The EPPO and some data protection challenges

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Data protection and criminal justice
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Outline

- Introduction
  - The EPPO’s DP legal framework
- Data flows: Possible scenarios and implications
- Data subjects’ rights: Theory and practice
- Discussion?
Introduction (1)

- The EPPO at the cross-roads of different data protection regimes
  - Distinction administrative personal data and operational personal data
    - Administrative personal data: Regulation (EU) 2018/1725
    - Operational personal data: EPPO Regulation
      - Separate regime
      - Ratio legis?
The EPPO at the cross-roads of different data protection regimes (cont’d)
The EPPO at the cross-roads of different data protection regimes (cont’d)

Operational personal data

- EPPO Regulation, but with some references to national law and the Law Enforcement Directive (EU) 2016/680 (LED)
- Delimitation of the scope of application EU/national law
  - Article 5(3) EPPO Regulation
  - But grey zones
    - For examples, see study Franssen&Corhay 2021
- Implementation of the LED
  - National diversity (e.g. supervising authority)
  - First evaluations by the EDPB (2021) and the European Commission (2022)
Data flows:
Possible scenarios and implications (1)

- EPPO
  - Hybrid structure -> repercussions on:
    - Legal framework
    - Functioning of the EPPO
      - Cooperation with national authorities = indispensable (e.g. police, prosecutors, judges, customs)
      - Exchange of information with EU IBOAs
    - Various data flows!
Data flows: Possible scenarios and implications (2)

- Different options
  - Depending on...
    - Application & interpretation of the EPPO Regulation
    - Role of national law
    - Powers of national authorities cooperating with the EPPO
  - ...

![Data flow diagram showing communication channels with national authorities, including CMS with e-case file, EPPO case file, EDP, police, customs authorities, national public prosecutor's office, and other authorities. A question mark for future interconnectivity is also shown.]
Data flows: Possible scenarios and implications (3)

- Controllership and processors
  - Option 1
Data flows:
Possible scenarios and implications (4)

- Controllership and processors (cont’d)
  - Option 2
Data flows: Possible scenarios and implications (5)

- Controllership and processors (cont’d)
  - Option 3: joint controllership?
    - Uncertain...
    - Implications?
Implications

- Need for coordinated supervision (EDPS and national supervisory authorities)
  - See next panel

- Potentially various competent national supervisory authorities!
  - Art. 45(2) LED
    - Courts
    - Other independent judicial authorities (e.g. public prosecutor’s office)
    - ‘in their judicial capacity’
  - National implementations?
Data subjects’ rights: Theory and practice (1)

► EPPO Regulation
  ► Autonomous legal regime: Art. 57-62 EPPO Regulation

► But
  ► Hybrid structure EPPO (supra)
  ► Hybrid legal framework (supra)
    ► Interaction EPPO Regulation - LED - national law

► Real differences? -> substance
► Exercice of rights? -> procedure
Data subjects’ rights: Theory and practice (2)

- Implications for data subjects willing to exercise their rights with respect to personal data processed in an EPPO investigation?
  - One or two/multiple tracks?
    - Risk of potential contradictions
    - Legal framework clear enough for national authorities?
    - Abuse?
  - Information of data subjects = essential!
Some grey zones/questions to be clarified

Interaction EPPO Regulation - national law/LED

- E.g. Art. 49(6) EPPO Regulation (‘national procedural law’)
- E.g. Art. 18 LED: applicable national law in criminal investigations/proceedings?
Critical assessment: Right balance between conflicting interests?

- DP <-> criminal justice
- E.g. right of indirect access
  - Art. 62 EPPO Regulation, Art. 17 LED, national implementations
  - ‘all necessary verifications or a review’
  - Effective right? Additional guarantee?
Discussion?

- Need for
  - Further legal clarification?
    - Amendment of EPPO Regulation?
    - Interpretation of EPPO Regulation/LED by the CJEU?
  - Monitoring...
  - Awareness importance DP rules
Thank you!

Questions?

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