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JUDGMENT OF THE COURT (Grand Chamber)

8 April 2025 (*)

(Reference for a preliminary ruling – European Public Prosecutor’s Office – Regulation (EU) 2017/1939 – Article 42(1) – Procedural measures intended to produce legal effects vis-à-vis third parties – Judicial review, by national courts, in accordance with the requirements and procedures provided for in national law – Scope – Witness summons – National law not permitting direct judicial review of such a measure – Second subparagraph of Article 19(1) TEU – Articles 47 and 48 of the Charter of Fundamental Rights of the European Union – Principles of equivalence and effectiveness)

In Case C292/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado Central de Instrucción nº 6 de Madrid (Central Court of Preliminary Investigation No 6, Madrid, Spain), made by decision of 26 April 2023, received at the Court on 3 May 2023, in the criminal proceedings against

I.R.O.,

F.J.L.R.,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, K. Jürimäe, C. Lycourgos, I. Jarukaitis, S. Rodin, A. Kumin, N. Jääskinen, D. Gratsias (Rapporteur) and M. Gavalec, Presidents of Chambers, E. Regan, I. Ziemele, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2024,

after considering the observations submitted on behalf of:

– the European Public Prosecutor’s Office (EPPO), by J.F. Castillo García, L. De Matteis, acting as Agents, and I. de Lucas Martín, Fiscal Europeo,

- I.R.O. and F.J.L.R., by N. de Dorremoechea Guiot, procurador, and P. Soriano Mendiara, abogado,
- the Spanish Government, by A. Gavela Llopis and P. Pérez Zapico, acting as Agents,
- the French Government, by R. Bénard, B. Dourthe and B. Fodda, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by D.G. Pintus, avvocato dello Stato,
- the Netherlands Government, by E.M.M. Besselink, M.K. Bulterman and A. Hanje, acting as Agents,
- the European Commission, by J. Baquero Cruz, F. Blanc and H. Leupold, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 42(1) 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), Article 7 of Directive (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), Article 2 and the second subparagraph of Article 19(1) TEU, Article 86(3) TFEU, as well as Articles 6, 47 and 48 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in criminal proceedings brought by the European Public Prosecutor’s Office (EPPO) against I.R.O. and F.J.L.R. who are the subject of an investigation by that body for acts of subsidy fraud and forgery of documents in connection with the financing of a project by the European Union.

Legal context

European Union law

3 Recitals 12, 30, 32, 83 and 85 to 89 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. ... 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. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.

...

(30) The investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors in the Member States. ...

...

(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. ...

...

(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. ... 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 Directive [2016/343] 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.

(86) Article 86(3) TFEU allows the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions. That competence granted to the Union legislator reflects the specific nature of the tasks and structure of the EPPO, which is different from that of all other bodies and agencies of the Union and requires special rules regarding judicial review.

(87) According to Article 86(2) TFEU, the EPPO exercises its functions of prosecutor before the competent courts of the Member States. Acts undertaken by the EPPO in the course of its investigations are closely related to the prosecution which may result therefrom, and thus have effects in the legal order of the Member States. In many cases the acts will be carried out by national law enforcement authorities acting under the instructions of the EPPO, in some cases after having obtained the authorisation of a national court.

It is therefore appropriate to consider that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. This should ensure that the procedural acts of the EPPO that are adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons whose rights may be adversely affected by such acts) are subject to judicial review by national courts. 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 this Regulation, 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.

... Where national law provides for judicial review concerning procedural acts which are not intended to produce legal effects vis-à-vis third parties ..., this Regulation should not be interpreted as affecting such legal provisions. In addition, Member States should not be required to provide for judicial review by the competent national courts of procedural acts which are not intended to produce legal effects vis-à-vis third parties, such as the appointment of experts or the reimbursement of witness costs.

Finally, this Regulation does not affect the powers of national trial courts.

(88) The legality of procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to judicial review before national courts. In that regard, effective remedies should be ensured in accordance with the second subparagraph of Article 19(1) TEU. Furthermore, as underlined

by the case-law of the Court of Justice, the national procedural rules governing actions for the protection of individual rights granted by Union law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Union law (principle of effectiveness).

When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law, which applies to the extent that a matter is not dealt with by this Regulation. ...

...

(89) The provision of this Regulation on judicial review does not alter the powers of the Court of Justice to review the EPPO administrative decisions, which are intended to have legal effects vis-à-vis third parties, namely decisions that are not taken in the performance of its functions of investigating, prosecuting or bringing to [judgment]. This Regulation is also without prejudice to the possibility for a Member State of the European Union, the European Parliament, the Council [of the European Union] or the [European] Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU, and to infringement proceedings under Articles 258 and 259 TFEU.'

4 Article 4 of that regulation, entitled 'Tasks', is worded as follows:

'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.'

5 Article 8 of that regulation, entitled 'Structure of the EPPO' provides:

'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.

...'

6 Article 13 of the regulation, entitled 'The European Delegated Prosecutors', states, in paragraph 1:

'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 ...

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. ...

...'

7 Article 28 of Regulation 2017/1939, entitled 'Conducting the investigation', provides, in paragraph 1:

‘The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, ... undertake the investigation measures and other measures on his/her own ...’

