Chapter 9
Towards an Inconsistent European Regime of Cross-Border Evidence: The EPPO and the European Investigation Order

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Abstract This chapter focuses on the different approaches to cross-border evidence in two future manifestations of judicial cooperation in criminal matters in the EU: the European Investigation Order (EIO) and the proposed European Public Prosecutor's Office (EPPO). In the horizontal context of the EIO, the collection and transfer of evidence is based on a redesigned mutual recognition scheme, while the proposed EPPO model selectively combines elements of horizontal and vertical cooperation for the gathering and the Union wide recognition of evidence. The study sets the emphasis on the potential problems of the mixed EPPO regime and its future co-existence with the EIO. With currently no minimum European rules on the mutual admissibility of evidence, no uniform EPPO powers and the reality of the EPPO being established by enhanced cooperation, the author concludes that initial recourse to the EIO in EPPO investigations might be beneficial for various reasons. It might increase the acceptance of the EIO in practice, the trust in future EPPO investigations, the recognition of EPPO-evidence and the coherence of cross-border investigations in the EU in general.

Keywords European Union · Judicial cooperation in criminal matters in the EU · The *Corpus Juris* study · European Public Prosecutor's Office · European Investigation Order (EIO) · Evidence · Cross-border investigations

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9.1 Introduction

Judicial cooperation in criminal matters has always been a sensitive field of EU integration, given its complex and traditionally strong links to fundamental rights and state sovereignty.[1] One of the most contended issues in this field concerns the necessary level and most practicable scheme of integration, notably, whether coordinated actions between the Member States (horizontal model) or the conferral of certain prosecutorial powers to Union level (vertical model) would be more feasible.

The choice and the balance between these schemes have remained central questions up until the present day with the Treaty of Lisbon referencing both models.[2] Article 82 TFEU defines the mutual recognition principle as the cornerstone of judicial cooperation in criminal matters and Article 85 TFEU strengthens the position of the European Union's Judicial Cooperation Unit (Eurojust). At the same time Article 86 TFEU lays the legal basis for the establishment of a vertical cooperation model, in the form of the European Public Prosecutor's Office (EPPO).

The focus of this article is set on two future manifestations of the different models, on the European Investigation Order (EIO)[3] and on the progressing EPPO negotiations.[4] Special emphasis is set on their different regimes regarding the

[1] See for instance Luchtman and Vervaele 2014; Armada 2015; Lohse 2014. With regard to the EPPO, see especially the reasoned opinions issued by various national parliaments in the course of the early warning mechanism. For instance House of Lords, European Union Committee, Third Report, http://www.publications.parliament.uk/pa/ld201314/ldselect/ldeucom/65/6503.htm; the Senate of the Parliament of the Czech Republic 9th Term, 345th Resolution, Senate Press no. N 082/09, http://www.ipex.eu.

[2] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, *OJ* 2007 C 306/01.

[3] Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, 1 May 2014, *OJ* 2014 L130/1.

[4] The analysis is based on the initial Commission proposal and the revised version of the text dated 28 October 2016. Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office COM (2013) 534 final. Council, Proposal for a Regulation on the establishment of the European Public Prosecutor's Office—Outstanding questions on the full text.

collection and recognition of evidence in cross-border cases. The analysis identifies potential problems concerning the mixed EPPO-scheme on evidence and its future co-existence with the EIO regime. The paper concludes that with currently no minimum European rules on the admissibility of evidence or standardized EPPO procedure, recourse to the EIO in EPPO investigations might increase the acceptance of the EIO among the Member States, the trust in future EPPO investigations and the coherence of cross-border investigations in the EU.

9.2 Rationales and Models of Judicial Cooperation in Criminal Matters in the EU

Judicial cooperation in criminal matters, including the collection of evidence, was traditionally based on formal requests and lengthy political decisions with several grounds for refusal. Over the years, the necessity to simplify, accelerate and improve this scheme emerged, driven and shaped by different rationales.

The distinct stages of this evolution included:

- The Schengen-logic of strengthened legal cooperation
- The concept of vertical cooperation in the 1997 *Corpus Juris* study
- The Amsterdam-logic of mutual recognition of judicial decisions
- The co-existence of horizontal and vertical cooperation in the Treaty of Lisbon.

