

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

ON PLANNING OF MEETINGS AND BUSINESS CONTINUITY 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 2017¹, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO'), hereinafter "the constituent act", and in particular Articles 9-13, 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 amended and supplemented by Decision 085/2021 of 11 August 2021 and Decision 026/2022 of 29 June 2022 of the College of the EPPO, and in particular Articles 7(5), 15-24, 30, 32, 40-52, 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,

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

Considering the need to provide guidance on the planning of meetings and business continuity of the Permanent Chambers,

Has adopted the following decision:

Article 1

Adoption of EPPO's guidance on planning of meetings and business continuity of the Permanent Chambers

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

¹ 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 29 June 2022.

On behalf of the College,

Laura Codruța KÖVESI
European Chief Prosecutor



ANNEX: PLANNING OF MEETINGS AND BUSINESS CONTINUITY OF THE PERMANENT CHAMBERS

I. INTRODUCTION

The present document aims at revising the current system of planning of PC meetings in light of the first months of operational practice of the EPPO. The system should allow the EPPO to smoothly plan meetings of the PCs and to ensure business continuity throughout each year.

The current document is based on the comprehensive study setting out all the available options, together with their advantages and disadvantages, which was presented to the WG on Permanent Chambers on 30 April 2021 and on the practical experience since the start of operations of the EPPO.

II. PLANNING OF PERMANENT CHAMBERS' MEETINGS

1. Permanent Chambers' working calendar

Each Permanent Chamber will be able to hold meetings (in principle, at least two meetings per calendar month with the possibility to organize fewer according to the circumstances) **on a consistent basis throughout the year** with the introduction of **"light schedule" weeks** as explained below. The Chair of the PC may call additional meetings whenever necessary, in accordance with the applicable rules and procedures.

Note: Leave and absences

It is important to note that at least two permanent members of each PC must be available at all times to take part in the PC meetings. Otherwise, decisions on the items in the agenda cannot be adopted.

Notwithstanding this, in those cases where two (or the three) permanent members and/or the relevant supervising European Prosecutor (EP) are absent for any reason (including leave), an on-call system will be in place in order to ensure business continuity for matters requiring urgent action (see section III on business continuity for further details).

2. Organising Permanent Chambers' meetings

The organisation of ordinary meetings of the PCs should take into consideration the following principles:

1) Allocation of meeting days:

The allocation of meeting days and general working calendar will be carried out on a quarterly basis (three-month planning).

Each Permanent Chamber will be assigned specific days within the three-month calendar. The allocation of specific meeting days will take into account the fact that there are 15 Permanent Chambers, but only 10 different compositions: PC4, PC5 and PC6, as well as PC7, PC8 and PC9, are respectively composed of the same members, while PC10 and PC11 have 2 common permanent members. Permanent Chambers with the same or similar compositions should in principle not be assigned the same days.

Where possible, the days of ordinary meetings will alternate every month. This will prevent the same PC from being assigned the same day of the week (e.g. Monday or Friday) during three consecutive months.

Whenever the meeting time overlaps due to concurring meetings, the PCs should coordinate in order to ensure that the supervising EPs involved do not have conflicting schedules, by allocating specific time slots for the deliberation of a specific case. The PC support staff will assist the Chair in this process; the consistent use of a calendar application / software by EPs and PCs to facilitate the organization of PC meetings may be envisaged.

In order to facilitate the planning of the meetings, the calendars of the EPs should be visible to the other EPs and the relevant support staff.

The preparation of the Calendar of PC meetings over the summer period (June to August) will take into account the planned annual leave of the EPs. For this reason, the EPs are invited to submit to the Head of Operations their indicative periods for the summer leave until the end of March.

Some practical considerations for the organisation of PCs' ordinary meetings should be taken into account, as follows:

DAILY BASIS SCHEDULING

- **In principle**, a maximum of 2 PC meetings should be scheduled daily. As a direct consequence of avoiding overlaps of more than 2 daily PC meetings, some PCs will hold only one meeting per month during those months with several bank holidays (e.g. April, May, December) or high leave demand (e.g. summer).
- **Exceptionally**, 3 PC meetings could be scheduled on the same day in certain cases where a higher workload of urgent cases is expected (e.g. the day right after bank holidays).

MONTHLY BASIS SCHEDULING

- **In principle**, each PC should hold 2 ordinary meetings per month.
- **Exceptionally**, owing to the particularities mentioned above, certain PCs will hold only one ordinary meeting per month. In this regard, a **rotation system** should be put in place in order to ensure that the PCs with a single monthly meeting alternate each month.

OTHER CONSIDERATIONS

- In principle, at least 2 PC meetings with different compositions should be scheduled before and after weekends, bank holidays etc., in order to ensure the proper allocation of the evocation cases.
- In principle, evocation cases that would be allocated on bank holidays will be allocated to PCs with ordinary meetings scheduled on the next following working day (a rotation system will be also envisaged in this respect). This means that there will be no on-call PCs designated on bank holidays.

