



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023 ^{*i}

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – European Public Prosecutor’s Office – Regulation (EU) 2017/1939 – Article 31 – Cross-border investigations – Judicial authorisation – Scope of the review – Article 32 – Enforcement of assigned measures)

In Case C-281/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), made by decision of 8 April 2022, received at the Court on 25 April 2022, in the criminal proceedings against

G.K.,

B.O.D. GmbH,

S.L.

intervening party:

Österreichischer Delegierter Europäischer Staatsanwalt,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, T. von Danwitz, F. Biltgen and O. Spineanu-Matei, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, M. Safjan, S. Rodin, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 27 February 2023,

after considering the observations submitted on behalf of:

– G.K., B.O.D. GmbH and S.L., by W. Gappmayer, Rechtsanwalt,

* Language of the case: German.

- the Österreichischer Delegierter Europäischer Staatsanwalt, by L. De Matteis, T. Gut, I. Maschl-Clausen and F.-R. Radu, acting as Agents,
 - the Austrian Government, by J. Schmoll, J. Herrnfeld and C. Leeb, acting as Agents,
 - the German Government, by J. Möller, P. Busche and M. Hellmann, acting as Agents,
 - the French Government, by R. Bénard and A. Daniel, acting as Agents,
 - the Netherlands Government, by K. Bulterman, A. Hanje and J.M. Hoogveld, acting as Agents,
 - the Romanian Government, by M. Chicu, E. Gane and A. Wellman, acting as Agents,
 - the European Commission, by J. Baquero Cruz and S. Grünheid, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 22 June 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 31(3) and Article 32 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1).
- 2 The request has been made in criminal proceedings brought against G.K., B.O.D. GmbH and S.L. They are being prosecuted for importing biodiesel into the European Union by infringing, by means of false declarations, customs legislation.

Legal context

European Union law

Framework Decision 2002/584/JHA

- 3 Article 1(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) provides:

'Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.'
- 4 Article 6(1) and (2) of that framework decision provides:

'1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.'

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.'

Directive 2014/41/EU

5 Article 1(2) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1) provides:

'Member States shall execute [a European Investigation Order ('EIO')] on the basis of the principle of mutual recognition and in accordance with this Directive.'

6 Article 6 of that directive is worded as follows:

'1. The issuing authority may only issue an EIO where the following conditions have been met:

- (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and
- (b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

2. The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.

3. Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.'

7 Article 9(1) of that directive provides:

'The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.'

Regulation 2017/1939

8 Recitals 12, 14, 20, 30, 32, 60, 72, 73, 80, 83 and 85 of Regulation 2017/1939 state:

'(12) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the criminal prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States of the European Union, does not always sufficiently achieve that objective. Since the objectives of this Regulation, namely, to enhance the fight against offences affecting the financial interests of the Union by setting up the EPPO, cannot be sufficiently achieved by the Member States of the European Union, given the fragmentation of

national prosecutions in the area of offences committed against the Union's financial interests but can rather, by reason of the fact that the EPPO is to have competence to prosecute such offences, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. ...

...

- (14) In the light of the principle of sincere cooperation, both the EPPO and the competent national authorities should support and inform each other with the aim of efficiently combatting the crimes falling under the competence of the EPPO.

...

- (20) The organisational structure of the EPPO should allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States. ...

...

- (30) The investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors in the Member States. They should do so in accordance with this Regulation and, as regards matters not covered by this Regulation, in accordance with national law. ...

...

- (32) The European Delegated Prosecutors should be an integral part of the EPPO and as such, when investigating and prosecuting offences within the competence of the EPPO, they should act exclusively on behalf and in the name of the EPPO on the territory of their respective Member State. ...

...

- (60) Where the EPPO cannot exercise its competence in a particular case because there is reason to assume that the damage caused, or likely to be caused, to the Union's financial interests does not exceed the damage caused, or likely to be caused, to another victim, the EPPO should nevertheless be able to exercise its competence provided that it would be better placed to investigate or prosecute than the authorities of the respective Member State(s). The EPPO could appear to be better placed, inter alia, where it would be more effective to let the EPPO investigate and prosecute the respective criminal offence due to its transnational nature and scale, where the offence involves a criminal organisation, or where a specific type of offence could be a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence. ...

