

General Court Rules on EPPO Investigative Powers Vis-à-Vis European Court of Auditors

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News

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On 10 June 2026, the General Court of the EU delivered its judgment in [Case T-99/25, European Public Prosecutor's Office \(EPPO\) v European Court of Auditors](#). The case concerned the question whether EU institutions may rely on unresolved immunity issues and confidentiality rules to prevent the EPPO from gathering evidence in the context of a criminal investigation and clarified the limits of institutional objections to EPPO investigative measures.

The cause of the legal dispute

The case arose in the context of an EPPO investigation into alleged irregularities concerning the recruitment and appointment of an official of the European Court of Auditors (ECA). Following information transmitted by OLAF, the EPPO concluded that there was evidence of conduct potentially constituting an offence within its competence and formally opened a criminal investigation. As the ECA's premises, buildings, and archives benefit from the privileges and immunities of the EU and its officials enjoy immunity under EU law, the European Delegated Prosecutor handling the case requested that the European Chief Prosecutor seek to lift those protections. Several requests were subsequently submitted to the President of the ECA to lift the inviolability of the institution's premises, buildings, and archives, as well as the immunity of the individuals under investigation. The President of the ECA declined those requests, on the basis that the information provided by the EPPO was insufficient to justify such measures. He also believed that those affected should be informed and given the opportunity to submit observations before any decision affecting their immunity was made. The ECA proposed meetings with EPPO representatives and provided documents relating to the investigation.

Subsequently, the European Delegated Prosecutor requested additional documents and sought to lift the duty of confidentiality applicable to 12 EU officials so that they could be heard as witnesses. While providing some of the requested documentation, the ECA reiterated its proposal for a meeting and ultimately rejected the request to lift the 12 officials' duty of confidentiality. In its statement of position, issued by the Head of Legal Service, the ECA concluded that the EPPO had failed to provide sufficient information concerning the suspected offences. It therefore concluded that lifting the 12 officials' duty of confidentiality would be contrary to the interests of the EU. It further argued that granting the request would effectively circumvent its earlier decision not to lift the immunity of the two individuals under investigation and stated that the investigation should therefore be discontinued.

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The EPPO subsequently brought an action before the General Court of the EU, seeking the annulment of this statement of position, while the ECA contended that the action should be dismissed as inadmissible or, alternatively, as unfounded.

The ECA's arguments

The ECA submitted that the contested statement of position does not constitute an act challengeable under Art. 263 TFEU. It argued that it could not lift the duty of confidentiality of the 12 officials, as it had not been provided with sufficient information to ensure that the requested measures would not harm the interests of the EU. Furthermore, the ECA claimed that the EPPO had based its request to lift the duty of confidentiality on Art. 19 of the Staff Regulations, which concerns employment relations between EU institutions and their officials, rather than on the prerogatives of investigative bodies and national judicial authorities. However, only a decision adopted by the competent appointing authority in the context of such an employment relationship would produce legal effects that could be reviewed by the CJEU. According to the ECA, this was not the case in the present matter.

Regarding the plea of inadmissibility, the ECA argued that, where immunity constitutes an obstacle to an investigation, requesting the lifting of the immunity of the persons under investigation is a necessary preliminary step. In its view, immunity is not a minor procedural issue but a legal obstacle that must be removed before an investigation can proceed effectively. Therefore, evidence obtained while immunity remains in place may not be admissible in proceedings against the protected persons. As the EPPO had not brought an action at the time to annul the President of the ECA's decisions refusing to lift the immunity of the two individuals concerned, it could not, at a later stage, seek to advance the investigation indirectly by requesting that officials be released from their duty of confidentiality.

The EPPO's arguments

The EPPO countered that, in line with Art. 263(1) TFEU, the CJEU is responsible for reviewing the legality of acts issued by the institutions, bodies, offices, and agencies of the EU that are "intended to produce legal effects vis-à-vis third parties". This applies to all measures or provisions adopted by these bodies, whatever their nature or form, if they are intended to have binding legal effects. In the present case, the contested statement of position was sent in response to the request to lift the duty of confidentiality of 12 officials. It originated from the College of Members of the ECA, i.e., the competent appointing authority.

In consequence, the European Delegated Prosecutor could not hear the officials as witnesses, meaning that the statement produced legal effects vis-à-vis the EPPO. Any other interpretation allowing a decision by an EU institution, agency, body, or office refusing to lift an official's duty of confidentiality on the basis of Art. 19 of the Staff Regulations to have legal effects only in relation to the official concerned in proceedings under Art. 270 TFEU would prevent European Delegated Prosecutors from exercising their powers under Art. 28 of the EPPO Regulation. This would hinder the conduct of the investigation, as the EPPO would not be able to challenge the lawfulness of such a refusal before the CJEU.

Regarding the pleas of inadmissibility, the EPPO observed that no decision had ever been adopted by the competent body of the ECA refusing to lift the immunity of the persons under investigation. The letters sent by the President of the ECA could not be regarded as such decisions, since the President did not have the power to adopt them and the letters did not express the institution's final position. Consequently, as no final decision had been adopted, the EPPO could not be criticised for failing to challenge a refusal decision or for allowing the time limit for bringing an action against such a decision to expire.

The General Court's ruling

The General Court (GC) first rejected the two pleas of inadmissibility raised by the ECA. The contested statement of position is a challengeable act that may be the subject of an action for annulment under Art. 263 TFEU. In addition, since the ECA has not yet adopted a final decision in due and proper form on the request to lift immunity, the EPPO retains a legal interest in bringing proceedings against the contested statement of position in so far as that position prevents it from gathering additional evidence that may enable it to substantiate the request to lift immunity or to find that there is no longer any need to continue the proceedings brought against the persons under investigation.

With regard to the substance, the GC held that the ECA had wrongly linked the request to lift the duty of confidentiality of the 12 officials to the request to lift the immunity of the persons under investigation. The request concerning the 12 officials related only to potential witnesses and had to be assessed independently under Art. 19 of the Staff Regulations. The ECA could therefore not refuse to release the officials from their duty of confidentiality merely because it had not granted the request to lift the immunity of the persons under investigation.

Second, the ECA had misconstrued the concept of the "interests of the Union" in the second sentence of the first paragraph of Art. 19 of the Staff Regulations. According to settled case law, that concept must be interpreted restrictively and covers only interests of considerable importance that are vital to the European Union. The GC found that the immunity of the persons under investigation could not, in itself, be regarded as such a vital Union interest justifying refusal to allow the 12 officials to testify. On the contrary, allowing the EPPO to gather evidence during an investigation, including through testimony from EU officials, serves the interests of the Union and enables the EPPO to exercise the investigative powers conferred on it by the EPPO Regulation.

In conclusion, the GC therefore upholds the action brought by the EPPO and annulled the contested statement of position.

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