

# DECISION 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, AMENDED BY  
DECISION 007/2022 OF 7 FEBRUARY 2022 AND BY DECISION  
026/2022 OF 29 JUNE 2022 OF THE COLLEGE OF THE EPPO

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 ('EPPO'), hereinafter referred to as "the EPPO Regulation", and in particular Articles 9(2), 25, 26, 27 and 34(3) thereof,

Having regard to the Internal Rules of Procedure of the EPPO, adopted by the College on 12 October 2020, and in particular Articles 42 and 57 thereof,

Considering the need to ensure a coherent prosecution policy and to combat effectively the crimes against the financial interest of the European Union,

Taking into account the proposal of the European Chief Prosecutor, based on the conclusions of the dedicated working group of European Prosecutors,

HAS DECIDED AS FOLLOWS:

## Article 1

Guidelines on priorities, investigation and prosecution policy of the EPPO are laid down in Annex 1, which forms an integral part of this Decision.

Guidelines on criteria for evocation of pending cases related to the offences falling into the EPPO's competence and committed after 20 November 2017 are laid down in Annex 2, which forms an integral part of this Decision.

Guidelines on criteria for non-evocation of cases by the European Delegated Prosecutors are laid down in Annex 3, which forms an integral part of this Decision.

Guidelines on criteria for referral of cases to the competent national authorities are laid down in the Annex 4, which forms an integral part of this Decision.

## Article 2

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

Done at Luxembourg on 21 April 2021.

**On behalf of the College,**

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

## ANNEX 1: GUIDELINES ON PRIORITIES, INVESTIGATION AND PROSECUTION POLICY OF THE EPPO<sup>1</sup>

Pursuant to paragraph 24 of the recital of the Council Regulation (EU) 2017/1939 (hereinafter, “the EPPO Regulation”), the College of the EPPO takes decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO. Furthermore, pursuant to Article 9(2)<sup>2</sup> of the EPPO Regulation, the College shall take decisions on strategic matters, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States.

Article 25(1) establishes that “the EPPO shall exercise its competence either by initiating an investigation under Article 26 or by deciding to use its right of evocation under Article 27.”

The EPPO initiates an investigation when it receives relevant information about any offence committed or being committed for which it could be competent and in respect of which a judicial or law enforcement authority of a Member State has not initiated an investigation.

The EPPO may decide to use its right of evocation when a judicial or law enforcement authority of a Member State has initiated an investigation in respect of an offence for which the EPPO could exercise its competence.

Article 40(2) of the EPPO’s Internal Rules of Procedure (hereinafter: “IRP”) envisages that the verification for the purpose of evocation shall assess additional criteria, notably:

- 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.

Against this background, the College sets up the following guidelines that shall be taken into account by the European Delegated Prosecutors as regards the priorities and the investigation and prosecution policy of the EPPO:

### 1. Initiating an investigation

- a) Pursuant to Article 24(1) of the EPPO Regulation, “the institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall, without undue delay, report to the EPPO any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3)”. This is the main channel that enables the EPPO to exercise its competence by initiating an investigation.

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<sup>1</sup> These Guidelines are reproduced as adopted by the Decision 029/2021 of the College of the EPPO of 21 April 2021 and amended by the Decision 026/2022 of the College of the EPPO of 29 June 2022.

<sup>2</sup> Unless otherwise specified, Articles herein mentioned are Articles of “the EPPO Regulation”.

