



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 12 MAY 2021

LAYING DOWN RULES ON THE DISCIPLINARY LIABILITY OF THE EUROPEAN DELEGATED PROSECUTORS

The College of the European Public Prosecutor's Office (EPPO),

Having regard to Council Regulation (EU) 2017 /1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO') (hereinafter referred to as 'the EPPO Regulation'), and in particular Article 17 thereof,

Having regard to Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Community of Atomic Energy, hereinafter referred to as "the Staff Regulations" and, respectively "the CEOS", and in particular to Articles 5, 123 to 124 of the CEOS,

Having regard to Decision of the College of the European Public Prosecutor's Office of 29 September 2020 laying down rules on condition of employment of the European Delegated Prosecutors, (hereinafter referred to as "the CEEDP"), and in particular Articles 18-21 thereof,

Whereas:

1. Any failure by a European Delegated Prosecutor to comply with his/her professional obligations, as foreseen by the EPPO Regulation, the CEOS and the CEEDP, whether intentionally or with gross negligence on his/her part, shall make him/her liable to disciplinary action;
2. The misconducts liable to give raise to disciplinary action and the disciplinary procedure against European Delegated Prosecutors shall be determined in the present Decision;
3. The composition of the Disciplinary Board shall be determined in the present Decision;
4. The disciplinary measures applicable to European Delegated Prosecutors shall be determined in the present Decision.

HAS DECIDED AS FOLLOWS:

Chapter I: General provisions

Article 1

Scope

This Decision lays down rules on the disciplinary liability of the European Delegated Prosecutors and the corresponding disciplinary procedures, as foreseen in Chapter VI of the CEEDP.

Article 2

Principles

1. A European Delegated Prosecutor may be subject to disciplinary liability for the misconducts provided for in Article 3, committed with intention or gross negligence.
2. The disciplinary liability of a European Delegated Prosecutor shall be engaged by the EPPO only in accordance with the CEEDP and this Decision.

Article 3

Disciplinary misconducts

1. A European Delegated Prosecutor may be subject to disciplinary liability for having committed one or more of the following disciplinary misconducts:
 - a) Violation of his/her statutory obligations in accordance with the EPPO Regulation, the applicable national law, the CEOS and the CEEDP;
 - b) Violation of the law in the exercise of his/her professional duties;
 - c) Gross violation of the Decision of the College of the European Public Prosecutor's Office of 6 May 2021 on the Code of Ethics for members of the College of the European Public Prosecutor's Office (EPPO) and European Delegated Prosecutors, including but not limited to behaviour negatively affecting his/her professional integrity or the reputation of the EPPO.
2. The revocation or modification of a decision of a European Delegated Prosecutor shall not be in itself a reason for subjecting a European Delegated Prosecutor to disciplinary liability.

Article 4

Lapse of time

1. The administrative investigation against a European Delegated Prosecutor shall not be initiated for alleged misbehaviour older than 2 years. The administrative investigation shall be carried out within 6 months from the initiation.
2. Disciplinary action against a European Delegated Prosecutor may be initiated within 10 working days from the investigation report.

3. A disciplinary hearing before the Disciplinary Board shall take place within 2 months after the day of initiation of disciplinary action. If a European Delegated Prosecutor against whom a disciplinary matter has been initiated is temporarily absent, the time for examination shall be extended accordingly, but no longer than 2 years.

Article 5

Rights of a European Delegated Prosecutor subject to disciplinary proceedings

1. A European Delegated Prosecutor subject to disciplinary proceedings has the right to be heard and to submit observations, as well as to propose witnesses to be heard or provide written statement.
2. A European Delegated Prosecutor who, for objective reasons, cannot be heard under the provisions of this Decision, may submit written observations or may be represented by a lawyer or a person of his/her choice.
3. The European Delegated Prosecutor concerned may be assisted by a lawyer or a person of his/her choice.

Chapter II: Disciplinary proceedings

Section 1: Administrative phase

Article 6

Preliminary verification

1. Where applicable, upon receiving information indicating a possible disciplinary misconduct, the European Chief Prosecutor may carry out a preliminary verification of the information and accompanying evidence.
2. The preliminary verification shall be aimed at evaluating the information received in order to decide whether there are grounds for initiating an administrative investigation in accordance with Article 7 of this Decision.

Article 7

Administrative investigation

1. The administrative investigation referred to in Article 18(2) of the CEEDP shall be carried out by the European Chief Prosecutor. The latter may delegate this task to the supervising European Prosecutor or another European Prosecutor.
2. Whenever an administrative investigation is launched, the European Delegated Prosecutor concerned shall be informed immediately, provided this is not harmful to the investigation. In any event, the investigation cannot be concluded without the European Delegated Prosecutor concerned having been given the opportunity to present written or

oral observations on facts concerning him/her. The conclusions shall make reference to these comments.