2) Weeks/Days without PC meetings:

To allow the supervising EPs to work on their cases in an uninterrupted manner and to fulfil their missions abroad, a week with no PC or College meetings will be scheduled each month ("light schedule week"). This week should not overlap with bank holidays. To ensure business continuity during this period, a specific on-call system (described in section III.2) will be in place.

Some days within each month will be left without scheduled PC meetings in order to hold College meetings or specific events.

III. BUSINESS CONTINUITY

On-call systems (on-call PCs and EPs) will be in place in order to ensure business continuity for matters requiring urgent action. This system will be **operational during the entire year** in order to cover possible leaves and absences of EPs and to cover the handling of urgent cases during “light schedule” weeks. However, special arrangements may be also necessary during the main holiday periods (summer and Christmas holidays).

A European Prosecutor has multiple roles within a Permanent Chamber, namely as Chair, as permanent member or as supervising European Prosecutor. As such, three types of substitution mechanisms should be in place to ensure continuity of the operations of Permanent Chambers: 1) a replacement mechanism for the PC Chair; 2) a substitution mechanism for the PC permanent members; and 3) a substitution mechanism for the supervising European Prosecutors.

1. Chairs of the Permanent Chambers

When a Chair of a Permanent Chamber is temporarily unable to discharge his/her duties, he/she can then be replaced by one of the other two permanent members of the same Permanent Chamber. It follows from Art. 18 of the Internal Rules of Procedure (IRP) that the European Chief Prosecutor (ECP), after consulting with the Deputies, will determine appropriate arrangements for the replacement of the Chairs.

Selection of Chair replacement

The substitutes of Chairs will be determined based on a pre-established replacement list valid for a three-month period.

Each Chair may propose to the ECP a candidate for their replacement form amongst the other two available members of each PC. After having consulted with the Deputies, the ECP will issue a decision establishing the replacement list. After the expiry of the three-month period, the list will be renewed.

The replacement mechanism will automatically be triggered in case of absence of a PC Chair.

Note: It might be considered amending Art. 18(2) IRP in order to ensure a longer validity period of the replacement list.

2. Permanent members of the Permanent Chambers

An on-call system for Permanent Chambers should be established for addressing urgent matters whenever one or more PCs are not able to function due to the absence of their permanent members or during “light schedule” weeks. The Permanent Chambers can still function and take decisions with only two members instead of three, provided that

consensus is reached (Art. 23(5) IRP). Thus, when a member is absent, the presence of the remaining other two members should be ensured.

Notwithstanding, if two or more permanent members of a PC are absent, business continuity will be ensured by recourse to the on-call system explained below. It should also be recalled that in accordance with Article 23(7) IRP meetings may take place via videoconference or members may attend a meeting remotely.

Whenever it is foreseen that a PC will not be able to function for a time, the ECP should suspend the allocation of new cases to that PC for the relevant period in accordance with Art 19(4) of the IRP. The chairperson of the PC should inform the ECP thereof without delay. This would ensure that no tasks to review a decision on non-evocation are allocated to that PC.

Whenever an urgent task is created in a case already allocated to a PC that is unable to function, the ECP should reallocate the case to one of the on-call PCs, in accordance with Article 20(4) of the IRP.

Note: This solution assumes that the ECP or one of the Deputy ECPs would also establish an on-call system in order to ensure business continuity, including for issuing reallocation decisions when needed.

Designation of on-call Permanent Chambers on a weekly basis

On-call PCs will be designated **on the basis of a pre-established rota** and will function throughout the calendar year. The rota will be set up (together with the planning and working calendar for PC meetings) for a period of three months.

The following practical arrangements should be considered:

- **Number of PCs to be on call at the same time.** A pair of **PCs of different composition** should be on call simultaneously. If anything urgent appears in a case supervised by one of the on-call PC's permanent members, and the PC to which the case had been originally allocated is not functioning, a second PC needs to be on call. This situation may also arise outside periods with high leave demand².

Considering that two PCs will be on call at the same time, and taking into account that there are 10 different PC compositions (PCs with 2 or 3 common members are considered as having the same composition) for the purposes of the on-call system³, all the PCs are distributed in five on-call groups. Each group includes PCs with two

² For instance, PC1 is not functioning and PC12 is on duty but something urgent appears in a case supervised by the Portuguese EP and monitored by PC1. See the duty calendar in the Excel Table attached to this document.

³ Although the total number of PCs is 15, there are only 11 different PC compositions – 10 compositions if PC10 and PC11 are considered a single one (because they have two permanent members in common) for the purpose of designing the duty system.

different compositions⁴. The PCs included in each group on call may rotate periodically while complying with the constraints above.