- b) Institutions, bodies, offices and agencies of the Union and authorities of the Member States are the main sources of criminal reports. The EPPO may also receive direct information from other sources, such as complaints from natural and legal persons. Indeed, Article 26(1) foresees that the EPPO shall initiate an investigation when “there are reasonable grounds to believe” that an offence within its competence is being or has been committed, not mentioning any specific source.
- c) Article 24(1) refers to Article 22 and Article 25(2) and (3), which means that the EPPO is – in the first instance – the only authority competent to assess whether it should exercise its competence. This includes cases where there is a potential concurrent competence of the EPPO and of the national prosecution authorities. Article 24(1) envisages a channel of communication of the criminal report directly and exclusively dedicated to the EPPO, which cannot involve the national judicial authorities as simultaneous or concurrent addressees of the communication. In this case, institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent under applicable national law, shall file the criminal report directly and exclusively with the EPPO. The communication received in accordance with Article 24(1) is aimed at triggering a decision of the EPPO on whether to exercise its competence by initiating an investigation; hence, it shall be addressed only to the EPPO.
- d) Therefore, reporting of crime by the mentioned authorities primarily and exclusively to the EPPO will prevent interference with the prerogatives of the EPPO and its investigative actions. This exclusive line of reporting would prevent the risk of parallel investigations and their negative consequences, as well as a serious glitch to the mechanism of exchange of information foreseen by the Regulation.
- e) The aforementioned rules are without prejudice to the national authorities’ right to receive timely information in any case the EPPO decides to initiate a case, since the EPPO is obliged to convey this information in accordance with Articles 25(5) and 26(7).

## 2. Evoking an investigation

- a) The EPPO will receive information in respect of a criminal offence for which it could exercise its competence after a judicial or law enforcement authority of a Member State already initiated an investigation. This information is received in accordance with Article 24(2), and it is related to the possible decision of the EPPO to exercise its competence by exercising its right of evocation.
- b) As previously mentioned, the criteria to be met when deciding whether to evoke a case, in respect of which a national authority already initiated a criminal investigation, are different from those related to the initiation of an investigation.
- c) Pending the decision of the EPPO on the evocation, the national authority can still carry out investigative actions, since - in accordance with Article 27(5) - the national authority is obliged to refrain from carrying out further acts of investigation only after the EPPO exercises its right of evocation. After having provided the information

foreseen in Article 24(2), and before the EPPO undertakes a decision on the evocation, the national authority is only prevented from undertaking any decision that may have the effect of precluding the EPPO from exercising its right of evocation.

- d) It is further noted that Article 24(2) foresees that only “if it appears to the competent judicial or law enforcement authority” of the Member State that the investigation that they are carrying out concerns an offence referred to in Article 22, and Article 25(2) and (3), that authority shall inform the EPPO. As the offences fall within the competence of the EPPO are not enumerated in a “closed list of offences”, and therefore not always immediately identifiable, the competent national authority might need to undertake an initial appraisal before informing the EPPO.
- e) Nevertheless, only and exclusively with reference to the situations referred to in Article 24(3) the competent judicial or law enforcement authority of the Member State may consider that the EPPO could not exercise its competence. In any case, the competent national authority is obliged to inform the EPPO thereof.
- f) In the event the national authority does not believe that the EPPO should be informed, the EPPO might nonetheless exercise its right of evocation after having received information from other sources, and following the procedure envisaged in Articles 27(3) and, consequently, 24(2).

### **3. Guidelines for exercising the competence of the EPPO**

#### **3.1. General Rules**

- a) Pursuant to Article 24(1) of the EPPO Regulation, institutions, bodies, offices and agencies of the Union, as well as the authorities of the Member States competent under applicable national law, shall report any criminal conduct referred to in Article 22 and Article 25(2) and (3) exclusively to the EPPO.
- b) For the purpose of these guidelines, the assessment of the damage caused or likely to be caused to the financial interests of the European Union shall take into consideration:
  - 1. the actual loss to the European Union’s resources or assets as well as/or the loss that might have been caused if the offence had been accomplished according to the intention of the perpetrator(s);
  - 2. the value of the contract, in procurement-related cases, when the conduct did not cause an actual material loss to the Union's financial interests but the contract wouldn't have been awarded without the fraudulent activity”.
- c) When the EPPO decides to exercise its competence for an offence that falls within the scope of Article 22(2), or (3), or Article 25(2) or (3), and it is foreseeable that such decision might give rise to a conflict of competence pursuant to Article 25(6), both the decision of the EPPO and the information to the Member State shall be motivated and contain a specific reasoning on the EPPO’s competence for the actual case.