3. Where the investigation requires secrecy, the compliance with the obligation to invite the concerned European Delegated Prosecutor to comment may be deferred by the College, upon a proposal of the European Chief Prosecutor or of the European Prosecutor carrying out the administrative investigation. In any case, no disciplinary action may be initiated before the European Delegated Prosecutor has been given the opportunity to present written or oral observations.
4. The conclusions of the administrative investigation shall be drawn up in an investigation report. It shall contain, as a minimum:
 - a) a description of the alleged misconduct, including the date and the place it was committed,
 - b) the indication of which specific provision the alleged misconduct is in violation of,
 - c) the sources of information and the most relevant evidence,
 - d) a reference to the observations and written comments presented by the European Delegated Prosecutor concerned, if any.
5. The investigation report shall be communicated to the European Chief Prosecutor, who may present observations to be attached to the report.
6. The investigation report, along with the observations of the European Chief Prosecutor, if any, shall be sent to the European Delegated Prosecutor concerned.
7. Without prejudice to paragraphs 2 and 3 of this Article and upon his/her request, the European Delegated Prosecutor concerned shall have access and be provided with a copy of the case file.
8. The Administrative Director shall ensure adequate administrative support for the purpose of this Article.

Article 8

Conclusion of the administrative phase

On the basis of the investigation report and after hearing that European Delegated Prosecutor, the European Chief Prosecutor may:

- a) decide that there is no ground to launch a disciplinary action against the European Delegated Prosecutor, in which case the European Delegated Prosecutor shall be informed accordingly in writing;
- or
- b) where there are reasons to believe that the concerned European Delegated Prosecutor failed to comply with obligations within the meaning of the CEOS and the CEEDP, decide to initiate disciplinary action before the Disciplinary Board. The disciplinary action shall describe the disciplinary charges against the European Delegated Prosecutor, deriving from the investigation report.

Section 2: Disciplinary Board

Article 9

Establishment, functions and composition of the Disciplinary Board

1. A Disciplinary Board shall be established by the European Public Prosecutor's Office in order to examine disciplinary actions initiated against European Delegated Prosecutors.
2. The Disciplinary Board shall consist of 5 European Prosecutors. The European Chief Prosecutor and the Deputy European Chief Prosecutors shall not be members of the Disciplinary Board.
3. If the supervising European Prosecutor is a member of the Disciplinary Board, he/she shall not take part in the respective proceedings in the Disciplinary Board. In such case, he/she is replaced by one of the alternate members.

Article 10

Election of the members of the Disciplinary Board

1. The European Chief Prosecutor shall invite any interested European Prosecutor to submit his/her application to be a member of the Disciplinary Board.
2. The members of the Disciplinary Board of the European Public Prosecutor's Office shall be elected by the College by secret vote for a mandate of three years.
3. In addition to the members, the College shall elect by secret vote 2 alternate members.
4. The Disciplinary Board shall elect the chairperson and his/her deputy from among its members.

Article 11

Organisation of the work of the Disciplinary Board

1. The Disciplinary Board shall be assisted by a secretary appointed by the Administrative Director.
2. The secretary shall draw up minutes of meetings of the Disciplinary Board. Witnesses, who have been heard during the disciplinary hearing, shall sign the minutes recording their evidence.
3. The Administrative Director shall ensure that adequate administrative support is provided to the Disciplinary Board.

Article 12

Independence of the Disciplinary Board

1. The chairperson and members of the Disciplinary Board shall be completely independent in the performance of their duties.
2. The deliberations and proceedings of the Disciplinary Board shall be secret.

Article 13

Preparation of a disciplinary matter for examination by the Disciplinary Board

1. Before the first meeting on that matter, the chairperson, after consulting the other members of the Board, may designate among its members a rapporteur.
2. If necessary, the Disciplinary Board may request the European Chief Prosecutor to submit additional information, documents and materials.
3. The European Chief Prosecutor shall be notified of the time and place when and where the disciplinary matter will be examined at a sitting of the Disciplinary Board.

Article 14

Procedures for examining the case by the Disciplinary Board

1. The Disciplinary Board meetings and hearings shall take place at the premises of the EPPO. Whenever the circumstances so require, the chair may convene meetings of the Disciplinary Board by videoconference. If the physical presence of one or more members of the Disciplinary Board to meetings convened at the premises of the EPPO is not possible, the chair may authorise their attendance to take place remotely.
2. The Disciplinary Board shall examine the case with the participation of at least two third of its members.
3. The European Delegated Prosecutor concerned shall be notified at least 10 working days before the hearing by any proper mean, including email or mail, in order to be heard. If the European Delegated Prosecutor does not appear at the hearing due to an unjustified reason or has asked to examine the disciplinary matter in his/her absence, the Disciplinary Board is entitled to examine the disciplinary matter in the absence of the European Delegated Prosecutor concerned.
4. The Disciplinary Board may decide to hear the witnesses proposed by the European Chief Prosecutor or the European Delegated Prosecutor concerned or by their own initiative.
5. The chairperson shall declare the hearing open and announce the composition of the Disciplinary Board.
6. Until commencing examination of the matter, the European Delegated Prosecutor concerned may request the recusal of any of the members of the Disciplinary Board. Recusal shall be examined by the Disciplinary Board.
7. The examination of a disciplinary matter shall commence with the presentation of the disciplinary case by the rapporteur or by the chairperson.

