



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 7 FEBRUARY 2022

AMENDING THE GUIDELINES ON CRITERIA FOR REFERRAL OF CASES TO THE COMPETENT NATIONAL AUTHORITIES

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

Having regard to the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), hereinafter referred to as the "EPPO Regulation", and in particular Articles 9, 10, 22, 25, 34 and 35 thereof,

Having regard to Article 6 of the Internal Rules of Procedure of the EPPO,

Having regard to Decision 029/2021 of the College of the European Public Prosecutor's Office of 21 April 2021 adopting operational guidelines on investigation, evocation policy and referral of cases,

Taking into account the proposal drawn up by the European Chief Prosecutor,

Whereas:

- (1) The College Working Group on legal and operational issues raised questions on the discretion that Permanent Chambers enjoy under Article 34(3), first subparagraph, of the EPPO Regulation and the guidelines on criteria for referral of cases to the competent national authorities laid down in Annex 4 of College Decision 029/2021.
- (2) In the exercise of their discretion for thus referring a case or not, Permanent Chambers should be able to take into account all the individual circumstances of the given case, including in particular its relative seriousness or relatively high damage compared to other cases in the concerned Member State. The Permanent Chambers should not be bound to refer all cases that do not qualify as an exception under points a) to k) of Section 1 of the Guidelines to the national authorities.
- (3) Corresponding to the degree of discretion available to Permanent Chambers in taking their decisions, the reasons on which they base a decision should be discernable from it. This is particularly important when a Permanent Chamber finds that an individual case should not follow the generally applicable guidelines.



- (4) The proposed amendment to College Decisions 029/2021 provide an opportunity to linguistically clarify a provision on negative conflicts of competence and referrals under Article 34 of the EPPO Regulation in this context.
- (5) The College examined the proposals by the College Working Group and by the European Chief Prosecutor at its meeting of 12 January 2022,

Has adopted the following decision:

Article 1

Amendments of the Guidelines on criteria for referral of cases to the competent national authorities

Decision 029/2021 of the College of the European Public Prosecutor's Office of 21 April 2021 is amended as follows:

- (1) In Annex 1, the fourth sentence in point k) of Section 4.1 is replaced by the following:
'The only kind of investigation that can be referred to a national authority in accordance with Article 34(1), in respect of which a negative conflict can be raised, is for offences regarding participation in a criminal organisation, when it emerges that the focus of the criminal activity is not to commit offences referred to in Article 22(1).'
- (2) In Annex 4, the words "shall refer" in the chapeau of Section 1 are replaced by the words "may refer".

Article 2

Entry into force

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

Done at Luxembourg on 7 February 2022.

On behalf of the College,

Laura Codruta KÖVESI
European Chief Prosecutor

