



THE SWEDISH NETWORK FOR EUROPEAN LEGAL STUDIES (SNELS),
UPPSALA UNIVERSITY, AND KU LEUVEN ARE PROUD TO INVITE YOU
TO A WORKSHOP ON

JUDICIAL PROTECTION IN EU CROSS- BORDER EVIDENCE GATHERING

UPPSALA, SWEDEN

May 22, 2023

Hosted by:

Maria Bergström (Uppsala University)

Anna Mosna (KU Leuven)

Michele Panzavolta (KU Leuven)

CONFERENCE OUTLINE

This workshop focuses on new and traditional challenges in European Union (EU) cross-border investigations. Building on the preliminary findings of the EU-funded project 'Mould EIO Review' (MEIOR), it intends to shed light on different structures of judicial control and protection in European Investigation Order (EIO) proceedings. The discussion will move from judicial protection in mutual recognition-based cooperation procedures to judicial control in cross-border investigations led by the European Public Prosecutor's Office (EPPO). It will further give an outlook into human rights and trial fairness implications of investigations in the cybersphere and those that allow for data collection directly from service providers in the EU pursuant to a European Production Order.

THE MEIOR PROJECT

MEIOR investigates the concepts and structures of judicial scrutiny in the context of the European Investigation Order (EIO) to identify common minimum denominators and to address existing and potential future problems. The project combines systematic research on the law and practice of judicial scrutiny of investigative measures in EIO proceedings at both national and European level with the production of practice-oriented training materials and tools that offer a comparative view on the coordinates of the relevant forms of such scrutiny. It thus responds to the demand for improved, more uniform and more inclusive training for all legal professionals, mindful that this can only be achieved where there is sufficient understanding of procedural structures in other Member States.



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PRACTICAL INFORMATION

To register your attendance, [please visit our website](#).

The conference is free to attend and open to the public. Advance registration is required. It will be held in Lecture Hall X in the University Main Building at Uppsala University. The conference will also be live streamed via Zoom. More information about online attendance will be provided to registered attendees.

For any further questions regarding this invitation, please email the network coordinator Jasmine Bakaeva at jasmine.bakaeva@juridicum.su.se.

PROGRAMME

Please note that all times are in CEST.

Monday, May 22

Lecture Hall X, University Main Building, Uppsala University

08:30 – 09:00

Registration and coffee

09:00 – 09:15

Welcome and Introduction

Prof. Björn Lundqvist, *SNELS, Stockholm University* and **Associate**

Prof. Maria Bergström, *SNELS, Uppsala University*

Prof. Michele Panzavolta and Dr. Anna Mosna (KU Leuven):

[The MEIOR Project](#)

Session I: Traditional Aspects

09:15 – 10:45

Panel I: Structures of Judicial Scrutiny between Autonomous Concepts and Procedural Autonomy

Against the background of the CJEU judgement in Gavanozov II (C-853/19)—according to which national laws that do not provide for legal remedies against EIOs requesting searches, seizures and hearings of witnesses via videoconference are not in line with EU law—this panel discusses the essential features of judicial review in EIO proceedings. To this end, it focuses on the concepts of legal remedy, of judicial authority and of judicial independence in light of the CJEU decisions in Staatsanwaltschaft Wien (C-584/19), XK (Procura della Repubblica di Trento) (C-66/20), and, most recently, in Staatsanwaltschaft Graz (C-16/22). This way, the panel intends to open a discussion on the existence of and possible further need for autonomous concepts of EU law in this field.

Chairperson: Prof. Xavier Groussot, *SNELS, Lund University*

Speakers:

- **Prof. Lorena Bachmaier**, *Universidad Complutense de Madrid*
Effective judicial protection after *Gavanozov II*
- **Prof. Slawomir Steinborn**, *Gdansk University*
Lack of legal remedy regarding the investigative measure carried out under the EIO in the context of effective judicial protection in national law

- **Dr. Anna Mosna**, *KU Leuven*
Judicial independence and effective judicial protection in cross-border evidence gathering

Commentators:

- **Dr. Johanna Engström**, *European Commission*
- **Prof. Marcello Daniele**, *University of Padua*

10:45 – 11:00

Coffee

11:00 – 12:45

**Panel II: Judicial Protection in and Beyond Mutual Recognition:
EIO vs EPPO**

This panel endeavours discussing different models of cross-border evidence gathering. It aims at examining the degree of mutual trust and/or mutual recognition presupposed in two types of cross-border investigations: those conducted by national authorities through EIOs and those conducted by the EPPO pursuant to Article 31 of Regulation (EU) 2017/1939. The presentations will contribute to a discussion on the scope of judicial scrutiny attributed to competent authorities in the Member State of the executing authority or of the assisting European Delegated Prosecutor (EDP). This will be an opportunity to compare the degree of judicial protection and the distribution of the dynamics and scope of control foreseen in cooperation procedures based on mutual recognition, such as the EIO, that provide for a split in the control between judicial authorities in the issuing and the executing Member State, and cooperation procedures within a single office, such as the EPPO. This panel will be among the first platforms allowing for a public discussion of the issues raised in the reference for preliminary ruling presented by the Oberlandesgericht Wien in the case G.K., B.O.D. GmbH, S.L. (C-281/22), the hearing of which took place before the Grand Chamber on 27 February 2023.