8 Article 30 of Regulation 2017/1939, entitled ‘Investigation measures and other measures’, provides, in paragraphs 1, 4 and 5:

‘1. 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 ...
- (b) obtain the production of any relevant object or document ...
- (c) obtain the production of stored computer data, ...
- (d) freeze instrumentalities or proceeds of crime ...
- (e) intercept electronic communications ...
- (f) track and trace an object ...

...

4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.’

9 Article 41 of the regulation, entitled ‘Scope of the rights of the suspects and accused persons’, 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:

...

- (b) the right to information and access to the case materials, ...
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, ...
- (d) the right to remain silent and the right to be presumed innocent ...

...

3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have all the procedural rights available to them under the applicable national law, including the possibility to present evidence, to request the appointment

of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence.’

10 Article 42 of that regulation, entitled ‘Judicial review’, provides:

‘1. Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

2. The Court of Justice shall have jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings concerning:

(a) the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law;

(b) the interpretation or the validity of provisions of Union law, including this Regulation;

(c) the interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence between the EPPO and the competent national authorities.

3. By way of derogation from paragraph 1 of this Article, the decisions of the EPPO to dismiss a case, in so far as they are contested directly on the basis of Union law, shall be subject to review before the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU.

4. The Court of Justice shall have jurisdiction in accordance with Article 268 TFEU in any dispute relating to compensation for damage caused by the EPPO.

5. The Court of Justice shall have jurisdiction in accordance with Article 272 TFEU in any dispute concerning arbitration clauses contained in contracts concluded by the EPPO.

6. The Court of Justice shall have jurisdiction in accordance with Article 270 TFEU in any dispute concerning staff-related matters.

7. The Court of Justice shall have jurisdiction on the dismissal of the European Chief Prosecutor or European Prosecutors, ...

8. This Article is without prejudice to judicial review by the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU of decisions of the EPPO that affect the data subjects’ rights under Chapter VIII and of decisions of the EPPO which are not procedural acts, such as decisions of the EPPO concerning the right of public access to documents, or decisions dismissing European Delegated Prosecutors adopted pursuant to Article 17(3) of this Regulation, or any other administrative decisions.’

Spanish law

LO 9/2021

11 Ley Orgánica 9/2021, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea (Organic Law 9/2021 implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’)), of 1 July 2021 (BOE No 157, of 2 July 2021, p. 78523; ‘LO 9/2021’), establishes, within every competent court, a Juez de garantías (supervisory court), which, according to the recitals of that organic law, is a court that is not involved in the conduct of the proceedings, but which is nevertheless entrusted with the judicial review tasks expressly provided for by that organic law.

12 Article 42 of LO 9/2021 provides:

‘1. The European Delegated Prosecutors, in accordance with the provisions of [this organic law], Regulation [2017/1939] and the rules laid down in its rules of procedure, shall conduct the investigation ordering the completion of all the steps in the investigation and taking the interim protective measures set out in the Ley de Enjuiciamiento Criminal [(Code of Criminal Procedure)], except those reserved to the courts by the Constitution and other legal provisions, which must be authorised by the supervisory court.

...

3. The investigation shall be conducted in accordance with the provisions of the Code of Criminal Procedure, except in particular cases expressly provided for in this organic law.’

13 Article 43 of LO 9/2021 provides:

‘1. The European Delegated Prosecutor may summon and take witness statements from any person with knowledge of facts and circumstances relevant to the finding of an offence and the determination of the person responsible, or who could provide useful information for that purpose.

With the exception of persons who are exempt from the obligation to appear and provide witness evidence in the oral part of court proceedings, any person who is summoned by the European Delegated Prosecutor is required to appear and to provide evidence, as a witness, as to everything that he or she knows as regards the questions posed to him or her.

2. The witness statement shall be taken in the form laid down in the Code of Criminal Procedure.

The parties to the proceedings, through their lawyers, may attend the witness making a statement, in which case, at the end of the statement, they shall be given the opportunity to ask the witness to make any clarifications they deem necessary.’

14 Article 90 of LO 9/2021 provides:

‘The decisions made by the European Delegated Prosecutor during the investigation procedure may only be challenged before the supervisory court in the cases expressly provided for in this organic law’.

15 Article 91 of LO 9/2021 governs the appeal procedure.

16 Pursuant to LO 9/2021, the defendant to the investigation proceedings may bring an appeal against the following decisions of the European Delegated Prosecutor:

- the decision instituting proceedings;
- the decision refusing to take a new statement from the accused person, who had so requested;
- the decision refusing to carry out the investigation measures sought before the European Delegated Prosecutor;
- the decision refusing to include in the case file documents and reports submitted;
- the decision refusing the intervention of the expert appointed by the defence on the area of expertise that he or she agreed to address;
- the decision refusing the recusal of an expert;
- the decision on interim protective measures;
- the decision by which the European Delegated Prosecutor ordered a placement in custody; and

- the decision to reopen the investigation.

The Code of Criminal Procedure

17 Article 311 of the Code of Criminal Procedure is worded as follows:

‘The investigating judge shall carry out investigation measures proposed by the Public Prosecution Office or by any party to the proceedings, unless he or she considers them to be unnecessary or prejudicial.

A decision refusing the measures requested may be the subject of an appeal, which is simultaneously decided and referred back to the competent court which made that decision.

...’

18 Article 766(1) of the Code of Criminal Procedure provides as follows:

‘The decisions of the investigating judge and of the criminal judge, which are not exempt from appeal, may be subject to an action to vary the decision before the same court or an appeal to a higher court. Unless the law provides otherwise, those appeals do not have the effect of staying the proceedings.’

