

Brief note for the discussion

- **Overview of the procedural guarantees framework:** article 41 is the principal clear reference to rights of suspects and accused persons in the operational part of the EPPO Regulation.

See art. 41(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.”

Paragraph 3 lays out the rule that persons involved in the proceedings of the EPPO generally have the same procedural rights compared to a proceeding on the national level. This provision is applicable not only to procedural rights of suspects and accused persons, but also to procedural rights of other persons involved in the proceedings, such as victims, witnesses, persons sought by a European Arrest Warrant, etcetera.

Paragraph 3 refers to the applicable national law and it offers a guidance in the interpretation of applicable national law, and it highlights the importance of these procedural rights.

Paragraph 2 recalls the general Union law on procedural rights of suspects and accused persons and specifically the national implementation of the principal Directives on procedural rights, including the fundamental rights as eshrined in art. 6 of the ECHR

The primacy of EU primary law including the Charter of Fundamental Rights, is already recalled in the EPPO Regulation in its Article 5(1). The procedural rights which are specifically mentioned in the end of paragraph 3 only serve an example of rights which are essential to a fair proceeding, but which have not yet been codified in EU directives. Their detailed and substantial configuration is therefore a matter of national law.

- **The Access to case file**

In the EPPO proceedings, if a **suspect** requests access to the case file of the, the access will be granted or denied on the basis of the relevant legal provisions of the Code of Criminal procedure of the Member State of the handling EDP according to Article 45 EPPO Regulation:

Case files of the EPPO: “The case file shall be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State. ... Access to the case file by suspects and accused persons as well as other persons involved in the proceedings shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor’s Member State.”

Also the access requested by third persons and parties involved in the proceedings is granted or denied according to the national rules of the MS (art. 45 (2) of the edp involved).

(in Italy the access procedure is disciplined by art. 116 of the criminal procedural code. It applies also before the official termination of the investigation, when the discovery of the evidence collected in the case file is granted to the defense lawyers and the suspect (art. 415 c.p.p..))

the Regulation provides - Art. 44 Access to the case management system (CMS) - that the case file, “shall be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State”.

The case management system is intended to serve internal purposes of the EPPO (cf. Article 44(2)). In order to enable the Central Office to carry out its functions, all information and evidence contained in the handling EDP’s case file “that may be stored electronically”, shall therefore be uploaded (copied) into the CMS (cf. Article 44(4)(c) and Article 45(3)).

Article 44 describes the EPPO CMS in terms of purpose and content, Article 45 establishes a number of principles and rules on the case files of the EPPO. The Regulation intends to ensure that the copy of the case file kept in the CMS is a true copy of the case file kept by the EDP.

In fact Paragraph 3, provides that “the content of information in the case management system reflects at all times the “leading” case file”, to be adjusted regularly with the assistance of the the EPPO’s IT infrastructure.

This is necessary in order to ensure that the chamber and the european prosecutors (the central level) have access to an accurate and update copy of the content of the case file, in order that they can properly exercise its functions in accordance with the Regulation. It is also necessary in the interest of the suspect and other interested persons, including data subjects, in order to avoid that the CMS does contain information that is no longer up to date.

The right of access to the case file, as provided for in paragraph 2 of art. 45, specifically applies to the case file kept by the EDP in accordance with national law, in the national case-file system.

This provision does not provide access also to the “information and evidence from the case file” that is stored in the respective part of the CMS (cf. Article 44(4)(c)).

The Regulation does not specifically address the possibility for external persons to seek access to “information and evidence from the case file” stored electronically in the CMS, as Article 46 only regulates internal access to the CMS.

However, there should be no need to provide access to the case-file in the CMS in addition to providing access to the case file itself, as the content of both should be the same.

Paragraph 3 of Article 46 contains rules on access by the EDPs to information stored in the CMS (Article 44(4)(c)) from a case file kept by another EDP as well as to the case file itself. The provision does not grant direct access to all other edps but only access upon request. The EDP handling the file has to decide on such a request for access, he/she is to do so “in accordance with applicable national law”.

Paragraph 3 also provides for a resolution mechanism in case of any conflicts that may arise between EDPs in case access is not granted on request.

To sum up, in the EPPO proceedings, if a suspect requests access to the case, access will be granted or denied.

If the request has been filed by a suspect: national law applies,

if the request has been filed by, e.g., third person not involved in the proceedings:
Arts. 58 to 60 EPPO Regulation should apply

- **Possible other issues:**

Use of operational personal data for other purpose than collected

Example: an EDP from Germany has granted an Italian EDP colleague access to case material. Can the Italian EDP use this material in his/her proceedings?

This answer seems to be supported by Art. 49(3) EPPO Regulation: *Processing of operational personal data*