

# DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 26 MAY 2021

## ON THE FUNCTIONS AND PROCEDURES OF THE PERMANENT CHAMBERS

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

Having regard to Council Regulation (EU) 1939/2017 of 12 October 2017<sup>1</sup>, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO'), hereinafter "the constituent act", and in particular Articles 9, 10, 12, 13, 26-28, 31, 34-36, 39, 40, 46, 91, 104 thereof,

Having regard to the Internal Rules of Procedure of the EPPO, adopted by the College on 12 October 2020, and in particular Articles 7(5), 15-24, 32, 41-52, 54-57, 59-61, 69 thereof,

Having regard to the College Decision 15/2020 on the Permanent Chambers,

Having regard to the College Decision 16/2020 on the Composition of the Permanent Chambers,

Having regard to the College Decision 23/2020 laying down Guidelines on simplified procedures and on the delegation of powers of the Permanent Chambers respectively,

Taking into account the conclusions of the dedicated working group of European Prosecutors,

Considering the need to provide guidance on the activity and functioning of the Permanent Chambers, including their operational procedures concerning the monitoring of cases,

Has adopted the following decision:

### Article 1

#### *Adoption of EPPO's guidance on Functions and Procedures of the Permanent Chambers*

EPPO's guidance on functions and procedures of the Permanent Chambers is laid down in the Annex, which forms an integral part of this Decision.

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<sup>1</sup> OJ L 283, 31.10.2017, p. 1–71



## Article 2

### *Entry into force*

This Decision shall take effect on the date of its adoption.

Done at Luxembourg on 26 May 2021.

**On behalf of the College,**

**Laura Codruța KÖVESI**  
**European Chief Prosecutor**

A handwritten signature in blue ink, likely belonging to Laura Codruța KÖVESI, is written over the printed name and title.



EUROPEAN  
PUBLIC  
PROSECUTORS  
OFFICE

# ANNEX: FUNCTIONS AND PROCEDURES OF THE PERMANENT CHAMBERS

## Introduction

The Permanent Chamber (PC), headed by the Chair, is responsible for the monitoring of the EPPO investigations and prosecutions, a task it carries out with the support of the Support Pool, composed of Legal Support and Administrative Support Staff.

Each PC will have one dedicated Legal Support Staff. A pool of Administrative Support Staff will also be allocated to the PCs. In exceptional situations, due to the lack of sufficient personnel, the administrative and legal support tasks may be fulfilled by the same person.

The purpose of this document is to describe the activity of the PCs, providing guidance on their functioning, including their operational procedures concerning the monitoring of cases. This guidance further addresses the role and interaction between the members of the PC, the supervising European Prosecutor and the Support Pool.

This guidance applies foremost to the European Chief Prosecutor (ECP), the Deputy European Chief Prosecutors (DECPs) and the European Prosecutors (EPs) to the extent they take part in the activities of the PCs as either permanent members or supervising EPs.

The present document will be periodically updated to reflect changes in the operational processes over time.<sup>2</sup>

## I. Meetings of the Permanent Chamber

The PCs generally discuss and adopt their decisions orally during PC meetings. When the legal framework provides for it, PCs can also opt for a written procedure. The following paragraphs describe how PC meetings are scheduled (i), how the agenda is drafted and adopted (ii), the preparation of (extra-)ordinary PC meetings (iii), the designation and the role of the rapporteur (iv), the unfolding of PC meetings (v), the follow-up on PC meetings (vi), as well as the written procedure (vii).

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<sup>2</sup> This guidance is in line with the following sources: the EPPO Regulation, in particular recitals 21, 25-28, 30, 34-37, 68, 78, 79, 82, 112, 115 and Articles 9, 10, 12, 13, 26-28, 31, 34-36, 39, 40, 46, 91, 104; the EPPO Internal Rules of Procedures ('IRP'), in particular Articles 7.5, 15-24 (Chapter II), 32, 41-52, 54-57, 59-61, 69; College Decision 15/2020 on the Permanent Chambers; College Decision 16/2020 on the Composition of the Permanent Chambers; College Decision 23/2020 Laying down Guidelines on simplified procedures and on the delegation of powers of the Permanent Chambers respectively; the Explanatory note to the decision on the organisation of the support to the Permanent Chambers, discussed by the College on 18 December 2020. The present note takes also into consideration the applicable legislative and regulatory framework governing data protection and the processing of operational personal data.