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

19 I.R.O. and F.J.L.R. were directors of a Spanish company which obtained a subsidy to implement a project financed by EU funds. The European Anti-Fraud Office (OLAF) informed the Fiscalía de área de Getafe-Leganés (Public Prosecutor’s Office, Getafe-Leganés, Spain) that direct staff costs that that company had claimed in respect of two researchers it had employed to carry out the project, namely Y.C. and I.M.B., had been insufficiently justified.

20 The Public Prosecutor’s Office, Getafe-Leganés filed a complaint with the Juzgado de Primera Instancia e Instrucción nº 1 de Getafe (Court of First Instance and Preliminary Investigations No 1, Getafe, Spain) alleging the offence of subsidy fraud. On 20 April 2021, that court initiated a criminal investigation against I.R.O. In that investigation, I.R.O. was questioned on 21 May 2021, and exercised his right to remain silent. On 2 July 2021, that court examined Y.C. as a witness.

21 By decision of 26 July 2022, the European Delegated Prosecutors handling the case in Spain exercised their right of evocation and initiated the investigation out of which this reference for preliminary ruling arises.

22 By decisions of 22 August and 25 October 2022, pursuant to Article 27 of LO 9/2021, those European Delegated Prosecutors summoned I.R.O. and F.J.L.R. respectively to appear for a first hearing in order to inform each of them that they were the subject of an investigation for subsidy fraud and forgery of documents, on the basis, respectively, of Article 308 or, where relevant, Article 306 of the Código Penal (Criminal Code), and of Articles 390 and 392 of that code.

23 By a decision of 2 February 2023 (‘the decision of 2 February 2023’), taken pursuant to Article 43 of LO 9/2021, those European Delegated Prosecutors summoned Y.C. and I.M.B. to appear before them as witnesses. On 7 February 2023, relying upon Article 90 of LO 9/2021, the lawyers representing I.R.O. and F.J.L.R. lodged an appeal before the EPPO against that decision in that it summoned Y.C. to appear as a witness. They submitted that that investigation measure was neither relevant, nor necessary, nor useful, since the Juzgado de Primera Instancia e Instrucción nº 1 de Getafe (Court of First Instance and Preliminary Investigations No 1, Getafe) had already heard Y.C. in that capacity. On 8 February 2023, that appeal was notified to the Juzgado Central de Instrucción nº 6 de Madrid (Central Court of Preliminary Investigation No 6, Madrid, Spain), which has the role of supervisory court in the proceedings and which is the referring court.

24 The referring court asks the Court to provide it with guidance on the interpretation of EU law to enable it to assess the effects of Regulation 2017/1939 as regards the supervisory court's jurisdiction to review certain procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties. It observes that, pursuant to Articles 42 and 43 of LO 9/2021, read in conjunction with Article 90 thereof, judicial review of procedural acts of the EPPO is possible only if it is authorised expressly by that organic law. Since witness summonses do not appear amongst the acts in respect of which that organic law authorises such a review, no appeal may be made to the supervisory court against the decision of 2 February 2023.

25 However, the referring court notes that Article 42 of Regulation 2017/1939 authorises the judicial review of procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties and considers that that is the case for the decision of 2 February 2023.

26 In the first place, it considers that that decision produces direct effect vis-à-vis the persons summoned, in that it prejudices, first, their fundamental right to enter and leave EU territory and to move freely within it, protected by Article 6 of the Charter and, secondly, their rights of defence, contrary to Article 48 of the Charter, in so far as there is a reasonable possibility that their statements may disclose that they were in some way involved in the acts at issue and that it may be possible to deduce evidence of criminal conduct therefrom, in circumstances where the Code of Criminal procedure does not provide that, when making statements, witnesses are to be assisted by a lawyer.

27 In the second place, according to that court, the witness summons of Y.C. and of I.M.B. produces effects vis-à-vis persons who are the subject of an ongoing investigation. On the one hand, it considers that a witness summons in respect of Y.C., given that he had already given a witness statement before the Juzgado de Primera Instancia e Instrucción nº 1 de Getafe (Court of First Instance and Preliminary Investigations No 1, Getafe), could have an impact on the right of those persons to proceedings without undue delay, since that would involve repeating procedural acts that have already been carried out. On the other hand, it observes that the statements of Y.C. and of I.M.B. could make it possible to obtain incriminating evidence prejudicial to the persons who are the subject of the investigation.

28 In the light of those considerations, the referring court is of the view that the absence of an appeal in respect of the decision of 2 February 2023 could result in an unjustified restriction, having regard to the principles of equivalence and effectiveness, of an individual right derived from EU law.

29 As regards the principle of equivalence, the referring court observes that, if the facts at issue were examined by a Spanish investigating judge, which is the equivalent of the European Delegated Prosecutor at national level, it would be appropriate to follow the criminal investigation procedure, since the relevant offences are punishable by a period of imprisonment of no more than five years. Under Article 766 of the Code of Criminal Procedure, decisions by which investigating judges order investigation measures in the context of that procedure may be appealed to the judge who took the contested decision and also thereafter to a higher court.

