

# The EPPO and some data protection challenges

Supervision conference

Data protection and criminal justice

Organised by EDPS, Eurojust and EPPO

Brussels, 29 November 2022



# Outline

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- ▶ Introduction
  - ▶ The EPPO's DP legal framework
- ▶ Data flows: Possible scenarios and implications
- ▶ Data subjects' rights: Theory and practice
- ▶ Discussion?

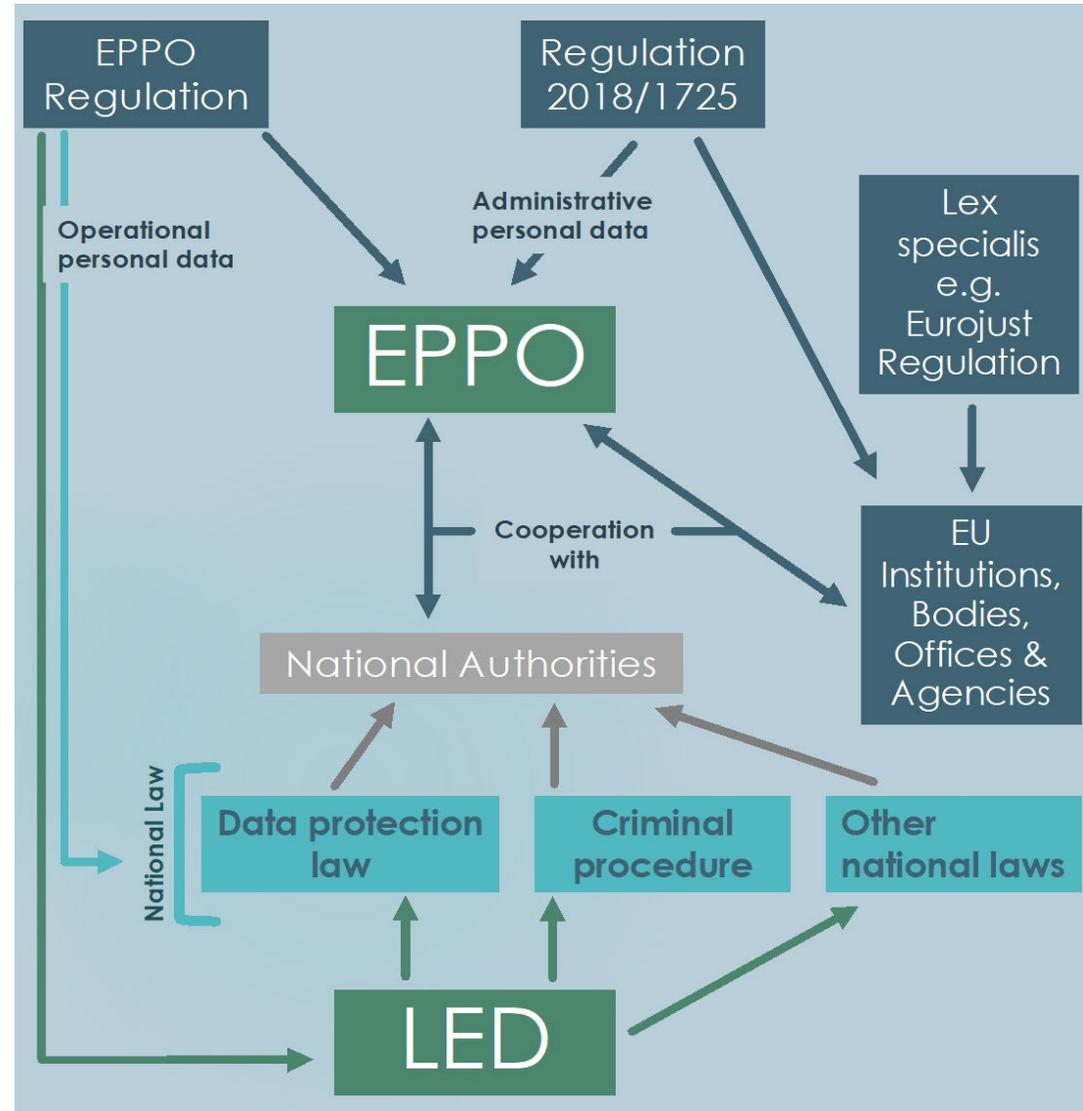
# Introduction (1)

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- ▶ **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?*