...

- (72) In cross-border cases, the handling European Delegated Prosecutor should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States. Where judicial authorisation is required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation. If an investigation measure is

finally refused by the judicial authorities, namely after all legal remedies have been exhausted, the handling European Delegated Prosecutor should withdraw the request or the order.

- (73) The possibility foreseen in this Regulation to have recourse to legal instruments on mutual recognition or cross-border cooperation should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.

...

- (80) The evidence presented by the EPPO in court should 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, provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter [of Fundamental Rights of the European Union ('the Charter')]. This Regulation respects the fundamental rights and observes the principles recognised by Article 6 TEU and in the Charter, in particular Title VI thereof, by international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950], and by Member States' constitutions in their respective fields of application. ...

...

- (83) This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO. The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.

...

- (85) The rights of defence provided for in the relevant Union law, such as Directives [2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ 2010 L 280, p. 1), 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1), 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1), (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1), and (EU) 2016/1919 of the

European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ 2016 L 297, p. 1)], as implemented by national law, should apply to the activities of the EPPO. Any suspect or accused person in respect of whom the EPPO initiates an investigation should benefit from those rights, as well as from the rights provided for in national law to request that experts are appointed or that witnesses are heard, or that evidence on behalf of the defence is otherwise produced by the EPPO.'

9 Under Article 1 of that regulation:

'This Regulation establishes the [EPPO] and sets out rules concerning its functioning.'

10 Points 5 and 6 of Article 2 of that regulation are worded as follows:

'For the purposes of this Regulation, the following definitions apply:

...

(5) "handling European Delegated Prosecutor" means a European Delegated Prosecutor responsible for the investigations and prosecutions, which he/she has initiated, which have been allocated to him/her or which he/she has taken over using the right of evocation according to Article 27;

(6) "assisting European Delegated Prosecutor" means a European Delegated Prosecutor located in a Member State, other than the Member State of the handling European Delegated Prosecutor, where an investigation or other measure assigned to him/her is to be carried out'.

11 Article 4 of that regulation provides:

'The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union ... In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.'

12 Article 5(1) of Regulation 2017/1939 provides:

'The EPPO shall ensure that its activities respect the rights enshrined in the Charter.'

13 Article 8(1) to (4) of that regulation states:

1. The EPPO shall be an indivisible Union body operating as one single Office with a decentralised structure.

2. The EPPO shall be organised at a central level and at a decentralised level.

3. The central level shall consist of a Central Office at the seat of the EPPO. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director.

4. The decentralised level shall consist of European Delegated Prosecutors who shall be located in the Member States.'

14 Article 13(1) of that regulation provides:

'The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.

The European Delegated Prosecutors shall be responsible for those investigations and prosecutions that they have initiated, that have been allocated to them or that they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor.

...'

15 Article 28(1) of that regulation states:

'The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. ...'

16 Article 30(1) of Regulation 2017/1939 provides:

'At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:

(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

...

(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

...'

17 Under Article 31 of that regulation, which is entitled 'Cross-border investigations':

'1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member [State] of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his[/her] supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.

If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.

5. Where the assisting European Delegated Prosecutor considers that:

...

(c) an alternative but less intrusive measure would achieve the same results as the measure assigned; ...

...

he/she shall inform his[/her] supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

...'

18 Article 32 of that regulation, entitled 'Enforcement of assigned measures', provides:

'The assigned measures shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such

formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.’

19 Article 41(1) and (2) of that regulation provides:

‘1. The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence.

2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at [a] minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law, such as:

- (a) the right to interpretation and translation, as provided for in Directive [2010/64];
- (b) the right to information and access to the case materials, as provided for in Directive [2012/13];
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive [2013/48];
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive [2016/343];
- (e) the right to legal aid as provided for in Directive [2016/1919].’

