

DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 29 JUNE 2022

AMENDING AND SUPPLEMENTING THE INTERNAL RULES OF PROCEDURE OF THE EPPO AND THE OPERATIONAL GUIDELINES ON INVESTIGATION, EVOCATION POLICY AND REFERRAL OF CASES

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 21 thereof,

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

Whereas:

1. In September 2021, the College considered it necessary to revise and adjust the Internal Rules of Procedure (IRP) as adopted by College Decision 003/2020 and as amended by College Decision 085/2021 in order to take into account the experience of the first months of operations.
2. The European Chief Prosecutor entrusted the Working Group having previously dealt with the organisation of the work of the Permanent Chambers, with the support of the Operations Unit (OU) and the Legal Service (LS), to prepare a draft amending act.
3. The amendments to the internal rules of procedure require to update the Decision 029/2021 of the College of the EPPO of 21 April 2021 adopting Operational Guidelines on Investigation, Evocation Policy and Referral of Cases.
4. In accordance with Article 70 of the internal rules of procedure, a reasoned proposal for amendment was communicated to the College on 20 April 2022.
5. The College examined the proposal at its meetings of 18 May and 29 June 2022.

Has adopted the following decision:

Article 1

Amendments of the internal rules of procedure

The Decision 003/2020 of the College of the EPPO of 12 October 2020 on the internal rules of procedure of the European Public Prosecutor's Office, as modified by College Decision 085/2021, is amended as follows:

- I. In Article 18, paragraph 2 is amended as follows:
 - "2. The duration of these temporary arrangements shall be determined by the European Chief Prosecutor."
- II. In Article 19, paragraph 1 is amended as follows:
 - "1. The decision on the Permanent Chambers shall establish a system for the allocation of cases to the Permanent Chambers. The system shall be based on a random and automatic allocation of cases to Permanent Chambers, whose permanent members do not include the supervising European Prosecutor, according to the order of registration of each new case and shall ensure an even distribution of workload among the Permanent Chambers. The case shall be randomly allocated immediately after its registration to a Permanent Chamber. For the purpose of evocation, the case shall be randomly allocated to a Permanent Chamber that has a meeting scheduled between the third and the fifth day from the registration of the case."
- III. Article 20 is amended as follows:
 - "1. Once a case has been allocated to a Permanent Chamber, it shall remain competent to monitor and direct the investigations and prosecutions related to that case, until the matter has been finally disposed of. This is without prejudice to the application of the rules on reallocation of cases between Permanent Chambers in accordance with Article 51.
 2. The European Chief Prosecutor may, on his/her own initiative or upon request of a Permanent Chamber, after consultation of the Permanent Chamber to which a case had been assigned, reallocate the case to a different Permanent Chamber when there are links between individual cases assigned to different Permanent Chambers, or when the subject matter is repetitive.
 3. The European Chief Prosecutor may also reallocate a case to a Permanent Chamber identified in accordance with Article 19(4), either on his/her own initiative or upon request of a Permanent Chamber, after the consultation of the Permanent Chamber to which it had been initially allocated, if such case should have been initially allocated to the specialised Permanent Chamber in application of the Decision on the Permanent Chambers, or if the need for reallocation emerges in the course of the criminal proceedings.
 4. Exceptionally, where imperative grounds of urgency so require, the European Chief Prosecutor may temporarily reallocate a case to another Permanent Chamber, for a period not exceeding 10 days. The European Chief Prosecutor may, in a reasoned decision, extend the temporary reallocation for the same period of time. Once this period has expired, the

temporary reallocation shall end and the case shall return under the competence of the Permanent Chamber to which it was previously allocated.

5. The European Chief Prosecutor shall inform the College of any measure taken in accordance with paragraph 2, stating the reasons for the reallocation."

IV. In Article 22, letters a) and b) in paragraph 2 are amended as follows:

"2. The report provided for in paragraph 1 shall contain at least information on the following:

- a) workload of the Permanent Chamber, including the number of incoming cases, the number and type of decisions taken;
- b) grounds for dismissal of cases in accordance with Article 39(1)(a-g) of the Regulation;"

V. Article 23 is amended as follows:

"1. Meetings of the Permanent Chambers shall be held in accordance with an agenda, indicating specifically the cases to be treated, the decision to be taken and the issues to be discussed in relation to each case.

