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From: Presidency

To: Delegations

Subject: Proposal for a Council Regulation on the establishment of the European
Public Prosecutor's Office

- Drafting proposal from the French delegation

Delegates will find in Annex a drafting proposal from the French delegation.

ANNEX II

**CHAPTER IV
RULES OF PROCEDURE ON INVESTIGATIONS,
PROSECUTIONS AND TRIAL PROCEEDINGS**

**SECTION 1
CONDUCT OF INVESTIGATIONS**

Article 20

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law shall inform the European Public Prosecutor's Office of any conduct which might constitute a criminal offence within its competence in accordance with Article 17:
 - a) without delay where the European Public Prosecutor's Office would be entitled to exercise its rights of evocation in accordance with Article 21a;
 - b) not later than three months after becoming aware of facts of an offence other than mentioned in point a) where the damages caused or likely to be caused exceed EUR ~~1 000~~ 5 000.
2. The information under paragraph 1 (b) may be submitted to the European Public Prosecutor's Office in the form of a summary report every three months.
3. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law may inform the European Public Prosecutor's Office of any other conduct not mentioned in paragraph 1.

4. Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office ¹.
5. Information provided to the European Public Prosecutor's Office in accordance with paragraph 1(a) 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.
6. Where, upon verification, the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in Case Management system. It shall inform the national authority, the Union institution, body, office or agency, and, where necessary, at their request, the person who provided the information, thereof.
7. The European Public Prosecutor's Office may request and receive any information that is relevant for the functions of the Office. The rules of registration and verification set out in this Article shall apply mutatis mutandis if the information received refers to any conduct which might constitute a criminal offence within its competence.
8. **The College may, in consultation with national authorities, upon proposal by the European delegated prosecutors, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences, in particular customs infringements violating Union customs legislation. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutors's Office deems to be best dealt with by national authorities under domestic law.**

¹ The following recital may be considered: "The report shall include, as a minimum, a short description, including place and time, of the offence, available information about victims and perpetrators, and an assessment of the damages caused or likely to be caused. The report may be presented in the form of an automatically generated information from a Member State's criminal case management system."

The European Public Prosecutor's Office, on decision by the College, upon proposal by the European delegated prosecutors, should be entitled to determine specific modalities of information or discharge the national authorities from their obligation to report regarding certain types of offences, including where the conduct caused or is likely to cause damage to the Union's financial interest of more than EUR 20 000. Recourse to such possibility could be envisaged in particular in cases of offences of minor nature in order to ensure an even exercise of competence by the European Public Prosecutor's Office, taking into account possible discrepancies in Member States' criminal law.

Article 21

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

1. Where, in accordance with this Regulation and the 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~~ may initiate an investigation and note this in the Case Management System².
2. Taking into account the criteria set out in paragraph 3 of this Article, the competent Permanent Chamber:
 - shall allocate the case in accordance with Article 12(1), after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, if an investigation in respect of the same offence has already been initiated by the European Public Prosecutor's Office;

² 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.

- may allocate the case to a European Delegated Prosecutor in another Member State, which according to its law has jurisdiction in the case if an investigation in respect of the same offence had not already been initiated.
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 in accordance with paragraph 2 of this Article, the competent Permanent Chamber, after clarifying that the Member State has jurisdiction, may deviate from that principle on sufficiently justified grounds, taking into account in particular the following criteria, in order of priority:
- c) the place where the accused person has his/her habitual residence;
 - d) the nationality of the accused person;
 - e) 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 and directing 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 the handling 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 competence in respect of an offence ~~where~~ for which the European Public Prosecutor's Office's right of evocation is not excluded by ~~could exercise its right of evocation in accordance with~~ paragraph 3 of this Article, 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 ~~40~~ 5 days after having received the information from the national authority, unless the European Chief Prosecutor in a specific case takes a reasoned decision to prolong the time frame of ~~40~~ 5 days with a maximum prolongation of ~~40~~ 5 days. Without prejudice to Article 20 (8), ~~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 competent national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution with regard to an offence within the competence of the European Public Prosecutor's Office.
2. If the European Public Prosecutor's Office 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, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence within the time periods of the previous paragraph.

- 2a. The European Public Prosecutor's Office shall, where appropriate, consult with judicial or law enforcement authorities of the Member State concerned before deciding³ whether to exercise its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation, 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.
3. Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR ~~10 000~~ 20 000, the European Public Prosecutor's Office shall refrain from exercising its right of evocation, unless
- a) a case has repercussions at Union level⁴ 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 Institutions⁵.

The Office shall, where appropriate, consult relevant national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are fulfilled.

³ 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.

⁴ Some delegations request that a definition of this concept shall be introduced.

⁵ 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.

PROPOSAL FOR A RECITAL AD ARTICLE 21a (1)

(...) In order to safeguard free circulation of goods and freedom of trade, the European Public Prosecutor's Office should seek to take decisions on evocation on a real-time basis where it is made aware by national authorities that they exercise competence following an operation of control of goods resulting in cargo dwell pending final decision on the case.

PROPOSAL FOR A RECITAL AD ARTICLE 21a (3) (a)

A particular case should be considered as having repercussions at Union level inter alia where a given fraud has a transnational nature and scale, where such fraud involves a criminal organisation, or where, given the nature of the case, the European Public Prosecutor's Office would be best placed to investigate, in view of the seriousness of the damage caused to the Union's financial interests or the Union Institutions' credit and Union citizens' confidence.