Chairperson: Associate Prof. Eva Storskrubb, *SNELS, Uppsala University*

Speakers:

- **Prof. Marcello Daniele**, *University of Padua*
Scope of judicial review in the executing MS in EIO proceedings
- **Prof. Malgorzata Wasek-Wiaderek**, *Catholic University of Lublin, Polish Supreme Court*
Cooperation of Poland with EPPO in evidence taking
- **Prof. Jacob Öberg**, *University of Southern Denmark*
Cross-border gathering of evidence under the EPPO Regulation – missing EU regulation?
- **TBC**, *European Public Prosecutor's Office*
Cross-border evidence gathering under art. 31 EPPO Regulation

Commentators:

- **Dr. Anna Gonourie Waldenström**, *Gothenburg University*
- **Prof. Slawomir Steinborn**, *Gdansk University*

12:45 – 14:15

Lunch at Café Alma, University Main Building

Session II: What's Next?

14:15 – 16:00

Panel III: Evidence Gathering between Police Lawful Decryption and Police Hacking

This panel will start from the well-known EncroChat, Sky ECC, and Exclu investigations to kick-off a discussion on investigations in the cybersphere. The presentations will focus on the new methods and techniques to investigate new and old types of crime as well as on their implications in terms procedural effectiveness and trial fairness. The panel will give an opportunity, on the one hand, to discuss the current degree of judicial control over these types of operations and the extent to which fundamental (including defence) rights may unduly be affected by them and, on the other hand, to reflect upon the repercussions on evidence integrity and its (potentially denied) usability at trial. This panel will also provide a chance to discuss the key points of the reference for preliminary ruling lodged by the Landgericht Berlin in October 2022 in the M.N. (Staatsanwaltschaft Berlin) case (C-670/22) about the usability in a German court of evidence resulting from the EncroChat investigation and transferred to German authorities through an EIO.

Chairperson: Prof. Iain Cameron, *Uppsala University*

Speakers:

- **Prof. Michele Panzavolta**, *KU Leuven*
EncroChat between legal decryption and police hacking
- **Dawid Świczkowski**, *Gdansk University*
Verification in the issuing state of evidence obtained on the basis of an EIO
- **Associate Prof. Maria Bergström and Sofie König**, *Uppsala University*
EncroChat cases in Sweden and the non-references for preliminary rulings
- **Dr. Thomas Wahl**, *MPI zur Erforschung von Kriminalität, Sicherheit und Recht*
EncroChat cases in Germany and the reference for preliminary ruling

Commentators:

- **Dr. Anna Mosna**, *KU Leuven*
- **Hans Sundberg**, *Former Legal Secretary at the General Court of the EU*, TBC

16:00 – 16:15

Coffee

16:15 – 17:45

Panel IV: The New E-evidence Package: New Frontier of (Mutual) Trust?

This panel intends to discuss the recently adopted e-evidence package. Considering that the new legal instrument provides of a European Production Order that enables prosecuting authorities to gather digital evidence directly from internet service providers in other Member States, bypassing the mutual recognition mechanism provided by the EIO and its safeguards, the discussion will focus on the appropriateness of human rights protection in this type of investigations. What degree of judicial control remains in these cases? Does the transfer of cooperation duties to private entities lead to a de facto outsourcing of human rights protection? Without the guarantee of judicial independence, what margin to refuse the execution of a European Production Order can there be expected? This panel will provide an opportunity to discuss the human rights and trial fairness implications of this new form of cross-border evidence gathering.

Chairperson: Dr. Anna Wetter Ryde, *Swedish Institute for European Policy Studies*

Speakers:

- **Prof. Anze Eberznik**, *European Parliament*
New EU e-evidence system as a new step in mutual recognition - legal issues and defence rights
- **Prof. Jannemieke Ouwerkerk**, *Leiden University*
Gathering e-evidence under the new EPO-mechanism. Whose Rights and Whose Responsibilities?

Commentators:

- **Associate Prof. Yulia Razmetaeva**, *Uppsala University, Yaroslav Mudryi National Law University*
- **Prof. Lorena Bachmaier**, *Universidad Complutense de Madrid*

17:45 – 18:00

Closing Remarks

Prof. Michele Panzavolta and Dr. Anna Mosna, *KU Leuven* , and **Associate Prof. Maria Bergström**, *SNELS, Uppsala University*

18:15 – 19:15

Reception hosted by the **Dean of the Law Faculty, Prof. Anna Singer,**
and **Guided Tour of the University Main Building**