8. The Disciplinary Board shall hear the explanations of the European Delegated Prosecutor concerned, as well as, if necessary, of other persons invited to the hearing and shall review the materials of the matter and other documents.
9. At any time before the Disciplinary Board retires to deliberate, the European Delegated Prosecutor concerned and the European Chief Prosecutor are entitled to have access to the case file and to submit observations.

Article 15

Decisions by the Disciplinary Board

1. Upon examining a disciplinary matter, the Disciplinary Board shall adopt in the deliberation room a reasoned opinion proposing to apply a sanction in accordance with Article 17 or issue a reasoned decision to dismiss the case in accordance with paragraph 4 of this Article. The reasoned opinion or the decision to dismiss shall be taken by a majority vote of those members of the Disciplinary Board who participated in examination of the matter. In the event of a tied vote, the chairperson of the sitting shall cast the deciding vote.
2. The reasoned opinion of the Disciplinary Board shall be notified in writing to the College, with a proposal to apply one of the disciplinary sanctions referred to in Section 3 of this Chapter or to dismiss the case against the European Delegated Prosecutor concerned.
3. Upon proposing to impose a disciplinary sanction, the Disciplinary Board shall consider the nature of the disciplinary violation, its consequences, whether the misconduct was committed with intention or gross negligence, as well as any other information, which relates to the European Delegated Prosecutor concerned.
4. The disciplinary case shall be dismissed by the Disciplinary Board if the disciplinary action is not founded or if the time periods provided for in Article 4 paragraph 1 have expired. The concerned European Delegated Prosecutor and the European Chief Prosecutor shall be notified thereof. Article 19 a) to e) shall apply to the content of the decision.
5. The reasoned opinion of the Disciplinary Board shall be notified to the European Delegated Prosecutor concerned and to the European Chief Prosecutor, who can present observations and written comments to the College.

Section 3: Decision by the College

Article 16

Procedure before the College

1. The College shall be chaired by the most senior Deputy European Chief Prosecutor in age.
2. The College may invite the European Chief Prosecutor and the European Prosecutor who conducted the administrative investigation to attend the discussion, without a right to vote.

3. The College shall deliberate without the presence of the European Chief Prosecutor and of the European Prosecutor who conducted the administrative investigation.

Article 17

Disciplinary sanctions

1. The College may impose one of the following sanctions:
 - a) a written warning;
 - b) a reprimand;
 - c) deferment of advancing in a higher remuneration level for a period between one and 23 months;
 - d) downgrading the remuneration level for a period up to 6 months;
 - e) suspension from post for a period from one to three months;
 - f) termination of the contract of employment.
2. The College cannot apply a disciplinary sanction more serious than the one proposed by the Disciplinary Board.
3. A single misconduct shall not give rise to more than one disciplinary sanction.

Article 18

Deadlines

1. After hearing the European Delegated Prosecutor concerned, the College shall take its reasoned decision within two months of receipt of the reasoned opinion of the Disciplinary Board.
2. If the College decides to dismiss the case, it shall so inform the European Delegated Prosecutor concerned in writing without undue delay. The European Delegated Prosecutor concerned may request that this decision be inserted in his/her personal file.

Article 19

Decision

1. The College decision in a disciplinary matter shall be in writing.
2. The following shall be indicated in any decision taken in a disciplinary matter:
 - a) the place and time of examination of the matter;
 - b) the given name, surname, and European Delegated Prosecutor's office (country) of the prosecutor subject to disciplinary liability;

- c) the circumstances of committing the disciplinary misconduct and the grounds for subjecting a European Delegated Prosecutor to disciplinary liability as described in the disciplinary action initiated by the European Chief Prosecutor;
 - d) the observations and written comments submitted by the European Delegated Prosecutor concerned and any other information, which relates to the European Delegated Prosecutor concerned;
 - e) substantiation for the decision taken based upon the evidence;
 - f) the reasoned opinion of the Disciplinary Board regarding the imposed disciplinary sanction;
 - g) the imposed disciplinary sanction by the College;
 - h) information on the right to appeal.
3. The European Chief Prosecutor shall inform the relevant national authority about the decision to impose disciplinary sanction.

Article 20

Appeal

The European Delegated Prosecutor concerned has the right to appeal against the decision imposing a disciplinary sanction in accordance with Articles 90 and 91 from the Staff Regulations, which shall apply by analogy.

Chapter III: Final provisions

Article 21

Costs

1. Expenses incurred on the initiative of the European Delegated Prosecutor concerned in the course of disciplinary proceedings, and in particular fees paid to a person chosen to assist the European Delegated Prosecutor or for his/her defence, shall be borne by the European Delegated Prosecutor concerned where the disciplinary proceedings result in the imposition of one of the sanctions provided for in Article 16 of this Decision.
2. However, the College may decide otherwise in exceptional cases where the burden on the European Delegated Prosecutor concerned would be unfair. In particular, the College may decide the reimbursement of travel costs.

Article 22

Other provisions

These rules are supplemented by the Annex IX of the Staff Regulations, which shall apply by analogy, unless otherwise provided for in this Decision.