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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Proposal for a Council Regulation on the establishment of the European  
Public Prosecutor's Office  
*- Report on the State of Play*

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In general

The European Public Prosecutor's Office (EPPO) has been a high priority for the Italian Presidency. The proposal has been discussed during 12 meeting days at expert group level, in addition to four meetings of CATS, the JHA Councils in October and December and the informal ministerial in July. The discussions have been very constructive and important advances have been made, but they have also highlighted certain technical issues that will need further analysis. Following the discussions in Council, a redrafted text of the first 37 Articles of the Regulation was elaborated and presented to Ministers on 4 December 2014 as Annex II to the relevant Council document<sup>1</sup>.

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<sup>1</sup> Doc 15862/1/14 EPPO 70 EUROJUST 205 CATS 194 FIN 878 COPEN 298 GAF 64.

## The JHA Council of 4-5 December 2014

The Ministers' discussion at the December Council were based on the assumption is that the EPPO will be organised in such way, that the European Prosecutors will, as a rule, supervise the work of the European Delegated Prosecutors in their Member States of origin. As the Presidency considered that this approach could raise questions as regards the independence of the decision-making of the Office, it suggested, as a balancing measure, that the independence of the European Chief Prosecutor and the European Prosecutors should be reinforced through more transparent and "European" appointment procedures. A majority of Ministers thereby agreed that the independence of the European Prosecutors needs to be strengthened in order to balance this mechanism of supervision within the Office, including through a more transparent and objective procedure of nomination and appointment of the Members of the College.

### State of Play

The redrafted text of the first 37 Articles of the Regulation in Annex constitutes the Report on the State of Play of the Presidency. In order to take the outcome of the Council into account, the Presidency has introduced new draft texts of Articles 13 and 14 in the document, whereas the rest of the text is identical to the text of the abovementioned Annex II to Council document 15692/1/14.

Draft

## COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

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### CHAPTER I SUBJECT MATTER AND DEFINITIONS

#### *Article 1* **Subject matter**

This Regulation establishes the European Public Prosecutor's Office and sets out rules concerning its functioning.

#### *Article 2* **Definitions<sup>2</sup>**

For the purposes of this Regulation, the following definitions apply:

- a) 'person' means any natural or legal person;
- b) 'criminal offences affecting the financial interests of the Union' means the offences provided for by Directive 2014/xx/EU, as implemented by national law;

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<sup>2</sup> The definitions will need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive. The provision in b) will be reformulated in order to be consistent with the final wording of Article 17. The issue of uniformity with EU law needs to be examined further.

- c) 'financial interests of the Union' means all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budgets of institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them;
- d) 'administrative personal data' means all personal data processed by the European Public Prosecutor's Office except for operational personal data;
- e) 'operational personal data' means all [case-related] personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article [37].

## **CHAPTER II**

### **Establishment, tasks and basic principles of the European Public**

#### **Prosecutor's Office**

##### *Article 3*

##### **Establishment**

1. The European Public Prosecutor's Office is established as a body of the Union.
2. The European Public Prosecutor's Office shall have legal personality.
3. The European Public Prosecutor's Office shall cooperate with Eurojust and rely on its support in accordance with Article [57].

#### *Article 4*

##### **Tasks**

1. The task of the European Public Prosecutor's Office shall be to combat<sup>3</sup> criminal offences affecting the financial interests of the Union.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in the criminal offences referred to in paragraph 1. In that respect the European Public Prosecutor's Office shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States in respect of the offences referred to in paragraph 1, until the case has been finally disposed of<sup>4</sup>.

#### *Article 5*

##### **Basic principles of the activities**

1. The European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.
2. The European Public Prosecutor's Office shall be bound by the principles of rule of law and proportionality in all its activities, and guided by the principle of legality.

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<sup>3</sup> A few Member State would replace this term, for example with "prosecute".

<sup>4</sup> Some delegations has suggested that this provision should be modified in order to clarify what functions the Office will have after the Court proceedings, in particular as regards the execution of a judgment. A recital highlighting the necessity for each Member State to foresee the function of a prosecutor with the tasks described in this Regulation shall be elaborated.

3. The investigations and prosecutions on behalf of the European Public Prosecutor's Office shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is responsible for the investigations and prosecutions in accordance with Article 12(1). Where a matter is governed by national law and this Regulation, the latter shall prevail.
4. The European Public Prosecutor's Office shall have competence to investigate, prosecute and bring to judgment the perpetrators of, and accomplices in the criminal offences against the Union's financial interests as determined in Articles 17 and 18 and exercise this competence in accordance with Article 19 in this Regulation.
5. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence<sup>5</sup>, whether inculpatory or exculpatory.
6. The European Public Prosecutor's Office shall open and conduct investigations without undue delay.
7. The competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office at its request and shall refrain from any action, policy or procedure which may hamper or unduly delay their progress.

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<sup>5</sup> Some delegations wish that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO.

## *Article 6*

### **Independence and accountability**

1. The European Public Prosecutor's Office and all its staff shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors as well as the staff of the European Public Prosecutor's Office shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the office, any Member State or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States and the Union institutions, bodies, offices or agencies shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks.
2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for its general activities, and shall issue annual reports in accordance with Article 6a.

## *Article 6a<sup>6</sup>*

### **Reporting**

1. Every year the European Public Prosecutor's Office shall draw up and issue an Annual Report in the official languages of the Union institutions on its general activities. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and the Council to give account of the general activities of the European Public Prosecutor's Office, without prejudice to the Office's obligation of discretion and confidentiality as regards individual cases and personal data.

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<sup>6</sup> A few delegations are of the opinion that paragraphs 2 and 3 of this provision need clarification. In particular, a few delegations have requested that the notion of "general activities" should be clarified

3. National Parliaments may invite the European Chief Prosecutor to participate in an exchange of views in relation to the general activities of the European Public Prosecutor's Office.

