A COMPLETE SYSTEM, AN INCOMPLETE GUARANTEE? JUDICIAL REVIEW OF EPPO PROCEDURAL ACTS AFTER *MINCU PĂTRAŞCU BRÂNCUŞI* (CASE C-328/24 P)

Un sistema completo, una garanzia incompleta? Il controllo giurisdizionale sugli atti procedurali dell'EPPO dopo Mincu Pătraşcu Brâncuşi *(causa C-328/24 P)*

Un système complet, une garantie incomplète ? Le contrôle juridictionnel des actes de procédure du Parquet européen après Mincu Pătraşcu Brâncuşi *(affaire C-328/24 P)*

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1. A Prosecutor between, and beyond, Legal Orders

The establishment of the European Public Prosecutor's Office (the *EPPO*) by Council Regulation (EU) 2017/1939 of 12 October 2017[1] is one of the most consequential institutional innovations in European criminal law.[2] Entrusted with investigating and prosecuting offenses affecting the Union's financial interests, the EPPO is an indivisible EU body with a markedly decentralized structure. It acts through European

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[1] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, *OJEU*, L 283, ('EPPO Regulation', 'Regulation 2017/1939' or 'the Regulation').

[2] It represents the 'emblem for the transformation of EU criminal law from an intergovernmental paradigm to a strong supranational polity', as aptly pointed out by J. ÖBERG, *The Normative Foundations for EU Criminal Justice: Powers, Limits and Justifications*, 2024, p. 92.

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Delegated Prosecutors (EDPs) embedded in the Member States, who investigate and prosecute under both Regulation 2017/1939 and applicable national law, before the competent national courts.[3]

Although legally attributable to an EU body, the EPPO's procedural acts are embedded in Member States' criminal justice systems, and their legal effects are, to a large extent, determined by the applicable national law. This hybrid character – supranational in institutional origin, yet deeply integrated into national criminal procedure – raises a basic question of constitutional architecture: *which court should review the legality of those acts*? Article 42 of the Regulation 2017/1939 answers that question through a mechanism of differentiated allocation of jurisdiction between national courts and the EU Courts, by establishing a bifurcated and composite regime of judicial remedies.[4]

Departing from the centralized model of direct review under Article 263 TFEU, the EU legislature:

(i) allocated review of 'procedural acts of the EPPO intended to produce legal effects *vis-à-vis* third parties' to the *competent national courts*, under the requirements and procedures laid down by national law (Article 42(1) EPPO Regulation);[5]

(ii) preserved the *Court of Justice's* (ECJ) jurisdiction, through preliminary rulings, over specified questions of interpretation and validity; and

(iii) retained direct jurisdiction as per Article 263 TFEU *before the EU Courts* – including the *General Court* (GC) – for specified matters, including EPPO decisions to dismiss a case when challenged directly on the basis of

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[3] See Articles 4, 8, and 13 and recitals 30 and 31 of the EPPO Regulation.

[4] V. MITSILEGAS, F. GIUFFRIDA, *Judicial Review of EPPO Acts and Decisions*, in K. LIGETI, M.J. ANTUNES, F. GIUFFRIDA (eds.), *The European Public Prosecutor's Office at Launch: Adapting National Systems, Transforming EU Criminal Law*, 2020, pp. 115-136; H.-H. HERRNFELD, *Article 42 Judicial Review*, in H.-H. HERRNFELD, D. BRODOWSKI, C. BURCHARD (eds), *European Public Prosecutor's Office: Article-by-Article Commentary*, 2021, pp. 400-441; V. MITSILEGAS, *European Prosecution between Cooperation and Integration: The European Public Prosecutor's Office and the Rule of Law*, in *Maastricht Journal of European and Comparative Law*, 2021, p. 245 ff., pp. 259-264; S. ALLEGREZZA, *A European Public Prosecutor Office to Protect Common Financial Interests: A Milestone for the EU Integration Process*, in K. AMBOS, P. RACKOW (eds.), *The Cambridge Companion to European Criminal Law*, 2023, p. 413 ff., pp. 434-435; A.M. COLLINS, *Judicial Control of the EPPO: the Role of the Court of Justice*, in *eucrim*, 2024, p. 64 ff., pp. 66-68; A. HERNÁNDEZ WEISS, *EPPO Caught Between EU and National Law: A Catch-22: Comments on the ECJ's Judgment in EPPO v I.R.O and F.J.L.R (Case C-292/23)*, in *eucrim*, 2025, pp. 229-235.

[5] With regard to the choice of forum, on the 'inadequate system of judicial review', see M. PANZAVOLTA, *Choosing the National Forum in Proceedings Conducted by the EPPO: Who Is to Decide?*, in L. BACHMAIER WINTER (ed.), *The European Public Prosecutor's Office. The Challenges Ahead*, 2018, pp. 80-81.

EU law, as well as certain data-protection and administrative decisions.[6]

In sum, Article 42 EPPO Regulation translates the institutional hybridity of the EPPO into a composite system of judicial review.[7] National courts review most procedural acts producing legal effects *vis-à-vis* third parties; the EU Courts retain defined heads of direct jurisdiction; and the ECJ remains available through Article 267 TFEU.

This arrangement reflects a deliberate legislative choice. This jurisdictional framework departs markedly from traditional EU agency models, where administrative output is subject to direct scrutiny by the Union Courts. Unlike agencies whose decisions remain primarily within the EU administrative sphere (e.g. EBA or ESMA), the EPPO exercises prosecutorial functions continuously *inside* national criminal justice systems. The Regulation therefore placed immediate review mainly with domestic courts already connected to the criminal proceedings, rather than directing each challenge through the EU Courts.[8] However, whether this composite mechanism satisfies the constitutional guarantee of effective judicial protection under Article 47 of the Charter of Fundamental Rights and the foundational requirement of a complete system of remedies under Article 19 TEU has

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[6] Article 42(1)-(3) and (8) EPPO Regulation. Paragraphs 4 to 7 confer jurisdiction on the EU Courts in matters concerning damages, arbitration clauses, staff, and removal from office. On the mechanism's *sui generis* character, see General Court, 28 February 2024, Case T-385/23, *Mincu Pătraşcu Brâncuşi v EPPO*, para. 21.

