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Proposal for a

**COUNCIL REGULATION**

**on the establishment of the European Public Prosecutor's Office**

{SWD(2013) 274 final}

{SWD(2013) 275 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Prosecuting offences against the EU budget is currently within the exclusive competence of Member States and no Union authority exists in this area. While their potential damage is very significant, these offences are not always investigated and prosecuted by the relevant national authorities, as law enforcement resources are limited. As a result, national law enforcement efforts remain often fragmented in this area and the cross-border dimension of these offences usually escapes the attention of the authorities.

Whereas tackling cross-border fraud cases would require closely coordinated and effective investigations and prosecutions at European level, the current levels of information exchange and coordination are not sufficient to achieve this, despite the intensified efforts of Union bodies, such as Eurojust, Europol and the European Anti-Fraud Office (OLAF). Coordination, cooperation and information exchange face numerous problems and limitations owing to a split of responsibilities between authorities belonging to diverse territorial and functional jurisdictions. Gaps in the judicial action to fight fraud occur daily at different levels and between different authorities and are a major impediment to the effective investigation and prosecution of offences affecting the Union's financial interests.

Eurojust and Europol have a general mandate to facilitate exchange of information and coordinate national criminal investigations and prosecutions, but lack the power to carry out acts of investigation or prosecution themselves. The European Anti-Fraud Office (OLAF) has a mandate to investigate fraud and illegal activities affecting the EU, but its powers are limited to administrative investigations. Action by national judicial authorities remains often slow, prosecution rates on the average low and results obtained in the different Member States over the Union as a whole unequal. Based on this track record the judicial action undertaken by Member States against fraud may currently not be considered as effective, equivalent and deterrent as required under the Treaty.

As Member States' criminal investigation and prosecution authorities are currently unable to achieve an equivalent level of protection and enforcement, the Union not only has the competence but also the obligation to act. Article 325 of the Treaty so requires from a legal perspective, but taking into account the specific Union rules which apply in this field the Union is also best placed to protect its own financial interests, including via the prosecution of offences against these interests. Article 86 of the Treaty provides the necessary legal basis for such a new Union-level prosecution system, the purpose of which is to correct the deficiencies of the current enforcement regime exclusively based on national efforts and add consistency and coordination to these efforts.

The current proposal seeks to set up the European Public Prosecutor's Office and define its competences and procedures. It complements an earlier legislative proposal<sup>1</sup> which defines the criminal offences as well as the applicable sanctions.

This proposal is part of a legislative package as it will be accompanied by a proposal concerning the reform of Eurojust.

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, 11 July 2012 COM (2012) 363 final

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

In order to prepare this Regulation, the Commission has consulted widely with stakeholders, on a number of occasions, also building on earlier discussions related to the European Public Prosecutor's Office, which have been going on for more than a decade.<sup>2</sup> Preparatory consultations in view of the present proposal have covered the main issues addressed in this Regulation, including various options with regard to the institutional, legal, organisational and operational set-up of a European system for the investigation and prosecution of the relevant offences.

Early in 2012, two questionnaires were published and distributed on-line, one to justice professionals and another to the general public, respectively. In general, the replies were positive towards taking new actions to strengthen the material and procedural framework to counter offences affecting the EU's financial interests, and most also expressed support for the idea to set up a European Public Prosecutor's Office. A number of more detailed suggestions, concerns and questions were also voiced, in particular on the relationship between such the European Public Prosecutor's Office and national prosecution authorities, the competence of the European Public Prosecutor's Office to direct and coordinate investigations at national level, or the possible difficulties with any harmonised European rules of procedure in the European Public Prosecutor's Office's proceedings. In parallel, field research has been conducted in a number of Member States, as part of the external study in support of this report. In addition, throughout 2012 and at the beginning of 2013, a number of discussions or meetings took place at European level:

- The network of Public Prosecutors or equivalent institutions at the Supreme Judicial Courts of the Member States, Budapest, 25-26 May 2012.
- Conference: A Blueprint for the European Public Prosecutor's Office? Luxembourg, 13-15 June 2012. The conference gathered experts and high level representatives from academia, EU institutions and Member States.
- Vice-President Reding's consultation meeting with Prosecutors General and Directors of Public Prosecution from Member States, Brussels, 26 June 2012. The meeting permitted an open discussion on specific issues regarding the protection of the Union's financial interests.
- On 18 October 2012, the Commission organised a consultation meeting on issues relating to a possible reform of Eurojust, in which questions related to the setting up of a European Public Prosecutor's Office were also discussed with representatives of Member States. The meeting generally supported establishing a close link between Eurojust and the European Public Prosecutor's Office.
- The 10th OLAF Conference of Fraud Prosecutors, Berlin, 8-9 November 2012, was an opportunity to explore the ways in which national prosecutors would interact with the European Public Prosecutor's Office, if set up.
- The informal consultation held on 26 November 2012 with defence lawyers (CCBE and ECBA) looked at procedural safeguards for suspects and made useful recommendations in that regard.

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<sup>2</sup> See Green Paper on criminal law protection of the financial interests of the Community and the establishment of a European Public Prosecutor, 11 December 2001 COM (2001)715 final and its follow up report, 19 March 2003 COM (2003)128 final

- ERA seminar "Towards the European Public Prosecutor's Office (EPPO)", 17 and 18 January 2013.
- Meeting of the Commission Expert Group on European Criminal Policy, Brussels, 23 January 2013.
- Further consultation meeting with ECBA and CCBE, Brussels, 9 April 2013.

Also, numerous bilateral consultation meetings with Member States' authorities have taken place over the second half of 2012 and the beginning of 2013.

The Commission conducted an Impact Assessment of policy alternatives taking account *inter alia* an external study (Specific contract No. JUST/2011/JPEN/FW/0030.A4) which has considered various options involving the establishment of a European Public Prosecutor's Office. According to the analysis of the Impact Assessment, setting up the European Public Prosecutor's Office as a decentralised integrated office of the Union, which relies on national judicial systems, offers the most benefits and generates the lowest costs.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. The legal basis**

The legal basis of the proposal is Article 86 of the Treaty. According to the first paragraph of that provision, "[i]n order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament". The second paragraph of that provision defines the responsibility of the European Public Prosecutor's Office as follows: "[t]he European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Eurojust, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences". Finally, the third paragraph of Article 86 of the Treaty defines the substantive scope of the regulations to be adopted pursuant to it: "[t]he regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions".

#### **3.2. Subsidiarity and proportionality**

There is a need for the Union to act because the foreseen action has an intrinsic Union dimension. It implies Union-level steering and coordination of investigations and prosecutions of criminal offences affecting its own financial interests, the protection of which is required both from the Union and the Member States by Articles 310 (6) and 325 TFEU. In accordance with the subsidiarity principle, this objective can only be achieved at Union level by reason of its scale and effects. As stated above, the present situation, in which the prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States is not satisfactory and does not sufficiently achieve the objective of fighting effectively against offences affecting the Union budget.

In accordance with the principle of proportionality, this Regulation does not go beyond what is necessary to achieve this objective. Throughout the proposed text, the options chosen are those that are least intrusive for the legal orders and the institutional structures of the Member

States. Key features of the proposal, such as the choice of the law that applies to investigative measures, the figure of Delegated Prosecutors, the decentralised character of the European Public Prosecutor's Office and the system of judicial review, were designed in order not to go beyond what was necessary to achieve the main objectives of the proposal.

The Union's competence to counter fraud and other offences affecting its financial interests is unambiguously stipulated by Articles 86 and 325 of the Treaty. As this Union competence is not accessory to that of Member States and exercising it has become necessary to achieve a more effective protection of the Union's financial interests, the proposed package complies with the requirement of subsidiarity.

### **3.3. Explanation of the proposal by chapters**

The main objectives of the proposal are:

- To contribute to the strengthening of the protection of the Union's financial interests and further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union's institutions, while respecting all fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.
- To establish a coherent European system for the investigation and prosecution of offences affecting the Union's financial interests.
- To ensure a more efficient and effective investigation and prosecution of offences affecting the EU's financial interests.
- To increase the number of prosecutions, leading to more convictions and recovery of fraudulently obtained Union funds.
- To ensure close cooperation and effective information exchange between the European and national competent authorities.
- To enhance deterrence of committing offences affecting the Union's financial interests.

#### *3.3.1. Chapter I: Subject matter and definitions*

This Chapter sets out the subject matter of the Regulation, which is the setting up of the European Public Prosecutor's Office. In addition, it defines a certain number of terms used in the text, such as the "financial interests of the Union".

#### *3.3.2. Chapter II: General rules*

This Chapter regulates the fundamental features of the European Public Prosecutor's Office, its status and structure as a new Union office with investigation and prosecution functions. In doing so, it provides specific rules on the appointment and dismissal of the European Public Prosecutor and his/her delegates. It also sets out the basic principles of its functioning.

Section 1 (Status, organisation and structure of the European Public Prosecutor's Office) clarifies how the European Public Prosecutor's Office is set up and what functions will be entrusted to it. The text provides for its establishment as a new Union body with legal personality and sets out its relationship with Eurojust. Among the key features of the European Public Prosecutor's Office, the text refers to independence and accountability, which should guarantee that it is able to exercise its functions and use its powers in a way that makes it immune from any improper influence. The main characteristics of the structure of the European Public Prosecutor's Office are also described in the text.

Section 2 (Appointment and dismissal of the members of the European Public Prosecutor's Office) provides the rules applicable to the appointment and dismissal procedure of the

European Public Prosecutor, his/her Deputies and staff. The appointment procedure for the European Public Prosecutor is designed in a way that guarantees his independence and accountability towards Union institutions, whereas his/her dismissal procedure rests with the Court of Justice of the European Union. For the European Delegated Prosecutors, who will be appointed and dismissed by the European Public Prosecutor, the procedure ensures their integration into national prosecution systems.

Section 3 (Basic principles) describes the main legal principles that will govern the activities of the European Public Prosecutor's Office, including conformity with the Charter of Fundamental Rights of the European Union, proportionality, national law being applicable to implement the Regulation, procedural neutrality, legality and celerity of investigations, Member States' duty to assist the investigations and prosecutions of the European Public Prosecutor's Office.