## **CHAPTER III**

### **STATUS, STRUCTURE AND ORGANISATION OF EPPO**

#### **SECTION 1**

#### **STATUS AND STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

##### *Article 7*

##### **Structure of the European Public Prosecutor's Office**

1. The European Public Prosecutor's Office shall be a Union body operating as one single Office with a decentralised structure.
2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of a College, its Permanent Chambers, a European Chief Prosecutor, [his/her deputies] and the Members of the College.
4. The decentralised level shall consist of European Delegated Prosecutors located in the Member States.



## Article 8

### The College

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor [and his/her Deputies] and one Member per Member State, who shall be referred to as European Prosecutors. The European Chief Prosecutor shall chair the meetings of the College and have responsibility for their preparation.
2. The College shall meet regularly, in accordance with the internal Rules of Procedure. It shall be responsible for monitoring<sup>7</sup> the activities of the Office and for taking decisions on strategic matters and issues of general application arising from individual cases, in particular in view of ensuring coherence and consistency in the prosecution policy of the Office throughout the Union, as well on other matters as specified in this Regulation. The College shall not be responsible for taking operational decisions in individual cases.
3. On a proposal by the European Chief Prosecutor and in accordance with the internal Rules of Procedure, the College shall set up Permanent Chambers to direct and monitor the casework of the European Public Prosecutor's Office<sup>8</sup>.

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<sup>7</sup> In this document, the terms "monitoring", "directing and monitoring" and "supervision" are used to describe different control activities. These terms will need more detailed definitions in the text and recitals. In general terms, the preliminary understanding of the [Hellenic] Presidency is that

✓"Monitoring" refers to a general oversight of the activities of the Office, in which instructions are in principle only given on issues which will have a horizontal importance for the Office;

✓"Directing and monitoring" refers both to the general oversight just described and to certain clear powers to direct individual investigations and prosecutions when such directions appear to be necessary.

✓"Supervision" refers to a closer and rather continuous oversight of investigations and prosecutions, including full powers to at any time intervene and give instruction on investigations and prosecution matters.

<sup>8</sup> A number of delegations have requested that detailed criteria for the composition and set up of the Chambers shall be set out in the Regulation. Some have argued in favour of specialised chambers, whereas others appear to advocate a system where there is always one Chamber on duty. It has also been suggested that the European Prosecutors could be distributed between different Permanent Chambers with account taken to the size of the Member States and the expected number of cases

4. The College shall adopt internal Rules of Procedure of the European Public Prosecutor's Office in accordance with Article 16, as well as the organigram and the establishment plan of the Central Office<sup>9</sup>.
5. Unless stated otherwise in this Regulation, the College shall take decisions by simple majority. The College shall vote at the request of any of its Members. Each Member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College<sup>10</sup>.

#### *Article 9*

#### **The Permanent Chambers**

1. The European Chief Prosecutor, the Deputies and all the other European Prosecutors shall be part of [at least one] Permanent Chamber. Each Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, and have [...] additional permanent Members.
2. The Permanent Chambers shall direct and monitor the investigations and prosecutions conducted in the Member States<sup>11</sup>. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College on strategic or prosecution policy matters in accordance with Article 8(2).

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<sup>9</sup> Whether the Internal Rules of Procedure will be adopted by the Council or the College will depend on the content of these rules. On the basis of the current state of negotiations, it is the assessment of the Presidency that the content of the Regulation will be such, that the internal Rules of Procedure can be adopted by the College. Some Member States have suggested that explanations of the terms organigram and establishment plan are needed.

<sup>10</sup> The casting vote of the Chief Prosecutor as well as other voting arrangements foreseen have been criticized by some.

<sup>11</sup> The Commission, with the support of some Member States, advocates that the Permanent Chambers should be in charge of supervision in order to create a European system of supervision. The Commission also advocates a solution where one of the Members of a Permanent Chamber - regardless of his or her nationality - will be selected to be Rapporteur of the case in order to ensure the neutrality of the Rapporteur.

3. The Permanent Chambers shall take the following decisions in accordance with the conditions and procedures set out by this Regulation<sup>12</sup>:
  - a) to initiate an investigation where no investigations has been initiated by an European Delegated Prosecutor;
  - b) to refer to the College strategic matters or issues of general application arising from individual cases;
  - c) to reallocate a case;
  - d) to determine the Member State in which the prosecution shall be brought;
  - e) to bring a prosecution to Court;
  - f) to dismiss a case;
  - g) [...]
4. The competent Permanent Chamber may give instructions, through the competent European Prosecutor, in a specific case to the European Delegated Prosecutor to whom it has been allocated, whenever necessary for the efficient handling of the investigation and prosecution and in the interest of a coherent functioning of the European Public Prosecutor's Office.
5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its Members. Each Member shall have one vote. The Chair shall have a casting vote in the event of a tie vote.

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<sup>12</sup> A number of delegations have questioned whether all (or any) important operational decisions always need to be taken by a Permanent Chamber and if such a system would ensure efficient and speedy proceedings. The introduction of a rule enabling European Delegated Prosecutors to take certain decisions and then refer the matter to a Permanent Chamber for confirmation has also been suggested. The Commission has argued that important decisions, with the exception of initiating an investigation, should be taken at Chamber level, in view of ensuring full independence of the decision-making. The list will be completed at a later stage of negotiations. A few delegations wish to include a provision indicating under which conditions a Member State may refuse instructions from the Central Office.

6. In addition to the permanent Members, the European Prosecutor or European Prosecutors who are supervising a prosecution or an investigation<sup>13</sup> in accordance with Article 11(1) shall participate in the decisions of the Permanent Chamber as regards that case. A Permanent Chamber may also invite European Delegated Prosecutors to attend their meetings without a right to vote.
7. The Chairs of the Permanent Chambers shall keep the College informed of the decisions taken pursuant to this Article, in accordance with the internal Rules of Procedure. The Permanent Chambers may also request guidance from the College in a particular case whenever this is required in order to ensure coherence and consistency in the prosecution policy of the European Public Prosecutor's Office.

