



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 30 JUNE 2021

ACCESSION OF THE EPPO TO THE INTERINSTITUTIONAL AGREEMENT OF 25 MAY 1999 BETWEEN THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION CONCERNING INVESTIGATIONS BY THE EUROPEAN ANTI-FRAUD OFFICE (OLAF)

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 110 thereof,

Having regard to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (hereinafter referred to as "OLAF"),

Having regard to the Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office,

Having regard to the Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by OLAF (hereinafter referred to as "the OLAF Regulation"),

Whereas:

- (1) In accordance with Article 110(1) EPPO Regulation, in order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013, by 6 months after the date to be set by the Commission pursuant to Article 120(2), the EPPO shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF), and shall adopt the appropriate provisions applicable to the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and European Delegated Prosecutors using the template set out in the Annex to that Agreement.



- (2) Article 110(3) of the EPPO Regulation provides that OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the EPPO.
- (3) Article 1(4) of Regulation 883/2013 provides that, within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations.
- (4) The European Parliament, the Council of the European Union and the European Commission stressed that the responsibilities of OLAF, as established by the Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999, extend beyond the protection of the financial interests to include all activities related to the need to safeguard the Union's interests against irregular conduct liable to give rise to administrative or criminal proceedings.
- (5) Therefore, without prejudice to its independence and its administrative autonomy, the EPPO entrusts to OLAF the task of conducting internal investigations with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the EPPO or serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings
- (6) Such investigations shall be conducted in accordance with the Treaties, and in particular with Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on the European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), while respecting the Staff Regulations and the CEOS, the EPPO Regulation.
- (7) The assignment of investigating tasks to OLAF shall not affect the independence of the EPPO and the proper conduct of its investigations and shall in no way reduce the legal protection of the persons concerned.
- (8) The EPPO has adopted Guidelines on whistleblowing by College Decision 077/2021 of 30 June and has updated its Anti-Fraud Strategy by College Decision 020/2021 of 7 April, in order to continue improving the prevention, detection and the conditions for investigations of fraud cases.
- (9) The EPPO carries out criminal investigations and prosecutions and the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the



EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and European Delegated Prosecutors are under a strict obligation of confidentiality and professional secrecy under Article 108 of the EPPO Regulation with respect to any information which has come to their knowledge in the course of the performance of their tasks.

- (10) Providing OLAF access to documents, evidence, reports, notes or information, in whatever form, which are held, created or related to an EPPO case, whether in progress or already concluded, and the transmission of such documents, evidence, reports, notes and information to OLAF, should be prohibited in the context of internal investigations conducted by OLAF within EPPO.
- (11) This decision does not affect the operational cooperation between the EPPO and OLAF taking place in accordance with Article 101 of the EPPO Regulation and the Working Arrangement between OLAF and the EPPO.
- (12) Having regard to the Staff Regulations of Officials of the European Union (hereinafter referred to as the 'Staff Regulations') and the Conditions of Employment of Other Servants of the European Union (hereinafter referred to as the 'CEOS'), as laid down by Council Regulation (EEC, EURATOM, ECSC) 259/1968 and last amended by Regulation (EU, EURATOM) 1023/2013 of the European Parliament and the Council of 22 October 2013, and in particular Articles 11 to 26a, Title VI and Annex IX of the Staff Regulations applicable by analogy to temporary agents and contract agents by virtue of Articles 11, 50a, 81 and 119 of the CEOS,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with OLAF

1. The Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it as referred to in Article 98 of the EPPO Regulation, and European Delegated Prosecutors shall be required to cooperate fully with the staff of OLAF and to lend any assistance required to its administrative investigation. With that aim in view, and without any prejudice to the proper conduct and confidentiality of the EPPO investigations, they shall supply the staff of OLAF with all useful information and explanations.
2. Without prejudice to the relevant provisions of the Treaties, in particular the Protocol on privileges and immunities, and of the texts implementing them, the European Chief Prosecutor and the European Prosecutors shall cooperate fully with OLAF as foreseen in paragraph (1) above.

