

GENERAL PROTOCOL OF ACTION TO PROVIDE SUPPORT FOR THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE, BETWEEN THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE IN SPAIN AND THE OFFICE OF THE COMPTROLLER GENERAL OF THE STATE ADMINISTRATION

BETWEEN

The Parties, Ms Laura Codruța Kövesi, European Chief Prosecutor, by Decision EU 2019/1798 of the European Parliament and of the Council.

And Mr Pablo Arellano Pardo, Comptroller General of the State Administration, appointed by Royal Decree 618/2018, of 22 June, within the scope of the functions provided for in Article 19(1)(j) of Royal Decree 682/2021, of 3 August, which sets out the basic organic structure of the Ministry of Finance and Public Function and amends Royal Decree 139/2020, of 28 January, which establishes the basic organic structure of the ministerial departments.

The parties reciprocally recognise each other, in the capacity in which each party intervenes, as having sufficient legal capacity for the execution of this Collaboration Agreement and, to this effect:

DECLARE

I

The European Public Prosecutor's Office is a body of the European Union with its own legal personality that is responsible for investigating offences affecting the financial interests of the Union provided for in 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 and determined by Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, as well as for prosecuting and requesting the prosecution of perpetrators and accomplices of such crimes.

Regulation (EU) 2017/1939 provides for the establishment of this body in the European Union to deal effectively and with full independence with the procedures falling within its competence, for which purpose it has a central and a decentralised level, the latter consisting of the European Delegated Prosecutors established in the Member States.

According to Article 13(1) of Regulation (EU) 2017/1939, the European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them and under the conditions set out in this Regulation.

Article 106(1) of Regulation (EU) 2017/1939 provides that the European Public Prosecutor's Office shall have, in each Member State, the legal capacity accorded to legal persons under its national law.

II

Article 96 of said Regulation (EU) 2017/1939 states that 'the competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under this Regulation'.

Whereas, Article 16(3) of Organic Law 9/2021 of 1 July implementing the aforementioned Regulation (EU) 2017/1939 provides that 'European Delegated Prosecutors shall be supported by all professionals and experts necessary for the smooth conduct of the investigation'.

III

Furthermore, Article 5(6) of Regulation (EU) 2017/1939 provides that the competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office and that any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation.

The Comptroller General of the State Administration exercises, among other functions:

- The monitoring and control of subsidies and public aid and the administration and custody of the National Subsidies Database in accordance with the provisions of Law 38/2003, of 17 November, on General Subsidies.
- Control over collaborating entities and beneficiaries of subsidies and aid granted by public sector entities and those financed from Community funds in accordance with the provisions of the General Law on Subsidies and Community legislation.
- Actions derived from the exercise of the control of European funds, with regard to the exercise of functions of the auditing authority and Specific Service in relation to funds over which the Office of the Comptroller General

of the State Administration has a role and Control Authority of the Recovery and Resilience Facility and Plan, in accordance with its regulatory rules.

- Assistance and collaboration with the administration of justice, within the limits of the tasks and powers conferred on the Office of the Comptroller General of the State Administration under the legal system, in relation to those criminal proceedings in which there is a connection with those functions and powers.
- The coordination of actions aimed at protecting the financial interests of the European Union against fraud in accordance with the provisions of the 25th additional provision, concerning the 'National Anti-Fraud Coordination Service for the protection of the financial interests of the European Union', of the General Law on Subsidies.

IV

The second paragraph of Article 47(1) of Law 40/2015, of 1 October, on the Public Sector Legal System, establishes that General Protocols of Action or similar instruments consisting of mere declarations of intent of a general content or that express the will of subscribing Administrations and parties to act with a common objective, provided that they do not entail formal specific and enforceable legal commitments, are not considered as agreements.

The binding nature of the aspects set out in this Protocol derives directly and always from the legislation governing each of them, so that this Protocol does not entail formal specific and enforceable legal commitments for the parties.

In light of the above, the parties agree to sign this General Protocol of Action, which shall be governed by the following

CLAUSES

ONE. Purpose of the General Protocol of Action

The purpose of this Protocol is to reflect the support of the Office of the Comptroller General of the State Administration (IGAE) offered to the European Public Prosecutor's Office by the Support Unit of the IGAE to the European Public Prosecutor's Office in Spain.