[7] In addition to the studies quoted above (n 4), see K. LIGETI, A. WEYEMBERGH, *The European Public Prosecutor's Office: Certain Constitutional Issues*, in L.H. ERKELENS, A.W.H. MEIJ, M. PAWLIK (eds.), *The European Public Prosecutor's Office: An Extended Arm or a Two-Headed Dragon?*, 2014, p. 53 ff.; M.J.J.P. LUCHTMAN, J.A.E. VERVAELE, *European Agencies for Criminal Justice and Shared Enforcement (Eurojust and the European Public Prosecutor's Office*, in *Utrecht Law Review*, 2014, p. 132 ff.; A. NOVOKMET, *The European Public Prosecutor's Office and the Judicial Review of Criminal Prosecution*, in *New Journal of European Criminal Law*, 2017, p. 374 ff.; L. BACHMAIER WINTER (ed.), *The European Public Prosecutor's Office: The Challenges Ahead*, 2018; A.W.H. MEIJ, *Some Explorations into the EPPO's Administrative Structure and Judicial Review*, in ERKELENS, MEIJ, PAWLIK (eds.), ibid., pp. 101-119; B. VIDAL FERNÁNDEZ, *Judicial Review of Acts of the European Public Prosecutor's Office: Article 42 Regulation of the European Public Prosecutor's Office*, in *Revista de Estudios Europeos*, 2023, p. 28 ff.; D. ŽELJKO MRLJAK, *EPPO Si Muove?: Judicial Review of the European Public Prosecutor's Acts Between the EU and Member States*, in *Hrvatski ljetopis za kaznene znanosti i praksu*, 2024, p. 515 ff.; K. LIGETI, *Between National Procedural Law and Union Oversight: Article 42 of the EPPO Regulation and the Emerging Jurisprudence of National and EU Courts*, in D. BRODOWSKI AND S. TRAUTMANN (eds.), *Strengthening the Future of the European Public Prosecutor's Office*, 2026, p. 173 ff. On the institutional development of the EPPO as an exercise in supranational criminal justice, see L. SCHMEER, *The European Public Prosecutor's Office: From Sovereignty to Supranationalism*, 2025.

[8] K. LIGETI, *Judicial Review of Acts of the European Public Prosecutor's Office: The Limits of Effective Judicial Protection of European Prosecution*, in K. LENAERTS *et al.* (ed.), *Shaping a Genuine Area of Freedom, Security and Justice:* Liber Amicorum *Vice-President Bay Larsen*, 2024, pp. 61-70.

provoked significant concern in academic literature. Recent scholarship, has critically illuminated how the EPPO's hybrid institutional design strains orthodox conceptions of judicial review, exposing structural asymmetries between supranational prosecutorial power and fragmented national avenues of redress.[9]

Whether that allocation is compatible with the Treaties – and whether it provides effective protection in practice – lies at the center of *Mincu*. Ruling on an appeal against an order of the General Court, the Court of Justice upheld the constitutional validity of the jurisdictional allocation set out in Article 42(1) of Regulation 2017/1939, locating its legal basis in the broad legislative empowerment of Article 86(3) TFEU. In doing so, the Court affirmed that the Treaty authorizes the EU legislature to reallocate jurisdictional review over EU procedural acts to domestic courts when those acts unfold within national criminal proceedings. At the same time, the Court corrected a fundamental procedural error committed by the General Court, ruling that a jurisdictional bar contained in secondary legislation cannot validate itself to evade direct primary law scrutiny.

The following pages examines the constitutional implications of *Mincu* case, advancing a central argument: while the Court of Justice successfully establishes the formal constitutional permissibility of the decentralized model, it leaves the substantive guarantee of judicial protection fragile and structurally incomplete. While existing literature has largely focused on cross-border investigative measures, this article investigates the under-theorized problem of central decision-making acts, specifically, decisions by Permanent Chambers to bring cases to judgment.

The analysis unfolds in five successive parts. Section II presents the factual background and procedural evolution of the case. Section III examines the jurisdictional threshold and the Court's clarification of Kompetenz-Kompetenz. Section IV interrogates the Court's functional reading of Article 86(3) TFEU and identifies the operational limits of analogizing prosecutorial acts to composite administrative procedures. Section V contrasts formal constitutional completeness with practical remedial effectiveness, highlighting the deficiencies of indirect national review. Finally, Section VI provides concluding reflections and formulates concrete proposals de lege ferenda for the legislative amendment of Article 42 of Regulation 2017/1939.

2. From Bucharest to Luxembourg. Facts and Outcome of the Case

The proceedings originated from an EPPO investigation conducted

[9] J. ÖBERG, *The European Public Prosecutor: Quintessential supranational criminal law?*, in *Maastricht Journal of European and Comparative Law*, 2021, p. 164.

in Romania concerning offenses affecting the Union's financial interests. Upon conclusion of the preparatory investigation, Permanent Chamber 10 of the EPPO adopted a decision approving the handling European Delegated Prosecutor's draft to bring Mr Constantin Mincu Pătraşcu Brâncuşi and co-defendants to trial, which resulted in an indictment filed before the Regional Court of Bucharest. Concurrently, the same measure dismissed the proceedings regarding certain other suspects. Mr Mincu sought the annulment of the Permanent Chamber's decision bringing him to judgment before the General Court pursuant to Article 263 TFEU.

