



EUROPEAN
COURT
OF AUDITORS

EN

Opinion 01/2023

(pursuant to Article 287(4), TFEU)

**concerning the European
Public Prosecutor's Office
proposal for an amendment
to the Conditions of
Employment of the European
Delegated Prosecutors
with a view to adjusting their
base remuneration**

Contents

	Paragraph
Introduction	01-03
General comments	04
Specific comments	05-08
Budgetary requirements	05-07
Tax rebate	08
Concluding remarks	09

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 287(4) thereof,

Having regard to [Council Regulation \(EU\) No 2017/1939](#) of 12 October 2017 (“the EPPO Regulation”), implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (EPPO),

Having regard to [College Decision 001/2020 of the EPPO](#) of 29 September 2020, as amended and supplemented, laying down rules on Conditions of Employment of the European Delegated Prosecutors (EDPs),

Having regard to the request addressed by the EPPO on 22 November 2022 to the European Court of Auditors for an opinion on its proposal for an amendment to the Conditions of Employment of the EDPs with a view to adjusting their base remuneration,

Having regard to [opinion 05/2022](#) of the European Court of Auditors on the EPPO’s previous proposal to amend the same Conditions of Employment.

Whereas:

- (1) The EPPO does not pay EU dependent child allowances to the EDPs, but these employees receive the associated [EU tax rebates in their salary](#).
- (2) In a [judgment of the General Court of the European Union](#) (Case T-484/18), it was incidentally confirmed that EU employees who are not entitled to, and do not receive a dependent child allowance from their EU employer are not entitled to the corresponding tax rebates on their EU salary, provided for in [Regulation \(EEC, Euratom, ECSC\) No 260/68 of the Council](#) of 29 February 1968, laying down the conditions and procedure for applying the tax for the benefit of the European Communities.
- (3) The Commission’s legal service has advised the competent Commission services, which informed the EPPO in October 2022 that the EDPs cannot benefit from the EU dependent child allowances, and that child allowances received from a member state do not entitle them to the tax abatement.

HAS ADOPTED THE FOLLOWING OPINION:

Introduction

01 Each participating member state has at least two EDPs residing in their home country. The EPPO engages these EDPs as Special Advisors in accordance with EU's [Conditions of Employment of Other Servants](#).

02 The EPPO proposes an amendment to the Conditions of Employment of the EDPs: The [College Decision 001/2020](#) laying down rules on conditions of employment of the EDPs, as amended and supplemented by [Decisions 017/2021](#) and [103/2021](#) of the College of the EPPO, which currently sets the pay of the EDPs at 80 % of an AD9 graded official, would be amended as follows:

Article 14, paragraph (1), at letter a): “a) the basic monthly remuneration for level 1 of the scale as referred to in Article 12 of this Decision, which corresponds to the basic monthly salary of an Official in function group AD, grade 9, step 1, as provided in the table in Article 66 of the Staff Regulations. The basic monthly remuneration shall increase of 6 % for each next level of that scale.”

03 The EPPO informed us that this proposal is intended to increase the attractiveness of EDP posts in the member states. It replaces the EPPO's proposal from April 2022 to pay child allowances to the EDPs.

General comments

04 The EPPO Regulation provides that the EPPO shall be independent. This Regulation states that the EDPs should be engaged as Special Advisors. The EU's [Conditions of Employment of Other Servants](#) (Article 123), which apply to Special Advisors, gives the EPPO the ability to set the salary level for the EDPs, within budgetary and other legal constraints. We therefore do not comment on the scale and nature of the proposed increase in remuneration.

Specific comments

Budgetary requirements

05 The proposed change to the EDPs' remuneration will involve an increase in basic monthly salary for all the EDPs of 25 %. The EPPO has estimated that this will cost between €2.4 million and €3.8 million for 2023. This is a significant increase from the previous proposed amendment by the EPPO, to grant to the EDPs with children the EU dependent child allowances, which was estimated by the EPPO to cost €0.8 million per year. The current budget for the EDPs' remuneration for 2023, before considering the impact of the proposed amendment, is €9.8 million (out of a total EPPO budget of €65.5 million).

06 As we commented in our [opinion 05/2022](#), extra costs need to be considered as part of future annual budgetary discussions.

07 We note that in their opinion of 11 January 2023 on the EPPO's proposal, the Commission services stated that they can only give their approval if the proposed structural increase will not require additional financial contributions from the Union.

Tax rebate

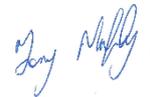
08 Following the relevant [judgment of the General Court of Justice of the European Union](#) (Case T-484/18), and as acknowledged by the EPPO and the Commission, there is no legal basis for granting the EU tax rebate to the EDPs. The EPPO should assess the case for recovering the EU tax rebate granted in the past two years from the EDPs, in accordance with Article 17 (1) of the [College Decision 001/2020](#), which provides that any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he/she could not have been unaware of it.

Concluding remarks

09 The EPPO has the right to decide on the remuneration of the EDPs. The proposed increase in the EDPs' remuneration would represent a significant additional cost to the EPPO, and should be addressed and agreed with the European Commission in future budgets. The EPPO also needs to assess the case for recovering from the EDPs the EU tax rebate granted in the past two years.

This opinion was adopted by Chamber V headed by Mr Jan Gregor, Member of the Court of Auditors, in Luxembourg at its meeting of 24 January 2023.

For the Court of Auditors



Tony Murphy
President

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