## I. Scheduling of meetings

The Chair sets the dates of the PC's meetings. Each PC shall, in principle, hold at least two ordinary meetings per calendar month, to be scheduled at least 15 calendar days in advance. The Chair may call additional meetings whenever necessary, setting the date at least 5 days in advance. In urgent situations, meetings may be convened as soon as the permanent members and relevant supervising EP are available.

The scheduling should take into account the calendar of the supervising EPs who are supposed to attend the meetings as well as the College meetings. The Support Staff will assist in scheduling the meetings.

Depending on the availability of participants, PC meetings will be held in a in-person, virtual or hybrid mode.

## II. Agenda

The Support Staff shall prepare a draft meeting agenda with the cases to discuss, based on the deadlines prescribed for adopting specific decisions, as well as according to the periodical monitoring of cases. The Support Staff shall propose to the Chair by email the list of cases to be included on the agenda timely before each PC meeting, for his/her approval.

The supervising EPs shall attend only the part of the PC meeting concerning the cases they supervise. The Support Staff shall check availabilities and calendars of supervising EPs who are required to attend the meeting. The supervising EPs shall be given "time-windows" (instead of precise timeslots) during which they should be available to discuss their respective cases as it may not be entirely predictable how long the discussion on each single case will take. Wherever possible the agenda shall group the cases to be dealt with during the meeting in such a way that those supervised by the same EP(s) can be discussed consecutively.

Once the Chair approves the draft agenda, it shall be circulated by the Administrative Support Staff to all the permanent members and relevant supervising EPs, to the ECP, as well as to the staff tasked with providing legal support. The EDPs handling the cases on the draft agenda shall be informed by separate messages. The permanent members of the PC may send comments on the agenda and request to add further topics for discussion during the meeting, within the applicable deadline.

The agenda of an ordinary meeting should be circulated at least 5 days before the meeting, while the agenda of an extraordinary meeting should be circulated within a timeframe that allows the permanent members, the supervising EPs and Support Staff to duly prepare for the meeting. The main source of information ahead of the meeting is the CMS with the EPPO case file.



### **III. Preparation of meetings**

Once the agenda has been adopted and circulated, the Legal Support Staff shall carry out a brief review of the issues to be considered during the PC meeting so that he/she can introduce the discussion per item as need be. Upon specific request by the chair, the Legal Support Staff may prepare written reports and briefings provisions, which in principle will be uploaded into the CMS within the deadline set by the Chair.

### **IV. Rapporteur**

The chair of the PC may designate a rapporteur from among the permanent members of the PC. A rapporteur who would add a supranational element and who would be able to report a different perspective than the national one (represented by the supervising EP) may be useful/appropriate when a case is particularly complex and it is expected that the PC will have to deal repeatedly with it. However, it is recommended that in simple cases no rapporteur is designated to avoid an “over-engineering” of the system. The decision whether to designate a rapporteur or not should be left to the chairperson of the PC.

A specific role will be created in further release of the CMS, in order to facilitate to the EPs keeping track and monitoring specifically the cases where they were designated as rapporteurs.

### **V. Meetings**

The Chair heads the discussion and either introduces the case him-/herself, or asks the supervising EP, the rapporteur (if a rapporteur has been designated) or the Legal Support Staff to introduce the case and the relevant issues. Then the supervising EP shall be asked for his/her opinion. The Legal Support Staff will provide a checklist setting out the specific elements to be assessed when taking the specific decision. When requested by the chairperson, the Legal Support Staff shall also present any results of analytical and research tasks and, where appropriate, to further propose actions to be taken by the PC.

In addition to the Permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 12(1) EPPO shall participate in the deliberations of the PC.

After discussing a case, the Chair and the other permanent members shall proceed with the vote on the PC decision to be taken. The supervising EP shall participate in the vote if provided for according to Article 10(9) EPPO. Except for the Support Staff, all participants in the discussions who do not take part in the vote shall not be present during the deliberation.