A primary institutional feature of the dispute concerns the authorship and nature of the contested act. The peculiarity of the case lies in the fact that the contested decision was not adopted by a national prosecutor acting alone, but by a Permanent Chamber at the EPPO's central level, on a draft submitted by the handling EDP. The same decision sent some defendants to trial and dismissed the case as regards other suspects. A single act therefore contained the two outcomes – dismissal and prosecution – that Article 42 places on different tracks of review.[10] Mr Mincu challenged only the part bringing him to trial.

According to him, the exclusive jurisdiction granted to national courts over EPPO's procedural acts producing effects *vis-à-vis* third parties (as a decision to bring a defendant to trial) is in breach of the right to a fair trial and effective remedy protected by Article 47 of the Chater. In his view, national courts are not equipped with the necessary expertise or jurisdiction to declare invalid EU acts. Furthermore, such allocation of authority in favor of national courts would jeopardize the Court's own exclusive jurisdiction on the validity of EU acts as laid down in Article 19 TEU. Mr Mincu also asked, under Article 277 TFEU, that provisions of the EPPO's internal rules contrary to Regulation 2017/1939 be declared inapplicable.[11]

The GC declined jurisdiction and dismissed Mr Mincu's action. In its view, the contested decision was a 'procedural act' falling within Article 42(1) EPPO Regulation, whose review belongs exclusively to *national* courts. Any alleged incompatibility of Article 42 of the Regulation and EU primary law was likewise rejected on the same ground.

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[10] Under Article 42(3), an EPPO decision to dismiss a case, insofar as it is challenged directly on the basis of Union law, is reviewable *by the EU Courts* under Article 263 TFEU. A decision bringing a defendant to trial instead falls within Article 42(1) as a procedural act intended to produce legal effects *vis-à-vis* third parties, thus reviewable only by *national competent courts*.

[11] Court of Justice, 16 April 2026, Case C-328/24 P, *Mincu Pătraşcu Brâncuşi v EPPO*, ('*Mincu*'), paras 15-23, 36, 44-47, and 102; General Court, 28 February 2024, Case T-385/23, *Mincu Pătraşcu Brâncuşi v EPPO*.

On appeal to the Court of Justice, the defendant (now the appellant) advanced one principal ground, combining two arguments, and one alternative ground:

(i) a *jurisdictional* argument – Article 86(3) TFEU authorizes the EU legislature to determine the 'the rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions', but does not expressly permit a derogation from the EU Courts' jurisdiction under Article 263 TFEU (which therefore shall be established in Mr Mincu's case);[12]

(ii) an *effective remedy* argument – national courts cannot invalidate EU acts,[13] while a defendant cannot compel them to make a preliminary reference;[14] Article 42 EPPO Regulation therefore allegedly fell short of Articles 19 TEU and 47 of the Charter; and

(iii) in the alternative, a *procedural* argument – given the close connection between jurisdiction and the merits of the main challenge, which was based on EU primary law, the GC should at least have reserved its ruling on admissibility until it examined that challenge.[15]

The ECJ upheld the GC's operative conclusion dismissing the action, but firmly set aside its underlying reasoning. The Court held that the GC had committed a manifest error of law: by relying mechanically on Article 42(1) of Regulation 2017/1939, the very secondary provision whose validity was being challenged under primary law, the GC fell into an impermissible jurisdictional circularity. A jurisdictional rule cannot insulate itself from constitutional scrutiny.

Exercising its power under Article 61 of the Statute to give final judgment on the matter, the Court of Justice proceeded to examine the substance of the plea of illegality against Article 42(1). In doing so, it articulated three fundamental holdings:

First, on the interpretation of the legal basis, the ECJ held that Article 86(3) TFEU cannot be read narrowly as merely authorizing the EU legislature to adopt procedural modalities for judicial review. Because

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[12] Court of Justice, *Mincu*, cit., para. 45: '. . . in the absence of such a legal basis, a lower-ranking measure, such as [the EPPO] Regulation, cannot derogate from that jurisdiction, established by rules of primary EU law'.

[13] Court of Justice, *Mincu*, cit., para. 46: 'National courts do not have the expertise and jurisdiction to declare invalid EU acts . . . with the result that, where the procedural acts of that body are issued under EU law, judicial review of those acts should fall within the jurisdiction of the EU Courts'.

[14] *Ibidem*: '[t]he obligation on national courts to make a reference to the Court of Justice is not enforceable, with the result that there is a high risk that EU law will not be applied or that it will be misapplied, particularly since the national courts concerned are not familiar with EU law'.

[15] *Ibidem*, para. 36.

Article 86(2) TFEU embeds the EPPO's prosecutorial activity directly before domestic courts, the power conferred on the legislature to determine the 'rules applicable to judicial review' necessarily encompasses the competence to allocate jurisdiction between Union Courts and national jurisdictions.

Second, the Court rejected the claim that allocating review of a prosecution decision to national courts undermines the Union Courts' exclusive jurisdiction under Article 19 TEU or the Foto-Frost doctrine. The ECJ stressed that national criminal courts operate as ordinary courts of Union law within an integrated judicial system. While they cannot declare an EU act invalid, they can, and where appropriate, must, refer questions of validity to the ECJ pursuant to Article 267 TFEU, which preserves the ECJ's ultimate monopoly while maintaining the decentralized structure of criminal proceedings.

Third, regarding Article 47 of the Charter, the Court affirmed that the right to an effective remedy cannot alter the system of judicial review established by the Treaties. The ECJ reasoned that because an EPPO decision to bring a suspect to judgment is an intermediate step that directly unfolds into a national trial, the defendant enjoys the full procedural safeguards of domestic criminal procedure, including the ability of the trial court to assess evidence and review the lawfulness of the underlying procedural steps. On this basis, the Court declared Article 42(1) fully valid and dismissed the action.

3. A Jurisdictional Objection cannot validate itself

The judgment's most important procedural holding is that the GC could not dispose of the challenge against Article 42 EPPO Regulation in that manner. The GC indeed relied on Article 42(1) thereof – the very provision whose validity was disputed – as the basis for declaring that it lacked jurisdiction, without first asking *whether Article 42 was compatible with the Treaties*. A court cannot use a rule to close its doors to judicial review while declining to determine whether that rule possesses the authority to do so.