Section 4 (Competence of the European Public Prosecutor's Office) clarifies the criminal offences which fall within the material competence of the European Public Prosecutor's Office. These offences are to be defined by reference to national law implementing Union law (Directive 2013/xx/EU). The text distinguishes between two categories of offences, the first of which falls automatically within the competence of the European Public Prosecutor's Office (Article 12) and the second (Article 13) which requires to establish its competence where there are certain connecting links with offences of the first category. The Section also describes how the European Public Prosecutor's Office will exercise its competence over these offences.

### *3.3.3. Chapter III: Rules of procedure on investigations, prosecutions and trial proceedings*

This Chapter covers the essential features of the investigations and prosecutions of the European Public Prosecutor's Office, including provisions on how they should be controlled by national courts, what decisions the European Public Prosecutor's Office could take once the investigation is completed, how it would exercise its prosecution functions and how the evidence collected would be used in trial courts.

Section 1 (Conduct of the investigation) provides the general rules that apply to the investigations of the European Public Prosecutor's Office, including the sources of information used, how investigations are initiated and conducted and how the European Public Prosecutor's Office may obtain further information from databases or data collected at its request.

Section 2 (Processing of information) explains the functioning of the Case Management System.

Section 3 (Investigation measures) sets out the types and conditions of the individual investigation measures which the European Public Prosecutor's Office will be able to use. The text does not regulate in detail each of these measures but requires the application of national law.

Section 4 (Termination of the investigation and powers of prosecution) stipulates the different types of decisions which the European Public Prosecutor's Office may take at the end of the investigation, including indictments and dismissals.

Section 5 (Admissibility of evidence) regulates the admissibility of evidence collected and presented by the European Public Prosecutor's Office in trial courts.

Section 6 (Confiscation) regulates the disposition of the assets confiscated by national courts as a result of the prosecution conducted by the European Public Prosecutor's Office.

#### *3.3.4. Chapter IV: Procedural safeguards*

The rules of this Chapter provide safeguards for suspects and other persons involved in the proceedings of the European Public Prosecutor's Office, which will need to comply with the relevant standards, in particular the Charter of Fundamental Rights of the European Union. The rules refer to Union legislation (Directives on various procedural rights in criminal proceedings) with regard to certain rights but also define autonomously other rights which have not yet been regulated in Union legislation. As such, these rules provide an additional layer of protection compared to national law so that suspects and other persons may benefit directly from a Union-level protection.

#### *3.3.5. Chapter V: Judicial review*

Article 86(3) of the Treaty prescribes the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the European Public Prosecutor's Office in the performance of its functions. This possibility reflects the specific nature of the European Public Prosecutor's Office, which is different from that of all other Union bodies and agencies and requires special rules regarding judicial review.

Article 86(2) of the Treaty requires that the European Public Prosecutor's Office exercise its functions of prosecutor in the competent courts of the Member States. The acts of investigation of the European Public Prosecutor's Office are also closely related to an eventual prosecution and will mainly deploy their effects in the legal orders of the Member States. In most cases they will also be carried out by national law enforcement authorities acting under the instructions of the European Public Prosecutor's Office, and sometimes also after having obtained the authorisation of a national court. The European Public Prosecutor's Office is therefore a Union body whose action will mainly be relevant in the national legal orders. It is therefore appropriate to consider the European Public Prosecutor's Office as a national authority for the purpose of the judicial review of its acts of investigation and prosecution. As a result, national courts should be entrusted with the judicial review of all the challengeable acts of investigation and prosecution of the European Public Prosecutor's Office, and the Union courts should not be directly competent with regard to those acts pursuant to Articles 263, 265 and 268 of the Treaty, since such acts should not be considered as acts of an office of the Union for the purpose of judicial review.

In accordance with Article 267 of the Treaty, national courts are able or, in certain circumstances, bound to refer to the Court of Justice questions for preliminary rulings on the interpretation or the validity of provisions of Union law which are relevant for the judicial review of acts of investigation and prosecution of the European Public Prosecutor's Office. This may include questions on the interpretation of this Regulation. Since the European Public Prosecutor's Office will be considered a national authority for the purpose of judicial review, national courts will only be able to refer questions on interpretation to the Court of Justice regarding its acts. The preliminary rulings procedure will thus ensure that this Regulation is applied uniformly throughout the Union, whereas the validity of the acts of the European Public Prosecutor's Office may be challenged before national courts in accordance with national law.

#### *3.3.6. Chapter VI: Data protection*

This Chapter provides for rules governing the data protection regime which in the specific context of the European Public Prosecutor's Office particularise and complement the Union legislation applicable to processing of personal data by EU bodies (in particular Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community

institutions and bodies and on the free movement of such data). The supervision of all personal data processing in the context of the activities of the European Public Prosecutor's Office has been entrusted to the European Data Protection Supervisor (EDPS).

### *3.3.7. Chapter VII: Financial and staff provisions*

The rules of this Chapter regulate how the European Public Prosecutor's Office shall handle its budget and staff. They are based on the applicable Union legislation, i.e. for budget matters on Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, and for staff matters on Regulation 31 (EEC), as amended.

### *3.3.8. Chapter VIII: Provisions on the relations of the European Public Prosecutor's Office*

This Chapter regulates the relationship of the European Public Prosecutor's Office with Union institutions or other bodies as well as actors outside the Union. Special rules apply to the relationship of the European Public Prosecutor's Office with Eurojust, given the special links that tie them together in the area of operational activities, administration and management.

### *3.3.9. Chapter IX: General provisions*

These provisions address institutional matters which arise with the setting up of any new Union office or agency. They are largely inspired by the "Common Approach on decentralised agencies" but take into account the specific (judicial) nature of the European Public Prosecutor's Office. The provisions covers matters such as legal status and operating conditions, language arrangements, transparency requirements, rules on the prevention of fraud, handling classified information, administrative enquiries and liability rules.

### *3.3.10. Chapter X: Final provisions*

These provisions deal with the implementation of the Regulation and provide for the adoption of implementing provisions, transitional provisions, administrative rules and entry into force.

## **4. BUDGETARY IMPLICATION**

The proposal seeks to be cost-efficient for the EU budget: part of OLAF's current resources will be used for setting up the central headquarters of the European Public Prosecutor's Office, which in turn will rely on the administrative support of Eurojust.

Limited additional costs will arise in relation to the position of the European Delegated Prosecutors who will be located in the Member States and will be an integral part of the European Public Prosecutor's Office. Given their dual status as both Union and national prosecutors, they will receive remuneration from the EU budget and will be covered by the Staff Regulations.

As the set-up phase of the European Public Prosecutor's Office will probably take several years, staff members will be gradually transferred from OLAF to the European Public Prosecutor's Office. The equivalent number of the staff transferred and the corresponding credits to finance this staff will be reduced in the establishment plan and budget of OLAF. The European Public Prosecutor's Office will reach cruising speed once the full staff levels are achieved. The full staff level will be achieved in 2023 with 235 staff, of which 180 establishment plan posts and 55 external staff. The estimated cost for 2023 with this staff level is approximately 35 million EUR.



Proposal for a

## **COUNCIL REGULATION**

### **on the establishment of the European Public Prosecutor's Office**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 86 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament,

After consulting the European Data Protection Supervisor,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Both the Union and the Member States have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not sufficiently investigated and prosecuted by the relevant national authorities.
- (2) The setting up of the European Public Prosecutor's Office is foreseen by the Treaty on the Functioning of the European Union (TFEU) in the context of the area of freedom, security and justice.
- (3) The Treaty expressly requires that the European Public Prosecutor's Office be established from Eurojust, which implies that this Regulation should establish links between them.
- (4) The Treaty provides that the mandate of the European Public Prosecutor's Office is to combat crime affecting the Union's financial interests.
- (5) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States does not sufficiently achieve that objective. Since the objectives of this Regulation, namely the setting up of the European Public Prosecutor's Office, cannot be achieved by the Member States given the fragmentation of national prosecutions in the area of offences committed against the Union's financial interests and can therefore, by reason of the fact that the European Public Prosecutor's Office is to have exclusive competence to prosecute such offences, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.
- (6) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve these objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.

- (7) The mandate of the European Public Prosecutor's Office should be to investigate, prosecute and bring to judgment the perpetrators of offences against the Union's financial interests. This requires autonomous powers of investigation and prosecution, including the ability to carry out investigations in cross-border or complex cases.
- (8) The organisational structure of the European Public Prosecutor's Office should also allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States.
- (9) As a rule, the investigations of the European Public Prosecutor's Office should be carried out by European Delegated Prosecutors in the Member States. In cases involving several Member States or cases which are of particular complexity, the efficient investigation and prosecution may require that the European Public Prosecutor also exercise his powers by instructing national law enforcement authorities.
- (10) Since the European Public Prosecutor's Office is to be granted powers of investigation and prosecution, institutional safeguards should be put in place to ensure its independence as well as its accountability towards the Union institutions.
- (11) Strict accountability is a complement to the independence and the powers granted to it under this Regulation. The European Public Prosecutor is fully accountable for the performance of his/her duties as the head of the European Public Prosecutor's Office and as such he/she carries an overall institutional accountability for its general activities before the Union institutions. As a result, any of the Union institutions can apply to the Court of Justice of the European Union with a view to his/her removal under certain circumstances, including in cases of serious misconduct. This accountability should be combined with a strict regime of judicial control whereby the European Public Prosecutor's Office can only use coercive investigation powers subject to prior judicial authorisation and the evidence presented to the trial court should be subject to verification by that court as to its compliance with the Charter of Fundamental Rights of the European Union.
- (12) To ensure consistency in its action and thus an equivalent protection of the Union's financial interests, the organisational structure of the European Public Prosecutor's Office should enable central coordination and steering of all investigations and prosecutions within its competence. The European Public Prosecutor's Office should therefore have a central structure where decisions are taken by the European Public Prosecutor.
- (13) To maximise efficiency and minimise costs, the European Public Prosecutor's Office should respect the principle of decentralisation whereby it should in principle have recourse to European Delegated Prosecutors located in the Member States to carry out investigations and prosecutions. The European Public Prosecutor's Office should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of loyal cooperation, all national authorities and the relevant Union bodies, including Europol, Eurojust and OLAF, are obliged to actively support the investigations and prosecutions of the European Public Prosecutor's Office as well as to cooperate with it to the fullest extent possible.
- (14) The operational activities of the European Public Prosecutor's Office should be carried out under the instruction and on behalf of the European Public Prosecutor by the designated European Delegated Prosecutors or their national staff in the Member States. The European Public Prosecutor and the Deputies should have the staff necessary to carry out their functions under this Regulation. The European Public Prosecutor's Office should be considered indivisible.