The supervising EP shall have a right to vote, except as regards the PC's decisions on delegation or withdrawal of delegation in accordance with Article 10(7) EPPO, on allocation and reallocation under Article 26(3), (4) and (5) and Article 27(6) EPPO and on bringing a case

to judgment in accordance with Article 36(3) EPPO, where more than one Member State has jurisdiction for the case, as well as the situations described in Article 31(8) EPPO Regulation.

## **VI. Follow up on PC meetings**

Within 48h after the meeting, the Administrative Support Staff shall present to the Chair the minutes of the meeting in relation to each item of the agenda, indicating the attendance to the meeting and the outcome of the discussions per agenda item. Once approved, the minutes, separately for each case, shall be uploaded in the CMS to the respective cases. In exceptional urgent cases, the Chair may shorten the deadline for preparing the draft minutes.

Whenever the PC has adopted a decision which is not based on a draft proposed by the EDP, the rapporteur or the Legal Support Staff shall prepare a draft and upload it in the CMS within 5 working days from the approval of the minutes. In exceptional urgent cases, the Chair may shorten the deadline for preparing the draft. The Chair and the other permanent members as well as the supervising EP shall revise the draft in CMS within the deadline set by the Chair. The date of the decision shall always refer to the date when the decision was adopted (the date of the vote), rather than the date when the draft decision has been agreed.

Once approved, the instruction or decision shall be signed by the Chair. The Administrative Support Staff shall upload the document into the CMS and create or complete the corresponding CMS task(s), where appropriate.

When the decision shall become part of the case file, the Administrative Support Staff shall ensure that the decision is also available in the national language of the proceedings. To that effect, the Administrative Support Staff shall ensure its translation in the national language of the proceedings by the Centre des Traductions. The Administrative Support Staff will then upload the decision in the version of the national language of the proceedings<sup>3</sup> in the CMS. The supervising EP shall notify the Chair if there are specific requirements for the translation, if it is needed urgently or if he/she would like to verify the quality of the translation before it is considered final. The chair shall certify by way of his/her signature, that the EPPO produced the decision in the national language of the proceedings as original version of the document. The procedure for translating PC decisions may be revised later to explore ways of allowing the use of translators at national level.

The Administrative Support Staff shall monitor the deadlines for the execution of decisions and of instructions issued to EDPs. Whenever the deadlines determined by the PC are not duly observed, the Chair shall be notified.

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<sup>3</sup> According to the EPPO's Legal Service, also the translated version of the PC's decision constitutes an original of the decision.



## **VII. Written procedure**

When the Chair decides that the PC is to adopt a decision by way of a written procedure, he/she will request the Administrative Support Staff to initiate the procedure by notifying via email the other permanent members and the supervising EP and indicating the case number, the name of the file containing the draft decision and the deadline for observations determined by the Chair. If no draft decision has been proposed by the EDP, the Chair may ask the Legal Support Staff to prepare a draft decision and to upload it to the CMS.

Once the deadline for observations has expired, the Support Staff will present the outcome of the procedure to the Chair.

If one of the permanent members or the supervising EP wants to lodge an objection to the written procedure he/she should send it to the Support Staff via email. The email should not contain any operational personal data, but only the case number and the grounds for the objection, if relevant.

The Chair shall organise a meeting or initiate another written procedure taking into account the observations.

## **II. Language to be used in the interaction between the Permanent Chambers and the European Delegated Prosecutors**

### **I. Language of documents prepared by the EDP for the PC**

All reports, proposals, observations prepared by the EDPs for the PC should be drafted in English, in accordance with the decision of the College on internal language arrangements. However, the specific legal nature and the complexity of the documents prepared in relation to the termination of the investigation, justify a specific derogation to the general use of the working language in drafting EPPO documents.

According to Article 35(1) of EPPO Regulation, upon termination of the investigation the EDPs draft a report containing a summary of the case, along with a draft decision to prosecute, to dismiss or to apply a simplified prosecution procedure.

