

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

of 11 August 2021

amending and supplementing the Internal Rules of Procedure of the EPPO and the Decision on Permanent Chambers

(2021/C 439/05)

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. At its extraordinary meeting of 9 June 2021, the College found necessary to establish specific rules for the exceptional cases provided for in Article 28(4) of the Regulation.
2. Upon request of the European Chief Prosecutor, a working group of the College elaborated new rules implementing Article 28(4) of the Regulation and submitted them to the European Chief Prosecutor with a view of a proposal for a College Decision amending and supplementing the internal rules of procedure.
3. The amendments to the internal rules of procedure imply minor amendments of the Decision 015/2020 of the College of the EPPO of 25 November 2020 on Permanent Chambers.
4. In accordance with Article 70 of the internal rules of procedure, the European Chief Prosecutor communicated to the College a reasoned proposal for amendment on 12 July 2021.
5. The College examined the proposal drawn up by the European Chief Prosecutor at its meeting of 11 August 2021.

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

Amendments and supplements 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 is amended and supplemented as follows:

I. In Article 19, paragraph 1 is amended and supplemented 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, automatic and alternating 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 whose permanent members do not include the supervising European Prosecutor. 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.'

II. In Article 39, paragraphs 1 and 2 are amended as follows:

'1. All information registered according to Article 38(1) of these rules shall be subject to verification by a European Delegated Prosecutor or by the European Prosecutor concerned for the purpose of assessing whether there are grounds to exercise the competence of the EPPO.

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.'

III. In Article 40, paragraphs 3-7 are amended as follows:

'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.

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 20 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 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.

7. 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.'

IV. In Article 40, after paragraph 7, a new paragraph, 7a, is inserted, with the following content:

'7a. 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.'

V. In Article 41, paragraph 1 is amended as follows:

'1. Where, following the verification, the EPPO decides to exercise its competence by initiating an investigation or evoking a case, a case file shall be opened and it shall be assigned an identification number in the index of the case files (hereinafter the Index). A permanent link to the related registration under Article 38(1) above shall be automatically created by the Case Management System.'

VI. In Article 41, the last sub-paragraph of paragraph 2 is amended as follows:

'The categories of personal data referred to above under points (a)(x)–(xv) shall be entered in the Index only to the extent practicable, taking into account the operational interest and available resources. The reference in the Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Prosecutor and the European Delegated Prosecutor concerned if certain categories of information are not entered in the Index.'

VII. In Article 41, paragraph 3 is amended as follows:

'3. The Case Management System shall notify the supervising European Prosecutor, the Permanent Chamber, and the European Chief Prosecutor.'

VIII. In Article 41, paragraph 4 is amended as follows:

'4. Where the handling European Delegated Prosecutor, or the European Prosecutor conducting the investigation pursuant to Article 28(4) of the Regulation, considers that in order to preserve the integrity of the investigation it is necessary to temporarily defer the obligation to inform the authorities referred to in Articles 25(5), 26(2) and 26(7) of the Regulation, he/she shall inform the monitoring Permanent Chamber without delay. The latter may object to this decision and instruct the European Delegated Prosecutor or, where applicable, the European Prosecutor acting pursuant Article 28(4) of the Regulation, to proceed with the relevant notification immediately.'

IX. In article 42, paragraph 1 is amended as follows:

'1. Where, following the verification, the European Delegated Prosecutor considers not to initiate an investigation or not to evoke a case, he/she shall record the reasons in the Register. The consideration shall be notified to the assigning European Prosecutor and its review shall be assigned to the competent Permanent Chamber.'

X. In Article 43, paragraphs 1 and 2 are amended as follows:

'1. Notwithstanding the possibility of reallocation in accordance with Article 49 and without prejudice to Article 28(4) of the Regulation, the European Delegated Prosecutor who decided to initiate or to evoke the investigation shall also be handling it.

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

XI. Article 52 is amended and supplemented as follows:

'Article 52

Investigations conducted by a European Prosecutor

1. When, after the EPPO registered an information in accordance with Article 24 of the Regulation, the European Prosecutor concerned considers that he/she should conduct the investigation personally, he/she shall request the approval of the Permanent Chamber through the Case Management System before taking a reasoned decision in accordance with Article 28(4), first sub-paragraph, letter a), b) or c) of the Regulation.

2. The request referred to in paragraph 1 shall include the reasons why the investigation should be conducted by the supervising European Prosecutor, allowing the Permanent Chamber to assess whether the conditions provided for in Article 28(4) of the Regulation are met.
3. The Permanent Chamber may ask for clarifications from the European Prosecutor concerned and, if a European Delegated Prosecutor has been assigned, from the handling European Delegated Prosecutor concerned.
4. If the approval is granted by the Permanent Chamber, the supervising European Prosecutor shall record the decision in the Case Management System, which shall notify the concerned European Delegated Prosecutor(s), if previously assigned. The decision shall also be communicated to the national authorities.
5. Where a European Prosecutor has taken a decision in accordance with Article 28(4) letter a) or b) of the Regulation before a European Delegated Prosecutor was assigned, he/she will undertake all the tasks of the European Delegated Prosecutor.
6. Where a European Prosecutor conducts an investigation personally, Article 44 shall apply by analogy.'

Article 2

Amendment of the Decision 015/2020 of the College of the EPPO on Permanent Chambers

In Article 4, letter a) is amended as follows:

- a) The Case Management System of the EPPO shall, upon the registration of a case, randomly allocate that case to a Permanent Chamber whose permanent members do not include the supervising European Prosecutor. For the purpose of evocation, the case shall be immediately allocated to a Permanent Chamber that has a meeting scheduled between the third and the fifth day from the registration of the case and whose permanent members do not include the supervising European Prosecutor.'

Article 3

Entry into force and transitional rules

1. This decision shall enter into force on the thirtieth day following its adoption by the College of the European Public Prosecutor's Office (EPPO).
2. Until the date when the amendments introduced by this Decision will be fully integrated in the technical features of the Case Management System, but not later than three months from the entry into force of this decision, the random allocation of cases to Permanent Chambers may be done manually, by drawing of lots.

Done at Luxembourg, 11 August 2021.

On behalf of the College,
Danilo CECCARELLI
Deputy European Chief Prosecutor
