

# The Permanent Chambers at the Heart of the EPPO's Decision-Making



## Article

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### ABSTRACT

The Permanent Chambers are the genuine multinational element in the EPPO's proceedings.

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As a former Eurojust National Member for Austria and as a public prosecutor specialised in economic crime cases, I have experienced first hand that the success of investigations into cross-border, white-collar crime depends as much on the compatibility of the different applicable legal regimes as on the national judicial authorities' willingness to find "out-of-the-box" solutions where such compatibility is lacking.

Council Regulation 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("EPPO Regulation") sets up the EPPO as one single office with a central and a decentralised level.<sup>1</sup> Whilst the investigations are to be conducted by the European Delegated Prosecutors (EDPs) at the decentralised level, the "main decisions" – e.g., whether to file an indictment, to dismiss the case, to apply a simplified prosecution procedure, or to refer a case to the national authorities – will be taken by the Permanent Chambers at the central level.<sup>2</sup>

Even before the initiation of an investigation, the Permanent Chamber may have to take a decision, notably when the EDP, after verification of a criminal complaint, is of the view that there are no reasons to initiate an investigation. The Permanent Chamber can "overrule" the EDP's decision and instruct the EDP to start an investigation. Equally, at later stages of the proceedings, e.g., when the verdict is handed down at the end of the trial, the decision whether to lodge an appeal or not, will, in principle,<sup>3</sup> be taken by the Permanent Chamber at the central level upon proposal from the EDP who represents the EPPO in court.<sup>4</sup>

The Permanent Chambers monitor and direct the investigations and prosecutions conducted by the EDPs, ensure the coordination of investigations and prosecutions in cross-border cases, and, by way of implementing decisions taken by the College in accordance with Art. 9(2) of the EPPO Regulation, ensure coherence, efficiency, and consistency in the EPPO's prosecution policy throughout the Member States.<sup>5</sup> The members of the Permanent Chambers generally take their decisions following proposals submitted by the EDPs conducting the proceedings. The case virtually goes back and forth between the decentralised and the central levels of the EPPO.

By way of College Decision 015/2020, the EPPO has established 15 Permanent Chambers.<sup>6</sup> The cases will be randomly allocated to any one of the Permanent Chambers by the EPPO's Case Management System, with the right of the European Chief Prosecutor to suspend the allocation of new cases to one or several Permanent Chambers for a specified period of time, so as to ensure an equal distribution of workload between the Permanent Chambers.<sup>7</sup>

Each of the Permanent Chambers consists of a chairperson (i.e., the European Chief Prosecutor, one of the two Deputy European Chief Prosecutors, or a European Prosecutor) and two European Prosecutors as permanent members.<sup>8</sup> Additionally, the European Prosecutor supervising an investigation or prosecution in an individual case (i.e., the European Prosecutor from the Member State of the EDP handling the case-) takes part in the deliberations and decision-making of the Permanent Chamber in that individual case.<sup>9</sup>

The decision-making Permanent Chambers, which are composed of three plus one members from different Member States and different legal traditions, are the genuine multinational element in the EPPO's proceedings. Otherwise, proceedings would be conducted by the EDPs almost entirely as if they were acting as national prosecutors on the basis of national law.<sup>10</sup> While this setting guarantees the EPPO's independence from national judiciaries and from (individual) Member States, on the one hand, it creates a number of linguistic, legal, and practical challenges, on the other.

The proceedings will be conducted in the official language of the Member State of the EDP handling the case-. The case file will be in that language, too. To allow the (three permanent) members of the Permanent Chambers to have access to the content of the case file in a language they understand, the acts of the

criminal investigation that are essential for the central Office to carry out its tasks, will have to be made available in English,<sup>11</sup> where appropriate in summary form.<sup>12</sup>

In each single case dealt with by the EPPO, one of the Permanent Chambers will take a decision at least once and, in most cases, much more often during the lifetime of an EPPO case. As the Permanent Chambers consist of (only) the 22 European Prosecutors and the European Chief Prosecutor, the Permanent Chambers will also have to find ways to counter the risk of becoming the “bottleneck” in the EPPO’s future casework.

The future work of the Permanent Chambers is poised to fulfil their objective of ensuring coherence, efficiency, and consistency in the EPPO’s prosecution policy is achievable without a harmonised criminal procedure applicable to all EPPO proceedings.

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1. Art. 8(1) and (2) of the EPPO Regulation.<sup>13</sup>
2. Art. 10(3) of the EPPO Regulation.<sup>14</sup>
3. When it is not possible to wait for the instructions of the Permanent Chamber within the deadline for the legal remedy, the EDP will take a subsequent decision autonomously and, where applicable, instructions from the Permanent Chamber as to whether or not to maintain or withdraw the appeal.<sup>15</sup>
4. Art. 16(7) of the EPPO Regulation.<sup>16</sup>
5. Art. 10(2) of the EPPO Regulation.<sup>17</sup>
6. Art. 2(1) of College Decision 015/2020.<sup>18</sup>
7. Arts. 4 and 5 of College Decision 015/2020.<sup>19</sup>
8. Art. 10(1) of the EPPO Regulation.<sup>20</sup>
9. Art. 10(9) of the EPPO Regulation.<sup>21</sup>
10. The main differences in the applicable procedural law are the independence from Member States, the principle of mandatory prosecution, and the exhaustively listed grounds for dismissal (Art. 39(1) of the EPPO Regulation), which apply instead of national legal provisions.<sup>22</sup>
11. Art. 1(1) of College Decision 002/2020 establishes English as the working language for the EPPO’s operational and administrative activities.<sup>23</sup>
12. According to Art. 2(4) of the Internal Rules of Procedure, the EDP handling the case has to ensure the translation. Based on Art. 3(1) of the Internal Rules of Procedure, the EPPO will seek to use electronic translation tools for speedy and high-quality translations.<sup>24</sup>

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