### **3.2. Exercising the competence by initiating an investigation with reference to information related to criminal conduct, which the EPPO receives in accordance with Article 24(1) or from other autonomous sources**

- a) The EPPO shall exercise its competence in respect of any offence referred to in Article 22(1) falling under its material, territorial, personal and temporal competence.
- b) In accordance with Article 22(2) of the EPPO Regulation, the EPPO shall exercise its competence for offences regarding participation in a criminal organisation if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in Article 22(1). In this case, and without prejudice to article 25(3), the EPPO shall initiate the investigation regardless of the concurrent presence of other underlying offences, and regardless of the damage caused or likely to be caused to the financial interests of the Union by the offences not referred to in Article 22(1).
- c) When the unlawful activity of such a criminal organisation is equally addressed at diverse areas and if the purpose of committing one or more of the offences referred to in Article 22(1) concurs with the intent of committing other offences, the EPPO can only exercise its competence if one of the following circumstances occurs:
  1. the maximum sanction provided for by the national law for the offence falling within the scope of Article 22(1) is more severe than the maximum sanction provided for another underlying offence, and the separation of the investigation would be detrimental to the efficient handling of the investigation or prosecution, against the interest of justice, or it could harm procedural guarantees or fundamental rights of the defendants or of the victims. If the maximum sentence for the offence falling out of the EPPO's competence is more severe, the EPPO may still exercise its competence if that offence has been instrumental to commit the offence falling within the scope of Article 22(1), if it has been committed to ensure the impunity of acts in respect of which the EPPO is competent, or if it has been instrumental to any dealing, transfer or disposal of the proceeds of the offence falling within the scope of Article 22(1);
  2. there is a reason to assume that the damage caused or likely to be caused to the Union's financial interests by the criminal activity in question exceeds the damage caused, or likely to be caused to another victim;
  3. the investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level.
- d) The EPPO will exercise its competence in respect of any other criminal offence that is inextricably linked to the criminal conduct that falls within the scope of Article 22(1), in conformity with Articles 22(3) and 25(3) of the EPPO Regulation. A criminal offence shall be considered as inextricably linked to another, *inter alia*, when:
  1. the separate decision on whether to prosecute of one of them may generate *ne bis in idem* consequences in the investigation, prosecution or trial of the other;

2. both offences were committed by means of the same material activity and driven by the same intent;
  3. the set of facts composing those offences was carried out as parts of the execution of the same criminal plan in order to achieve the same common goal;
  4. the specific unlawful conduct composing one of the offences is linked in time, in space and by subject matter to the other, making up an inseparable whole;
  5. the facts subjacent to those offences are interlinked in a way that a separate investigation, prosecution or adjudication of the offences in different proceedings would artificially split up the series of events that form the natural process of action.
- e) In accordance with Article 4(1) of the EU Directive 2017/1371, the EPPO shall exercise its competence in respect of money laundering offences involving property<sup>3</sup> derived from offences referred to in Article 22(1).
- f) When money laundering activities involve both property derived from offences referred to in Article 22(1) and from any other criminal offences, the EPPO shall exercise its competence:
1. if the maximum sanction provided for by national law for the predicate offence falling within the scope of Article 22(1) is more severe than the maximum sanction provided for another predicate offence, unless the latter offence has been instrumental to commit the offence falling within the scope of Article 22(1);
  2. if the value of the property derived from offences referred to in Article 22(1) is higher than the value of the property derived from other predicate offences;
- or:
3. if the investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level

### **3.3. Exercising the competence by evoking an investigation with reference to information related to criminal conduct, which EPPO receives in accordance with Article 24(2)**

The EPPO shall exercise its competence by evoking an investigation when the criteria laid down in 3.2, and at least one of the following additional criteria are met:

- a) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level;

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<sup>3</sup> The term "property" is herein used in accordance with the definition set out by the FATF Recommendations: "Property means assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets" (glossary).