30 In addition, the referring court notes that, admittedly, according to a line of national case-law, in the context of the investigation procedure called the '*Procedimiento Sumario Ordinario*' (procedure for offences punishable by a term of imprisonment of more than five years), Article 311 of the Code of Criminal Procedure provides that decisions to adopt investigation measures sought by parties are not amenable to appeal. Nevertheless, that line of case-law, which extends to the criminal investigation procedure the application of a provision of the *Procedimiento Sumario Ordinario* investigation procedure, has not been confirmed by the Tribunal Supremo (Supreme Court, Spain), is not unanimous and has not given rise to legislative reform.

31 The referring court considers therefore that there is a breach of the principle of equivalence given that LO 9/2021 does not allow an appeal to be brought against a witness summons, whereas the Code of Criminal Procedure does not lay down any kind of limitation as to the possibility of challenging decisions of an investigating judge regarding carrying out or refusing investigation measures.

32 As regards the principle of effectiveness, that court states that LO 9/2021 restricts judicial review of acts of the European Delegated Prosecutors to those cases which are listed exhaustively. It considers that the restrictive nature of the powers of review of the supervisory court resulting from that law, in particular from Article 90 thereof, infringes the right to an effective judicial remedy and the rights of the defence which Regulation 2017/1939 guarantees to parties and which flow from the Charter, as well as the values inherent in the rule of law upon which the European Union is founded. In addition, the appeal provided for in Article 42(1) of that regulation forms part of a procedure the essential objective of which is to combat fraud and tax avoidance within the European Union. Consequently, in accordance with the principle of sincere cooperation, there is a legitimate interest and an overriding reason in the general interest that the procedural rules governing that appeal at national level do not have the effect of depriving such an appeal, which is derived from EU law, of its substance or limiting the exercise thereof.

33 In those circumstances, the Juzgado Central de Instrucción nº 6 de Madrid (Central Court of Preliminary Investigation No 6, Madrid), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 42(1) of Regulation 2017/1939 to be interpreted as precluding a national provision, like Article 90 of [LO 9/2021], which excludes from judicial review a procedural act of the [EPPO] which produces legal effects vis-à-vis third parties (in the sense described), such as the decision [of 2 February 2023] of the European Delegated Prosecutor to summon witnesses ...?’

(2) Are Articles 6 and 48 of the [Charter] and Article 7 of Directive [2016/343] to be interpreted as precluding a national provision, like Article 90 [of LO 9/2021, read] in conjunction with [Article 42(1) and (3) and Article 43], of [that law], which excludes from judicial review a procedural act of the [EPPO] such as the decision of the European Delegated Prosecutor to summon as a witness a third party in respect of whom a reasonable expectation of involvement in the offences under investigation has been identified?

(3) Are the second subparagraph of Article 19(1) TEU and Article 86(3) TFEU to be interpreted as precluding a system of judicial review, of the kind laid down in Articles 90 and 91 of LO 9/2021 in relation to acts of European Delegated Prosecutors adopted under [Article 42(1) and Article 43] of LO 9/2021, which excludes from judicial review a measure adopted by the European Delegated Prosecutor in the exercise of his or her investigative powers and which has no equivalent in the national procedural provisions governing the right to contest decisions adopted by investigating judges in the exercise of their investigative powers?

(4) Is Article 2 ... TEU, which enshrines the values inherent in the rule of law on which the Union is founded, in conjunction with the right to an effective remedy and the right to a fair trial laid down in Article 47 of the [Charter] and the principle of effectiveness laid down in the second subparagraph of Article 19(1) ... TEU, to be interpreted as precluding a system of judicial review of acts of European Delegated Prosecutors which limits the situations in which there is a right to contest decisions to a closed number of situations such as that provided for in Spanish law in Articles 90 and 91 of LO 9/2021?’

Consideration of the questions referred

Admissibility

34 The EPPO and the Spanish, French and Netherlands Governments, as well as the Commission, submit that the second question is inadmissible because it is purely hypothetical. The main proceedings concern challenges, brought by persons who are the subject of the EPPO’s investigation, to the latter’s decision to

summon third parties as witnesses, whilst that question concerns the possibility of those witnesses themselves challenging that decision.

35 In addition, the EPPO submits that the third and fourth questions are also hypothetical, given that, according to it, Article 42(1) of Regulation 2017/1939 does not automatically confer the right to a judicial review of the EPPO's procedural acts, in the absence of a legal basis in national law.

36 According to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 October 2018, *XC and Others*, C234/17, EU:C:2018:853, paragraph 16 and the case-law cited).

37 In the present case, first, by its second question, the referring court asks, in essence, whether Articles 6 and 48 of the Charter, as well as Article 7 of Directive 2016/343, preclude a rule of national law which does not provide for the possibility, for third parties, to bring an appeal against a decision of the EPPO summoning them to appear as witnesses, having regard to the infringements of their fundamental rights likely to result from that decision.

38 It should be observed that, while the dispute in the main proceedings in fact concerns an appeal against the decision of 2 February 2023, by which the European Delegated Prosecutors handling the case in the main proceedings summoned Y.C. and I.M.B. to appear before them as witnesses, that appeal was brought not by those persons, but by I.R.O. and F.J.L.R., who are the subjects of an investigation by those European Delegated Prosecutors in the context of which that decision was taken. Consequently, since the referring court does not explain the reasons why, despite that context, it is nevertheless necessary for the Court to reply to the second question, that question is inadmissible.