Designing a system that creates perfect equality between the on-call responsibilities of the EPs was not possible due to the asymmetrical composition of the PCs⁵.

- **Length of the on-call period for PCs and EPs.** The PCs will be on call for a period of **one week** every rotation (from Monday to Friday). This will allow the EPs to disperse the on-call periods (having a higher number of on-call periods shorter in duration). This is particularly relevant for those EPs who will have to be on call more often (as members of several PC compositions)⁶.

Designation of on-call Permanent Chambers on "light schedule" weeks

On-call PCs will be also designated during "light schedule" weeks on the basis of a pre-established rota. A pair of PCs of different composition should be on call simultaneously.

The main task of these on-call PCs would be to treat evocation cases directly allocated to them and which would require to be discussed during their on-call period. In addition, they could serve as normal on-call PCs if the PC to which the case had been originally allocated is not functioning.

The PCs will be on call for the entire period of the "light schedule" week (from Monday to Friday).

Designation of on-call Permanent Chambers on periods of high annual leave demand

During periods with high annual leave demand (winter/Easter/summer holidays), the College could decide to establish a dedicated on-call system in view of treating urgent cases and providing flexibility for EPs/staff to take holidays while ensuring business continuity at the same time.

Scope of competencies of on-call PCs

The on-call PCs to which new cases have been allocated will continue to be responsible for them after the end of the on-call period.

Cases reallocated to the on-call PC for urgent matters will be reallocated back once the urgent task has been completed and after the return of the original monitoring PC.

⁴ There is no overlap between the members of the different compositions.

⁵ It must be stated that the only option to ensure that each EP is on duty an equal amount of time is to create new "duty PCs" instead of designating the existing ones to be on duty, but such action would require the amendment of the EPPO's legal framework.

⁶ Considering that two PCs will be on duty at the same time, the one-week duty period would mean that each PC composition will be on duty every 5 weeks (four weeks with no duty between duty periods). See the duty calendar in the Excel Table attached to this document.

Period covered by the on-call time

The weekends and the bank holidays shall not be covered by the on-call time. The cases that should be allocated during these periods will be allocated to the PCs that have ordinary meetings scheduled on the next working day⁷.

Leave of the members of the on-call PC

It is recommended that EPs who are permanent members of the designated on-call PC should whenever possible avoid taking leave during the on-call periods, as this creates a significant risk if another member of the on-call PC is for whatever reason absent. However, also Permanent Chambers on call can still function and take decisions with only two members instead of three, provided that consensus is reached (Art. 23(5) IRP). Thus, when a member of a Permanent Chamber on call is absent, the presence of the remaining other two members should be ensured.

3. Supervising European Prosecutors

According to Art 23(4) IRP, a Permanent Chamber may deliberate on an item in the agenda only if the relevant supervising European Prosecutor attends the meeting, either in person or remotely.

The on-call system for the supervising European Prosecutors should be established in line with the one for Permanent Chambers described above, so that if there is a need for designating an ad hoc substitute EP he/she should be selected from the composition of the two Permanent Chambers that are on call during the specified period. This system ensures that no more than six European Prosecutors are on call simultaneously.

As per Art 30 IRP, the ECP will appoint a substitute by issuing individual decisions each time there is a need for substitution, while taking into account the extent of knowledge of the legal system and language required.

Process for the appointment of substitutes for supervising EPs:

1. The EP to be substituted identifies the most suitable candidate for substitution based on the criteria laid down in Art. 30(3) IRP (knowledge of the legal system / language) amongst the available EPs (both within and outside the on-call PCs). After obtaining the consent of the nominated candidate, the EP to be substituted submits the proposal to the ECP for approval.
2. Failing to identify a substitute through the abovementioned procedure or if the absence of the EP to be substituted is unforeseen, the ECP will appoint a suitable substitute from the

⁷ This is based on Article 3(4) of the Regulation No. 1182/71 of the Council of 3 June 1971 (Computation of Time Regulation): "Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day". The provision makes it clear that the deadlines of the task allocated to PCs will not expire during the weekends or bank holidays.

available EPs in the on-call list in order to allow the PC to take an urgent measure. The ECP will take into account to the criteria laid down in Art. 30(3) IRP.

Note: It might be necessary to examine whether it is always necessary to appoint a substitute for supervising EPs, and in this respect whether it would be necessary to amend the IRP. It should be noted that the appointment of an ad hoc EP for the adoption of an urgent measure may have no added value as the substituting EP has a limited knowledge of the case, language and the legal system of the relevant MS.

Additionally, it should be considered whether, according to the IRP, the ECP has to take an individual decision every time an EP needs to be substituted, or the use of a single “framework decision” setting out a list of substitutes may be envisaged, potentially on the basis of a rotation system.