- b) Officials or other servants of the Union, members of the institutions of the Union, or other public officials<sup>4</sup>, are suspected of having committed, in any capacity, the offence;
  - c) The investigation has a cross-border dimension involving at least two participating Member States, putting the EPPO, as a single office, in a more effective position to investigate and prosecute;
  - d) The investigation has a cross-border dimension, involving both participating and non-participating Member States, and/or third countries, and the national authorities of the participating Member State did not undertake any relevant action or the investigation is considerably delayed;
  - e) The national authority did not undertake, and it is unlikely or unable to undertake, pertinent actions in order to fully recover the damage to the Union's financial interests;
  - f) The national authority did not undertake significant acts of investigation;
  - g) An agreement is reached between the competent national authorities and the EPPO that the latter is better placed to investigate or prosecute;
- or
- h) There is urgent need to deal with one or more of the following situations and the national authority in charge did not undertake pertinent actions, and is unlikely or unable to undertake actions, to tackle it:
    - 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
    - 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;
    - 3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;
    - 4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable
    - 5. risk that the damage to the financial interests of the Union would increase;

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<sup>4</sup> The term "public official" is herein used in conformity with the definitions set out in Article 4(4) and paragraph 10 of the Directive (EU) 2017/1371 of the European Parliament and of the Council L of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), and in Article 2(a), (b) and (c) of the United Nations Convention against corruption, including officials of a public international organization.



## 4. Raising or reacting to a conflict of competence in accordance with Article 25(6)

### 4.1. The legal framework

- a) In accordance with Article 25(6) of the EPPO Regulation, in the event of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the decision on who is competent shall be made by the national authority competent to decide on the attribution of competences concerning prosecution at national level.
- b) Although the Regulation does not set up any procedure for raising the conflict, it is believed that both the EPPO and the national prosecution authority might be in a position to seek for a decision on who is to be competent for the investigation of the case.
- c) In the absence of a specific procedure established by the Regulation, the EPPO shall comply with the rules established by the national Law regarding the resolution of conflicts of competence and address the authority specified by the concerning Member State as the appropriate to decide on the attribution of competence.
- d) The EPPO receives the information in accordance with Article 24(3) only in reference to cases referred to in Article 25(3). In this case, the EPPO may exercise its competence *via* Article 25(6). Article 27(1) foresees that the EPPO shall take its decision on whether to exercise its right of evocation upon receiving all relevant information in accordance with Article 24(2). Paragraph 61 of the recital states that “when a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence and considers that the EPPO could not exercise its competence, it should inform the EPPO thereof, in order to allow the latter to assess whether it should exercise competence”. The EPPO is entirely autonomous in establishing whether the criminal offence falls within its competence.
- e) Applying analogically Article 27(3) of the Regulation, the EPPO may also inform the competent national authority that the investigation has been assessed by the EPPO as falling within its competence, and of its intention to exercise the right of evocation. Therefore, the EPPO may request the competent national authority to report the information in accordance with Article 24(2) of the Regulation.
- f) However, if the competent national authority disagrees and decides to confirm its consideration that the EPPO could not exercise its competence in accordance with Article 24(3), the EPPO may exercise its competence *via* Article 25(6), applicable in the case of disagreement between the EPPO and the national prosecution authorities.
- g) In all the other cases, including when the investigation is related to organised crime and money laundering offences, the national authority is obliged to inform the EPPO in accordance with Article 24(2) and, as a consequence, if the EPPO believes that it should exercise its competence, it will exercise its right of evocation.