The Schengen regime aimed to facilitate inter-state cooperation as a necessary compensation of lifting border controls. For that reason the 1990 Convention Implementing the Schengen Agreement (CISA) provided for rules on police and judicial cooperation in penal matters.[5] Article 53 CISA enabled for instance that requests for assistance might be made directly between judicial authorities and not through diplomatic channels.

The objective remained the same under the Treaty of Maastricht (1992).[6] Nevertheless, during this era the Commission also launched an ambitious project in

(Footnote 4 continued)

http://www.statewatch.org/news/2016/nov/eu-council-EPPO-Ful-lText-%2013459-16.pdf. Council doc. No. 13459/16, 28 Oct. 2016. See http://www.statewatch.org/news/2016/nov/eu-council-EPPO-Ful-lText-%2013459-16.pdf.

[5] 1990 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. The related rules are most notably on mutual legal assistance (Article 53 CISA), extradition (Articles 59 et seq. CISA) and on the *ne bis in idem* principle (Article 54 CISA).

[6] The Treaty on European Union, 7 February 1992, *OJ* 1992 C 325/5.

order to invent a more efficient cooperation scheme to tackle EU budgetary fraud. The results were published in the 1997 *Corpus Juris* study, which envisaged the creation of a single legal area for budgetary fraud cases, based on unified offence definitions and standardized procedures in any part of the Union.[7] To ensure the uniform application of the rules, the study notably proposed the establishment of a central prosecution service: the European Public Prosecutor (EPP) or in later proposals the European Public Prosecutor's Office (EPPO). The seeds of strong vertical cooperation for a limited scope of offences were planted, based on Europe-wide rules for the collection of evidence. Given the slow integration in the field, the *Corpus*-ideas of vertical cooperation and a single legal area proved to have been far too revolutionary at the time.[8]

Next, with the new objective to create an Area of Freedom, Security and Justice (AFSJ) within the EU—inter alia by developing common actions in the field of police and judicial cooperation in criminal matters (Article 29 TEU)—the Treaty of Amsterdam (1999)[9] provided criminal law and judicial cooperation in criminal matters with a European perspective. That said, the Member States continued to support improved horizontal techniques over the vertical cooperation scheme envisaged in the *Corpus Juris*.[10] On the one hand, at institutional level, Eurojust was established with a task to facilitate and coordinate the efforts of the national law-enforcement authorities when dealing with specific trans-border crimes.[11] Contrary to the envisaged EPP, the national members of Eurojust operate under national rules, their decisions are based on intergovernmental mechanisms and their powers are limited to make requests to national authorities. On the other hand, as regards the cooperation scheme, the application of the internal market principle of mutual recognition was extended to criminal matters.[12] In general, the measures based on the mutual recognition principle undeniably simplified and accelerated

[7] Delmas-Marty 1997; Spencer 1998, pp. 77–105.

[8] For initial reactions to the study, see Spencer 2012, pp. 367–371. In 2000 a follow up study was presented that contained detailed information on the criminal justice systems of the then 15 Member States. See Delmas-Marty and Vervaele 2000.

[9] Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997, *OJ* 1997 C 340/1.

[10] The grounds for the improved horizontal cooperation were laid down in the subsequent Tampere European Council of 1999. Additionally, in order to eliminate parallel arrangements of cooperation within the EU, the Schengen *acquis* was integrated into the Treaty.

[11] Eurojust was established by Council Decision 2002/187/JHA [2002] *O*J L63/1. See also Nilsson 2011, pp. 73–78.

[12] European Commission, Communication on mutual recognition of final decisions in criminal matters. COM(2000), 495 final, 26 July 2000. Council work programme of measures to implement the principle of mutual recognition of decisions in criminal matters. 2001 *OJ* C 12/10. The principle was already embedded in the criminal justice systems of certain Member States (like the UK), in the internal market law (Judgment of the Court of 20 February 1979. Case 120/78) and in the field of civil and commercial judgments (Regulation 44/2001 on Jurisdiction and Recognition of Civil Judgments). The analogy and reference to the internal market principle was subject to various critiques. See Peers 2004, p. 34; Zeder 2014, p. 234.