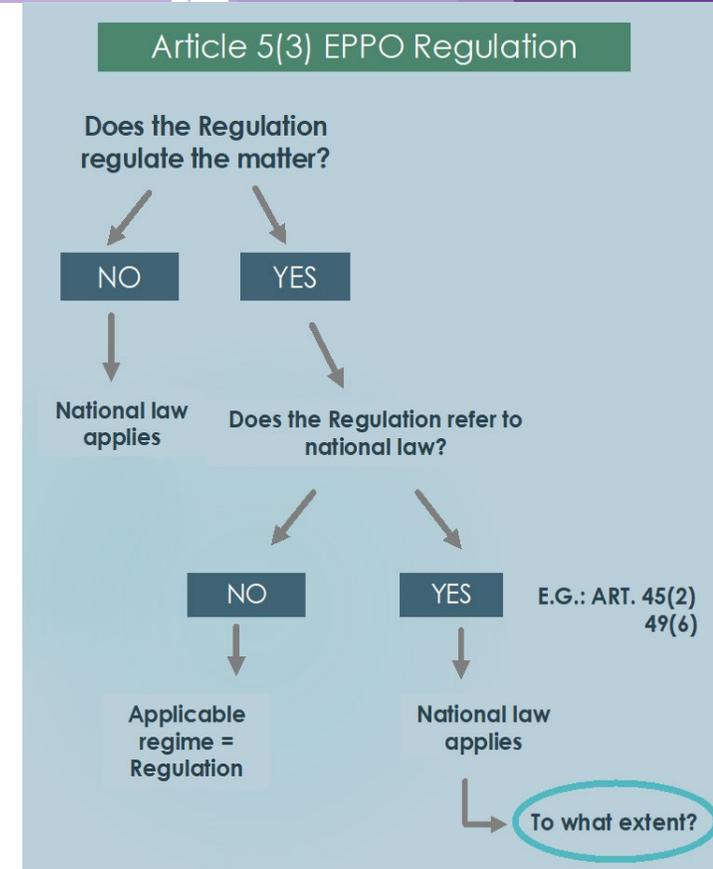
# Introduction (2)

The EPPO at the cross-roads of different data protection regimes (cont'd)



# Introduction (3)

- ▶ 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)

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## ▶ EPPO

### ▶ Hybrid structure -> repercussions on:

#### ▶ Legal framework

#### ▶ Functioning of the EPPO

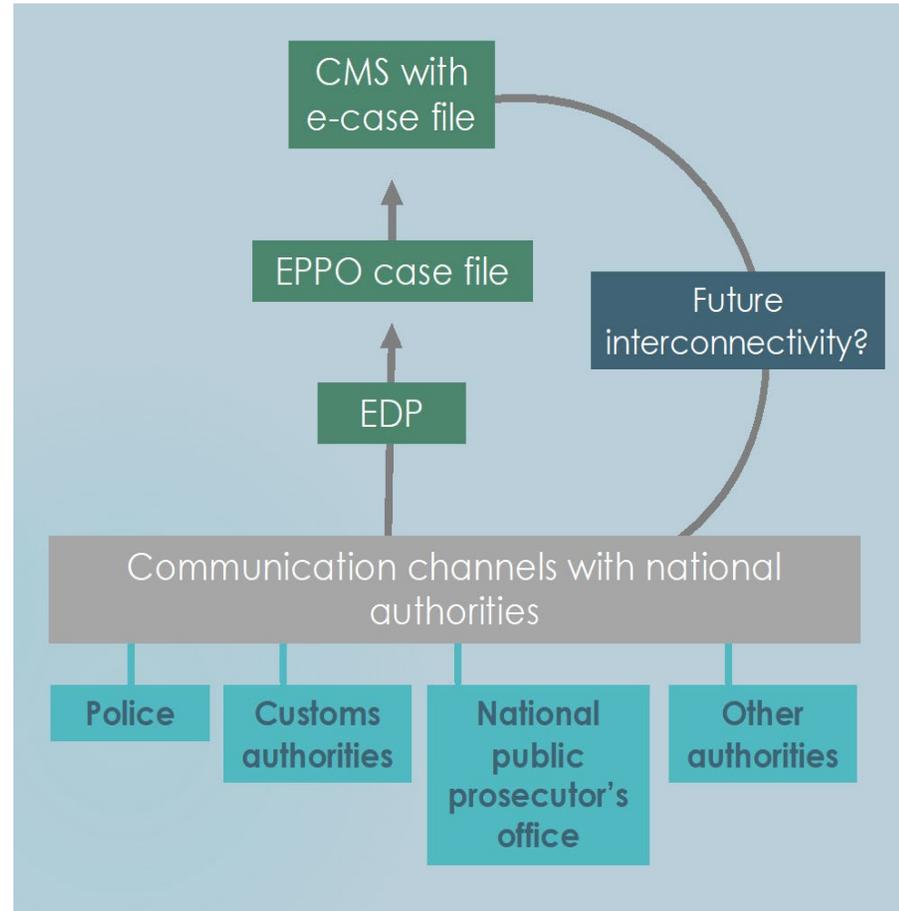
- ▶ Cooperation with national authorities = indispensable (e.g. police, prosecutors, judges, customs)
- ▶ Exchange of information with EU IBOAs
- ▶ **Various data flows!**