- h) Conversely, the national prosecution authority may raise a “positive conflict<sup>5</sup>” of competence on a number of occasions. As previously mentioned, the EPPO shall inform the competent national authority of any decision to exercise or to refrain from exercising its competence, in accordance with Articles 25(5), 24(7), 26(2), 26(7) and 27(7). Whenever the EPPO exercises its competence, either by initiating or by evoking an investigation, in respect of any criminal conduct that falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the national prosecution authority is entitled - after having obtained the relevant information - to request the competent national authority to make a decision on who is to be competent for the investigation of the case.
- i) As regards a possible “negative conflict<sup>6</sup>” of competence, the national authorities cannot transfer or refer cases to the EPPO, but can only inform the EPPO in accordance with Article 24(2). After having assessed the information, the EPPO may decide not to exercise its competence and does not need to raise any “negative conflict”. In this case, the investigation will stay with the national competent authority.
- j) However, the national competent authority might raise a “negative conflict” any time the EPPO decides not to exercise its competence in respect of any criminal conduct that falls within the scope of Article 22(2), or (3) or Article 25(2) or (3).
- k) It is noted that the national authority may raise a “negative conflict” also in case of a referral made by the EPPO in accordance with Article 34(1). Indeed, in accordance with Article 34(5), when the EPPO decides to refer to the national authority a case referred to in Article 34(2) and (3), the latter may decide not to accept to take over the case. Nevertheless, the national authority is not entitled to reject a referral for a case that falls within the provision of Article 34(1). 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). A disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), i.e. on what the focus of the criminal activity is, may be brought to the attention of the competent national authority for its decision in accordance with Article 25(6).

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<sup>5</sup> “Positive conflict” herein refers to situations where both the EPPO and the national prosecution authority claim to be competent to investigate and prosecute the case.

<sup>6</sup> “Negative conflict” herein refers to situations where both the EPPO and the national prosecution authority claim not to be competent to investigate and prosecute the case, and that the competence belongs to the other authority.



## **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).

## **ANNEX 2: GUIDELINES ON CRITERIA FOR EVOCATION OF PENDING CASES RELATED TO OFFENCES FALLING INTO THE EPPO'S COMPETENCE AND COMMITTED AFTER 20 NOVEMBER 2017**

In accordance with Article 120(2) of the Council Regulation (EU) 2017/1939 (hereafter, "the EPPO Regulation"), the EPPO is competent with regard to any offence within its remit committed after 20 November 2017, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court pursuant to Article 27(7) second paragraph.

In all probability, during the very early stage of the EPPO's operational activity, the national prosecution services will inform the EPPO, under Article 24(2) of the EPPO Regulation, of a high number of cases in relation to which the EPPO might exercise its right of evocation.

According to the estimates received from the member states, the EPPO will receive information about approximately 2150 ongoing cases, (herein referred to as 'backlog cases'). Following article 27(1) of the EPPO Regulation, each of these pieces of information will activate the 5-day deadline to take a decision on exercising of the right of evocation and, consequently, the obligation of informing the national authorities accordingly.

In accordance with the principles of proportionality and necessity, the EPPO should only evoke those cases where the exercise of its competence would bring added value to the continuation of the investigation.

In this regard, Article 40(2) of the EPPO's Internal Rules of Procedure, setting the rules of verification for the purpose of evocation, makes reference to the following general criteria:

- 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.

Against this background, the College sets up the following specific criteria that shall be taken into account by the European Delegated Prosecutors for the evocation of pending investigations concerning offenses committed between 20 November 2017 and the date the EPPO assumes the investigative and prosecutorial tasks conferred on it by this Regulation:

- a) The EPPO will evoke:
  1. investigations that might have repercussions at Union level or that could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level only;



2. investigations where officials or other servants of the Union, members of the institutions of the Union, or other public officials<sup>7</sup>, are suspected of having committed, the offence;
- b) If the requisites set up in paragraph 1 are not met, the EPPO may still evoke the case if:
1. it is relevant to ensuring the coherence of the EPPO's investigation and prosecution policy, or
  2. there are specific reasons which suggest that the EPPO is better placed to continue the investigation  
and
  3. the remaining time limit for the investigation and the procedural deadline for filing the indictment are compatible with the acts of investigation still to be carried out, and does not endanger the regular finalisation of the investigation
- c) Without prejudice to the criteria established above, the EPPO will, in principle, not evoke an investigation if it was initiated more than two years before the EPPO became operational in accordance with article 120 (2), second sentence, of the EPPO Regulation.
- d) In any case, the EPPO will evoke investigations falling in its remit if an agreement on the evocation is reached between with the competent national authorities.