The ECJ recalled that EU courts must determine, even of their own motion, whether they have jurisdiction, since jurisdiction is a matter of public policy.[16] It then qualified the rule that inadmissibility of the main action ordinarily entails inadmissibility of an incidental plea of illegality.[17] However, that rule cannot, 'by definition', permit a court to avoid an

[16] Court of Justice, *Mincu*, cit., para. 53.

[17] Court of Justice, 5 March 2020, Case C-69/19 P, *Credito Fondiario v SRB*, para. 64 and the case-law cited therein.

argument that specifically challenges, in light of primary law, the secondary law provision on which the court relies to deny its own jurisdiction.[18]

A jurisdictional objection, in other words, cannot validate itself.

Drawing on *SatCen*, the ECJ held that the GC *first* had to test Article 42(1) against primary law and *then*, had the challenge succeeded, assume jurisdiction under Article 263 TFEU.[19]

Clearly, the principle is larger than the case. The ECJ is suggesting, more broadly, that any legislative allocation of jurisdiction cannot become self-validating and escape constitutional scrutiny. *Mincu* therefore recognizes a narrow judicial *Kompetenz-Kompetenz* – before giving effect to a secondary law rule excluding direct review of EU Courts (i.e. Article 42(1) EPPO Regulation), the latter must be able to test that exclusion against primary law.

And yet, the appellant's victory lasted only a paragraph. Having identified the GC's error, the ECJ substituted its own reasoning, upheld the validity Article 42 in light of EU primary law, and preserved the operative part of the order.[20] In the eyes of Mr Mincu, the safeguard is consequently narrow. It secures review of the legislative allocation of jurisdiction, but it does not manage to ensure direct review of the underlying EPPO act once that allocation is upheld. *Mincu* protects the 'constitutional boundary' around Article 263 TFEU without reopening the road of the action for annulment to the defendant.

4. Article 86(3) TFEU as a Constitutional Switch

The *way* in which the ECJ guards such boundaries deserves some brief reflections. To begin with, the ECJ does not focus on Article 263 TFEU as a standalone norm. Instead, it looks at the other Treaty provision invoked by Mr Mincu – i.e. Article 86(3) TFEU – which, in his view, would function as a *limiting factor* to the distribution of authority in favor of national courts designed by Article 42(1) of the Regulation.

It is worth recalling that the appellant's first plea rested on a simple textual argument. Article 86(3) TFEU empowers 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'. It does not expressly authorize a derogation from Article 263 TFEU. Because other Treaty provisions expressly permit derogations from defined Treaty rules, the silence of Article 86(3), he argued, should be read as excluding

[18] Court of Justice, *Mincu*, cit., paras 58-59.

[19] *Ibidem*, para. 60, recalling Court of Justice, 25 June 2020, Case C-14/19 P, *SatCen v KF*, paras 65, 72, and 85-86.

[20] Court of Justice, *Mincu*, cit., paras 62-63.

such a power. Accordingly, the bottom line would be that the Permanent Chamber's decision remains reviewable by the GC as per Article 263 TFEU.

The ECJ disagreed and rejected that narrow reading. Article 86(2) TFEU places the EPPO's prosecutorial activity before national courts, while Articles 28 to 37 of the Regulation embed investigation, prosecution, and evidence in national procedural systems. In that setting and considering the 'particular nature of the tasks and structure of the EPPO',[21] the power of the EU legislature to determine the 'rules applicable to judicial review' includes the *power to allocate jurisdiction*.[22]

But of which setting is the ECJ ultimately talking about?

The Court's decisive move is to look beyond the author of the act to the *procedure in which the act "lives"*. Yes, the EPPO is an EU body. But its procedural acts are *stages in national criminal proceedings* whose final decision-maker is a national court. In this respect, *Mincu* seems the mirror image of *Berlusconi and Fininvest*.[23] There, in the context of the Banking Union, defects in national preparatory acts are reviewed by the EU Courts when they feed into a final *ECB* decision. In an EPPO prosecution, review runs the other way – it is the *national* criminal court which possesses final adjudicatory power, and thus "attracts" review of the preceding EPPO act.

This final decision-maker logic may seem elegantly persuasive, but it also reveals the limits of the Court's functionalism.[24] Some of the EPPO's most consequential acts – particularly those taken by Permanent Chambers under EU law criteria – are inherently *supranational* even when their effects mature in national proceedings. If anything, acts adopted at

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[21] Court of Justice, *Mincu*, cit., para. 68, recalling Court of Justice, 8 April 2025, Case C-292/23, *EPPO (Judicial review of procedural acts)*, ('*I.R.O.*'), para. 48. For a comment, see J. ÖBERG, *Effective Remedies and Procedural Autonomy – Judicial Review of Actions by the European Public Prosecutor*, in *EU Law Live*, 23 April 2025.

[22] Court of Justice, *Mincu*, cit., paras 64-84, emphasis added, recalling, *inter alia*, *I.R.O.*, cit., paras 48-49, 73 and 80.

[23] Court of Justice, 19 December 2018, Case C-219/17, *Berlusconi and Fininvest*, paras 44-45, 48, 57, and 60, mentioned in *Mincu*, cit., paras 77 and 92-94.

[24] Similar concerns were aptly articulated by V. MITSILEGAS, *European Prosecution between Cooperation and Integration: The European Public Prosecutor's Office and the Rule of Law*, cit., p. 260, observing that 'the possibilities allowed by the Treaty of Lisbon for specific rules concerning judicial review of EU agencies in general and the EPPO in particular (Article 86(4) TFEU) do not mean that rules of secondary EU law can limit substantially judicial review for EU agencies, including the EPPO. The exclusion of such review would be a direct attack to the rule of law in the European Union . . .'. MITSILEGAS (n 4) further stresses that the exclusion of EU judicial review of the EPPO would be difficult to reconcile with the right to effective judicial protection under Article 47 of the Charter.

the EU level, applying EU law criteria, traditionally fall for many good reasons within the judicial review of the Court.