- (15) The procedure for the appointment of the European Public Prosecutor should ensure his/her independence and his/her legitimacy should be drawn from Union institutions. The Deputies of the European Public Prosecutor should be appointed by the same procedure.
- (16) The procedure for the appointment of the European Delegated Prosecutors should ensure that they are an integral part of the European Public Prosecutor's Office, and that they are integrated at both an operational and functional level into the national legal systems and prosecution structures.
- (17) The Charter of Fundamental Rights of the European Union constitutes the common basis for the protection of rights of suspected persons in criminal proceedings during the pre-trial and trial phase. The activities of the European Public Prosecutor's Office should in all instances be carried out in full respect of those rights.
- (18) The investigations and prosecutions of the European Public Prosecutor's Office should be guided by the principles of proportionality, impartiality and fairness towards the suspect. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory.
- (19) It is necessary to determine the rules of procedure applicable to the activities of the European Public Prosecutor's Office. As it would be disproportionate to provide detailed provisions on the conduct of its investigations and prosecutions, this Regulation should only list the measures of investigation that the European Public Prosecutor's Office may need to use and leave the other matters, in particular rules related to their execution, to national law.
- (20) In order to ensure legal certainty and zero tolerance towards offences affecting the Union's financial interests, the investigation and prosecution activities of the European Public Prosecutor's Office should be based on the principle of mandatory prosecution, whereby it should initiate investigations and, subject to further conditions, prosecute every offence within its competence.
- (21) The material scope of competence of the European Public Prosecutor's Office should be limited to criminal offences affecting the financial interests of the Union. Any extension of this competence to include serious crimes having a cross-border dimension would require a unanimous decision of the European Council.
- (22) Offences against the Union's financial interests are often closely connected to other offences. In the interest of procedural efficiency and to avoid a possible breach of the principle *ne bis in idem*, the competence of European Public Prosecutor's Office should also cover offences which are not technically defined under national law as offences affecting the Union's financial interests where their constituent facts are identical and inextricably linked with those of the offences affecting the financial interests of the Union. In such mixed cases, where the offence affecting the Union's financial interests is preponderant, the competence of the European Public Prosecutor's Office should be exercised after consultation with the competent authorities of the Member State concerned. Preponderance should be established on the basis of criteria such as the offences' financial impact for the Union, for national budgets, the number of victims or other circumstances related to the offences' gravity, or the applicable penalties.
- (23) The competence of the European Public Prosecutor's Office regarding offences affecting the financial interests of the Union should take priority over national claims of jurisdiction so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. With regard to these offences the authorities of Member States should only act at the request of the European Public Prosecutor's Office, unless urgent measures are required.
- (24) As the European Public Prosecutor's Office should bring prosecutions before national courts, its competence should be defined by reference to the criminal law of the Member States, which

criminalises acts or omissions affecting the Union's financial interests and determines the applicable penalties by implementing the relevant Union legislation, in particular [*Directive 2013/xx/EU*<sup>3</sup>], in national legal systems.

- (25) The European Public Prosecutor's Office should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States. The exercise of its competence should therefore be aligned with the rules pursuant to [*Directive 2013/xx/EU*].
- (26) Since the European Public Prosecutor's Office has exclusive competence to deal with offences affecting the Union's financial interests, the investigations it conducts on the territory of Member States should be facilitated by the competent national authorities and the relevant Union bodies, including Eurojust, Europol and OLAF, from the moment a suspected offence is reported to the European Public Prosecutor's Office until it determines whether to prosecute or otherwise dispose of the case.
- (27) In order to comply fully with their obligation to inform the European Public Prosecutor's Office where a suspicion of an offence within its competence is identified, the national authorities of the Member States as well as all institutions, bodies, offices and agencies of the Union should follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them. The institutions, bodies, offices and agencies of the Union may make use of OLAF to that effect.
- (28) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the European Public Prosecutor's Office can gather evidence throughout the Union by using a comprehensive set of investigative measures, while bearing in the mind the principle of proportionality and the need to obtain judicial authorisation for certain investigative measures. These measures should be available with regard to the offences within the mandate of the European Public Prosecutor's Office for the purpose of its investigations and prosecutions. Once ordered by the European Public Prosecutor's Office or by the competent judicial authority at its request, they should be carried out in accordance with national law. In addition, the European Public Prosecutor's Office should have access to all relevant data sources, including public and private registers.
- (29) The use of the investigative measures provided for by this Regulation should comply with the conditions set out in it, including the need to obtain judicial authorisation for certain coercive investigative measures. Other investigative measures may be subject to judicial authorisation if this is required by the national law of the Member State where the investigation measure is to be carried out. The general requirements of proportionality and necessity should apply to the ordering of the measures by the European Public Prosecutor's Office and to their authorisation by the competent national judicial authority pursuant to this Regulation.
- (30) Article 86 of the Treaty requires the European Public Prosecutor's Office to exercise the functions of the prosecutor, which includes taking decisions on a suspect's indictment and the choice of jurisdiction. The decision whether to indict the suspect should be made by the European Public Prosecutor so that there is a common prosecution policy. The jurisdiction of trial should be chosen by the European Public Prosecutor on the basis of a set of transparent criteria.
- (31) Taking into account the principle of mandatory prosecution, the investigations of the European Public Prosecutor's Office should normally lead to prosecution in the competent national courts in cases where there is solid evidence and no legal ground bars prosecution. In the

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<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, 11 July 2012 COM (2012) 363 final.

absence of such evidence and where there is no high prospect that the required evidence could be produced in trial the case can be dismissed. Additionally the European Public Prosecutor's Office should have the possibility to dismiss the case where the offence is a minor one. Where the case is not dismissed on such grounds but prosecution is not justified either, the European Public Prosecutor's Office should have the possibility of proposing a transaction to the suspect, if this would be in the interest of the proper administration of justice. The rules applicable to transactions, and those which apply to the calculation of the fines to be imposed, should be clarified in the administrative rules of the European Public Prosecutor's Office. The closure of a case through a transaction in accordance with this Regulation should not affect the application of administrative measures by the competent authorities, as far as those measures do not refer to penalties that could be equated to criminal penalties.

- (32) The evidence presented by the European Public Prosecutor's Office to the trial court should be recognised as admissible evidence, and thus presumed to meet any relevant evidentiary requirements under the national law of the Member State where the trial court is located, provided that court considers it to respect the fairness of the procedure and the suspect's rights of defence under the Charter of Fundamental Rights of the European Union. The trial court cannot exclude the evidence presented by the European Public Prosecutor's Office as inadmissible on the ground that the conditions and rules for gathering that type of evidence are different under the national law applicable to it.
- (33) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. It requires the European Public Prosecutor's Office to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by European Public Prosecutor's Office. The activities of the European Public Prosecutor's Office shall thus be exercised in full compliance with these rights and the Regulation shall be applied and interpreted accordingly.
- (34) Article 82(2) of the Treaty allows the Union to establish minimum rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. Although the Union has already established a significant *acquis*, some of these rights have not yet been harmonised under Union law. In respect of those rights, this Regulation should lay down rules which would apply exclusively for the purposes of this Regulation.
- (35) The rights of defence already provided for in the relevant Union legislation, such as Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings<sup>4</sup>, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>5</sup>, and [*Directive 2013/xx/EU of the European Parliament and of the Council of xx xxxx 2013 on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest*], as implemented by national law, should apply to the activities of the European Public Prosecutor's Office. Any suspected person in respect of whom the European Public Prosecutor's Office initiates an investigation should benefit from them.
- (36) Article 86(3) of the Treaty allows the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the European Public Prosecutor's Office in the performance of its functions. This competence granted to the legislator reflects the specific

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<sup>4</sup> OJ L 280, 26.10.2010, p.1.

<sup>5</sup> OJ L 142, 1.6.2012, p. 1.

nature of the European Public Prosecutor's Office, which is different from that of all other Union bodies and agencies and requires special rules regarding judicial review.

- (37) Article 86(2) of the Treaty requires that the European Public Prosecutor's Office exercise its functions of prosecutor in the competent courts of the Member States. Acts undertaken by the European Public Prosecutor's Office in the course of its investigations are closely related to the prosecution which may result therefrom and have effects in the legal order of the Member States. In most cases they will be carried out by national law enforcement authorities acting under the instructions of European Public Prosecutor's Office, sometimes after having obtained the authorisation of a national court. It is therefore appropriate to consider the European Public Prosecutor's Office as a national authority for the purpose of the judicial review of its acts of investigation and prosecution. As a result, national courts should be entrusted with the judicial review of all acts of investigation and prosecution of the European Public Prosecutor's Office which may be challenged, and the Court of Justice of the European Union should not be directly competent with regard to those acts pursuant to Articles 263, 265 and 268 of the Treaty, since such acts should not be considered as acts of a body of the Union for the purpose of judicial review.
- (38) In accordance with Article 267 of the Treaty, national courts are able or, in certain circumstances, bound to refer to the Court of Justice questions for preliminary rulings on the interpretation or the validity of provisions of Union law, including this Regulation, which are relevant for the judicial review of the acts of investigation and prosecution of the European Public Prosecutor's Office. National courts should not be able to refer questions on the validity of the acts of the European Public Prosecutor's Office to the Court of Justice, since those acts should not be considered acts of a body of the Union for the purpose of judicial review.
- (39) It should also be clarified that issues concerning the interpretation of provisions of national law which are rendered applicable by this Regulation should be dealt with by national courts alone. In consequence, those courts may not refer questions to the Court of Justice relating to the interpretation of national law to which this Regulation refers.
- (40) As the Treaty prescribes that the European Public Prosecutor's Office is to be set up from Eurojust, they should organically, operationally and administratively co-exist, co-operate and complement each other.
- (41) The European Public Prosecutor's Office should also work closely with other Union institutions and agencies in order to facilitate the exercise of its functions under this Regulation and establish, where necessary, formal arrangements on detailed rules relating to exchange of information and cooperation. Cooperation with Europol and OLAF should be of particular importance to avoid duplication and enable the European Public Prosecutor's Office to obtain the relevant information at their disposal as well as to draw on their analysis in specific investigations.
- (42) Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>6</sup> applies to the processing of personal data performed by the European Public Prosecutor's Office. This concerns the processing of personal data in the framework of the objectives and tasks of the European Public Prosecutor's Office, personal data related to staff members as well as administrative personal data held by it. The European Data Protection Supervisor should monitor the processing of personal data by the European Public Prosecutor's Office. The principles set out in (EC) No Regulation 45/2001 should be particularised and complemented

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<sup>6</sup> OJ L 8, 12.1.2001, p. 1.

as regards the processing of operational personal data by the European Public Prosecutor's Office when necessary. When the European Public Prosecutor's Office transfers operational personal data to an authority of a third country or to an international organisation or Interpol by virtue of an international agreement concluded pursuant to Article 218 of the Treaty, the adequate safeguards adduced with respect to the protection of privacy and fundamental rights and freedoms of individuals should ensure that the data protection provisions of this Regulation are complied with.