judicial cooperation in criminal matters by providing for fixed deadlines and a central role for the judicial authorities as well as by reducing the grounds for refusing cooperation. It has also fundamentally changed the role of the cooperating states as the issuing state became the 'owner' of the order, and its decisions took effect as such in the executing Member State. Over the years however, the varying transposition of the measures into national laws together with the lack of harmonization raised serious concerns over the comparability of the final decisions of the national authorities.[13]

9.3 Cross-Border Evidence in the Lisbon Context

The current Treaty context (the Treaty of Lisbon, 2009) provides simultaneously for both horizontal and vertical forms of cooperation in criminal matters. On the one hand it defines mutual recognition along with the complimentary approximation of laws (which may concern mutual admissibility of evidence) as the cornerstone of judicial cooperation in criminal matters (Article 82 TFEU). On the other hand it lays the legal basis for the establishment of the EPPO (Article 86 TFEU), the vertical form of cross-border prosecution within the EU.[14]

In-between Article 85 para 1 TFEU also strengthens the operational position of Eurojust—which some might label as conditional verticalisation—by providing the body with the future possibility to initiate criminal investigations. This however is currently only an option linked to national enquiries and with no powers to initiate criminal prosecutions.

In the following, the paper focuses on questions related to cross-border evidence in the EIO directive and in the EPPO drafts.

9.3.1 The Horizontal Scheme: The European Investigation Order

The first mutual recognition instrument, the European Arrest Warrant (EAW),[15] came into force in 2004 and became the template for subsequent instruments in the field of judicial cooperation in criminal matters. It was driven by the impetus of the 9/11 attacks and was based upon the Amsterdam-logic of cooperation. The emphasis was set on the security objective of the AFSJ and so the EAW provided for nearly

[13] In addition, the mutual recognition model was vague concerning fundamental rights and failed to provide for a standard system of exceptions. See Peers 2014, p. 294; Zeder 2015, pp. 25–26.

[14] Consequently, the current Post-Stockholm multi-annual programme also references both models. European Council Conclusions of 26/27 June 2014. European Council 79/14 Brussels, 27 June 2014. See Peers 2008, pp. 507–529.

[15] Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States [2002] L190/1. See also Klimek (2015) and Eurojust News 2013.

automatic execution of foreign judicial decisions to arrest and surrender individuals in another Member State. In order to accelerate proceedings it has provided for fixed deadlines and has reduced the traditional grounds for refusals to cooperate. In particular, the EAW did not provide for refusal grounds based on fundamental rights protection. As all EU Member States were parties to (and presumably conform with) the ECHR,[16] the instrument was based upon practically blind trust in the Member States' mutual commitment to fundamental rights.[17] In fact it took until April 2016 when the CJEU ruled in the joined cases *Aranyosi* and *Căldăraru*, that under certain conditions it is possible to refuse the execution of an EAW for the protection of fundamental rights. Thus, to rebut unconditional mutual trust in each other's legal systems as regards the surrender of an individual in criminal proceedings.[18]

The Directive on the European Investigation Order (EIO) indicates further significant changes in the horizontal model of judicial cooperation.[19] The EIO should accelerate judicial cooperation by introducing deadlines and strict formalities related to the collection and transfer of evidence in cross-border cases. It will presumably facilitate the admissibility of foreign evidence, as a competent authority of the Member State that intends to use the evidence will issue the order.

However, the EIO might also slow down cooperation in individual cases. In order to prevent the issuing authority to bypass national safeguards, the directive limits the former (almost) automatic effect of foreign decisions within the EU. A double equivalency test shall ensure that the measure could be applied to the same offence under the domestic laws of both Member States concerned.[20] Additionally, a proportionality test shall answer whether the executing authority may have recourse to a less intrusive measure if it would achieve the same results.[21] Finally and most notably, in order to protect fundamental rights the Directive also enables to eventually refuse the execution of an EIO. Together, the new guarantees will strengthen the position of the defendant as the presumption of the compliance with Union law and, in particular, with fundamental rights becomes rebuttable.[22]

Altogether, the EIO scheme transforms the horizontal regime somewhere between the traditional inter-state cooperation and the automatism of the mutual recognition principle.[23]

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[16] European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. ETS 5 (ECHR).

[17] See also Mitsilegas 2006, pp. 1277–1311.