### *Article 10*

#### **The European Chief Prosecutor and the Deputies**

1. The European Chief Prosecutor shall be the head of the European Public Prosecutor's Office. The European Chief Prosecutor shall organise the work of the Office, direct its activities, and take decisions in accordance with this Regulation and the internal Rules of Procedure.<sup>14</sup>
2. [Five] Deputies shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and act as replacement when he/she is absent or is prevented from attending to his/her duties.
3. When the European Chief Prosecutor has been informed that a case has been initiated, he/she shall, in accordance with Article [X] and the internal Rules of Procedure, decide which Permanent Chamber shall be in charge of a case.

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<sup>13</sup> Some delegations have suggested that the participation in the decision-making should be limited to one of the supervising European Prosecutors, possibly to the one coordinating the investigations.

<sup>14</sup> The Rules of Procedure should include a provision on the equal distribution of the workload within the Office. A few delegations have suggested that this provision gives too extensive powers to the Chief Prosecutor.

4. The European Chief Prosecutor shall represent the European Public Prosecutor's Office. The European Chief Prosecutor may also delegate his/her tasks relating to representation to one of the Deputies or to a European Prosecutor.
5. The European Chief Prosecutor and his/her Deputies shall be assisted by the staff of the Central Office in their duties under this Regulation.

### *Article 11*

#### **The European Prosecutors**

1. The European Prosecutors shall, on behalf of the Permanent Chamber in charge of the case and in accordance with its instructions, supervise investigations and prosecutions assigned to them<sup>15</sup>. They shall also function as liaisons and channels of information between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States.
2. The European Prosecutors shall monitor the implementation<sup>16</sup> of the tasks of the Office in their respective Member States in close consultation with the European Delegated Prosecutors, and shall ensure in accordance with this Regulation and the internal Rules of Procedure that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.
3. [The European Prosecutors may temporarily be authorised to discharge their duties on a part-time basis provided that this does not conflict with the interest of the European Public Prosecutor's Office. Such an authorisation may be granted, upon the written request of the national prosecution authorities, by the European Chief Prosecutor for a maximum period of up to 6 months. This period may upon request be extended by a new decision of the European Chief Prosecutor. The authorisation may be revoked at any time after consultation with the appropriate authorities].<sup>17</sup>

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<sup>15</sup> A number of delegations have suggested, as regards cases assigned to several European Prosecutors, that one of these European Prosecutors shall be selected to be coordinator/rapporteur of the case in question.

<sup>16</sup> Some delegations have suggested that a specific definition of the notion "monitoring the implementation of the tasks" should be introduced in the text.

<sup>17</sup> A number of delegations wish to delete this provision, or to move it to Chapter IV. Various opinions as regards the need and appropriateness of various parts of this provision have been expressed.

*Article 12*

**The European Delegated Prosecutors**

1. The European Delegated Prosecutors shall represent the European Public Prosecutor's Office in the Member States. The European Delegated Prosecutors shall be responsible for the investigations and prosecutions, which they have initiated or which have been allocated to them by a Permanent Chamber through the competent European Prosecutor, and act under their instructions.
2. There shall be two or more European Delegated Prosecutors in each Member State. The Member States shall determine the division of competences between their European Delegated Prosecutors.
3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the competent European Prosecutor of such assignments. In the event that they are at any given moment unable to fulfil their tasks as European Delegated Prosecutors because of other commitments, the European Prosecutors may, after consultation with the competent national prosecution authorities, instruct the European Delegated Prosecutor concerned to give priority to their functions deriving from this Regulation and immediately inform the competent national prosecution authorities thereof.<sup>18</sup>

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<sup>18</sup> Various opinions have been expressed as regards the wording and content of this provision. In particular, clear rules on conflict of interest have been called for. The Commission has suggested that the reallocation of a case could also be done to an EDP in another Member State. Some Member States would prefer to delete the last sentence of the Article.

## SECTION 2

### APPOINTMENT AND DISMISSAL OF THE MEMBERS OF THE EUROPEAN PUBLIC

#### PROSECUTOR'S OFFICE

##### *Article 13<sup>19</sup>*

#### **Appointment and dismissal of the European Chief Prosecutor and of the Deputy European Chief Prosecutors**

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a term of nine years, which shall not be renewable. The Council shall act by simple majority.
2. The European Chief Prosecutor shall be selected from among candidates
  - a) who are active members of the public prosecution service or judiciary of the Member States ;
  - b) whose independence is beyond doubt;
  - c) who possess the qualifications required for appointment, in their respective countries, to the highest prosecutorial or judicial offices and have relevant practical experience of national legal systems and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
  - d) who have sufficient managerial experience and qualifications for the position.
3. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which a Selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and the Council. The panel shall comprise [...] persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts and lawyers of recognised competence, one of whom shall be

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<sup>19</sup> A number of delegations would prefer that the Chief Prosecutor is chosen from among the Members of the College.

proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members.<sup>20</sup>

4. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss the European Chief Prosecutor [or a Deputy European Chief Prosecutor] if it finds that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
5. If the European Chief Prosecutor, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 – 3 above.

#### *Article 14<sup>21</sup>*

#### **Appointment and dismissal of the European Prosecutors**

1. Each Member State shall nominate three candidates for the position as European Prosecutor from among candidates which:
  - a) are active members of the public prosecution service or judiciary of the Member States ;
  - b) whose independence is beyond doubt, and
  - c) who possess the qualifications required for appointment, in their respective countries, to high prosecutorial or judicial office and have relevant practical experience of national legal systems and of international judicial cooperation in criminal matters.

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<sup>20</sup> The composition of the Selection panel remains to be determined.

<sup>21</sup> Some delegations are of the opinion that it would be enough for each Member State to nominate one candidate for the position as European Prosecutor.