- (43) [Directive 2013/xx/EU on the protection of individuals with regard to the processing of personal data and on the free movement of such data] applies to the processing of personal data by Member States competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- (44) The data processing system of the European Public Prosecutor's Office should build on the Case Management System of Eurojust, but its temporary work files should be considered case-files from the time an investigation is initiated.
- (45) The financial, budgetary and staff regime of the European Public Prosecutor's Office should follow the relevant Union standards applicable to bodies referred to in Article 208 of Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council<sup>7</sup>, with due regard, however, to the fact that the competence of the European Public Prosecutor's Office to carry out investigations and prosecutions at Union-level is unique. The European Public Prosecutor's Office should be subject to an annual reporting obligation.
- (46) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office but only with regard to its administrative tasks so as not to jeopardise in any manner the requirement of confidentiality in its operational work. In the same manner, administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office.
- (47) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish [not] [to take part] in the adoption and application of this Regulation.
- (48) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,
- (49) The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003 have determined the seat of the European Public Prosecutor's Office,

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<sup>7</sup> Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.

HAS ADOPTED THIS REGULATION:

## **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**

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 2013/xx/EU, as implemented by national law;
- 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 personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article 37.



# CHAPTER II

## GENERAL RULES

### SECTION 1

#### STATUS, ORGANISATION AND STRUCTURE 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 with a decentralised structure.
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 administrative support in accordance with Article 57.

##### *Article 4*

##### **Tasks**

1. The task of the European Public Prosecutor's Office shall be to combat 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 direct and supervise investigations, and carry out acts of prosecution, including the dismissal of the case.
3. The European Public Prosecutor's Office shall exercise the functions of prosecutor in the competent courts of the Member States in respect of the offences referred to in paragraph 1, including lodging the indictment and any appeals until the case has been finally disposed of.

##### *Article 5*

##### **Independence and accountability**

1. The European Public Prosecutor's Office shall be independent.
2. The European Public Prosecutor's Office, including the European Public Prosecutor, his/her Deputies and the staff, the European Delegated Prosecutors and their national staff, shall neither seek nor take instructions from any person, any Member State or any institution, body, office or agency of the Union in the performance of their duties. The Union institutions, bodies, offices or agencies and the Member States shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks.
3. The European Public Prosecutor shall be accountable to the European Parliament, the Council and the European Commission for the general activities of the European Public Prosecutor's Office, in particular by giving an annual report in accordance with Article 70.

## *Article 6*

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

1. The structure of the European Public Prosecutor's Office shall comprise a European Public Prosecutor, his/her Deputies, the staff supporting them in the execution of their tasks under this Regulation, as well as European Delegated Prosecutors located in the Member States.
2. The European Public Prosecutor's Office shall be headed by the European Public Prosecutor, who shall direct its activities and organise its work. The European Public Prosecutor shall be assisted by four Deputies.
3. The Deputies shall assist the European Public Prosecutor in all his/her duties and act as a replacement, in accordance with the rules adopted pursuant to Article 72(d), when he/she is absent or prevented from attending to them. One of the Deputies shall be responsible for the implementation of the budget.
4. The investigations and prosecutions of the European Public Prosecutor's Office shall be carried out by the European Delegated Prosecutors under the direction and supervision of the European Public Prosecutor. Where it is deemed necessary in the interest of the investigation or prosecution, the European Public Prosecutor may also exercise his/her authority directly in accordance with Article 18(5).
5. There shall be at least one European Delegated Prosecutor in each Member State, who shall be an integral part of the European Public Prosecutor's Office. The European Delegated Prosecutors shall act under the exclusive authority of the European Public Prosecutor and follow only his/her instructions, guidelines and decisions when they carry out investigations and prosecutions assigned to them. When they act within their mandate under this Regulation, they shall be fully independent from the national prosecution bodies and have no obligations with regard to them.
6. The European Delegated Prosecutors may also exercise their function as national prosecutors. In the event of conflicting assignments, the European Delegated Prosecutors shall notify the European Public Prosecutor, who may, after consultation with the competent national prosecution authorities, instruct them in the interest of the investigations and prosecutions of the European Public Prosecutor's Office to give priority to their functions deriving from this Regulation. In such cases, the European Public Prosecutor shall immediately inform the competent national prosecution authorities thereof.
7. Acts performed by the European Public Prosecutor, European Delegated Prosecutors, any of the staff members of the European Public Prosecutor's Office or any other person acting on behalf of it in the performance of their duties shall be attributed to the European Public Prosecutor's Office. The European Public Prosecutor shall represent the European Public Prosecutor's Office towards the Union Institutions, the Member States and third parties.
8. Where necessary for the purpose of an investigation or prosecution, the European Public Prosecutor may temporarily allocate resources and staff to European Delegated Prosecutors.

## *Article 7*

### **Internal rules of procedure of the European Public Prosecutor's Office**

1. The internal rules of procedure of the European Public Prosecutor's Office shall be adopted by a decision of the European Public Prosecutor, his/her four Deputies and five European Delegated Prosecutors, who shall be chosen by the European Public Prosecutor on the basis of a system of strictly equal rotation, reflecting the demographic and geographical range of all the Member States. The decision shall be taken by simple majority, all members having

one vote. Where the votes are equally divided, the European Public Prosecutor shall have a casting vote.

2. The internal rules of procedure shall govern the organisation of the work of the European Public Prosecutor's Office and shall include general rules on the allocation of cases.

## **SECTION 2**

### **APPOINTMENT AND DISMISSAL OF THE MEMBERS OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

#### *Article 8*

##### **Appointment and dismissal of the European Public Prosecutor**

1. The European Public Prosecutor shall be appointed by the Council with the consent of the European Parliament for a term of eight years, which shall not be renewable. The Council shall act by simple majority.
2. The European Public Prosecutor shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to high judicial office and relevant prosecutorial experience.
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 the Commission shall draw up and submit a shortlist to the European Parliament and the Council. Before the shortlist is submitted, the Commission shall seek the opinion of a panel set up by it and composed of seven persons chosen from among former members of the Court of Justice, members of national supreme courts, national public prosecution services and/or lawyers of recognised competence, one of whom shall be proposed by the European Parliament, as well as the President of Eurojust as an observer.
4. If the European Public Prosecutor no longer fulfils the conditions required for the performance of his/her duties or if he/she has been guilty of serious misconduct, the Court of Justice of the European Union may, on application by the European Parliament, the Council, or the Commission dismiss him/her.

#### *Article 9*

##### **Appointment and dismissal of the Deputies of the European Public Prosecutor**

1. The Deputies of the European Public Prosecutor shall be appointed in accordance with the rules set out in Article 8(1).
2. The Deputies of the European Public Prosecutor shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to high judicial office and relevant prosecutorial experience.
3. The selection shall be based on an open call for candidates, to be published in the Official Journal, following which the European Commission shall draw up and submit, in agreement with the European Public Prosecutor, a shortlist to the European Parliament and the Council, reflecting the demographic balance and geographical range of the Member States.
4. The Deputies may be dismissed in accordance with the rules set out in Article 8(4), on the initiative of the European Public Prosecutor.

*Article 10*

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

1. The European Delegated Prosecutors shall be appointed by the European Public Prosecutor from a list of at least three candidates, who comply with the requirements set out in paragraph 2, submitted by the Member State(s) concerned. They shall be appointed for a term of five years, which shall be renewable.
2. The European Delegated Prosecutors shall possess the qualifications required for appointment to high judicial office and have relevant prosecutorial experience. Their independence should be beyond doubt. Member States shall appoint the European Delegated Prosecutor as a prosecutor under national law, if at the time of his/her appointment as a European Delegated Prosecutor, he/she did not have this status already.
3. European Delegated Prosecutors may be dismissed by the European Public Prosecutor if they no longer fulfil the requirements set out in paragraph 2, or the criteria applicable to the performance of their duties, or if they have been found guilty of serious misconduct. European Delegated Prosecutors shall not be dismissed as national prosecutors by the competent national authorities without the consent of the European Public Prosecutor during the exercise of their functions on behalf of the European Public Prosecutor's Office.

**SECTION 3  
BASIC PRINCIPLES**

*Article 11*

**Basic principles of the activities of the European Public Prosecutor's Office**

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 actions of the European Public Prosecutor's Office shall be guided by the principle of proportionality as referred to in Article 26(3).
3. The investigations and prosecutions 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. The applicable national law shall be the law of the Member State where the investigation or prosecution is conducted. Where a matter is governed by national law and this Regulation, the latter shall prevail.
4. The European Public Prosecutor's Office shall have exclusive competence to investigate and prosecute criminal offences against the Union's financial interests.
5. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence, whether inculpatory or exculpatory.
6. The European Public Prosecutor's Office shall initiate investigations without undue delay and ensure that investigations and prosecutions are conducted speedily.
7. The competent authorities of the Member States 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 delay or hamper their progress.

## **SECTION 4**

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

#### *Article 12*

#### **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, as provided for by Directive 2013/xx/EU and implemented by national law.

#### *Article 13*

#### **Ancillary competence**

1. Where the offences referred to in Article 12 are inextricably linked with criminal offences other than those referred to in Article 12 and their joint investigation and prosecution are in the interest of a good administration of justice the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the conditions that the offences referred to in Article 12 are preponderant and the other criminal offences are based on identical facts.  
  