2. The Chair of the Permanent Chamber shall set the agenda. Additional items shall be added to the agenda upon request of a permanent member. The Chair shall circulate the agenda to the members of the Permanent Chamber and to the supervising European Prosecutor in charge of each case included on the agenda.

3. The Chair of the Permanent Chamber may invite the persons indicated in Article 10(9), second subparagraph, of the Regulation, or any relevant member of the staff of the EPPO, to submit comments in writing within a specified deadline.

4. A Permanent Chamber may deliberate on an item in the agenda only if the permanent members and the relevant supervising European Prosecutor attend the meeting, either in person or with the modalities set out in paragraph 6.

5. By derogation from paragraph 4, if a permanent member cannot attend the meeting, in person or with the modalities set out in paragraph 6, a decision on an item in the agenda may be taken by those present.

6. The meetings of the Permanent Chamber shall take place at the premises of the EPPO. Whenever the circumstances so require, the Chair may convene meetings of the Permanent Chamber by videoconference. If the physical presence of one or more members of the Permanent Chamber, or of any other person invited to attend a meeting is not possible, they may attend remotely.

7. The Chair may designate a member of the Permanent Chamber or the supervising European Prosecutor to report on an item included on the agenda of the meeting.

8. Minutes of each meeting of the Permanent Chambers shall be drawn up under the responsibility of the Chair of the Permanent Chamber and shall be registered in the Case Management System. "

VI. In Article 30, paragraph 2 is amended as follows:

"2. The substituted European Prosecutor may propose in writing to the European Chief Prosecutor a European Prosecutor whose consent to act as a substitute has already been obtained. The European Chief Prosecutor shall either assign the proposed European Prosecutor or another.

Where the European Prosecutor designated in accordance with paragraph 2 of this Article is a permanent member of the concerned monitoring Permanent Chamber, he/she shall be deemed as attending the meeting only in his/her capacity as supervising European Prosecutor. In such cases, the monitoring Permanent Chamber may take decisions in accordance with Article 23(5)."

VII. In Article 38, paragraph 7 is amended as follows:

"7. In deviation from paragraph 1, information reported by private parties that manifestly does not refer to a criminal conduct in respect of which the EPPO may exercise its competence shall be referred by a European Delegated Prosecutor or a European Prosecutor to the competent national authorities without undue delay, in line with Article 24(8) of the Regulation or returned to the reporting party and / or deleted. An appropriate log shall be kept. In case of referral, the private parties shall be informed thereof by a European Delegated Prosecutor or a European Prosecutor, in accordance with applicable national law."

VIII. In Article 39, paragraph 2 is amended as follows:

"2. Following the notification from the Case Management System in accordance with Article 38(5), the European Prosecutor shall assign the verification to a European Delegated Prosecutor. The European Prosecutor may undertake the verification personally in the situations referred to in Article 28(4) of the Regulation. The process for assigning the verification shall be determined by the European Prosecutor, which may include a rule based allocation, including for cases where the information was obtained ex officio by a European Delegated Prosecutor."

IX. Article 40 is amended as follows:

1. The verification for the purpose of initiating an investigation shall assess whether:
 - a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
 - b) there are reasonable grounds under the applicable national law to believe that an offence is being or has been committed;
 - c) there are obvious legal grounds that bar prosecution;
 - d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.

2. The verification for the purpose of evocation shall additionally assess:
 - a) the maturity of the investigation;
 - b) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
 - c) the cross-border aspects of the investigation;
 - d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.
3. The verification shall be carried out using all sources of information available to the EPPO as well as any sources available to the European Prosecutor or to the European Delegated Prosecutor concerned, in accordance with applicable national law, including those otherwise available to him/her if acting in a national capacity. The European Prosecutor or the European Delegated Prosecutor respectively may make use of the staff of the EPPO for the purpose of the verification. Where appropriate, the EPPO may consult and exchange information with Union institutions, bodies, offices or agencies, as well as national authorities, subject to the protection of the integrity of a possible future criminal investigation.

