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**LIMITE**

## MEETING DOCUMENT

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From: Presidency  
To: Delegations

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No. prev. doc.: 6319/15 EPPO 19 EUROJUST 49 CATS 34 FIN 127 COPEN 55 GAF 5

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Subject: Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office  
- Presidency draft text on Articles 7-12 in the Regulation

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The content of Articles 7-12 in the draft Regulation have been discussed and examined in detail in the COPEN working party for more than a year. The Presidency considers that sufficient time has now been spent on the analysis of these Articles and the positions of delegations, and that time has now come to search agreement on a balanced compromise on the provisions in question. In Annex I, delegations will find the Presidency proposal for such a compromise text, which the Presidency proposes JHA Counsellors to examine at the meeting of 23 March 2015. Annex I indicates changes in relation to the Italian Presidency text from December 2014<sup>1</sup> as underlined or ~~struckthrough~~, as well as changes in relation to the Council document discussed in COPEN on 26-27 February 2015<sup>2</sup> indicated as **shadowed**. In Annex II, delegations will find a clean version of the Presidency proposal.

With a view to approaching an agreement on the text, the Presidency invites delegations to lift reservations as far as possible, in order to identify the possible 'real' substantial open issues.

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<sup>1</sup> Doc 16993/14 EPPO 78 EUROJUST 221 CATS 209 FIN 1006 COPEN 318 GAF 68.

<sup>2</sup> Doc 6319/15 EPPO 19 EUROJUST 49 CATS 34 FIN 127 COPEN 55 GAF 5.

## 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 **an indivisible** 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: **the** College, ~~it's~~ **the** Permanent Chambers, ~~the~~ **the** 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.
5. The College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors and the European Deputy Prosecutors shall be assisted by the staff of the European Public Prosecutor's Office in their duties under this Regulation.

## 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 ~~behave responsibly~~ for their preparation.
2. The College shall meet regularly, ~~in accordance with the internal Rules of Procedure. It and shall be responsible for the general oversight (monitoring)<sup>1</sup> of the activities of the Office in accordance with the internal Rules of Procedure. It shall and for taking~~ decisions on strategic matters, and ~~on general issues of general application~~ arising from individual cases<sup>2</sup>, 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.

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<sup>1</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 ~~explanations~~ definitions in the text and/or recitals, in line with the following: ~~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>2</sup> A recital with the following wording could be considered: "The College should take decisions on strategic matters, including as regards determining the priorities and policy of the Office, as well as on general issues arising from individual cases, for example as regards to the application of the Regulation, the correct implementation of the policy of the Office or questions of principle or of significant importance for the development of a coherent prosecution policy of the Office".

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>3</sup>.
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>4</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>5</sup>.

### *Article 9*

#### **The Permanent Chambers**

1. The European Chief Prosecutor, the Deputies and all the other European Prosecutors shall be ~~Members~~ part of at least one Permanent Chamber. Each Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, or another Chairperson appointed among the European Prosecutors in accordance with the internal Rules of Procedure, and have at least two additional permanent Members. The number and organisation of the Permanent Chambers shall be determined in function of the needs of

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<sup>3</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~~

<sup>4</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>5</sup> ~~The casting vote of the Chief Prosecutor as well as other voting arrangements foreseen have been criticized by some.~~ A recital indicating that the College and the Permanent Chambers should in principle strive towards consensual decision-making will be considered, for example as follows: "The College and Permanent Chambers should use their best endeavours to reach consensus. If such a consensus cannot be reached, decisions should be taken by simple majority".

the Office. The Permanent Chambers shall be set up with a view to ensuring an even workload between the Chambers, with account taken to the interest of ensuring a balance of various backgrounds in legal systems and geographical range of the European Prosecutors, in accordance with the applicable-rules on the setting up and organisation of the Permanent Chambers in the internal Rules of Procedure.

2. The Permanent Chambers shall direct ~~and monitor~~ the investigations and prosecutions conducted ~~in the Member States~~ by the European Delegated Prosecutors in accordance with paragraphs 3 and 4 in this Article or by European Prosecutors who have taken over the case in accordance with Article 23(5)<sup>6</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).

~~2a. Every case shall be allocated to a Permanent Chamber in accordance with Article [X] and the automated random automatic system of allocation of cases to be defined in the internal Rules of Procedure. The Internal Rules of Procedure shall include rules on reallocation of cases between Permanent Chambers, and provide for a possibility to diverge from the automated distribution of cases in exceptional cases.~~

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<sup>6</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. One Member State would exclude that the Permanent Chamber shall have the right to intervene in individual cases.

