

First EPPO Case before CJEU



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News

The first case concerning the interpretation of Regulation 2017/1939 on the establishment of the EPPO is at the CJEU. In a reference for preliminary ruling (*Case C-281/22, GK and Others*, lodged at 25 April 2022), the *Oberlandesgericht Wien*, Austria) seeks clarification as to the extent of judicial review if it comes to cross-border investigations within the EPPO regime. In the case at issue, the Austrian court has to decide on appeals by natural and legal persons who were subject to searches in Austria. Investigations were conducted by the European Delegated Prosecutor (EDP) in Munich, Germany (handling EDP) who sought assistance from his colleague in Austria (assisting EDP).

The appellants contested the coercive measures in Austria as being inadmissible due to the lack of suspicion and proportionality and due to the infringement of fundamental rights. According to the *Oberlandesgericht Wien*, Arts. 31(3) and 32 of the EPPO Regulation are unclear as to which extent Austrian courts can verify the measure under their national law. On the one hand, it could be argued that the courts in the assisting Member State (here: Austria) are not limited to a formal review only, but must also verify the substantive provisions of this Member State. On the other hand, this would mean, according to the referring court, that cross-border investigations under the established EPPO Regulation might be more cumbersome than approving a measure in accordance with the EU's instruments on mutual recognition, notably the European Investigation Order. The *Oberlandesgericht Wien* also poses the question to which extent decisions by courts in the Member State of the EDP handling the case (here: Germany) must be recognised.

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