[18] Joined Cases C-404/15 and C-659/15 PPU. The refusal of an EAW requires prior consultation of the competent authorities and grounds to believe that due to the detention conditions there is a real risk for the individual being treated in an inhuman or degrading way. See also Mitsilegas 2012, pp. 319–372.

[19] See De Capitani and Peers 2014.

[20] Articles 6(1) and 10 EIO Directive.

[21] Articles 6 and 10 EIO Directive.

[22] Recital 19 and Article 11(1)(f) EIO Directive.

[23] See also Böse 2014, pp. 152–164; Vervaele 2013, pp. 21–56; European Union Agency for Fundamental Rights 2011.

9.3.2 The Desired Vertical Scheme: The European Public Prosecutor's Office

9.3.2.1 The 2013 Commission EPPO Proposal

As pointed out above, the *Corpus Juris* study proposed a truly vertical scheme to prosecute EU fraud. At the central level, the European Public Prosecutor would have made decisions to be enforced by delegated prosecutors at national level according to Union-wide rules of procedure.

The Treaty of Lisbon laid the legal basis for the establishment of the EPPO (Article 86 TFEU), but left it to the future Regulation to define basically all of its features, including its powers and institutional design.[24] The subsequent model proposed by the Commission in 2013 was much like the one advocated by the *Corpus Juris*, but without standardized rules of procedure.[25] Instead, the European delegated prosecutors (EdelP) would enforce the central decisions according to the applicable national laws (Article 26.2), while in cross-border cases the EdelP whom the case was assigned to shall act in 'close consultation' with the EdelP of the Member State, where the investigation measure needs to be carried out (Article 18.2).

Altogether, the nature and scope of the EPPO powers (including the applicable investigative measures) would differ from case to case and from Member State to Member State, the judicial authorisation of investigative measures would be limited to the jurisdiction of the respective national authority, while the application of different regimes of procedural guarantees might also be both beneficial and detrimental for the defendant in the transnational context.[26]

That said, according to the proposal national courts would need to recognize EPPO evidence even in the absence of equivalence of the rules or compatibility of the legal systems between the Member States concerned (Article 30(1)).[27] The Union wide admissibility of EPPO evidence would be indeed desirable, but either on the basis of Article 82(2)(a) TFEU that provides for establishing minimum rules in this area or on the basis of standardized EPPO procedure. The simple fact that the evidence is gathered in EPPO investigations will not automatically balance the different systems of procedural guarantees in the Member States. The arrangement in the proposal set the focus mainly on the enforcement of EPPO decisions within a single jurisdiction.

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[24] For the discussions on the possible design of the EPPO, see, for instance, Csúri 2012, p. 79; Zwiers 2011; Ligeti 2011, p. 51; Ligeti and Simonato 2013, pp. 7–21.

[25] Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office COM (2013) 534 final. See also the Impact Assessment Accompanying the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, SWD (2013) 275 final. For a detailed assessment of different aspects of the Commission's Proposal, see Erkelens et al. 2014. See also Csúri 2016, pp. 137–144.

[26] See Luchtman and Vervaele 2014, p. 140. See also Thorhauer 2015, p. 78.

[27] Except if the evidence would adversely affect the fairness of the procedure or the rights of defense as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights.

It failed to address important transnational aspects of EPPO investigations and the significant differences in the national criminal prosecutions, one of the main justifications to establish the EPPO (Preamble Rec. 5). Apart from the obvious risks of such an arrangement, the increased reliance on national laws also questions its added value. Given the considerable differences between the national legal systems, common minimum standards would have been a prerequisite for consistent EPPO investigations and for the admissibility of EPPO evidence in front of the competent trial court.

9.3.2.2 Cross-Border Evidence in the Current Version of the Council Text

The subsequent negotiations in the Council maintained the basic concepts of EPPO decisions being enforced according to applicable national laws (Article 25.3) and EPPO evidence being recognized by national courts as such (Article 31).[28]