The reasoning also recasts the orthodox 'complete system of legal remedies and procedures'.[25] This formula ordinarily allocates review according to responsibility for implementing the contested EU norm, namely, *direct* review where an EU institution, body, or agency adopts the implementing measure, and *decentralized* review where national authorities do so (including the possibility to trigger national courts to request a preliminary ruling from the ECJ).[26]

The EPPO fits neither category neatly. Instead, it seems precisely an awkward third case – it is an EU actor implementing EU law through a prosecution completed before a national court, according to national rules, which ultimately holds adjudicatory powers.

On the Court's reading, Article 86(3) TFEU permits the legislature to make the endpoint of that composite procedure – rather than solely the identity of the act's author – the *jurisdictional link*.[27] The exceptions in Article 42 of the Regulation support that logic. A *dismissal* decision may terminate the EPPO case without a national judgment; Article 42(3) thereof thus preserves direct EU review when such a decision is challenged on EU law-based grounds.[28] A decision to *prosecute* instead leads into a national trial, in which the court may review earlier steps and assess the evidence.[29] This is why, in those cases, review remains within the remit to *national* courts. As it stands, therefore, such a jurisdictional allocation seems not a far-fetched repudiation of Article 263 TFEU, but a special 'constitutional switch' enabled by Article 86(3) thereof.

Nevertheless, the *symmetry* between EU and national review established in *Mincu* seems imperfect. After all, a successful national remedy – whatever form it takes – does not necessarily reproduce the relief

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[25] Court of Justice, *Mincu*, cit., para. 66 (quoting Court of Justice, 3 October 2013, Case C-583/11 P, *Inuit Tapiriit Kanatami v Parliament and Council*, para. 92).

[26] Court of Justice, Opinion 1/09 *(Agreement creating a Unified Patent Litigation System)*, paras 66-69; *Inuit Tapiriit Kanatami*, cit., paras 91-93.

[27] Court of Justice, *Mincu*, cit., paras 77-78 and 83-84: 'the legal effects that procedural acts of the EPPO produce *vis-à-vis* third parties are, to a large extent, determined by the national law applicable to those acts . . . the procedural acts of the EPPO constitute a stage of criminal proceedings at the end of which the final decision-making power lies exclusively with the competent national court, which… has discretion to assess the evidence submitted, *inter alia*, by the EPPO on the basis of such acts'.

[28] Indeed, ' . . . this is the only 'procedural act' of the EPPO not supervised by national courts', according to S. ALLEGREZZA, *A European Public Prosecutor Office to Protect Common Financial Interests: A Milestone for the EU Integration Process*, in K. AMBOS, P. RACKOW (eds.), *op. cit.*, p. 435.

[29] Court of Justice, *Mincu*, cit., paras 83-90. The EU Courts also retain direct jurisdiction over the matters listed in Article 42(4)-(8) of the Regulation.

available in an action for annulment against a decision to bring a case to judgment.[30]

Perhaps it is just an impression, but one possible explanation is that Article 42(1) of the EPPO Regulation may have been drafted primarily with a particular category of 'procedural acts' in mind – namely, *investigative measures*.[31] Read in this light,[32] the distribution of jurisdiction provided for in that provision makes sense – intrusive measures performed by the EPPO are part of national criminal proceedings and national courts are well placed (and well-equipped) to review their legitimacy according to domestic law.[33] What is more, a trial court's ability to assess evidence –

[30] A similar position has been sustained in the Opinion of the Council's Legal Service of 17 September 2014, 'Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office – Issues relating to judicial review of procedural measures taken by the European Public Prosecutor's Office', 13302/1/14 REV 1, 16-18.

[31] This seems confirmed by Recital 87 EPPO Regulation, which highlights how '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 authorization of a national court*'. These are certainly acts which resemble investigative measures. It is true that the same Recital provides that '*procedural acts that relate to the choice of the Member State whose courts will be competent to hear the prosecution*, which is to be determined on the basis of the criteria laid down in 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*'. However, a decision to bring a case to judgment encompasses considerably more than the choice of forum. It also entails, *inter alia*, (i) an assessment that the available evidence is sufficient to justify prosecution; (ii) the identification of the persons to be tried and the charges brought against them; (iii) the legal characterization of the alleged conduct; and (iv) compliance with the rules governing the competence, composition, and decision-making process of the Permanent Chamber. Defects affecting those elements may call into question the legality of the prosecution itself without being reducible either to the choice of the competent Member State or to the admissibility and weight of particular items of evidence. Recital 87 therefore confirms that choice of forum decisions must be reviewable before national courts, but it does not, by itself, establish that review available only at the trial stage will provide an adequate remedy against every illegality capable of affecting the broader decision to prosecute.

[32] A. ERBEŽNIK, *EU Criminal Law and the Way Forward in the Case of the Functioning of the EPPO*, in *Hrvatski ljetopis za kaznene znanosti i praksu*, 2020, p. 72: 'The text provides for remedies in front of national courts *against individual investigative measures*' (emphasis added). As summarized by A. MEIJ, *Some Explorations into the EPPO's Administrative Structure and Judicial Review*, in L. ERKELENS, A. MEIJ, M. PAWLIK (eds.) *The European Public Prosecutor's Office. An extended arm or a Two-Headed dragon?*, 2015, p. 112: '. . . acts of pre-trial investigation are closely related to eventual prosecution, that they deploy their effects in the national legal order and are carried out by national law enforcement authorities, sometimes after having obtained the authorization of a national court. In short, the EPPO's action will mainly be relevant in the national legal orders and therefore the judicial review of *all challengeable acts of investigation and prosecution of the EPPO should be with national courts*' (emphasis added).