2. The Council shall, after having heard the Selection panel<sup>22</sup>, select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the Selection Panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.
3. The European Prosecutors shall be selected and appointed for a non- renewable term of [nine] years by the Council, acting by simple majority.
4. Every [three] years there shall be a partial replacement of a third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules for the appointment of European Prosecutors for and during their first mandate period.
5. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss a European Prosecutor if it finds that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
6. If a European Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 – 2 above.

#### *Article 15*

#### **Appointment and dismissal of the European Delegated Prosecutors**

1. The College shall, upon proposal by the European Chief Prosecutor, appoint the European Delegated Prosecutors nominated by the Member States. The College shall appoint the nominated persons on a proposal from the European Chief Prosecutor. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a term of five years, which shall be renewable.

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<sup>22</sup> The composition of the panel remains to be determined.

2. The European Delegated Prosecutors shall be active members of the public prosecution service or the judiciary of the Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system. Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.
3. The appointment of European Delegated Prosecutors shall take effect upon the decision of the College.
4. The College shall dismiss a European Delegated Prosecutor if it finds that he or she no longer fulfils the requirements set out in paragraph 2 or the criteria applicable to the performance of their duties<sup>23</sup>, or that he or she is guilty of serious misconduct.
5. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor, it shall consult the European Chief Prosecutor before taking action. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his activities under this Regulation<sup>24</sup>.
6. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the Central Office and, where necessary, nominate another prosecutor to be appointed as the new European Delegated Prosecutor<sup>25</sup> in accordance with paragraph 1.

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<sup>23</sup> Some delegations have suggested that additional criteria should be added here.

<sup>24</sup> Some delegations have noted that a differentiation between the respective roles of an EDP and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them. One delegation has noted that it must be clarified what the notion "connected with his activities" actually means.

<sup>25</sup> Some Member States have questioned whether the words "where necessary" are sufficient in order to clarify that Member States do not always need to replace EDP's that leave their position.

**SECTION 3**  
**INTERNAL RULES OF PROCEDURE**

*Article 16*

**Internal rules of Procedure of the European Public Prosecutor's Office**

1. The internal Rules of Procedure shall govern the organisation of the work of the Office<sup>26</sup>.
2. A proposal for the internal Rules of Procedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the College by two thirds majority<sup>27</sup>.

**SECTION 4**

**COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

*Article 17*

**Criminal offences within the competence of the European Public Prosecutor's Office**

The European Public Prosecutor's Office shall have competence in respect of the criminal offences affecting the financial interests of the Union, which are provided for in Directive 2014/xx/EU and as implemented by national law<sup>28</sup>.

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<sup>26</sup> It has been agreed that the Regulation will include very detailed rules on allocation of cases.

<sup>27</sup> It has been suggested that it should be clearly spelled out that the Rules of Procedure must be adopted without delay once the Office has been set up. Some have questioned if it is necessary to foresee a specific role for the Chief Prosecutor here.

<sup>28</sup> The competence of the EPPO as determined by this Article raises complex legal issues that will need to be considered further. One of the open issues in this Article is whether a dynamic reference (the standard solution ensuring legal certainty) or a static reference to the substantive law should be chosen. Some delegations would prefer to see the offences defined in this Regulation directly.

## Article 18<sup>29</sup>

### Ancillary competence

1. Where an offence constituting a criminal offence referred to in Article 18 is based on a set of facts which are identical or inextricably linked to a set of facts constituting, in whole or in part under the law of the Member State concerned, a criminal offence other than those referred to in Article 18, the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the condition that the offence referred to in Article 18 is preponderant. Where the offence referred to in Article 18 is not preponderant, the Member State that is competent for the other offence shall also be competent for the offence referred to in Article 18<sup>30</sup>.
2. When assessing whether two set of facts are inextricably linked within the meaning of paragraph 1, account shall be taken as to whether one of the relevant offences has been instrumental in committing the other offence or to whether one offence has been committed with a view to ensuring impunity<sup>31</sup>.
3. An offence in accordance with Article 18 shall be considered to be preponderant:
  - a) if the damage caused or likely to be caused to the Union exceeds the damage caused or likely to be caused by the same act to the Member State or a third party, or<sup>32</sup>,
  - b) in case the same act, under the law of the Member State, constitute a different type of offence: if the sanction that may be imposed in respect of the offence in accordance with Article 18 is<sup>33</sup> more severe than the sanction that may be imposed in respect of the other type of offence.

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<sup>29</sup> Many delegations continue to question whether the legal basis in Article 86 TFEU covers this Article.

<sup>30</sup> The need for this provision has been questioned by some. Others have noted that it must be seen in the light of the right of evocation as foreseen in Article 21a.

<sup>31</sup> A few delegations have suggested that this provision should rather be a recital. Others have suggested that the text should be given more detail.

<sup>32</sup> Many delegations have pointed out that it would be difficult to measure and compare the financial damage, or that it would at least be difficult to know what the damage is at an early stage of investigation. The assessment of the damage may also change during an investigation. It has been suggested that this rule should be seen as a hierarchical order of criteria. An explanatory recital could be considered to address these concerns.

<sup>33</sup> The Commission and some delegations would add the words "equal or" here.

5. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority should exercise its competence pursuant to paragraph 1. Where appropriate to facilitate this choice, Eurojust may be associated in accordance with Article [57].
6. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the exercise of competence pursuant to this Article, the national authorities competent to decide on the attribution of competences concerning prosecution at national level<sup>34</sup> shall decide who shall exercise the ancillary competence.

*Article 19*

**Exercise of the competence of the European Public Prosecutor's Office**

1. The European Public Prosecutor's Office has competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence<sup>35</sup>
  - a) was committed in whole or in part within the territory of one or several Member States, or
  - b) was committed by a national of a Member State, or
  - c) when committed outside of these territories by a person who was subject to the Staff Regulations or Conditions of Employment of Other Servants, at the time of the offence, provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory.

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<sup>34</sup> Some delegations would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review).