If those conditions are not met, the Member State that is competent for the other offences shall also be competent for the offences referred to in Article 12.
2. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority has competence pursuant to paragraph 1. Where appropriate to facilitate the determination of such competence Eurojust may be associated in accordance with Article 57.
3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over competence pursuant to in paragraph 1, the national judicial authority competent to decide on the attribution of competences concerning prosecution at national level shall decide on ancillary competence.
4. The determination of competence pursuant to this Article shall not be subject to review.

#### *Article 14*

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

The European Public Prosecutor's Office shall exercise its exclusive competence to investigate and prosecute any criminal offence referred to in Articles 12 and 13, where such offence was wholly or partly committed

- a) on the territory of one or several Member States, or
- b) by one of their nationals, or by Union staff members or members of the Institutions.

# **CHAPTER III**

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

### **SECTION 1**

#### **CONDUCT OF INVESTIGATIONS**

##### *Article 15*

##### **Sources of investigation**

1. All national authorities of the Member States and all institutions, bodies, offices and agencies of the Union shall immediately inform the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence.
2. Where European Delegated Prosecutors become aware of any conduct which might constitute an offence within the competence of the European Public Prosecutor's Office, they shall immediately inform the European Public Prosecutor.
3. The European Public Prosecutor's Office may collect or receive information from any person on conduct which might constitute an offence within its competence.
4. Any information brought to the attention of the European Public Prosecutor's Office shall be registered and verified by the European Public Prosecutor or the European Delegated Prosecutors. Where they decide, upon verification, not to initiate an investigation, they shall close the case and note the reasons in the Case Management System. They shall inform the national authority, the Union institution, body, office or agency, which provided the information, thereof, and at their request, where appropriate, the persons who provided the information.

##### *Article 16*

##### **Initiation of investigations**

1. The European Public Prosecutor or, on his/her behalf, the European Delegated Prosecutors shall initiate an investigation by written decision where 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.
2. Where the investigation is initiated by the European Public Prosecutor, he/she shall assign the case to a European Delegated Prosecutor unless he/she wishes to conduct the investigation himself/herself in accordance with the criteria set out in Article 18(5). Where the investigation is initiated by a European Delegated Prosecutor, he/she shall inform the European Public Prosecutor immediately. Upon receipt of such notification, the European Public Prosecutor shall verify that an investigation has not already been initiated by him/her or another European Delegated Prosecutor. In the interest of the efficiency of the investigation the European Public Prosecutor may allocate the case to another European Delegated Prosecutor or decide to take over the case himself/herself in accordance with the criteria set out in Article 18(5).

## *Article 17*

### **Urgent measures and referrals**

1. Where immediate action with regard to an offence within the competence of the European Public Prosecutor's Office is required, the national authorities shall take any urgent measures necessary to ensure effective investigation and prosecution. The national authorities shall subsequently refer the case without delay to the European Public Prosecutor's Office. In that case, the European Public Prosecutor's Office shall confirm, if possible within 48 hours from the initiation of its investigation, the measures taken by the national authorities, even if such measures have been undertaken and executed under rules other than those of this Regulation.
2. At any stage of the investigation, where the case gives rise to doubts as to its competence, the European Public Prosecutor's Office may consult the national prosecution authorities to determine which authority is competent. Pending a decision on competence, the European Public Prosecutor's Office shall take any urgent measures necessary to ensure effective investigation and prosecution of the case. Where the competence of the national authority is established, the national authority shall confirm within 48 hours from the initiation of the national investigation the urgent measures taken by the European Public Prosecutor's Office.
3. 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.
4. Where an investigation initiated by national authorities subsequently reveals that the conduct constitutes an offence within the competence of the European Public Prosecutor's Office, the national authorities shall refer the case without delay to the European Public Prosecutor's Office. In that case, the European Public Prosecutor's Office shall confirm, if possible within 48 hours from the initiation of its investigation, 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 18*

### **Conducting the investigation**

1. The designated European Delegated Prosecutor shall lead the investigation on behalf of and under the instructions of the European Public Prosecutor. The designated European Delegated Prosecutor may 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 comply with the instructions of the European Delegated Prosecutor and execute the investigation measures assigned to them.
2. In cross-border cases, where investigation measures need to be executed in a Member State other than the one where the investigation was initiated, the European Delegated Prosecutor who initiated it, or to whom the case was assigned by the European Public Prosecutor, shall act in close consultation with the European Delegated Prosecutor where the investigation measure needs to be carried out. That European Delegated Prosecutor shall either undertake the investigation measures himself/herself or instruct the competent national authorities to execute them.
3. In cross-border cases the European Public Prosecutor may associate several European Delegated Prosecutors with the investigation and set up joint teams. He/she may instruct any European Delegated Prosecutor to collect relevant information or undertake specific investigation measures on his/her behalf.

4. The European Public Prosecutor shall monitor the investigations conducted by the European Delegated Prosecutors and ensure their coordination. He/she shall instruct them where necessary.
5. The European Public Prosecutor may reallocate the case to another European Delegated Prosecutor or himself/herself lead the investigation if this appears necessary in the interest of the efficiency of the investigation or prosecution on the grounds of one or more of the following criteria:
  - a) the seriousness of the offence;
  - b) specific circumstances related to the status of the alleged offender;
  - c) specific circumstances related to the cross-border dimension of the investigation;
  - d) the unavailability of national investigation authorities; or
  - e) a request of the competent authorities of the relevant Member State.
6. Where the investigation is undertaken by the European Public Prosecutor directly, he/she shall inform the European Delegated Prosecutor in the Member State where the investigation measures need to be carried out. Any investigation measure conducted by the European Public Prosecutor shall be carried out in liaison with the authorities of the Member State whose territory is concerned. Coercive measures shall be carried out by the competent national authorities.
7. 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 19*

#### **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 Public Prosecutor's Office 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 Union law, 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 Public Prosecutor's Office shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

### **SECTION 2**

### **PROCESSING OF INFORMATION**

#### *Article 20*

#### **Access to information by the European Public Prosecutor's Office**

From the moment it registers a case, the European Public Prosecutor's Office shall be able to obtain any relevant information stored in national criminal investigation and law enforcement databases, as



well as other relevant registers of public authorities, or have access to such information through European Delegated Prosecutors.

#### *Article 21*

#### **Collection of information**

1. Where necessary for the purpose of its investigations, the European Public Prosecutor's Office shall obtain, at its request, from Eurojust and Europol, any relevant information concerning an offence within its competence, and may also ask Europol to provide analytical support to a specific investigation conducted by the European Public Prosecutor's Office.
2. The institutions, bodies, offices and agencies of the Union and Member States' authorities shall provide the necessary assistance and information to the European Public Prosecutor's Office upon its request.

#### *Article 22*

#### **Case Management System, index and temporary work files**

1. The European Public Prosecutor's Office shall establish a Case Management System composed of temporary work files and of an index which contain personal data as referred to in the Annex and non-personal data.
2. The purpose of the Case Management System shall be to:
  - a) support the management of investigations and prosecutions conducted by the European Public Prosecutor's Office, in particular by the cross-referencing of information;
  - b) facilitate access to information on on-going investigations and prosecutions;
  - c) facilitate the monitoring of lawfulness and compliance with the provisions of this Regulation concerning the processing of personal data.
3. The Case Management System may be linked to the secure telecommunications connection referred to in Article 9 of Decision 2008/976/JHA<sup>8</sup>.
4. The index shall contain references to temporary work files processed within the framework of the work of the European Public Prosecutor's Office and may contain no personal data other than those referred to in points (a) to (i), (k) and (m) of point (1) and in point 2 of the Annex.
5. In the performance of its duties under this Regulation, the European Public Prosecutor's Office may process data on the individual cases on which it is working in a temporary work file. The European Public Prosecutor's Office shall allow the Data Protection Officer provided for in Article 41 to have access to the temporary work file. The European Public Prosecutor's Office shall inform the Data Protection Officer each time a new temporary work file containing personal data is opened.
6. For the processing of case related personal data, the European Public Prosecutor's Office may not establish any automated data file other than the Case Management System or a temporary work file.

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<sup>8</sup> OJ L 348, 24.12.2008, p.130.

### *Article 23*

#### **Functioning of temporary work files and the index**

1. A temporary work file shall be opened by the European Public Prosecutor's Office for every case with respect to which information is transmitted to it in so far as this transmission is in accordance with this Regulation or other applicable legal instruments. The European Public Prosecutor's Office shall be responsible for the management of the temporary work files which it has opened.
2. The European Public Prosecutor's Office shall decide, on a case-by-case basis, whether to keep the temporary work file restricted or to give access to it or to parts of it to members of its staff, where necessary to enable such staff to carry out its tasks.
3. The European Public Prosecutor's Office shall decide which information related to a temporary work file shall be introduced in the index. Unless otherwise decided by the European Public Prosecutor, information registered and subject to verification in accordance with Article 15(4) shall not be introduced in the index.

### *Article 24*

#### **Access to the Case Management System**

European Delegated Prosecutors and their staff, in so far as they are connected to the Case Management System, may only have access to:

- a) the index, unless such access has been expressly denied;
- b) temporary work files opened by the European Public Prosecutor's Office related to investigations or prosecutions taking place in their Member State;
- c) temporary work files opened by the European Public Prosecutor's Office related to investigations or prosecutions taking place in another Member State in as far as they relate to investigations or prosecutions taking place in their Member State.

## **SECTION 3**

### **INVESTIGATION MEASURES**

### *Article 25*

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

1. For the purpose of investigations and prosecutions conducted by the European Public Prosecutor's Office, the territory of the Union's Member States shall be considered a single legal area in which the European Public Prosecutor's Office may exercise its competence.
2. Where the European Public Prosecutor's Office decides to exercise its competence over an offence which was partly or wholly committed outside the territory of the Member States by one of their nationals, by Union staff members or by members of the Institutions, it shall seek assistance to obtain the cooperation of the third country concerned pursuant to the instruments and procedures referred to in Article 59.