[33] This is the rationale behind the choice to assign judicial review of those acts also

flagged by the ECJ as a salient power of national criminal courts[34] – would work well where at stake is the lawfulness of investigative measures implemented by the EPPO. In those cases, domestic courts operate a review which would involve a certain degree of evidentiary assessment (e.g. was the search performed according to national law which, say, require a certain degree of suspicion? Was the interception of communications properly authorized and remained within the material and temporal scope of the warrant?).

The position is less straightforward in cases such as *Mincu*, however, where the contested act is a decision by a Permanent Chamber to bring a case to judgment. In that context, the framework established by Article 42(1) risks fitting somewhat uneasily.[35] The feeling is that assigning judicial review to national courts may fail to provide the same scope of relief as that obtainable through annulment proceedings before the EU Courts. Nor does every defect in a decision to bring a case to judgment become *per se* an evidentiary question. We can think about the forum choice, questions of competence, or the composition of a Permanent Chamber – issues which may affect the legality of the prosecution without being reducible to the admissibility or weight of evidence.[36]

This raises a series of practical questions. How are national courts expected to address such defects? May they set aside or otherwise deprive the EPPO decision of legal effect under domestic law, including of their own motion? Would an incidental challenge at the trial stage provide an effective remedy? Or should an *ad hoc* remedy be provided in this case? And what happens where domestic law does not, in comparable national proceedings, permit an autonomous/incidental appeal against a decision to bring a case to judgment?[37]

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according to M. BÖSE, *Judicial Control of the European Public Prosecutor's Office*, in T. RAFARACI, R. BELFIORE (eds.), *EU Criminal Justice*, 2015, pp. 191-198.

[34] Court of Justice, *Mincu*, cit., para. 83.

[35] In this respect, V. MITSILEGAS, *European Prosecution between Cooperation and Integration: The European Public Prosecutor's Office and the Rule of Law*, cit., already observed how '… the Commission's approach over-emphasized the links of the EPPO with national legal orders, yet disregarded the fact that EPPO decisions are acts adopted by an EU agency – with the Commission's approach treating EPPO acts as act by national authorities and effectively creating a European agency lying outside European judicial control' (p. 261).

[36] For similar criticism on judicial review of forum choices, see A. ZIVIC *et al.*, *Who's Afraid of EU Primary Law? Judicial Review of the EPPO's Decision on Forum Choice*, in *New Journal of European Criminal Law*, 2022, pp. 410-413.

[37] Some of these issues have been addressed, *mutatis mutandis*, in Court of Justice, *I.R.O.*, cit., paras 70-90.

While *Mincu* tells the defendant *where* to complain, it says much less about *what* the national judge must be able to do with a well-founded complaint.

5. The missing Half of Completeness: effective Protection in Practice

In this respect, there is a final point of reflection.

Mincu is the third movement in a jurisprudential *crescendo*. In *G.K.*, the Court divided review of cross-border investigative measures between the courts of the handling and assisting EDPs, linking the justification and adoption of the measure to the former and its execution to the latter.[38] In *I.R.O.*, it gave Article 42(1) of the Regulation an autonomous Union meaning[39] – every EPPO procedural act producing binding legal effects capable of distinctly changing a third party's legal position must be reviewable. National law governs the *modalities*, though not the existence, of review. A separate action is not always required, but incidental review must be effective; equivalence may require a direct remedy where one exists against an analogous national act.[40]

The cases illuminate different dimensions of the same problem. *G.K.* divides scrutiny of a transnational investigative measures between jurisdictions, though risking fragmentation of review. *I.R.O.* broadens the (EU law) category of reviewable acts while accepting that the form and timing of review may vary at the national level. Against this background, *Mincu* supplies the constitutional basis for that decentralization. This jurisprudential puzzle therefore combines a uniform trigger – i.e. binding legal effects *vis-à-vis* third parties – with patchy, fragmented and heterogeneous national remedies (which is, after all, the very consequence of what the EU legislature established in the EPPO Regulation).

In that sense, *Mincu* constitutionalizes the model. It reiterates that Article 47 of the Charter cannot enlarge the jurisdiction conferred on the EU Courts and treats Article 42 of the Regulation as part – rather, as the "drop point" – of the Treaties' 'complete system' of remedies.[41] Article

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[38] Court of Justice, 21 December 2023, Case C-281/22, *G.K. and Others (EPPO)*, paras 47-54, commented by A. MOSNA, *Effective Judicial Protection as a Central Issue in EPPO Cross-Border Investigations*, in *Common Market Law Review*, 2024, pp. 1345-1366.

[39] Court of Justice, *I.R.O.*, cit., para. 58.

[40] *Ibidem*, paras 51-80 and 91. See A. CIPRANDI, *Il controllo giurisdizionale degli «atti procedurali dell'EPPO destinati a produrre effetti giuridici nei confronti dei terzi»*, in *Rivista del Contenzioso Europeo*, 2025, p. 1 ff.

[41] Court of Justice, *Mincu*, paras 95-100. Cf. Court of Justice, 10 September 2024, Joined Cases C-29/22 P and C-44/22 P, *KS and Others v Council and Others*, paras 70-71 and 78.

267 TFEU preserves the ECJ's exclusive authority – its monopoly – to invalidate EU acts, while national judges provide the forum and their knowledge of the domestic procedural framework.[42]

There is, however, a compressed step in the reasoning. The proposition that Article 47 of the Charter cannot confer jurisdiction to the Court answers *where* review must occur; it does not clarify *whether* the review available there is really *effective*. The Court moves quickly from the absence of any impairment of the ECJ's Treaty powers to the conclusion that Article 42 EPPO Regulation respects effective judicial protection.[43] Those are connected but distinct propositions. A lawful allocation of jurisdiction may still operate through a national remedy that is ineffective, because, for instance, is too late, too narrow in its scope, or incapable at all of providing appropriate redress.

