

EPPO & admissibility of evidence

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Working with the EPPO at decentralised level –
Training materials for prosecutors and investigating judges



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Admissibility of evidence: a complex topic

International judicial assistance in criminal matters

+ possibility to collect evidence transnationally

- need to tackle the issue of to what extent evidence collected in one state can be used in another state

Principles?

Locus regit actum

Forum regit actum

Admissibility of evidence: a complex topic

Problem? Diversity of rules on evidence between MS

Solutions?

Mutual recognition of evidence

Minimum common standards

Commission 2009 Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility already referred to...

Minimum common standards for gathering evidence (could be general standards applying to all types of evidence or more specific standards depending on the type of evidence)

Admissibility of evidence: a complex topic

Art. 82 TFEU 2. To the extent necessary to facilitate mutual recognition of judgments and judicial decision and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, **by means of directives** adopted in accordance with the ordinary legislative procedure, **establish minimum rules**. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States

--- NEW POSSIBILITIES WITH TFEU... but HAVE NOT BEEN USED

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Art. 86 TFEU

1. In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust.

3. The Regulations...shall determine the general rules applicable to the EPPO, the conditions governing the performance of its functions, the **rules** of procedure applicable to its activities, as well as those **governing the admissibility of evidence** and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

--- Art.37 EPPO Regulation...an easy fix? Or more to come?

Article 37 EPPO

1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.
 2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.
- Evidence gathered by EPPO in one MS or according to the law of one MS can be presented before the court of another participating MS.
- The trial court will determine the validity of evidence according to the principles of national law on fairness of the procedure.

QUIZ- TEST YOUR KNOWLEDGE

The trial court in an EPPO case:

- A) Will have to admit all the evidence put forward by the EPPO
- B) Will have to assess, before admitting the evidence, if it was legally gathered, in accordance with the detailed rules on evidence set out in the Regulation
- C) Will assess the evidence freely in accordance to its national law

Correct answer: C)

Thank you for your attention

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