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<sup>7</sup> The term "public official" is herein used in conformity with the definitions set out in Article 4(4) and paragraph 10 of the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), and in Article 2(a), (b) and (c) of the United Nations Convention against Corruption, including officials of a public international organization.

## **ANNEX 3: GUIDELINES OF THE COLLEGE OF THE EPPO ON CRITERIA FOR NON-EVOCATION OF CASES BY THE EUROPEAN DELEGATED PROSECUTORS**

The following guidelines shall be taken into account by a European Delegated Prosecutor in order to decide not to evoke a case with regard to offences, which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, in accordance with Article 27(8) of the EPPO Regulation:

Without prejudice to the powers of the Permanent Chamber on this matter, the European Delegated Prosecutors shall decide, independently and without undue delay, not to evoke a case concerning such offences, unless:

- a) Public officials, as defined in Article 4(4) of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, are suspected of having committed, in any capacity, the offence;
  - b) The investigation concerns a criminal organisation pursuant to Article 22(2) of the EPPO Regulation;
  - c) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level;
  - d) The investigation has a cross-border dimension involving at least two Member States participating in the establishment of the EPPO, putting the EPPO, as a single office, in a more effective position to investigate and prosecute;
  - e) The investigation has a cross-border dimension, involving both participating Member States and Member States which do not take part in the establishment of the EPPO, and/or third countries, and the national authorities did not undertake any relevant action or the investigation is considerably delayed;
  - f) The national authority did not undertake, and it is unlikely or unable to undertake, pertinent actions in order to fully recover the damage to the Union's financial interests;
- or
- g) There is an urgent need to deal with one or more of the following situations and the national authority in charge did not undertake pertinent actions, and is unlikely or unable to undertake actions, to tackle it:
    - 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
    - 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;
    - 3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;



4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable;
5. risk that the damage to the financial interests of the Union would increase.

## **ANNEX 4: GUIDELINES ON CRITERIA FOR REFERRAL OF CASES TO THE COMPETENT NATIONAL AUTHORITIES**

Pursuant to Article 34(3) and in accordance with Article 9(2) of the EPPO Regulation, the College shall issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities in the following cases:

- with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, when the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution
- in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371, where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim

Pursuant to Article 34(3), fourth sub-paragraph, of the EPPO Regulation, such referrals shall also include any inextricably linked offences within the competence of the EPPO as referred to in Article 22(3).

### **1. Offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100.000**

Pursuant to Article 34(3), first sub-paragraph, of the EPPO Regulation, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the Permanent Chamber may refer the case to the competent national authorities unless:

- a) Public officials, as defined in Article 4(4) of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, are suspected of having committed, in any capacity, the offence;
- b) The investigation concerns a criminal organisation pursuant to Article 22(2) of the EPPO Regulation;
- c) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level only;
- d) The investigation has a cross-border dimension involving at least two Member States participating in the establishment of the EPPO, and/or involving both participating and non-participating Member States and Member States, and/or third countries, putting the EPPO, as a single office, in a better position to investigate and prosecute;



- e) There are reasons to believe that the national authority would not undertake pertinent actions in order to fully recover the damage to the Union's financial interests;
- f) There is an urgent need to deal with one or more of the following situations and there is reason to believe that the national authority in charge would not undertake pertinent actions to tackle it:
  - 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
  - 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;
  - 3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;
  - 4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable;
  - 5. risk that the damage to the financial interests of the Union would increase.

## **2. Offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim**

In respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371, where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim, the Permanent Chamber may, upon request of this other victim, refer the case to the competent national authorities, if:

- a) The other victim is a public institution or body of a Member State, and
- b) The competent national authority is better placed to investigate or prosecute.