### *Article 26*

#### **Investigation measures**

1. The European Public Prosecutor's Office shall have the power to request or to order the following investigative measures when exercising its competence:
  - a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system;

- 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) seal premises and means of transport and freezing of data, in order to preserve their integrity, to avoid the loss or contamination of evidence or to secure the possibility of confiscation;
- d) freeze instrumentalities or proceeds of crime, including freezing of assets, if they 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;
- e) intercept telecommunications, including e-mails, to and from the suspected person, on any telecommunication connection that the suspected person is using;
- f) undertake real-time surveillance of telecommunications by ordering instant transmission of telecommunications traffic data to locate the suspected person and to identify the persons who have been in contact with him at a specific moment in time;
- g) monitor financial transactions, by ordering any financial or credit institution to inform the European Public Prosecutor's Office in real time of any financial transaction carried out through any specific account held or controlled by the suspected person or any other accounts which are reasonably believed to be used in connection with the offence;
- h) 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;
- i) undertake surveillance measures in non-public places, by ordering the covert video and audio surveillance of non-public places, excluded video surveillance of private homes, and the recording of its results;
- j) undertake covert investigations, by ordering an officer to act covertly or under a false identity;
- k) summon suspected persons and witnesses, where there are reasonable grounds to believe that they might provide information useful to the investigation;
- l) undertake identification measures, by ordering the taking of photos, visual recording of persons and the recording of a person's biometric features;
- m) seize objects which are needed as evidence;
- n) access premises and take samples of goods;
- o) inspect means of transport, where reasonable grounds exist to believe that goods related to the investigation are being transported;
- p) undertake measures to track and control persons, in order to establish the whereabouts of a person;
- q) track and trace any object by technical means, including controlled deliveries of goods and controlled financial transactions;
- r) undertake targeted surveillance in public places of the suspected and third persons;
- s) obtain access to national or European public registers and registers kept by private entities in a public interest;
- t) question the suspected person and witnesses;

- u) appoint experts, ex officio or at the request of the suspected person, where specialised knowledge is required.
2. Member States shall ensure that the measures referred to in paragraph 1 may be used in the investigations and prosecutions conducted by the European Public Prosecutor's Office. Such measures shall be subject to the conditions provided for in this Article and those set out in national law. Investigation measures other than those referred to in paragraph 1 may only be ordered or requested by the European Public Prosecutor's Office if available under the law of the Member State where the measure is to be carried out.
  3. The individual investigative measures referred to in paragraph 1 shall not be ordered without reasonable grounds and if less intrusive means can achieve the same objective.
  4. Member States shall ensure that the investigative measures referred to in points (a) - (j) of paragraph 1 are subject to authorisation by the competent judicial authority of the Member State where they are to be carried out.
  5. The investigative measures referred to in points (k) – (u) of paragraph 1 shall be subject to judicial authorisation if required by the national law of the Member State where the investigation measure is to be carried out.
  6. If the conditions set out in this Article as well as those applicable under national law for authorising the measure subject to the request are met, the authorisation shall be given within 48 hours in the form of a written and reasoned decision by the competent judicial authority.
  7. 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.

## **SECTION 4**

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

#### *Article 27*

##### **Prosecution before national courts**

1. The European Public Prosecutor and the European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of prosecution and bringing a case to judgement, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.
2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with a draft indictment and the list of evidence to the European Public Prosecutor for review. Where he/she does not instruct to dismiss the case pursuant to Article 28, the European Public 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. The European Public Prosecutor may also bring the case to the competent national court himself/herself.
3. The indictment submitted to the competent national court shall list the evidence to be adduced in trial.
4. The European Public Prosecutor shall choose, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the jurisdiction of trial and determine the competent national court taking into account the following criteria:
  - a) the place where the offence, or in case of several offences, the majority of the offences was committed;

- b) the place where the accused person has his/her habitual residence;
  - c) the place where the evidence is located;
  - d) the place where the direct victims have their habitual residence.
5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the European Public Prosecutor shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

#### *Article 28*

#### **Dismissal of the case**

1. The European Public Prosecutor shall dismiss the case where prosecution has become impossible on account of any of the following grounds:
  - a) death of the suspected person;
  - b) the conduct subject to investigation does not amount to a criminal offence;
  - c) amnesty or immunity granted to the suspect;
  - d) expiry of the national statutory limitation 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.
2. The European Public Prosecutor may dismiss the case on any of the following grounds:
  - a) the offence is a minor offence according to national law implementing *Directive 2013/XX/EU on the fight against fraud to the Union's financial interests by means of criminal law*;
  - b) lack of relevant evidence.
3. 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.
4. Where the investigation was initiated on the basis of information provided by the injured party, the European Public Prosecutor's Office shall inform that party thereof.

#### *Article 29*

#### **Transaction**

1. Where the case is not dismissed and it would serve the purpose of proper administration of justice, the European Public Prosecutor's Office 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.
2. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction.
3. Where the transaction is accepted and paid by the suspected person, the European Public Prosecutor shall finally dismiss the case and officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies thereof.
4. The dismissal referred to in paragraph 3 shall not be subject to judicial review.

## **SECTION 5 ADMISSIBILITY OF EVIDENCE**

### *Article 30*

#### **Admissibility of evidence**

1. Evidence presented by 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 as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, shall 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 European Public Prosecutor's Office at trial shall not be affected.

## **SECTION 6 CONFISCATION**

### *Article 31*

#### **Disposition of the confiscated assets**

Where at the request of the European Public Prosecutor's Office 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, the monetary value of such property or proceeds shall be transferred to the Union's budget, to the extent necessary to compensate the prejudice caused to the Union.

## **CHAPTER IV PROCEDURAL SAFEGUARDS**

### *Article 32*

#### **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 person involved in the proceedings of the European Public Prosecutor's Office shall, as a minimum, have the following procedural rights as they are provided for in Union legislation and the national law of the Member State:
  - (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/xx/EU of the European Parliament and of the Council of xx xxxx 2013 on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest*],
  - (d) the right to remain silent and the right to be presumed innocent,
  - (e) the right to legal aid,

- (f) the right to present evidence, appoint experts and hear witnesses.
3. Suspects and accused persons shall have the rights listed in paragraph 2 from the time that they are suspected of having committed an offence. Once the indictment has been acknowledged by the competent national court, the suspect and accused person's procedural rights shall be based on the national regime applicable in the relevant case.
  4. The rights listed in paragraph 2 shall also apply to any person other than a suspect or accused person who is heard by the European Public Prosecutor's Office if, in the course of questioning, interrogation or hearing, he/she becomes suspected of having committed a criminal offence.
  5. 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.

*Article 33*

**Right to remain silent and to be presumed innocent**

1. The suspect and accused person involved in the proceedings of the European Public Prosecutor's Office shall have, in accordance with national law, the right to remain silent when questioned, in relation to the facts that he/she is suspected of having committed, and shall be informed that he/she is not obliged to incriminate himself/herself.
2. The suspect and accused person shall be presumed innocent until proven guilty according to national law.

*Article 34*

**Right to legal aid**

Any person suspected or accused of an offence within the scope of the competence of the European Public Prosecutor's Office shall have, in accordance with national law, the right to be given legal assistance free or partially free of charge by national authorities if he/she has insufficient means to pay for it.

*Article 35*

**Rights concerning evidence**

1. The suspect and accused person shall have, in accordance with national law, the right to present evidence to the consideration of the European Public Prosecutor's Office.
2. The suspect and accused person shall have, in accordance with national law, the right to request the European Public Prosecutor's Office to gather any evidence relevant to the investigation, including appointing experts and hearing witnesses.

**CHAPTER V  
JUDICIAL REVIEW**

*Article 36*

**Judicial review**

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.

2. Where provisions of national law are rendered applicable by this Regulation, such provisions shall not be considered as provisions of Union law for the purpose of Article 267 of the Treaty.

## **CHAPTER VI DATA PROTECTION**

### *Article 37*

#### **Processing of personal data**

1. The European Public Prosecutor's Office may process by automated means or in structured manual files in accordance with this Regulation only the personal data listed in point 1 of the Annex, on persons who, under the national legislation of the Member States concerned are suspected of having committed or having taken part in an offence in respect of which the European Public Prosecutor's Office is competent, or who have been convicted of such an offence, for the following purposes:
  - criminal investigations and prosecutions undertaken in accordance with the present Regulation;
  - information exchange with the competent authorities of Member States and other Union bodies in accordance with the present Regulation;
  - co-operation with third countries in accordance with the present Regulation.
2. The European Public Prosecutor's Office may process only the personal data listed in point 2 of the Annex, on persons who, under the national legislation of the Member States concerned, are regarded as witnesses or victims in a criminal investigation or prosecution regarding one or more of the types of offence for which the European Public Prosecutor's Office is competent, or persons under the age of 18. The processing of such personal data may only take place if it is strictly necessary for the purposes specified in paragraph 1.
3. In exceptional cases, the European Public Prosecutor's Office may also, for a limited period of time which shall not exceed the time needed for the conclusion of the case related to which the data are processed, process personal data other than those referred to in paragraphs 1 and 2 relating to the circumstances of an offence where they are immediately relevant to and included in on-going investigations which the European Public Prosecutor's Office is pursuing and when their processing is strictly necessary for the purposes specified in paragraph 1, provided that the processing of such specific data takes place in accordance with this Regulation. The Data Protection Officer referred to in Article 41 shall be informed immediately of recourse to this paragraph.
4. Personal data, processed by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sex life may be processed by the European Public Prosecutor's Office only when such data are strictly necessary for his investigations and if they supplement other personal data already processed. The Data Protection Officer shall be informed immediately of recourse to this paragraph. Such data may not be processed in the Index referred to in Article 22(4). Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken by the European Public Prosecutor.
5. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the EPPO in the context of its activities. This Regulation particularises and complements Regulation (EC) No 45/2001 in as far as operational personal data are concerned.



*Article 38*

**Time limits for the storage of personal data**

1. Personal data processed by the European Public Prosecutor's Office may not be stored beyond the first applicable among the following dates:
  - a) the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;
  - b) the date on which the person has been acquitted and the judicial decision became final;
  - c) three years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions became final;
  - d) the date on which the European Public Prosecutor's Office established that it was no longer necessary for it to continue the investigation or prosecution.
2. Observance of the storage deadlines referred to in paragraph 1 shall be reviewed constantly by appropriate automated processing. Nevertheless, a review of the need to store the data shall be carried out every three years after they were entered. If data concerning persons referred to in the Annex are stored for a period exceeding five years, the European Data Protection Supervisor shall be informed accordingly.
3. When one of the storage deadlines referred to in paragraph 1 has expired, the European Public Prosecutor's Office shall review the need to store the data longer in order to enable it to perform its tasks and it may decide by way of derogation to store those data until the following review. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of personal data, those data shall be deleted automatically after three years.
4. Where, in accordance with paragraph 3, data has been stored beyond the dates referred to in paragraph 1, a review of the need to store those data shall take place every three years by the European Data Protection Supervisor.
5. Where a file exists containing non-automated and unstructured data, once the deadline for storage of the last item of automated data from the file has elapsed all documents in the file and any copies shall be destroyed.