Where appropriate and before being finalised, verifications may be merged following the procedure foreseen by Article 51 and 51bis.
4. The European Delegated Prosecutor or, as the case may be, the European Prosecutor, shall finalise the verification related to the evocation of an investigation at least 2 days before the expiration of the deadline prescribed by Article 27(1) of the Regulation. The verification related to initiating an investigation shall be finalised no later than 60 days following the assignment.
5. In cases where the task of verification is assigned to an European Delegated Prosecutor, if the European Delegated Prosecutor does not finalise the verification on whether or not to initiate an investigation within the prescribed time limit, or he/she informs their inability to do so within the foreseen time limit, the European Prosecutor shall be informed and where deemed appropriate extend the time available or issue an appropriate instruction to the European Delegated Prosecutor.
6. Where it concerns a decision on evocation, the European Delegated Prosecutor or, as the case may be, the Chair of the Permanent Chamber or the European Prosecutor, may ask the European Chief Prosecutor to extend the time limit needed to adopt a decision on evocation by up to 5 days. Where the European Prosecutor or the European Delegated Prosecutor concerned does not issue a decision within the time limit, it shall be treated as a consideration not to evoke a case, and Article 42 shall be applied accordingly.
7. When the verification is carried out by a European Prosecutor, upon a preliminary assessment of the information for the purpose of Articles 26, 27 and 28(4) of the Regulation, the European Prosecutor shall, as a rule, assign the case within 24 hours to a European Delegated Prosecutor to proceed in accordance with Articles 41 or 42 of these rules.

In the situations where the European Prosecutor believes that the conditions provided for in Article 28(4) of the Regulation are met, he/she shall proceed without undue delay pursuant to

Article 52 paragraphs (1) and (2) of these rules. In such situations, if the European Prosecutor obtained the approval of the competent Permanent Chamber to conduct himself/herself the investigation, he/she shall take a reasoned decision to initiate the investigation or evoke the case personally and open a case file pursuant to Article 41(1) of these rules. If the approval is not granted, the supervising European Prosecutor shall assign without undue delay the case to a European Delegated Prosecutor. “

X. After Article 42, a new Article 42bis, titled “Information received in application of Article 24(3) of the Regulation”, is created as follows:

“1. Where, as a result of the verification of information received pursuant to Article 24(3) of the Regulation, which shall be finalised within 10 days, it appears that the EPPO could exercise its competence, the European Delegated Prosecutor shall inform the competent national authority of the intention to evoke the case and, pursuant to Article 27(3), shall request the competent national authority to report, within 10 days, the information to the EPPO in accordance with Article 24(2).

2. If the competent national authority does not report to the EPPO in accordance with Article 24(2) within 10 days from the reception of the information, the European Delegated Prosecutor shall raise a conflict via the procedure established in Article 25(6). In Member States where the national legislation does not allow the EPPO to raise a conflict via the procedure established in Article 25(6) without a previous decision on its competence, the European Delegated Prosecutor shall exercise the right of evocation.

3. If, as a result of the verification of information received in application of Article 24(3), the European Delegated Prosecutor agrees that the EPPO should not exercise its competence, he/she shall issue a reasoned report on the matter.

4. The Permanent Chamber shall review the report within 10 days. If the Permanent Chamber believes that the EPPO should exercise its competence, it shall instruct the European Delegated Prosecutor to inform the competent national authority about the EPPO's intention to exercise its competence and, pursuant to Article 27(3), to request the national authorities to report the information to the EPPO in accordance with Article 24(2) of the Regulation. In such case, paragraph 2 shall apply.

5. Where the Permanent Chamber does not issue any instructions within 10 days after having received the report foreseen by paragraph 3 of this Article, the report of the European Delegated Prosecutor shall be deemed as accepted and the Registration case shall be closed.”

XI. In Article 43, the paragraph 2 is amended as follows:

“2. When allowed under the national law, the European Prosecutor may assign one or more European Delegated Prosecutors from the same Member State to conduct the investigation alongside the handling European Delegated Prosecutor. The supervising European Prosecutor may, in accordance with the applicable national law, remove from the case European Delegated Prosecutor(s) assigned to conduct the investigation alongside the

handling European Delegated Prosecutor. The European Prosecutor concerned may conduct the investigation himself/herself if the conditions provided for in Article 28(4) of the Regulation are met."