# Data flows: Possible scenarios and implications (2)

## ► Different options

### ► Depending on...

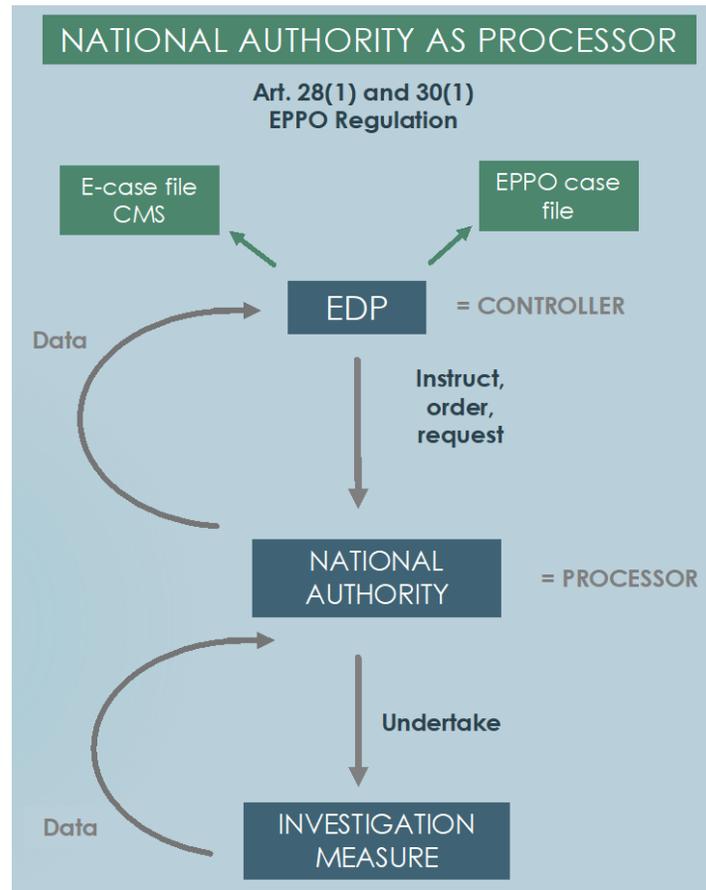
- Application & interpretation of the EPPO Regulation
- Role of national law
- Powers of national authorities cooperating with the EPPO
- ...