3. The Permanent Chambers shall take the following decisions in accordance with the conditions and procedures set out by this Regulation<sup>7</sup>:
- a) to initiate an investigation in accordance with the rules in Article 21(1) where no investigations has been initiated by an European Delegated Prosecutor or to evoke a case in accordance with Article 21a;
  - b) to refer to the College strategic matters or general issues of general application arising from individual cases in accordance with Article 8(2);
  - c) to reallocate a case in accordance with Article 21(4) and 23(4);
  - d) to determine the Member State in which the prosecution shall be brought in accordance with Article 27(3);
  - e) to bring a prosecution to Court in accordance with Article 27(2);
  - f) to dismiss a case, including through a transaction in accordance with Article 28(1);
  - g) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(5);

The decisions shall be taken in deliberation in the Chambers, on the basis of a summary report submitted by the supervising European Prosecutor. All case material shall at request be accessible to the Permanent Chamber in view of the preparation of the decisions.

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<sup>7</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 Prosecutors or 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.

~~The internal Rules of Procedure may, as regards decisions that do not require any prior evaluation of evidence, authorise the Permanent Chambers to delegate its decision-making powers under points e) and f) in this provision to European Prosecutors or European Delegated Prosecutors. The internal Rules of Procedure may provide that certain defined decisions to be taken by the Permanent Chamber shall be deemed to be of a simple nature, and that the Permanent Chamber may take such decisions by means of a written procedure." also authorise the Permanent Chambers to take decisions of a simple nature, to be defined in the internal Rules of Procedure, by means of a written procedure.~~

4. The competent Permanent Chamber may give instructions<sup>8</sup>, through the competent European Prosecutor who is supervising a prosecution or an investigation in accordance with Article 11(1), in a specific case to the handling European Delegated Prosecutor ~~to whom it has been allocated~~, whenever necessary for the efficient handling of the investigation or and prosecution and in the interest of justice and 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>8</sup> A recital with the following wording (or similar) will be considered: "The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. They will however retain the right to refuse, in accordance with fundamental principles of law, to follow an instruction if it is not compliant with applicable law".

6. In addition to the permanent Members, the European Prosecutor ~~or European Prosecutors~~ who ~~is are~~ supervising a prosecution or an investigation<sup>9</sup> in accordance with Article 11(1) shall participate in the ~~deliberations~~ **liberation decisions** of the Permanent Chamber, without a right to vote<sup>10</sup> as regards. A Permanent Chamber may also, either at the request of a European Prosecutor or a European Delegated Prosecutor or at its own initiative, invite other European Prosecutors or European Delegated Prosecutors who are concerned by a case to attend their meetings without a right to vote.
7. The Chairs of the Permanent Chambers shall, in accordance with internal Rules of Procedure, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfill its role in accordance with Article 8(2) 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>11</sup>
2. **At least three** 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.

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<sup>9</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>10</sup> ~~A number of delegations have requested that the supervising European Prosecutor shall have a right to vote. In order to address this concerns, the Presidency considers proposing a recital with the following wording "Considering the need to ensure that the differences in national legal systems are fully understood and taken into account in the deliberations of the Permanent Chamber, the latter should give specific attention to the opinion of the European Prosecutors and European Delegated Prosecutors directly concerned by a case".~~

<sup>11</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.~~



3. ~~When the European Chief Prosecutor has been informed through the Case Management System or otherwise that a case has been initiated, or when a case has been evoked in accordance with Article 21a, he/she shall allocate the case to the Permanent Chambers which shall be in charge of the case in accordance with Article [X] and the automated random automatic system of allocation of cases defined in the internal Rules of Procedure, decide which Permanent Chamber shall be in charge of a case. The European Chief Prosecutor may in exceptional cases disregard the automated distribution of cases where he/she deems it necessary for ensuring a balanced workload among the Permanent Chambers.~~
4. The European Chief Prosecutor shall represent the European Public Prosecutor's Office towards the Union institutions, the Member States and third parties. The European Chief Prosecutor may ~~also~~ delegate his/her tasks relating to representation to one of the Deputies or to a European Prosecutor.