39 Secondly, the third and fourth questions seek, in essence, to determine whether the principles of equivalence and effectiveness preclude national legislation that restricts the possibility of appealing against procedural acts of the EPPO to a certain number of exhaustively listed cases and which, as a result, does not offer protection equivalent to that offered by the national procedural rules applicable to appeals against decisions taken in the exercise of their investigatory powers by investigating judges, which are the equivalent, at national level, of the European Delegated Prosecutors.

40 In that regard, as is clear from the request for a preliminary ruling, the referring court considers that, under national law as it currently stands, there is no possibility of bringing an appeal against the decision of the EPPO to summon Y.C. and I.M.B. as witnesses, which is the subject matter of the dispute in the main proceedings. Furthermore, it considers that, contrary to the EPPO's submission, the national law must be interpreted as meaning that it is possible to bring an appeal against decisions by which an investigating judge orders investigation measures to be undertaken in the context of a criminal investigation.

41 In the light of those considerations, the accuracy of which it is not for the Court to call into question, the third and fourth questions appear to be relevant for the outcome of the dispute before the referring court, since the admissibility of the appeal in the main proceedings is likely to depend upon the Court's reply to those questions. Moreover, the plea of inadmissibility raised by the EPPO concerns the interpretation of Article 42(1) of Regulation 2017/1939 and therefore relates to the substance of those questions and not to their admissibility.

42 The third and fourth questions are therefore admissible.

The first, third and fourth questions

43 By its first, third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 42(1) of Regulation 2017/1939, read in the light of the second subparagraph of Article 19(1) TEU, Articles 47 and 48 of the Charter and the principles of equivalence and effectiveness, must be interpreted as precluding national legislation pursuant to which persons who are the subject of an EPPO investigation may not directly challenge before the competent national court a decision by which, in the context of that investigation, the European Delegated Prosecutor handling the case concerned summons witnesses to appear.

44 Article 4 of Regulation 2017/1939 provides that ‘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 is to undertake investigations, 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.

45 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. Article 8(2) to (4) states 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 consisting of European Delegated Prosecutors who are to be located in the Member States.

46 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 (judgment of 21 December 2023, *G.K. and Others (European Public Prosecutor’s Office)*, C281/22, EU:C:2023:1018, paragraph 42).

47 Pursuant to Article 28(1) of Regulation 2017/1939, the European Delegated Prosecutor handling a case may, in accordance with that regulation and with national law, undertake the investigation measures and other measures on his or her own. More specifically, European Delegated Prosecutors have the power to adopt not only the investigation measures referred to in Article 30(1) of that regulation, at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, but also, in accordance with Article 30(4), to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases. In addition, as stated in Article 30(5), the procedures and the modalities for taking the measures shall be governed by the applicable national law.

48 In that context, as stated in recital 86 of Regulation 2017/1939, in order to take account of the specific nature of the tasks and structure of the EPPO, which is different from that of all other bodies and agencies of the European Union, Article 86(3) TFEU permits the EU legislature to determine the rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions.

49 The EU legislature exercised that competence in adopting Article 42 of that regulation, paragraph 1 of which provides that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties are to be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law.

50 In order to determine whether Article 42(1) precludes national legislation that does not allow persons who are the subject of an EPPO investigation to challenge directly before the competent national court a decision by which the European Delegated Prosecutor handling the case concerned summoned persons to appear as witnesses, it must be ascertained whether such a decision is covered by the concept of

‘procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties’, within the meaning of that provision.

51 In accordance with settled case-law, it follows from the need for a uniform application of EU law and the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard not only to the wording of that provision but also to the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 30 April 2024, *M.N.(EncroChat)*, C670/22, EU:C:2024:372, paragraph 109 and the case-law cited).

52 In the first place, it is true that, in accordance with the wording of Article 42(1) of Regulation 2017/1939, the competent national courts carry out the judicial review of procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties ‘in accordance with the requirements and procedures laid down by national law’.

53 However, it is clear from the wording of Article 42(1) that the reference to ‘the requirements and procedures laid down by national law’ concerns only the modalities in accordance with which the competent national courts carry out judicial review of the acts in question, and not the scope of the concept of ‘procedural acts which are intended to produce legal effects vis-à-vis third parties’, in respect of which that provision does not refer to the law of the Member States, within the meaning of the case-law referred to in paragraph 51 of the present judgment.

54 Furthermore, as the Advocate General observed in points 39 to 43 of his Opinion, it is clear from the words and scheme of Article 42 of Regulation 2017/1939, read in the light of recitals 86, 87 and 89 thereof, as well as the context of that provision, that it is intended, in particular, to provide for a sharing of competences between the national courts and the EU Courts for the purposes of exercising the judicial review of the EPPO’s activities.

55 Thus, while, as recalled in paragraphs 49 and 52 of the present judgment, Article 42(1) assigns jurisdiction to the national courts to review procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties, Article 42(2) to (8) lists the cases in which the judicial review of EPPO activities is, by contrast, within the jurisdiction of the EU Courts.

56 In particular, Article 42(3) of Regulation 2017/1939 confers jurisdiction on the EU Courts to review, in accordance with the fourth paragraph of Article 263 TFEU, decisions of the EPPO to dismiss a case, in so far as they are contested directly on the basis of EU law. In addition, pursuant to Article 42(8) of that regulation, the EU Courts also review, in accordance with the fourth paragraph of Article 263 TFEU, both EPPO decisions affecting the data protection rights of data subjects under Chapter VIII of that regulation, and EPPO decisions which are not procedural measures, such as decisions relating to the right of public access to documents, a decision dismissing a European Delegated Prosecutor, adopted pursuant to Article 17(3) of the regulation, or any other administrative decision.