The current version of the text however elaborates on the cooperation mechanism in cross-border cases.[29] To some extent it resembles the EIO arrangements but with significant differences. Contrary to the standardized scheme of judicial authorisation in the EIO Directive, the EPPO draft provides for different scenarios. In cross-border cases, the respective measure might be granted by any of the competent authorities concerned (Article 26.3 together with Recital 69).[30] In case the handling authority grants the measure, the arrangement resembles the EIO, while if the assisting authority grants the measure it even takes us back to mutual legal assistance. The EDelP handling the case assigns the respective investigative measure to the assisting EDelP, who in turn undertakes the measure (Article 26). By doing so the assisting authority may apply an alternative measure if it is less intrusive but would achieve the same results, or when the measure does not exist or would not be available in a similar domestic case. The EDelPs concerned would need to consult on such issues with the involvement of the supervising European Public Prosecutor (Article 26(5)). Thus, the draft provides for similar considerations as the EIO, but without real grounds for refusal. In fact, Article 26(3) lays down the only situation, where cooperation is clearly impossible. This occurs, once the competent assisting authority does not grant the judicial authorisation of a measure.

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[28] On the evolution of the EPPO concept from the *Corpus Juris* study up to the text endorsed by the 2015 Luxembourg Presidency, see Csúri 2016. For the changes introduced since the Commission proposal, see the Presidency Notes from the Council to the Delegations 2013/0255 (APP). On the proposals of the Greek and Italian Presidencies, see Damaskou 2015, pp. 143–149.

[29] For the latest public version of the text dated 28 October 2016, see http://www.statewatch.org/news/2016/nov/eu-council-EPPO-Ful-lText-%2013459-16.pdf. For a detailed analysis, see Weyembergh et al. 2016.

[30] The text does not specify in which Member State the judicial authorisation should be obtained if more than two Member States are involved but clarifies that in any case there should be only one judicial authorisation (Recital 63).

Even in this case, it would be the EDelP handling the case who withdraws his/her assignment.

As regards the admissibility of evidence, Article 31(1) enables the trial court to examine the evidence (limited to the fairness of the procedure, the rights of the defence or other rights enshrined in the Charter, in accordance with Article 6 TEU), but only where the national law requires so. This new reference to national law limits the original Commission proposal (Article 30) and establishes further differences in the position of the defendants in the Member States.

In essence, the current version of the EPPO text deviates from the existing forms of horizontal cooperation but fails to create a truly vertical model. The draft selectively mixes horizontal cooperation for evidence-gathering and vertical cooperation for the recognition of evidence. This constitutes an inconsistent regime, especially as regards the position of the individuals affected by EPPO investigations, most notably through the almost obligatory recognition of foreign evidence gathered according to various rules and standards.

9.3.3 Interactions Between the Different Schemes

Free movement of judicial decisions requires a considerable comparability of national laws, regardless whether a cross-border investigation is initiated through an EIO or by the EPPO. Therefore a fair level of harmonization of national procedural laws would be inevitable for the proper functioning of either cooperation schemes. Although Article 82 TFEU provides for the possibility to establish minimum rules on mutual admissibility of evidence, no such legislation has taken place as yet.

In order to balance the lack of harmonized rules (and the related lack of trust), the EIO Directive introduces new possibilities to limit cooperation, notably if fundamental rights are at stake. Contrary to that, even in the absence of common rules, the EPPO text reduces the grounds to reject cooperation and imposes the recognition of foreign evidence. Thus, both the EIO Directive and the draft EPPO regulation introduce corrective elements, albeit with very different impact. While putting more emphasis on procedural safeguards, the EIO will strengthen the position of the individuals under investigation. This might slow down cross-border investigations in individual cases but might also increase mutual trust. Conversely, the limited options to reject cooperation in the EPPO text might accelerate cross-border EPPO investigations (not EPPO investigations in general as it will be seriously slowed down by the envisaged chamber-structure),[31] but the proposed rules on the admissibility of evidence could both benefit or detriment the defendant's position. An unfortunate tendency, given the fact that in the current Treaty context the respect for fundamental rights, in particular as regards the rights of suspected and accused persons in transnational criminal proceedings, has gained

[31] On the enlargement of the central decision level, see Csúri 2016, pp. 146–147.

greater emphasis.[32] Beside the already adopted EU legislation concerning the minimum rights of defendants[33] this philosophy also becomes evident in the EIO Directive and in the latest CJEU case law.