# Data flows: Possible scenarios and implications (3)

## ► Controllorship and processors

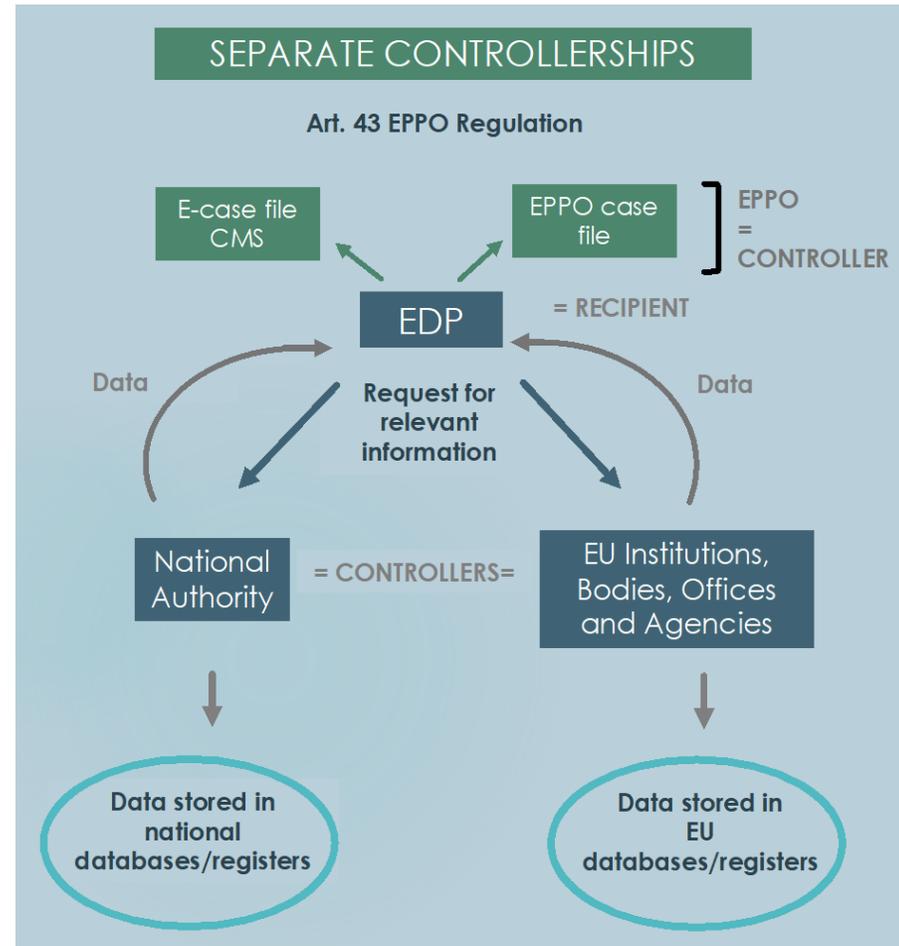
### ► Option 1



# Data flows: Possible scenarios and implications (4)

## ► Controllershship and processors (cont'd)

### ► Option 2



# Data flows: Possible scenarios and implications (5)

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- ▶ **Controllershship and processors (cont'd)**
  - ▶ **Option 3: joint controllership?**
    - ▶ Uncertain...
    - ▶ Implications?

# Data flows: Possible scenarios and implications (6)

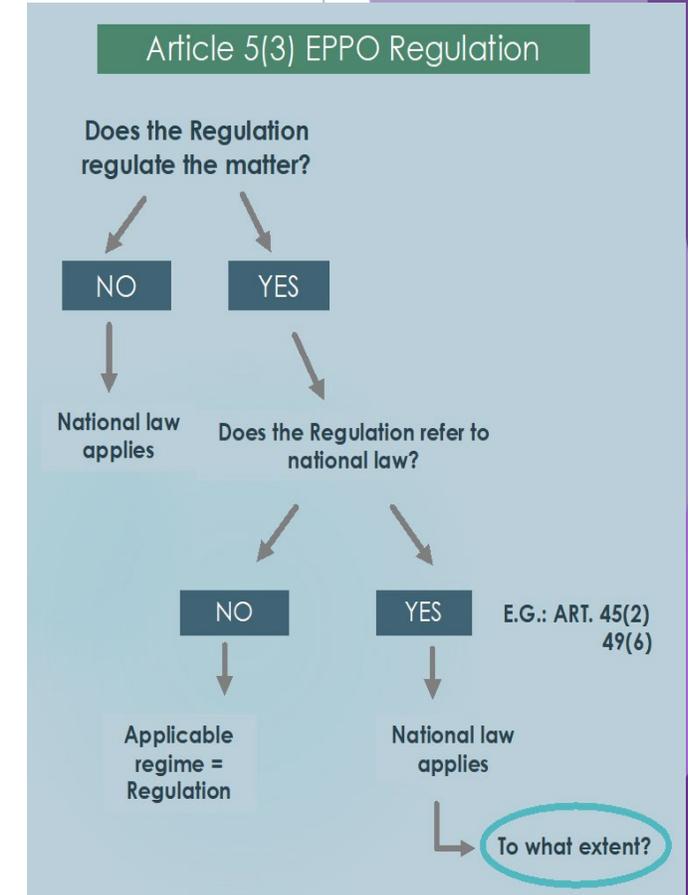
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## ► Implications

- 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**
- ▶ Exercise of rights? -> **procedure**



# Data subjects' rights: Theory and practice (2)

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- ▶ 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!

# Data subjects' rights: Theory and practice (3)

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- ▶ 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?

# Data subjects' rights: Theory and practice (4)

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- ▶ **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?

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- ▶ 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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