Here, the difficulty is that completeness and effectiveness operate at different levels. They are related concepts, but they are not synonyms. Completeness is somehow *structural*, in that, at some point, some court shall be formally available to grant relief to the affected person, whether at the national or at the EU level. Differently, effectiveness is someway *empirical* – the person must obtain timely, concrete, and meaningful protection against the act's consequences in the material case.

Against this background, affected persons involved in EPPO procedures can*not* autonomously trigger a preliminary reference before the ECJ and differences in national procedure may determine whether review is largely theoretical and/or ineffective.[44] More recent work describes a 'variable geometry' in which an autonomous Union category of reviewable acts is enforced *de facto* through heterogeneous national remedies and uneven judicial practice.[45]

Perhaps, the Court's own conditions in *I.R.O.* point toward a solution. Incidental review of the impugned act is sufficient only if the national court can examine every relevant issue of law and fact and address evidence obtained or used in breach of EU rights.[46] From those conditions

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[42] Court of Justice, *Mincu*, cit., para. 82 (recalling how national judges are 'best suited' to carry out such a judicial review).

[43] *Ibidem*, para. 95 ('. . . that argument [alleging a breach of the right to effective judicial protection] must be rejected, *since* . . .').

[44] A. ZIVIC *et al*, *Who's Afraid of EU Primary Law? Judicial Review of the EPPO's Decision on Forum Choice*, cit., pp. 414-418.

[45] A. HERNÁNDEZ WEISS, *EPPO Caught Between EU and National Law: A Catch-22: Comments on the ECJ's Judgment in EPPO v I.R.O and F.J.L.R (Case C-292/23)*, cit., p. 229 ff.; more broadly, K. LIGETI, *Between National Procedural Law and Union Oversight: Article 42 of the EPPO Regulation and the Emerging Jurisprudence of National and EU Courts*, in D. BRODOWSKI, S. TRAUTMANN (eds.), *op. cit.*, pp. 173-210.

[46] Court of Justice, *I.R.O.*, cit., paras 79-80.

one can derive a *minimum remedial core*, that is, review must occur before the alleged violation becomes irreversible; a national court must have access to the material needed to test legality and proportionality; and it must be able to neutralize the consequences of an unlawful act, including through *interim* protection or exclusion of evidence where appropriate.

On a parallel side, timing is particularly important in criminal proceedings. A later trial may remedy some evidentiary violations, but it cannot necessarily reverse disclosure of privileged material, prolonged asset freezes, reputational harm, or a forum decision that has shaped the entire defense strategy. The ECJ's case law accepts incidental review where a person need not expose himself or herself to a penalty merely to obtain access to a judge.[47] By the same logic, Article 42 EPPO Regulation should not permit review to be postponed until the relevant procedural right has lost its practical value. Where the alleged harm is irreversible, effective protection may require a direct (or at least *interim*) remedy even if incidental review is normally sufficient.

This concern should not be underestimated. Comparative studies and scholarship report divergent national approaches to many aspects of procedural measures in EPPO proceedings, including the existence, scope and structure of judicial authorization and the substance of (judicial) remedies.[48] What is more, while a preliminary reference can secure uniform interpretation of the EPPO Regulation (including in light of primary law), it is – at the end of the day – a bottom-up dialogue triggered and controlled by the national court, not really a remedy the defendant can activate autonomously.

The bottom line is that whilst *Mincu* proves that decentralized review is constitutionally permissible (as per Article 86(3) TFEU), it does not prove that *every* decentralized remedy is effective.

Nor does *Foto-Frost* eliminate the concern.[49] It prevents national courts from declaring EU acts invalid and preserves the ECJ's final authority, but a preliminary reference still depends on the national judge identifying a genuine validity issue. Even the strengthened duty of courts of last instance to explain a refusal to refer does not seem providing the

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[47] Court of Justice, 6 October 2020, Joined Cases C-245/19 and C-246/19, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, paras 47, 58, 79, and 82.

[48] TIPIK – SPARK LEGAL, POLICY CONSULTING, *Extension of the Compliance Assessment of Measures Adopted by the Member States to Adapt Their Systems to Regulation 2017/1939*, 2023, pp. 52-64; M. ENGELHART, *Compliance with the EPPO Regulation*, in *eucrim*, 2024, pp. 54-58; L. RAPISARDA, *The EPPO Between Union Law and National Systems: Critical Reflections on a Hybrid Enforcement Model*, in *New Journal of European Criminal Law*, 2025, pp. 385-406.

[49] Court of Justice, 22 October 1987, Case 314/85, *Foto-Frost*, paras 15-20.

defendant with the control over access to the Luxembourg Court.[50] In other words, the uniformity of remedies is institutionally protected, while individual protection remains somehow mediated. That distinction should guide future applications of equivalence and effectiveness under Article 42 EPPO Regulation.

6. Concluding Remarks. Settled Competence, unsettled Protection?

To sum up, *Mincu* closes an important constitutional argument. It marks a defining moment in the constitutional settlement of the EPPO. It resolves a long-standing competence dispute by confirming that Article 86(3) TFEU authorizes the EU legislature to calibrate the system of judicial review in light of the EPPO's integration into domestic criminal justice systems. It authorizes a *special allocation of jurisdiction* "suited" to the EPPO's integration into national criminal justice.[51]

Both the GC and the CJ nevertheless retain the authority to test that allocation against primary law, and the GC *must* do so before accepting its exclusion. We have a feeling that this judgment is not, however, the endpoint of the emerging 'Article 42 debate'. Together, *G.K.*, *I.R.O.*, and *Mincu* form a *crescendo* running from the allocation of review, through the definition of reviewable acts, to validation of the constitutional architecture. The missing step is – unsurprisingly – the most sensitive issue here, namely, the *content* of the remedy. The system of judicial protection cannot be assessed through structural completeness alone. National courts reviewing EPPO acts are bound not only by Articles 47 and 48 of the Charter, but also by Article 6 ECHR and the rigorous fair trial standards developed by the European Court of Human Rights (ECtHR), standards that risk being compromised if domestic procedural rules dilute the intensity or timing of judicial scrutiny.