The summary of the case should be drafted in English. When drafting, use can be made of the e-translation tool. It should always contain<sup>4</sup> a summary of the facts, their legal qualification under the national law, a description of the investigative acts carried out and their evidentiary results. When the EDP proposes to prosecute, a draft of the indictment, prepared in the language of the proceedings, should also be added. The draft indictment should comply with

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<sup>4</sup> See Art 56(1) of the IRP.

all the formal requirements of the national procedural law for the respective type of decision. The draft indictment will be translated into English by the e-translation function of the CMS. The draft decision should be prepared in English, based on the templates adopted by the College.

## **II. Review of the EDP proposal**

The PC will review the proposal based on the draft decision and on the translation of the summary as well as, where prosecution is proposed, the draft indictment.

If the PC agrees with the proposal, it will adopt the decision as drafted, making a reference within it to the summary of the EDP. The legal effects of the PC decision in the national legal order will be analysed separately by the College.

If the PC disagrees with the proposal, it will instruct the EDP to draft another report including the proposal and/or, where applicable, the draft indictment, indicating the changes to be made.

## **III. Language of PC decisions**

All decisions of the PC shall be drafted and adopted in English. When the decision needs to become part of the case file, a version of it in the national language of the proceedings shall be produced (see also point I. vi.).

## **III. The decision making process**

This section provides an overview of the main procedures the PC carries out when monitoring cases. Specific sub-sections are devoted to the following procedures: the review of the consideration not to exercise EPPO's competence (i); the monitoring of investigations (ii); the decisions adopted during the investigation (iii); the conclusion of cases (iv); the referral of cases to the national authorities (v); the monitoring court proceedings (vi); the reopening of an investigation (vii).

### **I. Review of the consideration not to exercise EPPO's competence (Article 27 (6) EPPO Regulation)**

Where an EDP registers in the CMS a consideration not to exercise EPPO's competence, by not evoking a case or not initiating an investigation, the system automatically creates the task *Review non-exercise consideration* and allocates it randomly to a PC, displaying also the indicative deadline.

Once the task is created, the Support Staff shall monitor the legal deadline for its completion, based on the date when the information was received by the EPPO and on the type of registration case (evocation or initiation of investigation).



The date when the deadline for evocation starts should be determined based on Art 27(1) of the EPPO Regulation, which makes reference to the moment when the EPPO has received all relevant information. A system for recording the date when the information reported to the EPPO is deemed complete may be envisaged.

When necessary, the Support Staff shall propose to the Chair to organize an extraordinary meeting or to ask the ECP for an extension of the deadline (by creating the task *Extend review deadline* upon the request of the Chair).<sup>5</sup>

The Legal Support Staff shall review the information in the registration case, including the grounds of the consideration and the relevant provisions of the EPPO Regulation, the general guidelines adopted by the College and the IRP.

The supervising EP shall, whenever possible, in line with Article 27(6) EPPO Regulation give his/her opinion in the CMS before the PC meeting takes place. In case he/she agrees with the EDP's proposal not to exercise EPPO competence, a "comment" of the supervising EP in the CMS "comment box" (of the case file interface IR or IC) may be sufficient. In case of disagreement of the supervising EP with the EDP's proposal, the EP should draft an opinion in a separate document and upload it in the CMS.

The review of the PC shall be based as a principle on the information reported by the national authorities via the ECR. If the national authorities have also attached additional information deemed essential for the assessment of EPPO's competence, the review may also take it into consideration.

During the PC meeting, the supervising EP elaborates his/her opinion on the proposed non-evocation decision and the Legal support staff may, upon request by the chairperson of the PC, complement the discussion on the relevant elements of the EPPO Regulation, the IRP and other guidelines adopted by the College.

If the PC follows the consideration of the EDP not to exercise the EPPO competence, no written version of the decision needs to be prepared (Art 10(4)(a) and (b) Regulation)<sup>6</sup>. In such cases it is sufficient that the task of the PC is marked as complete in the CMS.

When the PC decides to exercise the EPPO competence, the Legal Support Staff shall draft the decision based on the deliberations of the PC shortly after the meeting, upload it in the CMS and notify all members of the PC accordingly. The Chair shall set a deadline for the permanent members to review the draft in the CMS.

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<sup>5</sup> It should be recalled that according to the IRP also the EDP may ask the ECP directly for an extension of the deadline.