Austrian law

- 20 Paragraph 11(2) of the Bundesgesetz zur Durchführung der Europäischen Staatsanwaltschaft (Federal Law on the implementation of the EPPO) provides that, in EPPO cross-border investigations, where an investigation measure is carried out in Austrian territory, responsibility for the judicial authorisation referred to in the first subparagraph of Article 31(3) of Regulation 2017/1939 lies with the Landesgericht (Regional Court, Austria) at whose seat the competent public prosecutor’s office is located.
- 21 Paragraph 119(1) of the Strafprozessordnung (Code of Criminal Procedure) lays down the conditions for conducting searches.
- 22 Paragraph 120(1) of the Code of Criminal Procedure provides that searches must be ordered by the public prosecution service on the basis of a judicial authorisation and that law enforcement officers are empowered provisionally to conduct searches, without an order or authorisation, only in the event of imminent danger.

German law

- 23 Paragraph 102 of the Strafprozessordnung (Code of Criminal Procedure; 'the StPO') reads as follows:

'Anyone suspected of committing or participating in the commission of an offence or of handling stolen data, aiding and abetting, obstructing criminal proceedings or receiving stolen property may have his or her home and other premises searched, and his or her person and personal belongings searched, both for the purposes of his or her arrest and where there are grounds for presuming that the search will result in the discovery of evidence.'

- 24 Under Paragraph 105(1) of the StPO:

'Searches may be ordered only by the court and, in the event of imminent danger, also by the public prosecutor's office and its investigators [Paragraph 152 of the Gerichtsverfassungsgesetz (Law on the organisation of the courts)]. ...'

- 25 Paragraph 3(2) of the Gesetz zur Ausführung der EU-Verordnung zur Errichtung der Europäischen Staatsanwaltschaft (Law implementing the European Union regulation establishing the EPPO) states:

'Where the provisions of the Code of Criminal Procedure provide for the order or confirmation of a judge for an investigative duty, such an order or confirmation shall be obtained from a German judge for cross-border measures to be enforced in another Member State participating in the establishment of the EPPO, in accordance with Article 31(3) of [Regulation 2017/1939], only if the law of the other Member State does not require such an order or confirmation by a judge.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 26 A German European Delegated Prosecutor, acting on behalf of the EPPO, opened an investigation into large-scale tax fraud and membership of a criminal organisation formed for the purpose of committing tax offences.
- 27 In the context of that investigation, B.O.D., as well as its managing directors, G.K. and S.L., are being prosecuted for having imported into the European Union biodiesel of US origin by infringing, by means of false declarations, customs legislation and by thus causing damage allegedly amounting to EUR 1 295 000.
- 28 On 9 November 2021, an Austrian assisting European Delegated Prosecutor, in the context of the assistance provided to that investigation pursuant to Article 31 of Regulation 2017/1939, first, ordered searches and seizures, both at the business premises of B.O.D. and its parent company and at the homes of G.K. and S.L., all located in Austria, and, second, requested the competent Austrian courts to authorise those measures.
- 29 After obtaining the authorisations requested, that Austrian assisting European Delegated Prosecutor ordered the competent financial authority to actually enforce those measures, which that authority did.

- 30 On 1 December 2021, G.K., B.O.D. and S.L. brought actions before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), the referring court, against the decisions of the Austrian courts which authorised the measures at issue.
- 31 Before that court, G.K., B.O.D. and S.L. claim, *inter alia*, that no infringement was committed in Austria, that the suspicions against them are insufficient, that those decisions of the Austrian courts do not contain an adequate statement of reasons, that the searches ordered were neither necessary nor proportionate and that their right to a relationship of trust with their lawyer was infringed.
- 32 Before that court, the Austrian assisting European Delegated Prosecutor concerned argues that, in accordance with the legal framework established by Regulation 2017/1939 for EPPO cross-border investigations, justifications for assigned investigation measures are governed by the law of the Member State of the handling European Delegated Prosecutor and, by analogy with the regime established by Directive 2014/41, can be examined only by the authorities of that Member State. The infringements in question have already been examined by the competent investigating judge at the Amtsgericht München (Local Court, Munich, Germany). The competent authorities of the Member State of the assisting European Delegated Prosecutor could, for their part, only examine the formalities relating to the implementation of those assigned investigation measures.
- 33 The referring court notes that, on the basis of the wording of Article 31(3) and Article 32 of Regulation 2017/1939, it is possible to interpret those provisions as meaning that, where an assigned investigation measure requires judicial authorisation to be obtained in the Member State of the assisting European Delegated Prosecutor, that measure must be examined by a court of that Member State in the light of all the procedural and substantive rules laid down by that Member State.
- 34 That court points out, however, that the consequence of such an interpretation would be that such a measure would, where applicable, have to be the subject of a full examination in two Member States and according to their respective national law, which would mean that all the documents necessary to carry out such examinations would have to be made available to the competent court in the Member State of the assisting European Delegated Prosecutor and, where relevant, translated. Such a system would constitute a retrograde step in relation to that established by Directive 2014/41, under which the executing Member State could verify only certain formal aspects.
- 35 Moreover, the referring court considers that an interpretation of Regulation 2017/1939 in the light of the objective of the effectiveness of prosecutions could imply, in any event in a situation where judicial review has already been carried out in the Member State of the handling European Delegated Prosecutor, that the review carried out in the context of the judicial authorisation required in the Member State of the assisting European Delegated Prosecutor relates only to certain formal aspects.