*Article 39*

**Logging and documentation**

1. For the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security, the European Public Prosecutor's Office shall keep records of any collection, alteration, access, disclosure, combination or erasure of personal data used for operational purposes. Such logs or documentation shall be deleted after 18 months, unless the data are further required for on-going control.
2. Logs or documentation prepared under paragraph 1 shall be communicated on request to the European Data Protection Supervisor. The European Data Protection Supervisor shall use this information only for the purpose of data protection supervision, ensuring proper data processing, and data integrity and security.

*Article 40*

**Authorised access to personal data**

Only the European Public Prosecutor, the European Delegated Prosecutors and authorised members of their staff may, for the purpose of achieving their tasks and within the limits provided for in this

Regulation, have access to personal data processed by the European Public Prosecutor's Office for its operational tasks.

#### *Article 41*

##### **Data protection officer**

1. The European Public Prosecutor shall appoint a Data Protection Officer in accordance with Article 24 of Regulation (EC) No 45/2001.
2. When complying with the obligations set out in Article 24 of Regulation (EC) No 45/2001, the Data Protection Officer shall:
  - a) ensure that a written record of the transfer of personal data is kept;
  - b) cooperate with the staff of the European Public Prosecutor's Office responsible for procedures, training and advice on data processing;
  - c) prepare an annual report and communicate that report to the European Public Prosecutor and to the European Data Protection Supervisor.
3. In the performance of his tasks, the Data Protection Officer shall have access to all the data processed by the European Public Prosecutor's Office and to all of the Office's premises.
4. The staff members of the European Public Prosecutor's Office assisting the Data Protection Officer in the performance of his/her duties shall have access to the personal data processed by it and to its premises to the extent necessary for the performance of their tasks.
5. If the Data Protection Officer considers that the provisions of Regulation (EC) No 45/2001 or this Regulation related to the processing of personal data have not been complied with, he/she shall inform the European Public Prosecutor, requiring him/her to resolve the non-compliance within a specified time. If the European Public Prosecutor does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the European Data Protection Supervisor.
6. The European Public Prosecutor shall adopt the implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.

#### *Article 42*

##### **Modalities regarding the exercise of the right of access**

1. Any data subject may exercise the right of access to personal data in accordance with Regulation (EC) No 45/2001 and in particular Article 13 thereof.
2. When the right of access is restricted in accordance with Article 20 paragraph 1 of Regulation (EC) No 45/2001, the European Public Prosecutor's Office shall inform the data subject in accordance with Article 20(3) in writing. The information about the principal reasons on which the application of the restriction is based may be omitted where the provision of such information would deprive the restriction of its effect. The data subject shall at least be informed that all necessary verifications by the European Data Protection Supervisor have taken place.
3. The European Public Prosecutor's Office shall document the grounds for omitting the communication of the principal reasons on which the restriction referred to in paragraph 2 is based.
4. When in application of Articles 46 and 47 of Regulation (EC) No 45/2001, the European Data Protection Supervisor checks the lawfulness of the processing performed by the

European Public Prosecutor's Office, he/she shall inform the data subject at least that all necessary verifications by the European Data Protection Supervisor have taken place.

#### *Article 43*

##### **Right to rectification, erasure and restrictions on processing**

1. If personal data processed by the European Public Prosecutor's Office have to be rectified, erased or whose processing has to be restricted in accordance with Articles 14, 15 or 16 of Regulation (EC) No 45/2001 the European Public Prosecutor's Office shall rectify, erase or restrict the processing of such data.
2. In the cases referred to in Articles 14, 15 or 16 of Regulation (EC) No 45/2001, all addressees of such data shall be notified forthwith in accordance with Article 17 of Regulation (EC) No 45/2001. In accordance with rules applicable to them, the addressees shall then rectify, erase or restrict the processing of those data in their systems.
3. The European Public Prosecutor's Office shall inform the data subject in writing without undue delay and in any case within three months of the receipt of the request that data concerning him or her have been rectified, erased or their processing restricted.
4. The European Public Prosecutor's Office shall inform the data subject in writing on any refusal of rectification, of erasure or of restrictions to the processing, and the possibility of lodging a complaint with the European Data Protection Supervisor and seeking a judicial remedy.

#### *Article 44*

##### **Responsibility in data protection matters**

1. The European Public Prosecutor's Office shall process personal data in such a way that that it can be established which authority provided the data or where the personal data has been retrieved from.
2. The responsibility for compliance with Regulation (EC) No 45/2001 and this Regulation shall lie with the European Public Prosecutor. The responsibility for the legality of transfer of personal data provided to the European Public Prosecutor's Office shall lie with the provider of the personal data, and with the European Public Prosecutor's Office for the personal data provided to Member States, Union bodies and third countries or organisations.
3. Subject to other provisions in this Regulation, the European Public Prosecutor's Office shall be responsible for all data processed by it.

#### *Article 45*

##### **Cooperation between the European Data Protection Supervisor and national data protection authorities**

1. The European Data Protection Supervisor shall act in close cooperation with national authorities competent for data protection supervision with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national authority competent for data protection supervision finds major discrepancies between practices of the Member States or potentially unlawful transfers using the communication channels of the European Public Prosecutor's Office, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.
2. In cases referred to under paragraph 1 the European Data Protection Supervisor and the national authorities competent for data protection supervision may, each acting within the

scope of their respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

3. The National Supervisory Authorities and the European Data Protection Supervisor shall meet for the purposes outlined in this Article, as needed. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary.

#### *Article 46*

#### **Right to lodge a complaint with the European Data Protection Supervisor**

1. Where a complaint introduced by a data subject pursuant to Article 32(2) of Regulation (EC) No 45/2001 relates to a decision as referred to in Article 43, the European Data Protection Supervisor shall consult the national supervisory bodies or the competent judicial body in the Member State which was the source of the data or the Member State directly concerned. The decision of the European Data Protection Supervisor, which may extend to a refusal to communicate any information, shall be taken in close cooperation with the national supervisory body or competent judicial body.
2. Where a complaint relates to the processing of data provided to the European Public Prosecutor's Office by Union bodies, third countries or organisations or private parties, the European Data Protection Supervisor shall ensure that the necessary checks have been carried out by the European Public Prosecutor's Office.

#### *Article 47*

#### **Liability for unauthorised or incorrect processing of data**

1. The European Public Prosecutor's Office shall be liable, in accordance with Article 340 of the Treaty, for any damage caused to an individual which results from unauthorised or incorrect processing of data carried out by it.
2. Complaints against the European Public Prosecutor's Office pursuant to the liability referred to in paragraph 1 shall be heard by the Court of Justice in accordance with Article 268 of the Treaty.

## **CHAPTER VII FINANCIAL AND STAFF PROVISIONS**

### **SECTION 1 FINANCIAL PROVISIONS**

#### *Article 48*

#### **Financial actors**

1. The European Public Prosecutor shall be responsible for taking decisions on financial and budgetary matters.
2. The Deputy designated by the European Public Prosecutor in accordance with Article 6(3) shall be responsible for the implementation of the budget of the European Public Prosecutor's Office as authorising officer.

*Article 49*

**Budget**

1. Estimates of all the revenue and expenditure of the European Public Prosecutor's Office shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in its budget.
2. The budget of the European Public Prosecutor's Office shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the revenue of the European Public Prosecutor's Office shall comprise:
  - a) a contribution from the Union entered in the general budget of the Union;
  - b) charges for publications and any service provided by the European Public Prosecutor's Office.
4. The expenditure of the European Public Prosecutor's Office shall include staff remuneration, administrative and infrastructure expenses, and operating costs.
5. Where European Delegated Prosecutors act within the framework of the tasks of the European Public Prosecutor's Office, the relevant expenditure related to these activities shall be regarded as operational expenditure.

*Article 50*

**Establishment of the budget**

1. Each year the Deputy of the European Public Prosecutor referred to in Article 48 shall draw up a provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office for the following financial year. The European Public Prosecutor shall, on the basis of that draft, produce a provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office for the following financial year.
2. The provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office shall be sent to the Commission no later than 31 January each year. The European Public Prosecutor shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March.
3. The Commission shall send the statement of estimates to the European Parliament and the Council (the budgetary authority) together with the draft general budget of the Union.
4. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
5. The budgetary authority shall authorise the appropriations for the contribution of the European Public Prosecutor's Office.
6. The budgetary authority shall adopt the establishment plan of the European Public Prosecutor's Office.
7. The European Public Prosecutor shall adopt the budget of the European Public Prosecutor's Office. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
8. For any building project likely to have significant implications for the budget the European Public Prosecutor's Office shall inform the European Parliament and the Council as early as

possible in accordance with the provisions of Article 203 of Regulation (EU, Euratom) No 966/2012.

9. Except in cases of force majeure referred to in Article 203 of Regulation (EU, Euratom) No 966/2012 shall deliberate upon the building project within four weeks of its receipt by both institutions. The building project shall be deemed approved at the expiry of this four-week period, unless the European Parliament or the Council take a decision contrary to the proposal within that period of time. If the European Parliament or the Council raise duly justified concerns within that four-week period, that period shall be extended once by two weeks. If the European Parliament or the Council take a decision contrary to the building project, the European Public Prosecutor's Office shall withdraw its proposal and may submit a new one.
10. The European Public Prosecutor's Office may finance a budget acquisition project through a loan subject to prior approval of the budgetary authority in accordance with Article 203(8) of Regulation (EU, Euratom) No 966/2012.

#### *Article 51*

#### **Implementation of the budget**

1. The Deputy of the European Public Prosecutor referred to in Article 48, acting as the authorising officer of the European Public Prosecutor's Office, shall implement its budget under his or her own responsibility and within the limits authorised in budget.
2. Each year the Deputy of the European Public Prosecutor referred to in Article 48 shall send to the budgetary authority all information relevant to the findings of the evaluation procedures.