So, is there any need for a special scheme of evidence when it comes to EPPO investigations? One of the main arguments for a *sui generis* regime is the assumption that the EPPO will be a single legal office, operating in a single legal area.[34] This would legitimate the idea of a special scheme, especially one different from the mutual recognition mechanism. Nevertheless, the proposed text is far away from establishing a single legal area for EPPO investigations, as the Member States remain reluctant to provide the new Union body with uniform mandate and powers that would ensure the equality, consistency and efficiency of its investigations across the Union. Therefore, as long as the EPPO gathers evidence according to varying national laws, the single legal area-reasoning will be no adequate rationale. Even less, in case the EPPO would be established on the basis of an enhanced cooperation regime.

What if the EPPO would apply the EIO in its investigations? With no minimum European rules on the mutual admissibility of evidence, no uniform EPPO procedure and the possibility of the EPPO being established by enhanced cooperation, recourse to the EIO might be beneficial for various reasons. First, in the absence of uniform EPPO powers, it might strengthen the recognition of EPPO investigations and that of EPPO-evidence as the central European decisions would be enforced and evidence collected on the basis of an already transposed European instrument. Second, requiring national authorities to apply the EIO, while not considering the same measure to be efficient enough for cross-border EPPO cases (for a limited scope of offences) might generally weaken the acceptance of both the EIO and that of the EPPO. Third, in case of enhanced cooperation the EPPO will possibly have recourse to the EIO anyway, when cooperating with EU Member States not participating in the project.

Moreover, the EIO would be not the only horizontal instrument in the EPPO Regulation. The text already provides for the use of the EAW, whenever the arrest or surrender of a person located in another Member State is necessary (Article 28). It is true that the EAW provides for less refusal grounds than the EIO, but in light of the Court's ruling in *Aranyosi* and *Căldăraru*, this might change in the near future. Thus, providing for the use of EAW but not for the EIO creates further inconsistency within the EPPO regime itself.

It seems that the text avoids recourse to the EIO, as it would not assist the desired notion of a central European prosecution service making binding European decisions. It would allow the national authorities to opt for an alternative measure or

[32] See for instance The Stockholm Programme—An open and secure Europe serving and protecting citizens. *OJ* C 115 of 4.5.2010.

[33] EU harmonization measures were adopted with regard to certain defence rights. See Directive 2010/64/EU; Directive 2012/13/EU; Directive 2013/48/EU; Directive 2016/343/EU; Directive 2016/800/EU; and Directive 2016/1919.

[34] Commission Proposal Article 25.1.

even refuse cooperation despite a central decision at Union level. In particular, refusals in order to protect fundamental rights could jeopardize EPPO investigations, given the discrepancies between the national criminal laws concerning procedural safeguards.[35] Though the current version of the text introduces some similar scenarios, but without explicitly defining them as refusal grounds for cooperation.

9.4 Conclusion

The original *Corpus Juris* study based the Union-wide recognition of evidence in transnational fraud cases on a standardised procedure. The EIO Directive and the EPPO drafts provide for significantly different regimes. With no Union-wide minimum rules in the area, the EIO Directive provides for an equivalence check of the measures and presumes the recognition of the foreign evidence due to the congruent jurisdiction of the issuing authority and the authorities that make use of the evidence collected with the help of the EIO. On the other hand, evidence in cross-border EPPO investigations would be gathered according to the different applicable national laws. As a main rule the competent courts would need to recognize such evidence and may examine it only on limited grounds and if the applicable national law requires so. Thus, the recognition of evidence would not be based on uniform European rules or the congruent jurisdiction of the issuing authority and the trial court but exclusively on the circumstance that the evidence was gathered in EPPO investigations. In this chapter it is argued that such a Union-wide admissibility of EPPO evidence would require a uniform EPPO procedure or minimum European rules on the mutual admissibility of evidence. As currently there are no such rules in place, it is hard to imagine, how the EIO and the EPPO would contribute to a stable scheme of recognizing foreign evidence when they deal with the subject matter on such different grounds. Therefore, as long as the EPPO lacks a genuine vertical scheme, recourse to the EIO in EPPO investigations might provide for a more coherent scheme. It could increase the acceptance of the EIO in practice, the trust in future EPPO investigations, the recognition of EPPO evidence and the coherence of cross-border investigations in the EU in general.

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[35] Article 11(1)(f) of the EIO Directive. See Armada 2015, p. 8. See also Luchtman and Vervaele 2014, pp. 141–149.

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