- 36 In those circumstances, the Oberlandesgericht Wien (Higher Regional Court, Vienna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must EU law, in particular the first subparagraph of Article 31(3) and Article 32 of [Regulation 2017/1939], be interpreted as meaning that, in the case of cross-border investigations in the event that a court must approve a measure to be carried out in the Member State of the assisting European Delegated Prosecutor, all material aspects, such as criminal liability, suspicion of a criminal offence, necessity and proportionality, must be examined?
 - (2) Should the examination take into account whether the admissibility of the measure has already been examined by a court in the Member State of the European Delegated Prosecutor handling the case on the basis of the law of that Member State?
 - (3) In the event that the first question is answered in the negative and/or the second question in the affirmative, to what extent must a judicial review take place in the Member State of the assisting European Delegated Prosecutor?
- 37 By letter of 10 January 2023, the Registry of the Court of Justice sent the referring court a request for clarification. In response to that request, the referring court stated that G.K., B.O.D. and S.L. are referred to in the order of the Amtsgericht München (Local Court, Munich) of 2 September 2021 authorising searches in Germany, without any consideration having been given to the justification for any searches of the business premises of B.O.D. and the homes of G.K. and S.L. in Austria.

Consideration of the questions referred

- 38 By its three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 31 and 32 of Regulation 2017/1939 must be interpreted as meaning that the review conducted in the Member State of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate both to matters concerning the justification and adoption of that measure and to matters concerning its enforcement. In that context, it raises the question of the impact of the judicial review of that measure previously conducted in the Member State of the handling European Delegated Prosecutor on the scope of the review of the measure, pursuant to that judicial authorisation, in the Member State of the assisting European Delegated Prosecutor.
- 39 As a preliminary point, it should be noted that the subject matter of Regulation 2017/1939, in accordance with Article 1 thereof, is to establish the EPPO and to set out rules concerning its functioning.
- 40 Article 4 of that regulation states that the EPPO is to be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union. In that respect the EPPO is to undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.