#### *Article 11*

#### **The European Prosecutors**

1. The European Prosecutors shall, ~~on behalf of the Permanent Chamber in charge of the case and under the direction in accordance with the instructions of the Permanent Chamber in charge of the case~~its instructions, supervise investigations and prosecutions ~~allocated~~signed handled by European Delegated Prosecutors in their Member State of origin<sup>12</sup>, and shall present summaries of cases with proposals for decisions to be taken by the said Chamber<sup>13</sup>. The internal Rules of Procedure shall provide for a mechanism of ~~mutual~~ substitution between European Prosecutors in case the ~~supervising~~ European Prosecutor is absent from his/her duties or for other reasons not available to carry out the functions of the European Prosecutors.

<sup>12</sup> The Commission opposes the addition of the word "in their Member State of origin".

<sup>13</sup> A number of delegations have suggested, as regards cases ~~allocated~~signed to several European Prosecutors, that one of these European Prosecutors shall be selected to be coordinator/rapporteur of the case in question.

The European Prosecutors may give instructions in investigation or prosecution matters under their supervision whenever necessary for the efficient handling of the investigation and prosecution and in the interest of justice and a coherent functioning of the European Public Prosecutor's Office. If the Permanent Chamber in charge of the case has issued any decisions and instructions in a case, the European Prosecutors shall ensure that his or her instructions are in accordance with the said decisions and instructions of the Chamber.

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>14</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>15</sup>~~

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<sup>14</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>15</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 ~~be competent to~~ act on behalf of ~~represent~~ the European Public Prosecutor's Office in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers conferred on them by this Regulation.

The European Delegated Prosecutors shall be responsible for the investigations and prosecutions, which they have initiated, ~~or~~ which have been allocated to them ~~or which they have taken over using their right of evocation, by a Permanent Chamber through the competent European Prosecutor, and act under their instructions.~~ The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor. The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in evidence taking and exercise the available remedies in accordance with national law.

2. There shall be two or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall approve the division competences of the European Delegated Prosecutors in each state on a proposal from the Member State. ~~Member States shall determine the division of competences~~

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 **supervising** ~~competent~~ European Prosecutor of such ~~functions 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>16</sup> ~~Should the European Delegated Prosecutor fail to follow the instructions, the European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor or to himself/herself.~~<sup>17</sup>
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<sup>16</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.

<sup>17</sup> The deleted phrase should be moved to Article 23(4).

## **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 an indivisible 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: the College, the Permanent Chambers, the 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.
5. The College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors and the European Deputy Prosecutors shall be assisted by the staff of the European Public Prosecutor's Office in their duties under this Regulation.

## Article 8

### The College

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor 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 be responsible for their preparation.
2. The College shall meet regularly and be responsible for the general oversight (monitoring) of the activities of the Office in accordance with the internal Rules of Procedure. It shall take decisions on strategic matters, and on general issues arising from individual cases<sup>1</sup>, 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 take 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 the casework of the European Public Prosecutor's Office.
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 of the Central Office.
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>2</sup>.

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<sup>1</sup> A recital with the following wording could be considered: "The College should take decisions on strategic matters, including as regards determining the priorities and policy of the Office, as well as on general issues arising from individual cases, for example as regards to the application of the Regulation, the correct implementation of the policy of the Office or questions of principle or of significant importance for the development of a coherent prosecution policy of the Office".

<sup>2</sup> A recital indicating that the College and the Permanent Chambers should in principle strive towards consensual decision-making will be considered, for example as follows: "The College and Permanent Chambers should use their best endeavours to reach consensus. If such a consensus cannot be reached, decisions should be taken by simple majority."

## Article 9

### The Permanent Chambers

1. The European Chief Prosecutor, the Deputies and all the other European Prosecutors shall be Members of at least one Permanent Chamber. Each Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, or another Chairperson appointed among the European Prosecutors in accordance with the internal Rules of Procedure, and have at least two additional permanent Members. The number and organisation of the Permanent Chambers shall be determined in function of the needs of the Office. The Permanent Chambers shall be set up with a view to ensuring an even workload between the Chambers, with account taken to the interest of ensuring a balance of various backgrounds in legal systems and geographical range of the European Prosecutors, in accordance with the rules on the setting up and organisation of the Permanent Chambers in the internal Rules of Procedure.
2. The Permanent Chambers shall direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3 and 4 in this Article or by European Prosecutors who have taken over the case in accordance with Article 23(5)<sup>3</sup>. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College in accordance with Article 8(2).
- 2a. Every case shall be allocated to a Permanent Chamber in accordance with the automated random system of allocation of cases to be defined in the internal Rules of Procedure. The Internal Rules of Procedure shall include rules on reallocation of cases between Permanent Chambers, and provide for a possibility to diverge from the automated distribution of cases in exceptional cases.