To this end, the Ministry of Finance and the Civil Service has created said Support Unit in the corresponding establishment plan, with the characteristics set out in other clauses of this Protocol.

TWO. Composition, structure and headquarters of the Support Unit

In accordance with the above-mentioned establishment plan, the Support Unit shall be permanently composed of civil servants, professionals and experts recruited to the IGAE in the form and composition and structure defined in the above-mentioned establishment plan.

The number of posts assigned to this Unit shall be determined in the establishment plan, by taking account of the needs of the European Public Prosecutor's Office and the availability of civil servants at the IGAE.

The filling of the posts assigned to that Unit shall be in accordance with the rules on the provision of posts that are applicable at the IGAE.

The Unit shall be based at the headquarters of the European Public Prosecutor's Office in Madrid and shall be funded by the Ministry of Justice.

THREE. Organic and functional dependency

In accordance with the aforementioned establishment plan, the Support Unit for the European Public Prosecutor's Office shall report organically to the IGAE, but functionally to the European Public Prosecutor's Office, in accordance with the applicable procedural rules and regulations.

FOUR. Delimitation of functions and duty of secrecy

In accordance with the aforementioned establishment plan, the civil servants assigned to this Unit may not carry out other functions within the Office of the Comptroller of the State Administration, and must maintain strict confidentiality and observe strict secrecy with regard to matters that they handle in their post, in accordance with the applicable procedural rules and regulations.

FIVE. Powers and responsibilities

The IGAE Support Unit for the European Public Prosecutor's Office shall cooperate in the performance of the tasks of the European Public Prosecutor's Office, in particular as experts in the proceedings before it, in compliance with the collaboration obligations laid down in Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office and Organic Law 9/2021 of 1 July implementing the aforementioned Regulation.

SIX. Material and technical support

The Support Unit provided for in this Protocol shall have the administrative support (human and material resources) made available to it by the Ministry of Justice, taking into account the needs of the European Public Prosecutor's Office.

SEVEN. No increase in expenditure

As a consequence of the fulfilment and development of this Protocol, no obligations or financial commitments of an ordinary or extraordinary nature shall be assumed by any of the signatory parties, and therefore no increase in expenditure shall be derived from this Protocol.

EIGHT. Means of monitoring, surveillance and control

In order to coordinate the activities necessary to implement this Protocol, as well as to carry out its supervision, monitoring, surveillance and control, and to resolve any problems of interpretation and compliance that may arise, either party may request the other party to hold the necessary meetings for this purpose, by means of a corresponding request which must be made at least 10 days in advance and must indicate the aspects that the requesting party proposes for discussion during the meeting.

These meetings shall be attended by persons chosen by each party to represent them in line with the issues to be discussed at the meeting.

Minutes shall be taken of all meetings held in accordance with the provisions of the preceding paragraphs if either of the two parties so requests.

Questions arising in relation to the interpretation and enforcement of this Protocol shall be settled by mutual agreement between the parties.

NINE. Validity and amendment of the Protocol

This Protocol shall have a duration of four years and may be extended automatically for a further four years without prejudice to the fact that, upon the express withdrawal of one of the signatory parties with at least three months advance notice, the Protocol may be deemed to have been terminated.

The European Public Prosecutor's Office and the IGAE may amend the terms of this Protocol at any time, by mutual agreement.

TEN. Nature and legal status

This General Protocol of Action does not entail formal specific and enforceable legal commitments between the parties, and is therefore included in the instruments referred to in the second paragraph of Article 47(1) of Law 40/2015, of 1 October, on the Public Sector Legal System.

In witness whereof, the Parties hereto have signed this Protocol in two originals, each in the Spanish and English languages, both versions being equally authentic.

For the European Public
Prosecutor's Office

For the Office of the Comptroller
General of the State Administration

Ms Laura Codruța Kövesi
European Chief Prosecutor

Mr Pablo Arellano Pardo
Comptroller General of the State
Administration

Done at Luxembourg

Done at Madrid

On 25 May 2023

On 25 May 2023