- 41 Article 8(1) of that regulation provides that the EPPO is to be an indivisible Union body operating as one single Office with a decentralised structure. Paragraphs 2 to 4 of that article state that the EPPO is to be organised at two levels, namely, on the one hand, a central level, consisting of the Central Office at the seat of the EPPO, and, on the other hand, a decentralised level, which is to consist of European Delegated Prosecutors who are to be located in the Member States.
- 42 According to Article 13(1) of that regulation, read in the light of recitals 30 and 32 thereof, the investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors, who are to act on behalf of the EPPO in their respective Member States.
- 43 It is apparent from a combined reading of that Article 13(1) and Article 28(1) of Regulation 2017/1939 that the handling European Delegated Prosecutor, namely the European Delegated Prosecutor responsible for the investigations and prosecutions which he or she has initiated, which have been allocated to him or her or which he or she has taken over using the right of evocation, may, in accordance with that regulation and the law of his or her Member State, either undertake the investigation measures and other measures on his or her own or instruct the competent authorities in his or her Member State to undertake them.
- 44 In the context of investigations carried out by the handling European Delegated Prosecutor within his or her Member State, where that prosecutor decides to undertake an investigation measure which requires judicial authorisation in accordance with the law of that Member State, it is for the courts of that Member State to review compliance with all the conditions laid down for that purpose. By contrast, in cross-border cases, where an investigation measure needs to be carried out in a Member State other than that of the handling European Delegated Prosecutor, the latter should be able to rely, as is apparent from point 6 of Article 2 of that regulation, read in the light of recital 72 thereof, on an assisting European Delegated Prosecutor located in the Member State where such a measure needs to be carried out.
- 45 The regime applicable to the adoption and enforcement of such a measure in the context of a cross-border investigation is laid down in Articles 31 and 32 of that regulation, interpretation of which is sought by the referring court. Accordingly, it is necessary to refer to those articles in order to determine the extent of the judicial review that may be carried out within the Member State of the assisting European Delegated Prosecutor, where judicial authorisation for such a measure is required in accordance with the law of that Member State.
- 46 In that regard, it must be borne in mind that, according to settled case-law, it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraph 67 and the case-law cited).
- 47 As regards, in the first place, the wording of Articles 31 and 32 of Regulation 2017/1939, it is apparent from Article 31(1) of that regulation that EPPO cross-border investigations are to be conducted on the basis of close cooperation between the European Delegated Prosecutors. In the context of that cooperation, where a measure needs to be implemented in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor is to decide on the adoption of the necessary measure and assign it to an assisting European Delegated Prosecutor located in the Member State where the measure needs to be carried out.

- 48 Article 31(2) of that regulation states, in that regard, that the justification and adoption of such a measure is to be governed by the law of the Member State of the handling European Delegated Prosecutor.
- 49 Under the first subparagraph of Article 31(3) of that regulation, if judicial authorisation for the assigned measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor is to obtain that authorisation in accordance with the law of that Member State.
- 50 However, under the third subparagraph of Article 31(3) of Regulation 2017/1939, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation is to be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.
- 51 Article 31(4) of that regulation provides that the assisting European Delegated Prosecutor is to undertake the assigned measure, or instruct the competent national authority to do so.
- 52 Article 32 of that regulation states that such a measure is to be carried out in accordance with that regulation and the law of the Member State of the assisting European Delegated Prosecutor.
- 53 In the light of those factors, it should be noted that, although the first subparagraph of Article 31(3) of Regulation 2017/1939 provides that judicial authorisation is to be obtained in accordance with the law of the Member State of the assisting European Delegated Prosecutor where an assigned investigation measure requires such authorisation under the law of that Member State, Articles 31 and 32 of that regulation do not, however, specify the extent of the review that may be carried out for the purposes of that judicial authorisation by the competent authorities of that Member State.
- 54 Nevertheless, it is apparent from the wording of Article 31(1) and (2) and Article 32 of that regulation that the handling European Delegated Prosecutor is to decide on the adoption of an assigned investigation measure and that that adoption, as well as the justification of that measure, are to be governed by the law of the Member State of the handling European Delegated Prosecutor, whereas the enforcement of such a measure is governed by the law of the Member State of the assisting European Delegated Prosecutor.
- 55 As regards, in the second place, the context of Articles 31 and 32 of that regulation, it should be noted that the distinction drawn by those articles between the justification and adoption of an assigned investigation measure, on the one hand, and its enforcement, on the other, reflects the logic underlying the system of judicial cooperation in criminal matters between the Member States, which is based on the principles of mutual trust and mutual recognition.
- 56 In that regard, it should be recalled that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained (judgment of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraph 92 and the case-law cited).