Article 2

Duty to supply information

1. Any member of the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it as referred to in Article 98 of the EPPO Regulation, and European Delegated Prosecutors who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Union or of serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, shall inform, without delay, in writing and without their responsibility being called into question as a result, his/her immediate superior or the Administrative Director. In the case of presumed personal involvement of the immediate superior and/or the Administrative Director in the illegal activities mentioned above, the European Chief Prosecutor shall be informed.
2. The staff of the EPPO must not suffer inequitable or discriminatory treatment because of having communicated the information referred to in paragraph (1) of this article.
3. A European Prosecutor and/or the Administrative Director, who acquire knowledge of facts as referred to in paragraph (1) of this article, shall inform the European Chief Prosecutor; in the case of presumed involvement of the latter in the illegal activities mentioned in paragraph (1) of this article, a deputy European Chief Prosecutor shall be informed.
4. The European Chief Prosecutor, a deputy European Chief Prosecutor or the Administrative Director shall transmit to OLAF, without delay, any information and/or evidence of which they are aware—and from which the existence of irregularities as referred to in paragraph (1) of this article may be presumed.
5. Where a European Prosecutor, the Administrative Director and the staff of the EPPO, a seconded national expert and other persons put at the disposal of the EPPO but not employed by it, and a European Delegated Prosecutor has concrete evidence supporting the suspicion of the existence of irregularities mentioned in paragraph (1) of this Article, and has justified reasons to consider that the procedure foreseen in the above paragraphs would prevent a proper reporting of such evidence to OLAF, he/she may report it directly to OLAF.

Article 3

Request from the EPPO to OLAF to conduct an investigation

1. Without prejudice to Article 12c(5) of the OLAF Regulation, the European Chief Prosecutor, a deputy European Chief Prosecutor, and/or the Administrative Director can request OLAF to conduct an internal investigation within the EPPO for the purpose of fighting fraud, corruption and any other illegal activity detrimental to the interests of the Union as well as with a view to bringing to light serious matters related to the discharge of professional duties such as to constitute a dereliction of the obligations of



- officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings.
2. The European Chief Prosecutor, the deputy European Chief Prosecutor and the Administrative Director shall inform each other and the College of the EPPO before referring any matter to OLAF, provided that this is not harmful to the OLAF investigation.
 - 3.

Article 4

Follow-up reports and recommendations of OLAF issued on completion of an internal investigation

OLAF shall send the reports and recommendations drawn up following an internal investigation to the European Chief Prosecutor, or to a deputy European Chief Prosecutor where the latter is subject to that internal investigation. They shall be communicated to the College of the EPPO. The Administrative Director shall prepare an action plan following the reports and recommendations of OLAF. In the case of an internal investigation involving the Administrative Director, the College of the EPPO shall ensure all necessary follow-up.

Article 5

Case-related documents

1. Articles 1 and 2 of this Decision are not applicable to documents, evidence, reports, notes or any other information, in whatever form, which are held or created in the course of case-related activities of the EPPO in the context of investigations and prosecutions, whether in progress or already concluded.
2. The transmission of such documents, evidence, reports, notes or information to OLAF shall be prohibited in the context of internal investigations conducted by OLAF within the EPPO.

Article 6

Assistance of the security team of the EPPO

At the request of the Director-General of OLAF addressed to the Administrative Director, the security officers of the EPPO shall assist the staff of OLAF in the practical conduct of investigations.

Article 7

Information of the person concerned

1. Where the possible implication of the European Chief Prosecutor, a European Prosecutor, the Administrative Director, any staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and



of a European Delegated Prosecutor emerges, the person concerned shall be informed as soon as possible, provided that this is not harmful to the investigation.

2. In any event, conclusions referring by name to a person mentioned in paragraph (1) of this article may not be drawn, once the investigation has been completed, without the person concerned having been enabled to express his/her views on all the facts which concern him/her. The persons concerned shall have the necessary procedural guarantees (e.g. presumption of innocence, right to avoid self-incriminating, right to be assisted by a person of his/her choice, etc.) as provided by the OLAF Regulation
3. In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of the EPPO or of a national judicial authority, compliance with the obligation to invite a person mentioned in paragraph (1) of this article to give his/her views may be deferred by agreement with the European Chief Prosecutor.

Article 8

Information on the closing of the investigation with no further action taken

If, on completion of an internal investigation within the EPPO, no case can be made out against the person(s) concerned, the internal investigation shall be closed, with no further action taken, by decision of the Director-General of OLAF, who shall inform the interested party in writing.

Article 9

Entry into force

This decision shall enter into force on the date of its adoption.

Done at Luxembourg on 30 June 2021.

For the College,

Laura Codruța KÖVESI
European Chief Prosecutor