<sup>6</sup> From Art 10(4)(a) and (b) it can be deducted that in cases where the PC is called to review the EDP's consideration not to exercise the EPPO's competence, the PC should take decisions only when necessary to instruct the EDP to initiate an investigation or to exercise the right of evocation.

In order to organize the work of the PCs as efficient as possible, it should be considered to deal with evocation cases primarily in written procedure (outside scheduled meetings). However, whilst Article 24(3) of the IRP sets a deadline for objections in written procedure of not less than three days, that time limit is likely to conflict with the deadline for the PC review. In such a situation the ECP should be requested for an extension of the deadline for verification. If an objection is lodged by a permanent member, a meeting should be organised before the expiration of the deadline for review.

After approval by the members of the PC, the Administrative Support Staff shall ensure that the Chair signs the PC decision and shall upload it in the CMS, completing the *Review decision* task accordingly. The EDP informs the competent national authorities according to Article 27(7) EPPO Regulation.

## **II. Monitoring of investigations (Articles 10(2), 12(1), 26 and 28(1) EPPO)**

When the EDP decides to exercise the EPPO's competence, a new investigation case is created in CMS and allocated randomly to a PC. The system automatically creates the task *Monitor investigation*.

Based on the timetable established by the Chair, the Support Staff shall liaise with the Chair for the inclusion of the case on the PC agenda for its periodical review. Notwithstanding the provisions of Art 28(1) of the EPPO Regulation and Art 45(4) of IRP, in ordinary situations the regular review interval should be of 6 months, unless the specific case requires shorter review intervals.

The supervising EP shall be invited to the meeting and present a summary of the case under his/her supervision. Where a rapporteur has been nominated, the rapporteur shall also be invited to give his/her opinion.

Whenever the EDP updates the progress report, the system notifies the PC members, the supervising EP and the Support Staff. The Legal Support Staff shall review each update and propose the inclusion of the case on the PC agenda, following the regular review intervals or whenever an urgent decision or instruction is required.

Following the PC meeting where the case was reviewed, the Support Staff shall complete the task *Monitor investigations*.

Where appropriate, the Administrative Support Staff shall create the task corresponding to the PC decision (e.g. *Give instructions to EDP, Ad hoc task*) and, if needed, shall attach the relevant documents signed by the Chair. The PC can create tasks for the supervising EP, for the handling or assisting EDP, or for a Case Support Officer (case analyst, financial investigator).



### **III. Decisions adopted during the investigation (Article 10(6) EPPO)**

Within the framework of a particular investigation, members of the case team (PC members, supervising EP, handling EDP, Support Staff) may create tasks in the CMS in order to initiate the process for the PC to adopt one of the decisions foreseen by the EPPO Regulation or the IRP. Those tasks are as follows: *Reallocate case to EDP (same MS); Reallocate case to EDP (other MS); Reallocate case to PC; Review request to merge case; Review request to split case; Review EP request to conduct investigation; Request to review instruction; Review assisting measure; Review request for financial contribution; Delegate powers to EP; Withdraw delegation from EP.*

Whenever a task entails a PC decision, the Support Staff shall determine the applicable deadline for its completion and, when necessary, liaise with the Chair to schedule an extraordinary PC meeting or to put the relevant case on the agenda for the next ordinary meeting.

The Legal Support Staff shall review the information available and analyse possible options of completing the task.

Decisions shall be taken after deliberation in meetings of the PC on the basis, where applicable, of the draft decision proposed by the handling EDP. The supervising EP shall present proposals for decisions prepared by the EDP. Based on the outcome of the PC meeting, the Administrative Support Staff shall complete the task in the CMS and, where appropriate, shall attach the decision signed by the Chair.

### **IV. Termination of the investigation (Article 35(1) EPPO and Article 56 IRP)**

When the handling EDP considers the investigation to be completed, he/she shall upload in the CMS a report and a draft decision in accordance with Article 56 IRP whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure in accordance with Articles 34, 39 or 40 EPPO. The EDP encodes the task *Assess INV. Decision* in the CMS.