<sup>35</sup> This jurisdiction provision should at term be in principle identical with the corresponding jurisdiction provision in the PIF-Directive. Some delegations would introduce a reference to "participating Member States" in this and other provisions.

2. The European Public Prosecutor's Office shall exercise its competence by initiating an investigation in accordance with Article 21 unless the Office has become aware that national authorities have already opened an investigation in respect of the same offence. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise an own competence in respect of the same offence. If the national authorities have already started a criminal investigation in respect of the same offence, the European Public Prosecutor's Office may take over the investigation initiated by the national authority by exercising its right of evocation in accordance with Article 21a.

# CHAPTER IV

## RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

### SECTION 1 CONDUCT OF INVESTIGATIONS

#### *Article 20*

#### **Registration and verification of information**

1. The institutions, bodies, offices and agencies of the Union, and, in accordance with applicable national law, the competent authorities of the Member States shall inform<sup>36</sup> the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence. Where the conduct caused or is likely to cause damage to the Union's financial interest of less than EUR 10 000, and does not have repercussions at Union level which require an investigation to be conducted by the Office or has been opened following suspicions that an offence has been committed by officials and other servants of the European Union or members of the institutions, the information obligation may be fulfilled through a summary report [every six months] of conduct which might constitute such offences.
2. The European Public Prosecutor's Office collects and may receive any necessary information on conduct which might constitute an offence within its competence.
3. Any information brought to the attention of the European Public Prosecutor's Office shall be registered and verified by the European Public Prosecutor's Office in accordance with the internal rules of procedure. The verification shall aim at assessing whether there are grounds for the European Public Prosecutor's Office to initiate an investigation under this Regulation.

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<sup>36</sup> Some delegations have requested that the procedures for providing this information should be described in detail, in particular with a view of ensuring an uncomplicated reporting process.

4. Where, upon verification, the European Prosecutor's Office decides that there is no ground to initiate an investigation, the reasons shall be noted in the Case Management System. It shall inform the national authority, the Union institution, body, office or agency, and, where appropriate<sup>37</sup>, the persons who provided the information, thereof.

#### *Article 21*

### **Initiation of investigations and allocation of competences within the European Public Prosecutor's Office.**

1. Where, in accordance with applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case, or in cases referred to in Article 9(3)(a) a Permanent Chamber, shall initiate an investigation and note this in the Case Management System<sup>38</sup>. If more than one Member State has jurisdiction, the competence shall in principle be exercised by the European Prosecutor or a European Delegated Prosecutor from the Member State where the focus of the criminal activity is.
2. Upon receipt of such information, the Central Office shall verify whether an investigation has not already been initiated by the European Public Prosecutor's Office. If an investigation in respect of the same offence had not already been initiated, the Permanent Chamber may, taking into account the criteria set out in paragraph 3, assign the case to a European-Delegated Prosecutor with origin in another Member State, which according to its law would have jurisdiction in the case. If an investigation in respect of the same offence has already been initiated by the European Public Prosecutor's Office, the competent Permanent Chamber shall, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned and taking into account the criteria set out in paragraph 3, allocate the case in accordance with Article 12(1).

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<sup>37</sup> A few delegations would wish to delete "where appropriate", and a few others would prefer to introduce the words "at their request" as regards persons who provided information.

<sup>38</sup> It is the understanding of the Presidency that the notification in the Case Management System will cover the necessary information from the European Delegated Prosecutor to the Central Office.



3. A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competence of the Office have been committed, the Member State where the bulk of the offences has been committed. When allocating a case, the Permanent Chamber may deviate from that principle on sufficiently justified grounds, taking into account in particular the following criteria, in order of priority:
  - (a) the place where the accused person has his/her habitual residence;
  - (b) the nationality of the accused person;
  - (c) the place where the direct victim has its seat.
4. In the course of an investigation and until a decision to prosecute in accordance with Article 27 is taken, the Permanent Chamber monitoring a case concerning more than one Member State may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to reallocate a case to a European Delegated Prosecutor in another Member State if such reallocation is in the interest of the efficiency of investigations and in accordance with the general criteria for the choice of competent European Delegated Prosecutor set out in paragraph 3 in this Article.

*Article 21a*

**Right of evocation and transfer of proceedings to the European Public Prosecutor's Office**

1. When a judicial authority or a law enforcement authority of a Member State exercises a competence in respect of an offence referred to in Article 17 or 18, it shall without delay inform the European Public Prosecutor's Office so that the latter may decide whether to exercise its right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible, but no later than [14] days after having received the information from the national authority. During this timeperiod the national authority shall

refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation. The Member States' judicial and law enforcement authorities are not required to inform the European Public Prosecutor's Office of cases where the damage caused or likely caused by the alleged offender does not exceed 10 000 Euros unless they have reasons to assume that the Office would exercise its right of evocation in accordance with paragraph 2 and 3 of this Article.

2. If the European Public Prosecutor's Office is informed in accordance with paragraph 1 or becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the judicial or law enforcement authorities of a Member State, the European Public Prosecutor's Office shall, where appropriate, consult with these authorities and shall thereafter decide<sup>39</sup> whether to open its own investigation by exercising its right of evocation. Where the European Public Prosecutor's Office exercises its competence, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor's Office in accordance with Article 23.

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<sup>39</sup> Some Member States would indicate certain conditions under which such a decision could be taken. It has also been suggested that it should be indicated who within the European Public Prosecutor's Office should be entitled to take such decisions. Others have strongly opposed any condition to the right of evocation; some have suggested that the national competence should only be exercised when EPPO has taken a formal decision not to use its own competence.

3. Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the European Public Prosecutor's Office shall refrain from exercising its competence, unless
  - (a) a case has repercussions at Union level which require an investigation to be conducted by the Office, or
  - (b) a case has been opened following suspicions that an offence has been committed by officials and other servants of the European Union, or members of the Institutions<sup>40</sup>.
4. The European Public Prosecutor's Office may exercise the right of evocation at any time during the investigation. Where the Office, after having been duly informed by the national authorities in accordance with paragraph 1 in this Article, has refrained from exercising its right of evocation, the competent judicial or law enforcement authority shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision.
5. In case of an ancillary competence in accordance with Article 18, the European Public Prosecutor's Office can exercise its right of evocation in accordance with the conditions for the exercise of the said competence set out in the said Article.
6. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose judicial or law enforcement authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18. Article 21(2), (3) and (4) will apply when the right of evocation is exercised. When taking a decision to assign the case to a European Delegated Prosecutor from another Member State, the Permanent Chamber shall take due account of the current state of the investigations. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 of this Article considers not to exercise the right of evocation, he/she shall inform the competent European Prosecutor and await his/her instructions.

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<sup>40</sup> A few delegations have questioned whether these cases always need to be handled by the Office. Many delegations would like to see a definition or explanation of the concept of "repercussions at Union level" included in the text.

## *Article 22<sup>41</sup>*

### **Urgent measures**

The competent national authorities shall take any urgent measures necessary to ensure effective investigation and prosecution with regard to an offence within the competence of the European Public Prosecutor's Office. If the European Public Prosecutor's Office decides to initiate the investigation or to exercise the right of evocation, it shall confirm, if possible within [48 hours] from the initiation of the investigations, the measures taken by the national authorities, even if such measures have been undertaken and executed under rules other than those of this Regulation.

## *Article 23*

### **Conducting the investigation<sup>42</sup>**

1. The European Delegated Prosecutor handling the case in accordance with Article 21 may, in accordance with national law, either undertake the investigation measures on his/her own or instruct the competent law enforcement authorities in the Member State where he/she is located. These authorities shall, in accordance with national law, ensure that all instructions from the European Public Prosecutor's Office, coming through the competent European Delegated Prosecutor, are followed and undertake the investigation measures assigned to them. The European Delegated Prosecutor shall regularly report on significant developments to the Permanent Chamber, through the competent European Prosecutor.
2. In cross-border cases, where investigation measures need to be executed in another Member State, the European Delegated Prosecutor handling the case in accordance with Article 21 shall act in cooperation with the European Delegated Prosecutor where the investigation measure needs to be carried out in accordance with Article 26a.

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<sup>41</sup> The added value of the provision has been questioned by a few delegations.

<sup>42</sup> A general rule on the responsibility of the EDP's as regards the conduct of investigations can be found in Art 12(1). Some delegations have requested that chain of command, according to which EP's always are those instructing EDP's from their own state shall be mentioned explicitly in this provision.

3. At any time during the investigations, the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the competent European Delegated Prosecutor. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.
4. In the course of an investigation and until a decision to prosecute in accordance with Article 27 is taken, the Permanent Chamber monitoring a case concerning more than one Member State may, after having consulted the European Prosecutor and the European Delegated Prosecutor concerned, decide to reallocate a case to a European Delegated Prosecutor in another Member States, if such reallocation is in the interest of the efficiency of investigations and in accordance with the criteria for jurisdiction set out in Article 21(3).
5. The competent European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take the decision to conduct the investigation himself/herself, if this appears necessary in the interest of the efficiency of the investigations or prosecution on the grounds of one or more of the following criteria<sup>43</sup>:
  - a) the seriousness of the offence, in particular in view of its possible repercussions on Union level;
  - b) when the investigation concerns Members of the institutions of the European Union;
  - c) when the competent European Delegated Prosecutor in the Member State cannot perform the investigation.

When a European Prosecutor decides to conduct the investigation himself/herself, he/she will have all the powers of a European Delegated Prosecutor in accordance with national law.

The European Delegated Prosecutors concerned by the case shall be informed without delay of any decision taken under this paragraph.

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<sup>43</sup> A number of delegations oppose that a European Prosecutor should have any right to take over the conduct of investigations, and argue that it is sufficient that they have the right to supervise and instruct. Some have also suggested that the provision should be more flexible. Many delegations have criticised the wording of the criteria in this provision and asked for better clarity. The Presidency considers that the whole provision will be developed further in detail, in particular as regards applicable national law and judicial review.

6. Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union legislation. Authorities participating in the investigations of the European Public Prosecutor's Office are also bound to respect professional secrecy as provided under the applicable national law.

*Article 24*

**Lifting privileges or immunities**

1. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under national law, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor<sup>44</sup> shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.
2. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under the law of the European Union, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

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<sup>44</sup> A number of delegations have suggested that this request should rather be made by European Delegated Prosecutors.

## SECTION 2

### INVESTIGATION MEASURES

#### *Article 25*

#### **The European Public Prosecutor's Office's authority to investigate**

1. The European Delegated Prosecutor handling the case shall be entitled to order the same types of investigative measures which are available to investigators/prosecutors according to national law in similar national cases. In addition to the conditions set out in national law, such measures may only be ordered where there are reasonable grounds to believe that the specific investigation measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective.
2. Before ordering any investigation measure referred to in Article 26, the European Delegated Prosecutor handling the case shall request the authorisation of the competent national court.
3. Where the European Delegated Prosecutor handling the case, or a competent authority acting on his/her instructions in accordance with Article 23(1), undertakes investigative measures, the law of the Member State in which the measures are undertaken shall apply.

#### *Article 26*

#### **Investigation measures<sup>45</sup>**

Where the offence subject to the investigation would cause or is likely to cause a damage of [100,000] EUR or more, Member States shall ensure that the following investigative measures are also available under their laws to the European Public Prosecutor's Office:

- a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

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<sup>45</sup> There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations. A recital similar to recital 10 in the EIO Directive will give an explanation of the term "available" in the first paragraph.

- b) obtain the production of any relevant object or document, or of stored computer data, including traffic data and banking account data, encrypted or decrypted, either in original or in some other specified form;
- c) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court and there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation;
- d) freeze future financial transactions, by ordering any financial or credit institution to refrain from carrying out any financial transaction involving any specified account or accounts held or controlled by the suspected person;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected person is using.