57 Therefore, ‘procedural acts’, within the meaning of Article 42(1) of Regulation 2017/1939, are acts the legality of which is reviewed, in principle, by national courts, with the exception of acts covered by Article 42(3), and in contrast with decisions relating to protection of personal data and ‘administrative decisions’ of the EPPO, within the meaning of Article 42(8), which fall within the scope of Article 263 TFEU.

58 It follows from the foregoing that the concept of ‘procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties’, within the meaning of Article 42(1) of Regulation 2017/1939, is an autonomous concept of EU law which must be interpreted on the basis of uniform criteria. Only such an interpretation is capable of ensuring, throughout the European Union, a coherent division of competences

between national courts and the EU Courts for the purpose of exercising judicial review of the activity of the EPPO.

59 In the second place, it is necessary to examine whether a decision of the EPPO to summon witnesses to appear falls within that concept, which is not defined by Regulation 2017/1939.

60 In that regard, first, it is apparent from recital 87 of the regulation that the expression ‘procedural acts’ includes, in particular, those acts ‘undertaken by the EPPO in the course of its investigations’. It is common ground between the parties that the decision at issue in the main proceedings is a ‘procedural act’, within the usual meaning given to that expression, and that that act was adopted in the course of an EPPO investigation.

61 Secondly, as regards the question whether such a decision must be regarded as being a procedural act ‘intended to produce legal effects vis-à-vis third parties’, it should be observed, at the outset, that that expression corresponds to the criterion used in the first paragraph of Article 263 TFEU to define the scope of acts which may be challenged before the EU Courts by way of an action for annulment provided for by that article.

62 In that regard, it should be recalled that, according to settled case-law, an action for annulment may be brought, on the basis of the first paragraph of Article 263 TFEU, against any provision or act adopted by the EU institutions, bodies, offices and agencies, whatever form they may take, the legal effects of which are binding on, and capable of affecting the interests of, a natural or legal person by bringing about a distinct change in their legal position (judgment of 22 September 2022, *IMG v Commission*, C619/20 P and C620/20 P, EU:C:2022:722, paragraph 98 and the case-law cited).

63 It may therefore be deduced from the wording of Article 42(1) of Regulation 2017/1939, read in the light of the general scheme of that regulation and the purpose of Article 42 that, in referring to a criterion analogous to that referred to in the first paragraph of Article 263 TFEU, the EU legislature intended not to restrict the mandatory judicial review of procedural acts of the EPPO to certain specific categories of procedural acts, but to extend the scope of that review to cover all acts of a procedural nature intended to produce binding legal effects capable of affecting the interests of third parties by bringing about a distinct change in their legal position, including those adopted in the course of a criminal investigation procedure.

64 In that context, first, it must be observed that, according to recital 87 of Regulation 2017/1939, the term ‘third party’, used in Article 42 of the regulation, designates a category of persons within which fall not only the ‘suspect’ and the ‘victim’, but also ‘other interested persons whose rights may be adversely affected by such acts’.

65 In addition, in the third paragraph of recital 87, in order to illustrate the concept of ‘procedural acts which are not intended to produce legal effects vis-à-vis third parties’, the EU legislature referred expressly only to the appointment of experts or the reimbursement of witness costs. Since that list is one merely of examples, it cannot be excluded, at the outset, that a decision to summon a person to appear as a witness, which is not included in the procedural acts listed in recital 87, may be regarded as producing binding legal effects capable of affecting the interests of the person concerned by bringing about a distinct change in his or her legal position.

66 Secondly, the interpretation set out in paragraph 63 of the present judgment is the only one that can guarantee compliance with the principle that the European Union is a union based on the rule of law in which the acts of its institutions, bodies, offices and agencies are subject to review of their compatibility with, in particular, the Treaties, the general principles of law and fundamental rights (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C583/11 P, EU:C:2013:625, paragraph 91 and the case-law cited).

67 However, it should also be borne in mind that, in order to determine, in a given case, whether the contested act is intended to produce binding legal effects, it is necessary to examine the substance of the act and to assess its effects in the light of objective criteria, such as the content of the act in question, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution, body, office or agency which adopted it. Those powers should not be understood in the abstract, but should be regarded as factors that inform the specific analysis of the content of the act in question, which is central and indispensable (see by analogy, judgment of 22 September 2022, *IMG v Commission*, C619/20 P and C620/20 P, EU:C:2022:722, paragraph 99 and the case-law cited).

68 Having regard to the criteria listed in paragraphs 62 to 67 of the present judgment, the question whether a decision of a European Delegated Prosecutor to summon a witness to appear is intended to produce binding legal effects capable of affecting the rights of the persons who are the subject of an investigation, such as the applicants in the main proceedings, by bringing about a distinct change in their legal position, cannot be decided in the abstract and in general.

69 Those criteria require an *in concreto* assessment of the act in question to be conducted with regard, in particular, to the 'third party' status of the person challenging that act, the content of the act, the context within which it was adopted and the powers of the body which ordered it.

