acts of EDPs

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News

In its [judgement](#) of 8 April 2025 in [Case C-292/23](#) (*Criminal proceedings against I.R.O. and F.J.L.R.*), the European Court of Justice (ECJ) examined the compatibility with the EPPO Regulation of national law restricting the judicial review of procedural acts of European Delegated Prosecutors (EDPs) only to a list of acts exempting, above all, witness summons. According to the ECJ, procedural acts of the EPPO capable of affecting the legal situation of the persons challenging them must be amenable to judicial review. It is, however, for the national court - by means of a concrete and specific examination - to determine whether or not this is the case.

Background of the case and question referred

The request for a preliminary ruling stems from criminal proceedings in Spain where two suspects were under investigation by the EPPO for subsidy fraud and forgery of documents related to EU project financing. The Spanish EDPs handling the case had summoned two individuals to give evidence. The suspects, I.R.O. and F.J.L.R., challenged the summons issued for one of the witnesses to appear. They argued that this investigative measure (witness questioning by the EDP) was neither relevant, necessary, nor useful, since the witness had already been heard in a previous investigation into the matter triggered by OLAF (before the EPPO exercised its right of evocation). After the EPPO dismissed their appeal against the witness summons, the defendants wished to appeal before the referring court (the Juzgado Central de Instrucción no 6 de Madrid (Central Court of Preliminary Investigation No 6, Madrid, Spain)).

The Madrid court indicated, however, that Spanish law only permits judicial review of EPPO procedural acts in cases expressly provided for by the law implementing enhanced cooperation on the establishment of the EPPO, not listing, for instance, witness summons. It did, however, consider the act capable of producing legal effects with regard to third parties and therefore concluded that judicial review provided for by EU law should be possible for this type of act, in order to avoid unjustified restrictions on EU-derived rights. The referring court also saw an issue of equivalence, since, in criminal proceedings conducted in Spain by the investigative judge, the Code of Criminal Procedure does not lay down any kind of limitation as to the possibility of challenging decisions of the investigating judge on carrying out or refusing investigation measures.

Hence, the referring court asked, in essence, whether Art. 42(1) of [Regulation 2017/1939](#), read in the light of the second subparagraph of Art. 19(1) TEU, Arts. 47 and 48 of the Charter of Fundamental Rights and the principles of equivalence and effectiveness, must be interpreted as precluding national legislation pursuant to which persons who are the subject of an EPPO investigation may not directly challenge before the

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competent national court a decision by which, in the context of that investigation, the European Delegated Prosecutor handling the case concerned summons witnesses to appear .

Ruling of the ECJ (Grand Chamber)

In its judgement, the ECJ (sitting as Grand Chamber) first examined the meaning of the legal notions in Art. 42(1) of EPPO Regulation 2017/1939, which provides 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 (...)". The Court noted that the concept of "procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties", within the meaning of Art. 42(1), is an autonomous concept of EU law that must be interpreted on the basis of uniform criteria:

- "Procedural acts" includes, in particular, those acts "undertaken by the EPPO in the course of its investigations". This is the case for witness summons.
- The expression "intended to produce legal effects vis-à-vis third parties" corresponds to the criterion used in the first paragraph of Art. 263 TFEU to define the scope of acts that may be challenged before the EU Courts by way of an action for annulment. This means that judicial review 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.

According to the judges in Luxembourg, it is for the national court to assess *in concreto* whether the decision of a European Delegated Prosecutor to summon a witness is intended to produce said effects. The national court must take into account the "third party" status of the person challenging the act, the content of the act, the context within which it was adopted, and the powers of the body that ordered it. The ECJ also clarified that national procedural rules as well as the specific context of the criminal investigation in which the EPPO adopted said decision play a role. In this context, the EU legislature wished to limit review of EPPO acts "to that which is strictly necessary to ensure, in respect of those acts, a uniform level of effective judicial protection which complies with EU primary law."

If the referring court comes to the conclusion that the witness summons fulfills the criteria of Art. 42(1) of the EPPO Regulation, the ECJ further ruled that national law must guarantee these persons an effective judicial review of that decision by the criminal trial court, at least as an incidental question, where applicable. However, the principle of equivalence requires that, if national procedural rules allow for the direct challenge of comparable domestic decisions, the same opportunity must be available to individuals challenging analogous decisions under EU law.

Put in focus

The ECJ's judgment of 8 April 2025 in Case C-292/23 is the second important ruling on interpretation of the EPPO Regulation 2017/1939 following a request for preliminary ruling. The first judgment (Case C-281/22, G.K. and Others) was delivered in December 2023 and concerned the extent of judicial review in a Member State assisting an EDP handling an EPPO case in cross-border investigations (→ news in [eucrim 4/2023, 319-321](#) and the articles by *Hans-Holger Herrfeld* in [eucrim 4/2023, 370-380](#) and *Katalin Ligeti* in [eucrim 1/2024, 69-76](#)). The present case again concerned the topic of judicial review - this time within the jurisdiction of the EDP handling the case.

In short, the ECJ first emphasised that even "formally harmless" procedural acts of the EPPO may be subject to judicial review. This is, however, only the case if the act has legal significance and review must thus be given in the context of safeguarding the rights of defence. It is now up to the competent national court to apply the criteria established by the ECJ. The lengthy reasoning about the concept and interpretation of "a

procedural act that intends to produce legal effects vis-à-vis third parties" pursuant to Art. 42(1) of the EPPO Regulation, as well as several other hints in the judgment, indicate that the Court itself is not fully convinced that the requirements in favour of judicial review under Art. 42(1) have been met in the present case (witness summons). Nonetheless, the judgment provided the judges in Luxembourg with the opportunity to give guidance on Art. 42 of the EPPO Regulation and to draw the limits of defence rights with regard to judicial reviews.

Secondly, the ECJ made clear that, if judicial review is considered necessary, this does not necessarily mean that a direct and specific legal remedy must be available for such review. The review may also be carried out incidentally in subsequent proceedings, provided that the right to an effective remedy and to a fair trial, as well as the presumption of innocence and the rights of the defence, are safeguarded. However, in the case of a direct remedy to directly challenge a decision taken by the national authorities, the same possibility must also exist in relation to actions of the European Public Prosecutor's Office. It will be interesting to see how the referring Spanish court will implement the guidance from Luxembourg and assess the compatibility of the Spanish law implementing the EPPO Regulation with the EU standards.

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