*Article 26a*<sup>46</sup>

**Cross-border investigations**

1. The European Delegated Prosecutors shall assist each other in cross-border cases. Where an investigation measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter (“handling European Delegated Prosecutor”) shall notify the European Delegated Prosecutor located in the Member State where that investigation measure needs to be carried out (“assisting European Delegated Prosecutor”).
2. The handling European Delegated Prosecutor may notify any investigation measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the handling European Delegated Prosecutor. The enforcement of such measures conditions, modalities and procedures for taking such measures shall be governed by the law of the Member State of the assisting European Delegated Prosecutor.

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<sup>46</sup> There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations.



3. Where this Regulation or the law of the Member State of the handling European Delegated Prosecutor requires a judicial authorisation for the measure in question, that European Delegated Prosecutor shall obtain the authorisation according to national law and/or in accordance with special procedural requirements provided for by the law of the Member State of the handling European Delegated Prosecutor.
4. The notification shall set out, in particular, a description of the investigative measure(s) needed, including the evidence to be obtained, and where necessary any specific formalities that have to be complied with, a description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The request may call for the measure to be undertaken within a given time.
5. Where the law of the Member State of the assisting European Delegated Prosecutor requires judicial authorisation for a particular investigative measure, the said European Delegated Prosecutor shall seek such authorisation. The authorisation may only be refused if the measures are contrary to fundamental principles of law of the assisting State.
6. The assisting European Delegated Prosecutor shall undertake the notified measure, or another investigative measure that would achieve the same result, or ask the competent national authority to do so.
7. Where the assisting European Delegated Prosecutor considers that:
  - a) the notification is incomplete or contains a manifest relevant error,
  - b) the measure cannot be undertaken within the time limit set out in the notification for justified and objective reasons,
  - c) a less intrusive measure would achieve the same results as the measure requested, or
  - d) the notified measure does not exist or would not be available in a similar domestic case under the law of his or her Member State,he or she shall consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally. This consultation shall take no longer than [5] working days.

8. If the European Delegated Prosecutors cannot resolve the matter and the request is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the notified measure is not undertaken within the time limit set out in the notification or within a reasonable time.
9. The competent Permanent Chamber shall decide without undue delay whether and by when the measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor.

*Article 26b*

**Pre-trial arrest and cross-border surrender**

1. The European Public Prosecutor's Office may request from the competent judicial authority the arrest or pre-trial detention of the suspected person in accordance with national law.
2. Where the arrest and surrender of a person who is not present in the Member State in which the European Delegated Prosecutor handling the case is located, is necessary, the latter shall request, for the purpose of conducting a criminal prosecution, the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

**SECTION 3**

**TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION**

*Article 27<sup>47</sup>*

**Prosecution before national courts**

1. The European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of investigations, prosecution and bringing a case to judgement in their Member States of origin, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.

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<sup>47</sup> It has suggested that a new Article with an enumeration of the decisions that the Office can take to terminate an investigation are indicated should be introduced before this provision.

2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable, a draft indictment and the list of evidence<sup>48</sup> to the competent European Prosecutor and Permanent Chamber for review. Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations. If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative.
3. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the Member State in which the prosecution shall be brought. The Permanent Chamber shall in principle bring the prosecution in the Member State of the European Delegated Prosecutor assigned the case in accordance with Article 21(2). The Chamber may determine another Member State if there are sufficiently justified grounds related to the criteria for determining the competent European Delegated Prosecutor in Article 21 (2) and (3)<sup>49</sup>.
4. The competent national court is determined on the basis of national law.
5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the decision taken by the European Public Prosecutor's Office in accordance with this Regulation.

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<sup>48</sup> A number of delegations would prefer the deletion of the words "and the list of evidence"

<sup>49</sup> Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

*Article 28*

**Dismissal of the case**

1. The competent Permanent Chamber shall, on proposal from the European Delegated Prosecutor, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds<sup>50</sup>:
  - a) death of the suspected person;
  - b) amnesty granted in the state which has jurisdiction in the case;
  - c) immunity granted to the suspect, unless it has been lifted.
  - d) expiry of the national statutory limitation<sup>51</sup> to prosecute;
  - e) the suspected person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29;
  - f) lack of relevant evidence.
2. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.
3. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which became known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment.

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<sup>50</sup> Delegations have made a number of suggestions as regards the grounds. A criterion regarding permanently deranged persons has been called for, and a link to the prescription rules has also been asked for.

<sup>51</sup> The question under which national law this should be assessed in cross-border cases has been raised.

4. Where a case has been finally dismissed, the Central Office shall officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies and agencies, as well as the injured party, thereof.<sup>52</sup>
5. Where an investigation initiated by the European Public Prosecutor's Office reveals that the conduct subject to investigation constitutes a criminal offence, which is not within its competence, the European Public Prosecutor's Office shall refer the case without delay to the competent national law enforcement and judicial authorities.

*Article 29*

**Transaction**<sup>53</sup>

1. Where the case is not dismissed according to Article 28 and where the suspected persons' guilt is considered to be of a minor nature and it would serve the purpose of proper administration of justice, the competent European Delegated Prosecutor or competent European Prosecutor may, after the damage has been compensated, propose to the suspected person to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction). If the suspected person agrees, he/she shall pay the lump sum fine to the Union within a period of maximum four months.

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<sup>52</sup> The right of victims of review of such decisions should be addressed here or in a general provision. A number of delegations have also requested that a more detailed rule on *ne bis in idem* should be inserted in this Article.

<sup>53</sup> It has been suggested that this term should be replaced with "Settlement" in the final English version of the text. Many delegations have questioned the need for this provision, or have suggested that it should be replaced with a provision on plea bargaining. In any case, most Member States have requested additional details and criteria to determine when recourse to transactions can be made. The addition of a specific provision in this Article indicating that Member States may foresee that the European Public Prosecutor's Office shall submit the proposed transaction to a Court for validation will be considered later, in connection with the finalisation of the rules on judicial review in Article 33.