- 57 The principle of mutual recognition of judgments and judicial decisions implies that there is mutual trust as to the fact that each Member State accepts the application of the criminal law in force in the other Member States, even though the implementation of its own national law might produce a different outcome (see, to that effect, judgments of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 52, and of 10 January 2019, *ET*, C-97/18, EU:C:2019:7, paragraph 33).
- 58 That principle is implemented by various instruments falling within the scope of judicial cooperation in criminal matters between the Member States.
- 59 Thus, that principle is expressed, inter alia, in Article 1(2) of Framework Decision 2002/584, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 43 and the case-law cited).
- 60 In the context of the system of surrender established by that framework decision, the judicial authorities referred to in Article 6(1) and (2) of that framework decision respectively exercise separate functions connected with, first, issuing a European arrest warrant and, second, executing such a warrant (see, to that effect, judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 47).
- 61 It is therefore for the issuing judicial authority to review compliance with the conditions necessary for the issuing of the European arrest warrant, and that assessment cannot, in accordance with the principle of mutual recognition, subsequently be reviewed by the executing judicial authority (see, to that effect, judgments of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 52, and of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraphs 87 and 88).
- 62 The principle of mutual recognition is also expressed in Article 1(2) of Directive 2014/41, which provides that Member States are to execute an EIO on the basis of that principle and in accordance with the provisions of that directive.
- 63 It is apparent from a combined reading of Articles 6 and 9 of that directive that the system of judicial cooperation provided for therein is based, like that established by Framework Decision 2002/584, on a division of competences between the issuing judicial authority and the executing judicial authority, in the context of which it is for the issuing judicial authority to review compliance with the substantive conditions necessary for the issuing of an EIO, and that assessment cannot, in accordance with the principle of mutual recognition, subsequently be reviewed by the executing judicial authority (see, to that effect, judgment of 16 December 2021, *Spetsializirana prokuratura (Traffic and location data)*, C-724/19, EU:C:2021:1020, paragraph 53).
- 64 It follows from those considerations that, in the context of judicial cooperation in criminal matters between the Member States based on the principles of mutual trust and mutual recognition, the executing authority is not supposed to review compliance by the issuing authority with the conditions for issuing the judicial decision which it must execute.

- 65 In the third place, it follows from recitals 12, 14, 20 and 60 of Regulation 2017/1939 that the objective of that regulation, by setting up an EPPO, is to combat more effectively offences affecting the financial interests of the Union.
- 66 In that regard, it is apparent from Article 31(6) of Regulation 2017/1939, read in the light of recital 73 thereof, that it must be possible for the specific rules laid down in that regulation for the purposes of cross-border investigations to be supplemented by the possibility to have recourse to legal instruments on, inter alia, mutual recognition, such as the instrument established by Directive 2014/41, in order to ensure that, where a measure is necessary in such an investigation but is not available in national law for a purely domestic situation, that possibility can be used in accordance with national law implementing the relevant instrument.
- 67 It follows that, by defining the procedures laid down by Regulation 2017/1939, the EU legislature intended to establish a mechanism ensuring a degree of efficiency of cross-border investigations conducted by the EPPO at least as high as that resulting from the application of the procedures laid down under the system of judicial cooperation in criminal matters between the Member States which is based on the principles of mutual trust and mutual recognition.
- 68 However, an interpretation of Articles 31 and 32 of that regulation according to which the grant of the judicial authorisation referred to in the first subparagraph of Article 31(3) of that regulation could be made subject to an examination, by the competent authority of the Member State of the assisting European Delegated Prosecutor, of the elements relating to the justification and adoption of the assigned investigation measure concerned would, in practice, lead to a system less efficient than that established by such legal instruments and would thus undermine the objective pursued by that regulation.
- 69 First, in order to be able to carry out such an examination, the competent authority of the Member State of the assisting European Delegated Prosecutor would, in particular, have to examine in detail the entire case file, which would have to be forwarded to it by the authorities of the Member State of the handling European Delegated Prosecutor and, where relevant, translated.
- 70 Second, since the justification and adoption of an assigned investigation measure fall, on account of a choice made by the EU legislature, within the scope of the law of the Member State of the handling European Delegated Prosecutor, the competent authority of the Member State of the assisting European Delegated Prosecutor would, for the purposes of examining compliance with those two elements, have to apply the law of the first Member State. That authority cannot be regarded as being better placed than the competent authority of the Member State of the handling European Delegated Prosecutor to carry out such an examination under the law of the latter Member State.
- 71 It follows from all the foregoing considerations that Regulation 2017/1939 establishes, for the purposes of cooperation between the European Delegated Prosecutors in the context of EPPO cross-border investigations, a distinction between responsibilities relating to the justification and adoption of an assigned measure, which fall within the remit of the handling European Delegated Prosecutor, and those relating to the enforcement of that measure, which fall within the remit of the assisting European Delegated Prosecutor.
- 72 In accordance with that sharing of responsibilities, any review of the judicial authorisation required under the law of the Member State of the assisting European Delegated Prosecutor may relate only to elements connected with that enforcement.