Within 10 days, the supervising EP shall forward to the PC the case report and the draft decision together with his/her own observations, if deemed necessary.

The Support Staff will monitor the deadline applicable for completing the task and, when necessary, liaise with the Chair to organize an extraordinary meeting. The Legal Support Staff shall verify whether the report contains all the information required according to Article 56 IRP and whether the proposal is consistent with the EPPO Regulation, the IRP, the relevant College guidelines, and the ECJ case law. The Legal Support Staff should also check whether the summary of the case and, in case prosecution is proposed, the draft indictment is attached.

The PC shall decide on the draft decision within 21 days. The PC cannot decide to dismiss the case if a draft decision proposes bringing a case to judgment. Where the PC does not take a decision within the 21-day time limit, the decision proposed by the EDP is deemed to be accepted.

The PC may adopt or amend the decision proposed by the EDP, may adopt a different decision or may instruct the EDP to continue the investigation, indicating the specific activities to be undertaken, in accordance with Article 46 IRP. Where the PC decides not to adopt a decision, but to give further instructions to the EDP, the Administrative Support Staff will create the corresponding task in the CMS. If a decision to dismiss the case has been adopted by the PC, the EDP shall undertake the notification and information required pursuant to Article 39(4) EPPO.

## **V. Referral of cases to the national authorities (Article 34 EPPO and Article 57 IRP)**

Where the EDP, the supervising EP or a member of the PC proposes to refer the case to the national authorities, he/she shall upload the proposed draft decision in the CMS and create the task *Refer case to national authority*. The system automatically notifies the other members of the case team.

Upon notification of the proposal, the Legal Support Staff shall review if the requirements set in Article 34(1)-(3) EPPO and the relevant College guidelines are met.

If no comments have been registered in the CMS by the members of the Permanent Chamber within five days (i.e. the deadline provided for in Article 57(3) of the IRP), the Administrative Support Staff will ensure that the decision is signed by the Chair and uploaded in the CMS. If comments have been registered, the Administrative Support Staff will propose the inclusion of the case on the agenda of a following meeting. The PC shall communicate any decision to refer a case to national authorities on the basis of Article 34(3) EPPO (damage below 100.000 EUR) to the ECP.

The CMS shall automatically notify the ECP after the decision has been taken by the PC. If the ECP does not intervene within 3 days, the decision shall be deemed final, shall be translated, registered in CMS and sent to the competent national authority.

If comments have been registered, the Support Staff shall liaise with the Chair for including the case on the agenda of a following PC meeting.

Where the competent national authorities do not accept to take over the case in accordance with Article 34(2) or (3) EPPO within a timeframe of maximum 30 days, the PC shall remain competent to prosecute or dismiss the case.



## **VI. Monitoring court proceedings (Article 36 EPPO and Article 60 IRP)**

When the EDP registers in the CMS a report containing any significant developments on the court proceedings or updates it, in line with Article 60(2) of the IRP, the system will notify the members of the case team. The Support Staff shall liaise with the Chair for including the case on the agenda of a further meeting. Subsequently the Legal Support Staff, when so requested by the chair of the PC, shall analyse whether there are grounds for issuing instructions to the EDP or the EP, in accordance with Article 10(5) of the EPPO Regulation.

Where, following a judgment of the court, the EDP, in line with Article 36(7) EPPO, registers in the CMS a draft decision proposing to lodge an appeal, the Support Staff shall liaise with the Chair for including it on the agenda of a further meeting. On request of the Chair, the Legal Support Staff shall prepare an opinion on whether there are grounds to file an appeal, or, if an appeal has been filed by the EDP, whether to maintain or withdraw the appeal.

## **VII. Reopening an investigation (Article 39(2) EPPO and Article 59 IRP)**

After the dismissal of a case, or part of it, if the EDP registers in the CMS a report assessing new facts that were not known at the time of the dismissal decision, and which may warrant further investigations, the system automatically assigns the EDP's report and the corresponding draft decision to the same PC that decided upon the dismissal.

The Chair will liaise with the Support Staff in order to include the case on the agenda of the next PC meeting. The Legal Support Staff shall review the proposal and draft the PC decision on the reopening of the investigation, in line with the outcome of the PC meeting.