2. The European Delegated Prosecutor or the European Prosecutor handling the case may propose a transaction in cases which can not be considered serious, or where the damage caused to the Union's financial interests does not exceed [xxx Euros], and the suspected person has not been convicted of offences affecting the interests of the Union before..
3. The European Public Prosecutor's Office shall ensure that the amount of the fine is proportionate to the damage caused and to the suspected person's financial means. The amount of the fine shall be calculated in accordance with the method of calculation defined by the rules referred to in Article 72 (e).
4. The transaction proposal shall set out the alleged facts, the identity of the suspected person, the alleged offence, the compensation made and the commitment of the European Public Prosecutor's Office to dismiss the case if the suspected person agrees with this proposal and pays the lump-sum to the Union budget, as well as the time-limit within which the suspected person has to pay the lump-sum. Where the suspected person agrees to such proposal, he/she shall pay within the set time-limit following receipt of the proposal of the European Public Prosecutor's Office. The European Public Prosecutor's Office can upon the request of the suspected person extend the period for the payment by another [15] days, where this is justified.
5. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction. Where the transaction is paid by the suspected person within the time-limit set out in paragraph 4, the European Delegated Prosecutor or the European Prosecutor handling the case shall finally dismiss the case and notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies and injured parties thereof.
6. If the proposed fine is not paid within the time set out in paragraph 4 the European Delegated Prosecutor or the European Prosecutor handling the case shall continue the prosecution of the case.

7. The European Public Prosecutor's Office or the competent national authorities may not prosecute the suspected person for the same facts which constituted the offence being the subject of the transaction.

## SECTION 4

### ADMISSIBILITY OF EVIDENCE

#### *Article 30*

#### **Admissibility of evidence<sup>54</sup>**

1. Evidence presented by the prosecutors of the European Public Prosecutor's Office to the trial court, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence or other rights as enshrined in the Charter of Fundamental Rights of the European Union, shall [not be subject to/be admitted in the trial without] any validation or similar legal process even if the national law of the Member State where the court is located provides for different rules on the collection or presentation of such evidence.
2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the prosecutors of the European Public Prosecutor's Office at trial shall not be affected.

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<sup>54</sup> Many delegations have noted that this provision can only be finalised when the final wording of Article 27 will be there. Some delegations have called for a more explicit and detailed rule, in particular as regards illegally collected evidence. A few delegations have asked for a reference to national constitutions to be added. The text of this Article may need to be reassessed as a result of the outcome of discussions on Article 26a.

## SECTION 5 CONFISCATION

### *Article 31*

#### **Disposition of the confiscated assets<sup>55</sup>**

Where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the European Public Prosecutor's Office, Member States shall ensure that the monetary value of such property or proceeds shall ultimately be transferred to the Union's budget, to the extent necessary to compensate the prejudice caused to the Union and to administrative measures such as the recovery of any amounts lost as a result of irregularities or negligence. This transfer shall not prejudice the rights of other victims subject to their legitimate claims.

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<sup>55</sup> Some delegations have questioned whether there is a legal basis for this provision. Others have suggested that national law should apply in this area. Some delegations have requested that clarifying and detailed provisions on, for example, how money should be collected must be added, how claims should be made, how the monetary value shall be decided etc. It has also been requested that it must be ensured that the EU will not receive the same money twice, first through recovery and then from confiscated proceeds.



## **CHAPTER IV**

### **PROCEDURAL SAFEGUARDS**

*Article 32<sup>56</sup>*

#### **Scope of the rights of the suspects and accused persons as well as other persons involved**

1. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspected persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defence.
2. Any suspect and accused persons as well as other persons who are a party in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, such as:
  - (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council,
  - (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council,
  - (c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,

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<sup>56</sup> Many delegations have underlined that provisions on access to the file for in particular suspected persons must be included in the Regulation. Some delegations would prefer to delete the list of instruments in this provision, and move it to the recitals. Some have also noted that precisions as regards applicable law are needed.

- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,
  - (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant,
3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

## **CHAPTER V**

### **JUDICIAL REVIEW**

*Article 33*

**Judicial review**<sup>57</sup>

#### **OPTION 1:**

When adopting procedural measures in the performance of its functions, the European Public Prosecutor's Office shall be considered as a national authority for the purpose of judicial review.

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<sup>57</sup> A relative majority of delegations prefer option 2, but most delegations still believe that the options need to be modified slightly or clarified.

## OPTION 2:

1. Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [18(6)<sup>58</sup>, 27(4)] [and ....] shall be subject to review of their legality before the Court of Justice of the European Union in accordance with Article 263 of the Treaty<sup>59</sup>.
2. Without prejudice to Article 267 of the Treaty, the courts of Member States shall be competent to review other procedural decisions taken by the European Public Prosecutor's Office in the performance of its functions, in accordance with the requirements and procedures laid down by national law<sup>60</sup>.

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<sup>58</sup> Article 18(6) on ancillary competence should be redrafted as a consequence of this provision.

<sup>59</sup> A Recital should set out the criteria taken into account to limit the competence of the ECJ on actions for annulment to those specific cases, in the light of the objectives and principles referred to in the CLS legal opinion (doc. 13302/1/14 REV1) .

<sup>60</sup> A Recital should be added to explain that the principles of equivalence and effectiveness as interpreted by the case law of the Court of Justice should be respected. Another recital should clarify that this provision is without prejudice to Article 267 of the Treaty, in particular preliminary rulings on the interpretation of Union law, on the validity of this Regulation and of procedural decisions taken by the European Public Prosecutor's Office. Finally another Recital should also clarify the issue of judicial review of procedural decisions taken by the European Public Prosecutor's Office which are governed by national law.