- 73 In that regard, it must, however, be pointed out that, in accordance with Article 31(2) of Regulation 2017/1939, it is for the Member State of the handling European Delegated Prosecutor to provide for a prior judicial review of the conditions relating to the justification and adoption of an assigned investigation measure, taking into account the requirements stemming from the Charter, compliance with which is binding on the Member States in the implementation of that regulation pursuant to Article 51(1) of the Charter.
- 74 The sharing of responsibilities described in paragraphs 71 and 72 of the present judgment is thus without prejudice to the requirements relating to respect for fundamental rights in the adoption of assigned investigation measures which, like those at issue in the main proceedings, constitute interferences with the right of every person to respect for his or her private and family life, home and communications, guaranteed by Article 7 of the Charter, and with the right to property enshrined in Article 17 of the Charter (see, to that effect, judgment of 11 November 2021, *Gavanozov II*, C-852/19, EU:C:2021:902, paragraph 31).
- 75 As regards investigation measures which seriously interfere with those fundamental rights, such as searches of private homes, conservatory measures relating to personal property and asset freezing, which are referred to in Article 30(1)(a) and (d) of Regulation 2017/1939, it is for the Member State of the handling European Delegated Prosecutor 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.
- 76 In addition, beyond the safeguards for the protection of the fundamental rights attached to the legal instruments of the European Union to which European Delegated Prosecutors may have recourse under Article 31(6) of Regulation 2017/1939 in the context of cross-border investigations, it should be noted that, under recitals 80 and 83 and Article 5(1) of that regulation, the EPPO is to ensure that its activities respect the fundamental rights. That general requirement is given specific expression in Article 41(1) and (2) of that regulation, from which it is apparent that the EPPO must, inter alia, respect the right to a fair trial and the rights of defence of suspects and accused persons, who are, at a minimum, to have the procedural rights provided for in EU law, in particular by the instruments of that law identified in that latter provision and in recital 85 of that regulation.
- 77 Moreover, although the authorities, in particular the judicial authorities, of the Member State of the assisting European Delegated Prosecutor are not empowered to examine the justification and adoption of an assigned investigation measure, it should nevertheless be pointed out that, under Article 31(5)(c) of Regulation 2017/1939, where the assisting European Delegated Prosecutor considers that an alternative but less intrusive measure would achieve the same results as the assigned investigation measure at issue, he or she is to inform his or her supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally. Under Article 31(7) of that regulation, if the European Delegated Prosecutors concerned cannot resolve the matter within seven working days and if the assignment is maintained, that matter is to be referred to the competent Permanent Chamber.
- 78 Consequently, the answer to the three questions is that Articles 31 and 32 of Regulation 2017/1939 must be interpreted as meaning that the review conducted in the Member State of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate only to matters concerning the enforcement of that measure, to the exclusion of matters concerning the

justification and adoption of that measure; the latter matters must be subject to prior judicial review in the Member State of the handling European Delegated Prosecutor in the event of serious interference with the rights of the person concerned guaranteed by the Charter.

Costs

- 79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 31 and 32 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

must be interpreted as meaning that the review conducted in the Member State of the assisting European Delegated Prosecutor, where an assigned investigation measure requires judicial authorisation in accordance with the law of that Member State, may relate only to matters concerning the enforcement of that measure, to the exclusion of matters concerning the justification and adoption of that measure; the latter matters must be subject to prior judicial review in the Member State of the handling European Delegated Prosecutor in the event of serious interference with the rights of the person concerned guaranteed by the Charter of Fundamental Rights of the European Union.

[Signatures]

ⁱ — The wording of the header of this document has been amended since it was first put online.