

## Judicial review of the EPPO acts – case study

An EDP is handling a case in Italy regarding allegations of fraud committed by an Italian company, which is suspected of receiving EU agricultural funds upon an application with annexed documents suggesting it wanted to dismiss tobacco cultivation on significant parts of lands, to replace it with olive trees. The allegation is that the tobacco cultivation was not dismissed at all, but the company still received the money.

During the investigations, the EDP searches and seizes relevant documents in the company headquarters in Italy.

Under the applicable Italian law, the search is ordered by the prosecutor. The seizure is a consequence of the search. However, the prosecutor has validated the seizure of each single object found during the search carried out by the judicial police.

The company objects that no fraud has been committed and it wants to challenge the search.

### **Q1. Where should the company challenge the order of search and the seizure?**

In the appeal, the company explains that there was no reason for searching and seizing the documents, as the company had offered the EDP its full cooperation since the beginning of the investigation, by addressing him by letter. Therefore, the measure was not necessary to preserve evidence and was disproportionate.

The Court finds that under the EPPO regulation search and seizure are ordered when it is necessary to avoid the loss or contamination of evidence. Moreover, article 30 of the regulation allows the measures only when no other means to obtain the same results is available.

In order to decide on the company's motion of judicial review, the national Court would seek a clarification on the wording of the EPPO regulation in this regard, in particular in cases when the suspect has offered the EDP full cooperation.

### **Q2. Can the Court get such interpretation and clarification of the EPPO regulation?**

During the investigation, the Italian EDP also needs to carry out a search in France, as the company has a branch there, and some of the documents submitted to obtain the subsidy come from the French branch.

Under French law, searches are ordered by a judge, upon application of the prosecutor.

The Italian EDP associates the French EDP to the file that requests the judicial authorisation, under article 30 para 3 of the regulation.

**Q3. Where can the suspect challenge the search and seizure carried out in France?**

At the end of the investigation, the EPPO finds lack of relevant evidence to prosecute the case and it dismisses the case.

The Italian national body distributing the EU subsidies on agriculture, which is the injured party in the case, disagrees with the dismissal of the case and wants to challenge this EPPO decision.

It objects on the application of the Union law in the dismissal decision.

**Q4. Which judicial body is competent for the appeal against the dismissal?**

At the end of the investigation, the company under investigation claimed to have suffered some damage, due to the modalities of the search. It would like to appeal to a judicial authority for compensation.

**Q5. Which is the judicial body competent for the appeal to claim the damages?**

The company has filed a request of access to documents, but it was rejected by the EPPO; the company would like to challenge this decision.

**Q6. Can the company appeal against such decision? To which body?**