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<sup>3</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. One Member State would exclude that the Permanent Chamber shall have the right to intervene in individual cases.

3. The Permanent Chambers shall take the following decisions in accordance with the conditions and procedures set out by this Regulation:
- a) to initiate an investigation in accordance with the rules in Article 21(1) where no investigations has been initiated by an European Delegated Prosecutor or to evoke a case in accordance with Article 21a;
  - b) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 8(2);
  - c) to reallocate a case in accordance with Article 21(4) and 23(4);
  - d) to determine the Member State in which the prosecution shall be brought in accordance with Article 27(3);
  - e) to bring a prosecution to Court in accordance with Article 27(2);
  - f) to dismiss a case, including through a transaction in accordance with Article 28(1);
  - g) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(5);

The decisions shall be taken in deliberation in the Chambers, on the basis of a summary report submitted by the supervising European Prosecutor. All case material shall at request be accessible to the Permanent Chamber in view of the preparation of the decisions.

The internal Rules of Procedure may provide that certain defined decisions to be taken by the Permanent Chamber shall be deemed to be of a simple nature, and that the Permanent Chamber may take such decisions by means of a written procedure.

4. The competent Permanent Chamber may give instructions<sup>4</sup>, through the European Prosecutor who is supervising a prosecution or an investigation in accordance with Article 11(1), in a specific case to the handling European Delegated Prosecutor, whenever necessary for the efficient handling of the investigation or prosecution and in the interest of justice and a coherent functioning of the European Public Prosecutor's Office.

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<sup>4</sup> A recital with the following wording (or similar) will be considered: "The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. They will however retain the right to refuse, in accordance with fundamental principles of law, to follow an instruction if it is not compliant with applicable law".



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.
6. In addition to the permanent Members, the European Prosecutor or European Prosecutors who is supervising a prosecution or an investigation in accordance with Article 11(1) shall participate in the deliberations of the Permanent Chamber, without a right to vote<sup>5</sup>. A Permanent Chamber may also, either at the request of a European Prosecutor or a European Delegated Prosecutor or at its own initiative, invite other European Prosecutors or European Delegated Prosecutors who are concerned by a case to attend their meetings without a right to vote.
7. The Chairs of the Permanent Chambers shall, in accordance with internal Rules of Procedure, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfill its role in accordance with Article 8(2).

#### *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.
2. At least three 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.
4. The European Chief Prosecutor shall represent the European Public Prosecutor's Office towards the Union institutions, the Member States and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputies or to a European Prosecutor.

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<sup>5</sup> A number of delegations have requested that the supervising European Prosecutor shall have a right to vote. In order to address this concerns, the Presidency considers proposing a recital with the following wording "Considering the need to ensure that the differences in national legal systems are fully understood and taken into account in the deliberations of the Permanent Chamber, the latter should give specific attention to the opinion of the European Prosecutors and European Delegated Prosecutors directly concerned by a case".

*Article 11*

**The European Prosecutors**

1. The European Prosecutors shall supervise investigations and prosecutions handled by European Delegated Prosecutors in their Member State of origin<sup>6</sup>, and shall present summaries of cases with proposals for decisions to be taken by the said Chamber. The internal Rules of Procedure shall provide for a mechanism of substitution between European Prosecutors in case the supervising European Prosecutor is absent from his/her duties or for other reasons not available to carry out the functions of the European Prosecutors.

The European Prosecutors may give instructions in investigation or prosecution matters under their supervision whenever necessary for the efficient handling of the investigation or prosecution and in the interest of justice and a coherent functioning of the European Public Prosecutor's Office. If the Permanent Chamber in charge of the case has issued any decisions and instructions in a case, the European Prosecutors shall ensure that his or her instructions are in accordance with the said decisions and instructions of the Chamber.

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 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.

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<sup>6</sup> The Commission opposes the addition of the word "in their Member State of origin".

*Article 12*

**The European Delegated Prosecutors**

1. The European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers conferred on them by this Regulation.

The European Delegated Prosecutors shall be responsible for the investigations and prosecutions which they have initiated, which have been allocated to them or which they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor. The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in evidence taking and exercise the available remedies in accordance with national law.

2. There shall be two or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall approve the division competences of the European Delegated Prosecutors in each state on a proposal from the Member State.
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 supervising European Prosecutor of such functions. 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>7</sup>

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<sup>7</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.