70 In that regard, it should be found that, as is apparent from recitals 83 and 85 to 87 of Regulation 2017/1939, Article 42(1) of that regulation, read in conjunction with Article 41 thereof, must be interpreted as meaning that the judicial review of procedural acts intended to produce legal effects vis-à-vis third parties makes it possible to ensure that the EPPO observes the fundamental rights of persons in respect of whom those procedural acts produce such effects and, inter alia, to verify the respect, by that body, of the right to procedural fairness and the rights of the defence of suspects and accused persons, in accordance with Articles 47 and 48 of the Charter.

71 In particular, such a review involves, inter alia, ascertaining whether there is compliance with not only the procedural rights of suspects and accused persons laid down by EU law, which are referred to in Article 41(1) of that regulation, but also, in accordance with Article 41(3) thereof, all the procedural rights granted by domestic law applicable to those persons as well as other persons affected by the EPPO's procedures.

72 Since the perimeter of the procedural safeguards granted to the various categories of persons may thus vary depending on the national procedural rules of the Member State concerned, the perimeter of the procedural acts that it is admissible for those persons to challenge before the national courts may, consequently, also vary depending on which national law is applicable.

73 The assessment of the effects of a decision to summon a witness to appear on the rights of persons who are the subject of an investigation therefore depends, to a certain extent, on national procedural rules and the specific context of the criminal investigation in the course of which the EPPO adopted that decision, with the result that national courts competent to carry out the judicial review provided for in Article 42(1) of Regulation 2017/1939 are best suited to carry it out.

74 Support for that interpretation is found in recitals 12 and 87 of the regulation. First, it is apparent from recital 12 that the EU legislature intended, in accordance with the principles of subsidiarity and proportionality, set out in Article 5(3) and (4) TEU, to limit the extent to which judicial review of procedural acts of the EPPO was harmonised to that which is strictly necessary to ensure, in respect of those acts, a uniform level of effective judicial protection which complies with EU primary law. Secondly, it is also consistent with the substantial level of integration of that EU body within the Member States' systems of criminal procedure in the context within which they exercise their competences, which, as is clear from the

first paragraph of recital 87 of the regulation, is the reason for the national courts having jurisdiction in respect of the procedural acts covered by Article 42(1) of the regulation.

75 It follows that it is for the competent national courts to assess, having regard, *inter alia*, to national procedural rules, as well as to the specific context of the criminal investigation with which they are concerned, whether a decision of a European Delegated Prosecutor summoning a witness to appear is intended to produce binding legal effects capable of affecting the interests of the persons challenging that decision, such as, in the present case, the persons who are the subject of that investigation, by bringing about a distinct change in their legal position, *inter alia* by affecting their procedural rights. If that is the case, that decision is subject to review by those courts, pursuant to Article 42(1) of Regulation 2017/1939.

76 In the third place, as regards the question whether that judicial review must, where appropriate, be carried out by way of a direct appeal against that decision, it should be noted that the wording of that provision does not specify whether the Member States must provide for a specific legal remedy allowing a direct challenge to a procedural act of the EPPO and whether that review must necessarily lead to the annulment of the contested act.

77 On the other hand, that provision provides that the judicial review in question is to be carried out ‘in accordance with the requirements and procedures laid down by national law’. It follows that, provided that the rights enshrined in Articles 47 and 48 of the Charter are fully guaranteed, that provision does not rule out the possibility that, in Member States in which the rules of criminal procedure do not provide for such a specific remedy for challenging acts ordered in the course of those proceedings, that judicial review may be carried out as an incidental question.

78 Support for that interpretation is found in recital 88 of Regulation 2017/1939, which states that, as regards the review of legality undertaken by national courts with regard to procedural acts intended to produce legal effects *vis-à-vis* third parties, effective legal remedies should be ensured in accordance with the second subparagraph of Article 19(1) TEU.

79 That provision of the EU Treaty imposes on Member States the obligation of providing remedies sufficient to ensure effective legal protection in the fields covered by EU law. According to the Court’s case-law, that obligation corresponds to the right to an effective remedy of everyone whose rights and freedoms guaranteed by EU law are violated, as set out in the first paragraph of Article 47 of the Charter. However, that obligation means only that every person is recognised as having the right to challenge before the courts an act adversely affecting him or her which is such as to violate those rights and freedoms, and not necessarily that the holder of that right to an effective remedy has a direct legal remedy the primary object of which is to call into question a given measure, provided that one or more legal remedies also exist, before the various competent national courts, enabling that rightholder to obtain, as an incidental question, judicial review of that measure ensuring respect for the rights and freedoms guaranteed to that rightholder by EU law, without having to be subject, to that end, to the risk of receiving a penalty in the event of non-compliance with the measure in question (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C245/19 and C246/19, EU:C:2020:795, paragraphs 47, 58 and 79 and the case-law cited).

80 In that regard, although Article 42(1) of Regulation 2017/1939 must be read in the light of the second subparagraph of Article 19(1) TEU and Articles 47 and 48 of the Charter, it is, however, without prejudice to the procedural rules governing judicial review undertaken by national courts. Thus, that review may also take the form of an incidental question, dealt with, in particular, by the criminal trial court, provided that those procedural rules guarantee a right to an effective remedy, which presupposes that the court hearing the dispute has jurisdiction to examine all the questions of law and fact relevant to the resolution of that dispute. In particular, that court must have jurisdiction to verify that the evidence on which the act concerned is based has not been obtained or used in breach of the rights and freedoms guaranteed to the

person concerned by EU law (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C245/19 and C246/19, EU:C:2020:795, paragraph 82 and the case-law cited).

