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Judgment of the Court in Case C-281/22 | G.K. and Others (European Public Prosecutor's Office)

European Public Prosecutor's Office: the Court clarifies the exercise of judicial review of cross-border investigation measures by national courts

Where the European Public Prosecutor's Office (EPPO) conducts an investigation in several Member States of the European Union, the courts of the Member State of the public prosecutor responsible for the investigation are competent to verify the adoption and justification of investigation measures. Judicial review of investigation measures in other Member States may relate only to matters concerning the enforcement of those measures. In the event of serious interference with the rights of the person concerned guaranteed by the Charter of Fundamental Rights of the European Union, investigation measures must be subject to prior judicial review in the Member State of the public prosecutor responsible for the investigation.

The EPPO has powers of investigation and prosecution of crimes affecting the financial interests of the Union. It is organised at two levels, a central level and a decentralised level. The decentralised level consists of European Delegated Prosecutors (EDPs) located in the Member States.

In the present case, several persons are being prosecuted for fraud concerning the import of biodiesel into the Union. That fraud is alleged to have caused damage of approximately €1,295,000 to the financial interests of the Union. The EPPO has conducted an investigation through a handling EDP in Germany. For the purposes of the investigation, the search and seizure of goods in Austria was ordered. The German handling EDP thus delegated the enforcement of those measures to an Austrian assisting EDP.

The accused persons are challenging those investigation measures before the Austrian court. That court has decided to refer questions to the Court of Justice, to establish whether it is authorised to conduct a full review (comparable to what it would do in a purely domestic situation), or, whether its review should be limited to procedural questions concerning the implementation of the cross-border investigation measures.

In its judgment, the Court answers that the review of the assisting EDP must be limited to matters relating to the implementation of the cross-border investigation measures. The adoption and justification of an investigation measure are governed by the law of the Member State of the handling EDP, whereas the enforcement of such a measure is governed by the law of the Member State of the assisting EDP.

However, **as regards investigation measures which seriously interfere with fundamental rights**, such as measures involving searches, it is for the Member State of the handling EDP to provide, in national law, for adequate and sufficient safeguards, such as a **prior judicial review**, in order to ensure the legality and necessity of such measures.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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