XII. In Article 45, the paragraph 3 is amended as follows:

"3. Without prejudice to the reporting obligations under Article 44, the Permanent Chamber or the supervising European Prosecutor may at any time request a European Delegated Prosecutor to provide information on an ongoing investigation or prosecution."

XIII. In Article 46, the paragraphs 1 and 3 are amended as follows:

"1. Instructions to the handling European Delegated Prosecutors in accordance with Article 10(5) and 12(3) of the Regulation may concern taking or refraining from taking specific measures."

"3. Where instructions in accordance with Article 10(5) of the Regulation are envisaged, the Chair of the Permanent Chamber shall circulate a draft of the instructions or delegate a member of the Permanent Chamber or the supervising European Prosecutor to do so."

XIV. Article 49 is amended as follows:

"Without prejudice to Article 39(2), the supervising European Prosecutor may propose to the monitoring Permanent Chamber to reallocate a case to another European Delegated Prosecutor in the same Member State. The reasoned proposal shall be entered in the Case Management System, which shall notify the monitoring Permanent Chamber and the handling European Delegated Prosecutor. The handling European Delegated Prosecutor may submit written observations within 5 days after receiving the notification, unless, due to the urgency of the matter, this period has been reduced by the European Prosecutor."

XV. The title of Article 51 and its paragraph 2 are amended as follows:

Article 51: Merging and splitting cases concerning the jurisdiction of more than one Member State

2. When the cases to be merged are monitored by different Permanent Chambers, they shall consult each other in order to decide upon the merging of those cases. Where all the Permanent Chambers concerned have decided to merge the cases, the monitoring Permanent Chamber of the first registered case in the Case Management System shall also monitor the merged case, unless the concerned Permanent Chambers jointly decide to deviate from this principle. Where at least one Permanent Chamber refuses to merge the cases or disagrees on the determination of the monitoring Permanent Chamber, the European Chief Prosecutor shall decide.

XVI. After Article 51, a new Article 51bis shall be created as follows:

“Article 51 bis: Merging and splitting cases concerning the jurisdiction of one Member State

1. Where the jurisdiction of one Member State is concerned, the handling European Delegated Prosecutor may decide to merge or split cases in accordance with applicable national law. Article 20 (2) does not apply.
2. Where the handling European Delegated Prosecutor decides to merge or split cases in application of paragraph 1, the concerned Permanent Chamber(s) shall be notified of that decision without undue delay.
3. Where several Permanent Chambers are concerned by the decision to merge cases, the handling European Delegated Prosecutor shall indicate in his/her decision which Permanent Chamber should monitor the case resulting from the merge in accordance with the applicable national law. Where the latter does not allow to identify the monitoring Permanent Chamber or where it leaves discretion as to its designation, the monitoring Permanent Chamber shall be the one monitoring the case into which the other case or cases are merged.
4. Where the cases to be merged are handled by more than one European Delegated Prosecutor, the merge and the designation of the European Delegated Prosecutor handling the case resulting from it shall be decided in accordance with applicable national law. Where the latter does not allow to identify the handling European Delegated Prosecutor or where it leaves discretion as to its designation, the supervising European Prosecutor shall decide.
5. When the handling European Delegated Prosecutor decides to split a case, the concerned Permanent Chamber shall remain competent for all the cases which result from the split. If there is a reason to deviate from this rule, the Permanent Chamber shall inform the European Chief Prosecutor who shall decide. The new case(s) resulting from the split shall receive a new case number, in accordance with Article 41.”

XVII. The title of Article 53 is amended as follows:

“Article 53: Procedure for the assignment of cross-border investigation measures to an assisting European Delegated Prosecutor”

XVIII. In Article 56, the paragraph 1 is amended as follows:

- “1. When the handling European Delegated Prosecutor considers the investigation to be completed, he/she shall provide a report containing, inter alia:
 - a) a summary of the facts that were the object of the investigation, as resulting from the existing evidence;
 - b) the legal qualification of the facts and their application to the specific case;
 - c) a reasoned proposal to prosecute, to apply a simplified prosecution procedure, to dismiss the case or to refer it to the competent national authorities;
 - d) if applicable, a proposal to join several cases and the court where the case should be brought to judgement;

e) any deadlines applicable under national law.

