



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (EPPO) OF 21 OCTOBER 2020

LAYING DOWN RULES ON PUBLIC ACCESS TO DOCUMENTS OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (EPPO)

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

Having regard the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), hereinafter referred to as the "EPPO Regulation", and in particular Article 109 thereof,

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

Whereas:

1. Article 15 (3) of the Treaty on the Functioning of the European Union (TFEU) establishes the right of access to documents of the Union's institutions, bodies, offices and agencies of any citizen of the Union and any natural or legal person residing or having the registered office in a Member State. Moreover, it states that the proceedings of each institution, body, office and agency shall be transparent.
2. Regulation (EC) No. 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as "Regulation 1049/2001") lays down the general principles and limits governing the right of public access to European Parliament, Council and Commission documents. According to Article 109 (1) of the EPPO Regulation, Regulation 1049/2001 shall apply to EPPO documents other than case files, including electronic images of those files, that are kept in accordance with Article 45 of the EPPO Regulation.
3. In accordance with the second paragraph of Article 109 of the EPPO Regulation, the European Chief Prosecutor shall, within 6 months of the date of his/her appointment, prepare a proposal for detailed rules for applying this Article. That proposal shall be adopted by the College.

4. The rules laid down in accordance with Article 109 of the EPPO Regulation should safeguard the ability of the EPPO to carry out its tasks as the independent body of the European Union responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are 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 the EPPO Regulation.

5. These rules are without prejudice to Article 59 of the EPPO Regulation on the right to access to personal data.

Has adopted these rules.

Article 1

Purpose

The purpose of these rules is to lay down detailed rules related to the right of public access to EPPO documents, other than case files or electronic images of those files, in such way to ensure the widest possible access.

Article 2

Scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to EPPO documents, subject to the principles, conditions and limits defined by these rules.

2. These rules shall apply to all documents held by the EPPO, other than the case files, including electronic images of such files, and other documents held in accordance with Article 45 of the EPPO Regulation.

3. Classified documents as defined in Article 3(c) shall be subject to special treatment in accordance with Article 9.

Article 3

Definitions

For the purpose of these rules:

- (a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the EPPO's competence;
- (b) "third party" shall mean any natural or legal person, or any entity outside the EPPO, including the Member States, other institutions, bodies and agencies of the European Union, international organisations and third countries;
- (c) "classified documents" shall mean documents bearing a security classification marking and containing any information or material designated by a security classification of the EPPO or another Union institution, body, office or agency, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the European Union or of one or more of the Member States.

Article 4

Exceptions from the right of public access

1. The EPPO shall refuse access to a document where disclosure would undermine the protection of:

(a) a public interest as regards:

- public security;
- defence and military matters;
- international relations;
- financial, monetary or economic policy of the Union or a Member State;

(b) the privacy and integrity of the individuals;

2. The EPPO shall refuse access to document where disclosure would undermine the protection of:

- commercial interest of natural or legal persons, including intellectual property,
- court proceedings and legal advice, or
- the purpose of inspections, investigations and audits, other than those mentioned under paragraph 1 (a),

unless there is an overriding public interest in disclosure.

3. Access to a document drawn up for internal use or received by the EPPO, which relates to a matter where the decision has not been taken by the EPPO, shall be refused if disclosure

would undermine the EPPO's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the EPPO shall be refused even after the decision has been taken if disclosure of the document would undermine the EPPO's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the EPPO shall consult the third party with a view of assessing whether an exception as described in paragraph 1, 2 or 3 is applicable, unless it is clear that the document should or should not be released.

5. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released by the EPPO. In situations where the protection of privacy or integrity of individuals is at stake, the EPPO may decide to give access to the requested document after having rendered it anonymous. This decision will be taken after having considered whether it would still be reasonably possible for the person requesting access or for a third party to identify the individual concerned in light of the specific circumstances of the case even on the basis of the document rendered anonymous. The Data Protection Officer of the EPPO may be consulted in these cases.

6. The exceptions as laid down in paragraphs 1 to 5 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to integrity or privacy of individuals or commercial interests and in the case of classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Documents in the Member States

Where a Member State receives a request for a document in its possession, originating from the EPPO, unless it is clear that the document shall or shall not be disclosed, any request for consultation from the Member State, in accordance with Article 5 of Regulation 1049/2001, shall be dealt with promptly.

Article 6

Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages provided for in Article 55 (1) of the Treaty on the European Union and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the EPPO shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents. The deadline for reply as established in Article 7 shall run only from the time when the EPPO has received the additional information from the applicant.
3. In the event of an application relating to a very long document or to a very large number of documents, the EPPO may confer with the applicant informally, with a view to finding a fair solution.
4. The EPPO shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled by a person designated by the European Chief Prosecutor. An acknowledgment of receipt shall be sent to the applicant, unless the answer can be sent by return post. The acknowledgment of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
2. The designated person shall request the administrative unit holding the document, whether one of the exceptions provided for by Article 4 applies. The requested entity shall state in writing whether the document can be released, and, in case of a refusal, the reason for such decision.
3. Within 15 working days from the registration of the application and after consulting the Legal Service of the EPPO, the designated person shall either grant access to the document requested in accordance with Article 10 or, in a written reply, state the reasons for the total or partial refusal of disclosure and inform the applicant of his/her right to make a confirmatory application in accordance with Article 8.
4. In the event of a total or partial refusal, the applicant may, within 30 working days of receiving the EPPO's reply, make a confirmatory application, asking the EPPO to reconsider its position.
5. In exceptional situations, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1

may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.

6. Failure by the EPPO to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from the registration of the application and after consulting the Legal Service of the EPPO, the person appointed by the European Chief Prosecutor to handle such applications shall either grant access to the document requested in accordance with Article 10 or, in a written reply, state the reasons for the total or partial refusal of disclosure. This decision will be taken in accordance with the procedure laid down in Article 7 (2).

2. The applicant shall be notified in writing of the decision, where appropriate by electronic means. The EPPO will inform the applicant of remedies open to him/her.

3. In exceptional situations, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.

4. Failure by the EPPO to reply within the prescribed time-limit shall be considered as a negative reply.

Article 9

Treatment of classified documents

1. Classified documents shall be disclosed only with the consent of the originator.

2. Prior to disclosure the document shall be declassified.

3. If the EPPO decides to totally or partially refuse access to a classified document it shall give the reasons for its decision in a manner which does not harm the interests protected by Article 4.

Article 10

Access following an application

1. The applicant shall have access to documents by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. If providing copies is not practicable, the applicant shall have access to the document by consultation on the spot.
2. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge. Otherwise, the real cost of producing and sending copies will be charged to the applicant.

Article 11

Registers

To make citizens' right of access to documents effective, the EPPO shall provide public access to a register of documents. Access to the register shall be provided in electronic form. The EPPO shall without undue delay take the measures necessary to establish a register.

Article 12

Direct access in electronic form or through a register

1. The EPPO shall as far as possible make documents, including documents relating to the development of policy or strategy, directly accessible to the public in electronic form or through a register in accordance with these rules.
2. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

Article 13

Information

The EPPO shall take the necessary measures to inform the public of the rights they enjoy under these rules.

Article 14

Reproduction of documents

These rules shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 15

Report

The EPPO shall include in its annual report the number of cases in which it refused to grant access to documents and the reasons for such refusals.

Article 16

Entry into force

These rules shall enter into force on the date of their adoption by the College of the European Public Prosecutor's Office (EPPO).

Done at Luxembourg on 21 October 2020.

On behalf of the College,

Laura Codruța KÖVESI

European Chief Prosecutor

