

Explanatory note – Judicial review of the EPPO acts

The judicial review of the EPPO acts as a key topic for the smooth functioning of the new body.

Even the TFEU mentions it, as one of the subjects that necessarily has to be governed by the EPPO regulation.

In this regard, a preliminary distinction is necessary.

Just to simplify, we can identify in the regulation two categories of EPPO acts, that correspond to two different kinds of judicial review.

The first category encompasses the EPPO procedural acts, those strictly related to the investigation (a detention on remand request, a search, a seizure and so on). The second category relates to the EPPO as a Union body.

As a general principle, the acts of the first group are subject to judicial review from the national judicial bodies dealing with judicial reviews according to the national laws. The acts of the second group are under the jurisdiction of the Court of Justice.

Obviously, such distinction is not 100% precise. The EPPO is always a Union body, even when it carries out its investigations. Moreover, the CoJ jurisdictions also stretches to some acts that clearly relate to the investigation, such as the dismissal of the case and the acts that can give rise to non-contractual liability.

In any case, we can use this distinction just to facilitate the analysis of the judicial review.

Another preliminary remark is necessary: the procedural acts subject to judicial review are those that produce legal effects vis-à-vis third parties.

As was mentioned previously, these acts are subject to judicial review by national courts according to national law.

Recital 87 of the regulation contains a very important clarification to this end, by stating that procedural acts that relate to the choice of the Member State whose courts will be competent to hear the prosecution, which is to be determined on the basis of the criteria laid down in the EPPO Regulation (art. 36) are intended to produce legal effects vis-à-vis third parties and should therefore be subject to judicial review by national courts, at the latest at the trial stage.

Also the failures of the EPPO to adopt procedural acts, in violation of a specific obligations, are subject to judicial review before the national courts, when they produce effect towards third parties.

It is not easy to classify this category of procedural acts, as this system of review is not known in many States, but we can think of relevant omissions during the investigation.

It is then obvious that the regulation sets a level of protection of individual rights with respect to the EPPO acts, but that level must not be detrimental to a possible higher level of protection ensured by the national laws. Therefore, if national laws provide for the judicial review also on procedural acts that do not have direct effect on third parties, these provisions are not superseded by the EPPO regulation.

The applicable law for the judicial review is not only the national law, but also the regulation. As usual, there is interaction between such legal systems, but the highest level of protection of individual rights must be ensured.

In this sense, the principle of proportionality is essential.

It is important to underline that the CoJ can also be involved in the judicial review, even when the national judicial authorities are dealing with it.

It may happen in the function of interpretation of the Union law, as a preliminary referral.

In other words, when, in the procedure for the judicial review of an EPPO act, the competent national judicial authority has some doubts about the correct interpretation of a relevant Union law that is at stake, it may refer the case to the CoJ through a preliminary referral under article 267 TFEU.

In this case, the CoJ assessment does not concern directly the EPPO act, but the Union's legislation that is at stake in the concrete case.

The CoJ is directly dealing with the review of some EPPO acts.

One of these is a typical procedural act, an act of investigation. This is a derogation to the abovementioned principle that the review of the EPPO procedural acts is conducted by the national courts.

The decision to dismiss a case, as an act of a European body, is subject to the jurisdiction of the CoJ, as an action of annulment under article 263 TFEU.

The Court of Justice is also competent to decide on the action for the compensation of damage caused by the EPPO, in line with the general principle enshrined in the article 268 TFEU on the non-contractual liability of the Union's bodies and officials (art 340 TFEU).

The CoJ is also competent, under article 272 TFEU, in the disputes on arbitration causes contained in contracts concluded by the EPPO.

Moreover, the Court of Justice shall have jurisdiction:

- in accordance with Article 270 TFEU in any dispute concerning the EPPO staff- related matters,
- on the dismissal of the European Chief Prosecutor or European Prosecutors, in accordance, respectively, with Article 14(5) and Article 16(5),
- on the decisions of the EPPO that affect the data subjects' rights under Chapter VIII,
- on the decisions of the EPPO which are not procedural acts, such as decisions of the EPPO concerning the right of public access to documents, or
- on the decisions dismissing European Delegated Prosecutors adopted pursuant to Article 17(3) of the Regulation, or any other administrative decisions.