81 In the fourth and last place, as recital 88 of Regulation 2017/1939 suggests, Article 42(1) thereof must be interpreted in the light of the principle of the procedural autonomy of the Member States.

82 In accordance with that principle, it is for the domestic legal system of each Member State to lay down procedural rules governing the remedies necessary to ensure effective legal protection for individual parties in the fields covered by EU law, provided, however, that those rules are not, in situations governed by EU law, less favourable than in similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 21 December 2021, *Randstad Italia*, C497/20, EU:C:2021:1037, paragraphs 56 and 58 and the case-law cited).

83 As regards the principle of equivalence, the referring court has expressed doubts as to whether the applicable national procedural rules comply with that principle.

84 In order to ascertain whether the principle of equivalence is complied with, it is appropriate, on the one hand, to identify the comparable procedures or actions and, on the other hand, to determine whether the actions based on national law are handled in a more favourable manner than comparable actions concerning the safeguarding of the rights which individuals derive from EU law (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C180/17, EU:C:2018:775, paragraph 38 and the case-law cited).

85 With regard to the comparability of actions, it is for the national court, which has direct knowledge of the applicable procedural rules, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C180/17, EU:C:2018:775, paragraph 39 and the case-law cited).

86 In the present case, as has been stated in paragraphs 29 and 40 of the present judgment, it is apparent from the request for a preliminary ruling that the remedies against the procedural acts of the European Delegated Prosecutors operating in Spain must be compared to those which exist, under national law, against similar acts of an investigating judge, who is the equivalent, at national level, of a European Delegated Prosecutor.

87 So far as concerns the similar handling of the actions, it must be borne in mind that every case in which the question arises as to whether a national procedural rule governing actions based on EU law is less favourable than those governing similar domestic actions must be analysed by the national court taking into account the role played by the rules concerned in the procedure as a whole, as well as the operation and any special features of those rules before the various national courts (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C180/17, EU:C:2018:775, paragraph 40 and the case-law cited).

88 In that regard, as the Advocate General observed, in essence, in point 61 of his Opinion, it appears from the information provided by the referring court that the persons who are the subject of an investigation by a European Delegated Prosecutor operating in Spain are in a less favourable situation than the persons who are the subject of an investigation by an investigating judge, given that the national legislation applicable to the judicial review of procedural acts of the EPPO excludes the possibility of a direct appeal against a decision summoning witnesses to appear, whereas the legislation applicable to the

judicial review of an analogous act of an investigating judge provides for the possibility of an appeal before that investigating judge or before a higher court.

89 However, it is for the referring court to ascertain whether that is the case, having regard to the criteria set out in paragraph 87 of the present judgment and, *inter alia*, whether it is appropriate to reject the interpretation of national law put forward by the Spanish Government and by the EPPO in their written observations, according to which it is possible, in a purely domestic situation, to apply procedural provisions which do not provide for such a direct appeal.

90 As regards the principle of effectiveness, it must be found that this does not, in the present case, entail requirements going beyond those which arise from the right to effective judicial protection, as guaranteed in the first paragraph of Article 47 of the Charter and in the second subparagraph of Article 19(1) TEU (see, to that effect, judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C180/17, EU:C:2018:775, paragraph 43 and the case-law cited). It is apparent from paragraph 79 of the present judgment that those provisions of EU primary law do not preclude the absence of a direct remedy against a procedural act of the EPPO summoning witnesses to appear, provided that the requirements referred to, in particular, in paragraphs 79 and 80 of the present judgment are complied with.

91 In the light of the foregoing grounds, the answer to the first, third and fourth questions is that Article 42(1) of Regulation 2017/1939, read in the light of the second subparagraph of Article 19(1) TEU, Articles 47 and 48 of the Charter and the principles of equivalence and effectiveness, must be interpreted as meaning that a decision by which, in the course of an investigation, the European Delegated Prosecutor handling the case concerned summons witnesses to appear is subject to review by the competent national court, pursuant to Article 42(1), where that decision is intended to produce binding legal effects capable of affecting the interests of the persons challenging that decision, such as the persons who are the subject of that investigation, by bringing about a distinct change in their legal situation. If that is the case, national law must guarantee for those persons the effective judicial review of that decision, at least as an incidental question, where applicable, by the criminal trial court. However, by application of the principle of equivalence, where national procedural provisions concerning similar domestic actions provide for the possibility of challenging an analogous decision directly, such a possibility must equally be afforded to those persons.

Costs

92 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:

Article 42(1) 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'), read in the light of the second subparagraph of Article 19(1) TEU, Articles 47 and 48 of the Charter of Fundamental Rights of the European Union and the principles of equivalence and effectiveness,

must be interpreted as meaning that a decision by which, in the course of an investigation, the European Delegated Prosecutor handling the case concerned summons witnesses to appear is subject to review by the competent national court, pursuant to Article 42(1), where that decision is intended to produce binding legal effects capable of affecting the interests of the persons challenging that decision, such as the persons who are the subject of that investigation, by bringing about a distinct change in their legal situation.

If that is the case, national law must guarantee for those persons the effective judicial review of that decision, at least as an incidental question, where applicable, by the criminal trial court.

However, by application of the principle of equivalence, where national procedural provisions concerning similar domestic actions provide for the possibility of challenging an analogous decision directly, such a possibility must equally be afforded to those persons.

[Signatures]

* Language of the case: Spanish.