Where applicable, a draft of the indictment or proposal or decision to use a simplified procedure should be attached to the report.

This provision shall also apply to the European Prosecutor who is conducting the investigation personally in accordance with Article 28(4) of the Regulation."

XIX. Article 57 is amended as follows:

"1. At any point during the investigation, the handling European Delegated Prosecutor, the supervising European Prosecutor or any member of the monitoring Permanent Chamber may propose for a case to be referred to the national authorities according to Articles 34(1)-(3) of the Regulation.

2. The draft decision shall be registered in the Case Management System, which shall notify the permanent members of the Permanent Chamber, the supervising European Prosecutor and the handling European Delegated Prosecutor.

3. If the competent national authority decides to take over the case, or if the referral is based on Article 34(1) of the Regulation, the European Delegated Prosecutor shall transfer the case file without undue delay.

4. In cases where the referral is based on Article 34(2) and (3) of the Regulation, the competent national authority does not take over the case or does not respond in 30 days after receiving the referral decision, the European Delegated Prosecutor shall continue the investigation, or proceed with the application of Article 56."

XX. In Article 61, the paragraph 5 is amended as follows:

"5. The handling European Delegated Prosecutor shall grant access to information stored electronically in the Case Management System or to the case file to the assisting European Delegated Prosecutor, or other European Delegated Prosecutors having submitted a reasoned request, or staff of the EPPO only to the extent required for the undertaking of the tasks assigned to them.

Unless otherwise determined by the handling European Delegated Prosecutor, access for the assisting EDP shall encompass the entirety of the case in the Case Management System, in which they have been assigned a task. Such access shall also be extended to the European Prosecutor supervising and assigning the respective European Delegated Prosecutor having been or to be assigned the task, to allow for appropriate assignment and supervision.

Where a handling European Delegated Prosecutor, supervising European Prosecutor, or Member of the monitoring Permanent Chamber creates a link with another case in the CMS, access to all information stored electronically shall be granted to the handling European Delegated Prosecutor, supervising European Prosecutor and members of the monitoring Permanent Chamber of both cases, unless the handling European Delegated Prosecutor or supervising European Prosecutor or Member of the monitoring Permanent Chamber of the case to which the link was created objects. In such a case, they shall provide their reasoning to the concerned Permanent Chamber."

Article 2

Amendment of the Decision 029/2021 of the College of the EPPO of 21 April 2021 adopting Operational Guidelines on Investigation, Evocation Policy and Referral of Cases

Article 4.2 of the Guidelines on Priorities, Investigation and Prosecution Policy of the EPPO in Annex 1 is amended as follows:

"4.2. Guidelines of the EPPO in case of disagreement that may cause a conflict of competence pursuant to Article 25(6) of the EPPO Regulation

- a) When the EPPO decides to raise a conflict via the procedure established in Article 25(6) of the Regulation, the European Delegated Prosecutor shall file a reasoned application with the competent national authority requesting that the EPPO is declared competent for the investigation of the case, if appropriate in accordance with the national legislation.
- b) When the EPPO receives information that a national Prosecutor raised a conflict of competence pursuant to Article 25(6) of the EPPO Regulation, the handling European Delegated Prosecutor, after having consulted with the supervising European Prosecutor and where appropriate according to the national legislation, shall file a memorandum with the competent national authority. The handling European Delegated Prosecutor will explain why the EPPO exercised its competence and will provide the competent national authority with the relevant documents.
- c) When necessary in order to take an informed decision for the purpose of the application of Article 25(6), the European Delegated Prosecutor shall request further relevant information available to the institutions, bodies, offices and agencies of the Union and to the authorities of the Member States, in accordance with Article 24(9)."

Article 3

Entry into force

This decision shall enter into force two months after the date of its adoption by the College of the European Public Prosecutor's Office (EPPO).

Done at Luxembourg on 29 June 2022.

On behalf of the College,

Laura Codruța KÖVESI
European Chief Prosecutor