Hopefully, future cases would translate the Court's references to Articles 47 and 48 of the Charter into concrete requirements governing the timing, intensity and, most importantly, the *consequences* of review. On top of that, the Court of Justice should remember that the 'completeness' of this composite system of remedies cannot be assessed through the Charter alone. National courts reviewing EPPO acts are also bound *by Article 6 ECHR* – the heart (and soul) of fair trial and defense rights in

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[50] Court of Justice, 6 October 2021, Case C-561/19, *Consorzio Italian Management*, paras 33-51. Indeed, the duty to refer imposed on courts of last instance does not transform Article 267 TFEU into an appeal controlled by the litigant.

[51] On the distinct features of EPPO's integration into domestic systems, see L. BERNARDINI, J. ÖBERG, *The EPPO as a Supranational Policy Enforcer*, in L. TSOURDI, M. BONELLI (eds.), *The Softening and Hardening of EU Law and Policy Enforcement*, forthcoming.

Europe – and the detailed standards developed in the Strasbourg case law which, so far, have been overlooked in the Court's case-law.[52]

These persistent remedial shortcomings demonstrate, if anything, that judicial interpretation alone seems not – and perhaps should not be – the panacea for fixing the structural deficits of Article 42. Rather, there is a pressing need for the EU legislature to critically rethink and hopefully amend Article 42 of Regulation 2017/1939 in upcoming legislative revisions. In particular, three targeted amendments ought to be appropriately considered *de lege ferenda*.

First, Article 42 should establish a clear dichotomy between decentralized investigative measures and centralized collegiate decisions. While investigative acts performed by EDPs are naturally suited for domestic judicial oversight, central decisions adopted by the Permanent Chambers – most notably decisions on forum allocation, conflicts of jurisdiction, and the decision to bring a suspect to trial, should be made reviewable directly before the General Court under a specialized, fast-track Article 263 TFEU procedure. This would align the *locus* of review with the genuine administrative author of the act and ensure uniform judicial control.

Second, for procedural measures that remain within domestic jurisdictions, Article 42 should be amended to establish mandatory minimum procedural standards. The Regulation should explicitly oblige Member States to provide an effective, interlocutory judicial remedy prior to the trial phase, ensuring that individuals can challenge procedural irregularities before they produce irreversible consequences on defense rights.

Third, the legislature should introduce an express statutory mechanism to govern forum choice. Given that the EPPO exercises broad discretion under Article 26 of the Regulation to select the jurisdiction of prosecution, Article 42 must provide an autonomous avenue of judicial review against forum-selection decisions, thus safeguarding the fundamental principle of the tribunal established by law.

After all, in the post-*Mincu* era, the EPPO system of remedies remains complete only in an abstract, cartographic sense – whilst every stage of the procedure is formally assigned to a judicial body, the map does not always guarantee that the path to effective judicial relief is practically accessible.

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[52] As highlighted by J. CALLEWAERT, *What Is a Complete System of Legal Remedies and Procedures? Judgment of the CJEU in Mincu Pătraşcu Brâncuşi v EPPO*, 10 May 2026.

ABSTRACT

This article examines the Court of Justice's judgment in *Mincu Pătraşcu Brâncuşi* (C-328/24 P) and its implications for judicial review of procedural acts adopted by the European Public Prosecutor's Office (EPPO). While the Court confirms that Article 86(3) TFEU allows the EU legislature to allocate review of most EPPO procedural acts to national courts, the judgment leaves unresolved important questions concerning the practical effectiveness of those remedies. The article argues that the formal completeness of the system established by Article 42 of Regulation 2017/1939 does not necessarily guarantee effective judicial protection, particularly in relation to centralized decisions adopted by the EPPO's Permanent Chambers. It concludes by proposing targeted reforms aimed at strengthening the timing, scope and effectiveness of judicial review.

Il contributo analizza la sentenza della Corte di giustizia *Mincu Pătraşcu Brâncuşi* (C-328/24 P) e le sue implicazioni per il controllo giurisdizionale sugli atti procedurali della Procura europea (EPPO). Pur confermando che l'art. 86, par. 3, TFUE consente al legislatore dell'Unione di attribuire ai giudici nazionali il controllo sulla maggior parte degli atti procedurali dell'EPPO, la pronuncia lascia irrisolte importanti questioni relative all'effettività concreta dei rimedi disponibili. Il contributo sostiene che la completezza formale del sistema delineato dall'art. 42 del regolamento 2017/1939 non garantisca necessariamente una tutela giurisdizionale effettiva, soprattutto con riguardo alle decisioni centralizzate adottate dalle Camere permanenti. In conclusione, vengono prospettate alcune modifiche normative volte a rafforzare tempestività, portata ed effettività del controllo giurisdizionale.

La présente contribution analyse l'arrêt de la Cour de justice *Mincu Pătraşcu Brâncuşi* (C-328/24 P) et ses implications pour le contrôle juridictionnel des actes de procédure du Parquet européen (EPPO). Tout en confirmant que l'article 86, paragraphe 3, TFUE permet au législateur de l'Union de confier aux juridictions nationales le contrôle de la plupart des actes de procédure de l'EPPO, l'arrêt laisse ouvertes d'importantes questions concernant l'effectivité concrète des voies de recours disponibles. L'article soutient que la complétude formelle du système établi par l'article 42 du règlement 2017/1939 ne garantit pas nécessairement une protection juridictionnelle effective, notamment à l'égard des décisions centralisées adoptées par les chambres permanentes. Il propose enfin plusieurs modifications législatives visant à renforcer la célérité, l'étendue et l'effectivité du contrôle juridictionnel.