#### *Article 52*

#### **Presentation of accounts and discharge**

1. The accounting officer of Eurojust shall act as the accounting officer of the European Public Prosecutor's Office in the implementation of its budget. The necessary arrangements so as to avoid any conflict of interest shall be made.
2. By 1 March following each financial year, the accounting officer of the European Public Prosecutor's Office shall send the provisional accounts to the Commission's Accounting Officer and the Court of Auditors.
3. The European Public Prosecutor's Office shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors, by 31 March of the following financial year.
4. By 31 March following each financial year, the Commission's accounting officer shall send the provisional accounts of the European Public Prosecutor's Office consolidated with the Commission's accounts to the Court of Auditors.
5. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the European Public Prosecutor's Office.
6. On receipt of the Court of Auditors' observations on the provisional accounts of the European Public Prosecutor's Office pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the European Public Prosecutor's Office shall draw up its final accounts under his/her own responsibility.

7. The accounting officer of the European Public Prosecutor's Office shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors.
8. The final accounts of the European Public Prosecutor's Office shall be published in the Official Journal of the European Union by 15 November of the following year.
9. The deputy of the European Public Prosecutor referred to in Article 48 shall send the Court of Auditors a reply to its observations by 30 September of the following year at the latest. The replies of the European Public Prosecutor's Office shall be sent to the Commission at the same time.
10. The Deputy of the European Public Prosecutor referred to in Article 48 shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.
11. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the deputy of the European Public Prosecutor referred to in Article 48 in respect of the implementation of the budget for year N.

#### *Article 53*

#### **Financial rules**

The financial rules applicable to the European Public Prosecutor's Office shall be adopted by the European Public Prosecutor in accordance with [Regulation 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities] and after consultation with the Commission. They shall not depart from [*Regulation 2343/2002*] unless such departure is specifically required for the operation of the European Public Prosecutor's Office and the Commission has given its prior consent.

### **SECTION 2**

### **STAFF PROVISIONS**

#### *Article 54*

#### **General provisions**

1. The Staff Regulations of the European Union<sup>9</sup> and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations and those Conditions of Employment of Other Servants shall apply to the European Public Prosecutor, the Deputies and the staff of the European Public Prosecutor's Office, unless otherwise stipulated in this Section.
2. The powers conferred on the appointing authority by the Staff Regulations and by the Conditions of Employment of Other Servants to conclude Contracts of Employment shall be exercised by the European Public Prosecutor with respect to the staff of the European Public Prosecutor's Office.

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<sup>9</sup> Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

3. The European Public Prosecutor shall adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations. The European Public Prosecutor shall also adopt staff resource programming as part of the programming document.
4. The Protocol on the Privileges and Immunities of the European Union shall apply to the European Public Prosecutor's Office and its staff.
5. European Delegated Prosecutors shall be engaged as Special Advisors in accordance with Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union. The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy which may adversely affect their career and status in the national prosecution system. In particular, the competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under this Regulation, and ensure that they are fully integrated into their national prosecution services.

*Article 55*

**Seconded national experts and other staff**

1. The European Public Prosecutor's Office may make use of Seconded national experts or other persons not employed by it. The Seconded national experts shall be subject to the authority of the European Public Prosecutor in the exercise of tasks related to the functions of the European Public Prosecutor's Office.
2. The European Public Prosecutor shall adopt a decision laying down rules on the secondment of national experts to the European Public Prosecutor's Office and further implementing provisions as may be necessary.

**CHAPTER VIII**  
**PROVISIONS ON THE RELATIONS OF THE EUROPEAN PUBLIC**  
**PROSECUTOR'S OFFICE WITH ITS PARTNERS**

**SECTION 1**  
**COMMON PROVISIONS**

*Article 56*

**Common provisions**

1. In so far as necessary for the performance of its tasks, the European Public Prosecutor's Office may establish and maintain cooperative relations with Union bodies or agencies in accordance with the objectives of those bodies or agencies, the competent authorities of third countries, international organisations and the International Criminal Police Organisation (Interpol).
2. In so far as relevant to the performance of its tasks, the European Public Prosecutor's Office may, in accordance with Article 61, directly exchange all information, with the exception of personal data, with the entities referred to in paragraph 1.
3. The European Public Prosecutor's Office may receive, in accordance with Article 4 of Regulation (EC) No 45/2001, and process personal data received from the entities referred to in paragraph 1 in so far as necessary for the performance of its tasks and subject to the provisions of Section 3.



4. Personal data shall only be transferred by the European Public Prosecutor's Office to third countries, international organisations, and Interpol if this is necessary for preventing and combating offences that fall under the competence of the European Public Prosecutor's Office and in accordance with this Regulation.
5. Onward transfers to third parties of personal data received from the European Public Prosecutor's Office by Member States, Union bodies or agencies, third countries and international organisations or Interpol shall be prohibited unless the European Public Prosecutor's Office has given its explicit consent after considering the circumstances of the case at hand, for a specific purpose that is not incompatible with the purpose for which the data was transmitted.

## **SECTION 2**

### **RELATIONS WITH PARTNERS**

#### *Article 57*

#### **Relations with Eurojust**

1. The European Public Prosecutor's Office shall establish and maintain a special relationship with Eurojust based on close cooperation and the development of operational, administrative and management links between them as defined below.
2. In operational matters, the European Public Prosecutor's Office may associate Eurojust with its activities concerning cross-border or complex cases by:
  - a) sharing information, including personal data, on its investigations, in particular where they reveal elements which may fall outside the material or territorial competence of the European Public Prosecutor's Office;
  - b) requesting Eurojust or its competent national member(s) to participate in the coordination of specific acts of investigation regarding specific aspects which may fall outside the material or territorial competence of the European Public Prosecutor's Office;
  - c) facilitating the agreement between the European Public Prosecutor's Office and the Member State(s) concerned on ancillary competence in accordance with Article 13 without prejudice to a possible settlement by the judicial authority of the Member State concerned and competent to decide on the matter;
  - d) requesting Eurojust or its competent national member(s) to use the powers attributed to them by Union legislation or national law regarding specific acts of investigation which may fall outside the material or territorial competence of the European Public Prosecutor's Office;
  - e) sharing information with Eurojust or its competent national member(s) on prosecution decisions referred to at Articles 27, 28 and 29 before their submission to the European Public Prosecutor where Eurojust competences may be affected and this is appropriate in the light of Eurojust's previous involvement in the case;
  - f) requesting Eurojust or its competent national member(s) to provide support in the transmission of its decisions or requests for mutual legal assistance to, and execution in, States members of Eurojust but not taking part in the establishment of the European Public Prosecutor's Office or third countries.
3. The European Public Prosecutor's Office shall have access to a mechanism for automatic cross-checking of data in Eurojust's Case Management System. Whenever a match is found between data entered into the Case Management System by the European Public Prosecutor's

Office and data entered by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust. In cases where the data was provided by a third country, Eurojust will only inform that third country of the match found with the consent of the European Public Prosecutor's Office.

4. The cooperation established in accordance with paragraph 1 shall entail the exchange of information, including personal data. Any data thus exchanged shall only be used for the purposes for which it was provided. Any other usage of the data shall only be allowed in as far as such usage falls within the mandate of the body receiving the data, and subject to the prior authorisation of the body which provided the data.
5. The European Public Prosecutor shall designate the staff members authorised to have access to the results of the cross-checking mechanism and inform Eurojust thereof.
6. The European Public Prosecutor's Office shall rely on the support and resources of the administration of Eurojust. The details of this arrangement shall be regulated by an Agreement. Eurojust shall provide the following services to the European Public Prosecutor's Office:
  - a) technical support in the preparation of the annual budget, the programming document containing the annual and multi-annual programming, and the management plan;
  - b) technical support in staff recruitment and career-management;
  - c) security services;
  - d) Information Technology services;
  - e) financial management, accounting and audit services;
  - f) any other services of common interest.

#### *Article 58*

#### **Relations with Union institutions, agencies and other bodies**

1. The European Public Prosecutor's Office shall develop a special relationship with Europol.
2. The cooperation established in accordance with paragraph 1 shall entail the exchange of information, including personal data. Any data thus exchanged shall only be used for the purposes for which it was provided. Any other usage of the data shall only be allowed in as far as such usage falls within the mandate of the body receiving the data, and subject to the prior authorisation of the body which provided the data.
3. The European Public Prosecutor's Office shall cooperate with the Commission, including OLAF, for the purpose of implementing the obligations under Article 325(3) of the Treaty. To this end, they shall conclude an agreement setting out the modalities of their cooperation.
4. The European Public Prosecutor's Office shall establish and maintain cooperative relations with other Union institutions, bodies, offices and agencies.

#### *Article 59*

#### **Relations with third countries and international organisations**

1. The European Public Prosecutor's Office may establish working arrangements with the entities referred to in Article 56(1). Such working arrangements may, in particular, concern the exchange of strategic information and the secondment of liaison officers to the European Public Prosecutor's Office.

2. The European Public Prosecutor's Office may designate, in agreement with the competent authorities, contact points in third countries in order to facilitate cooperation.
3. In accordance with Article 218 of the Treaty, the European Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the cooperation between the European Public Prosecutor's Office and the competent authorities of these third countries with regard to legal assistance in criminal matters and extradition in cases falling under the competence of the European Public Prosecutor's Office.
4. Concerning the criminal offences within its material competence, the Member States shall either recognise the European Public Prosecutor's Office as a competent authority for the purpose of the implementation of their international agreements on legal assistance in criminal matters and extradition, or, where necessary, alter those international agreements to ensure that the European Public Prosecutor's Office can exercise its functions on the basis of such agreements when it assumes its tasks in accordance with Article 75(2).

### **SECTION 3**

#### **TRANSFER OF PERSONAL DATA**

##### *Article 60*

##### **Transfer of personal data to Union bodies or agencies**

Subject to any restrictions pursuant to this Regulation, the European Public Prosecutor's Office may directly transfer personal data to Union bodies or agencies in so far as it is necessary for the performance of its tasks or those of the recipient Union body or agency.

##### *Article 61*

##### **Transfer of personal data to third countries and international organisations**

1. The European Public Prosecutor's Office may transfer personal data to an authority of a third country or to an international organisation or Interpol, in so far as this is necessary for it to perform its tasks, only on the basis of:
  - a) a decision of the Commission adopted in accordance with [Articles 25 and 31 of Directive 95/46/EC] that that country or international organisation, or a processing sector within that third country or international organisation ensures an adequate level of protection (adequacy decision); or
  - b) an international agreement concluded between the Union and that third country or international organisation pursuant to Article 218 of the Treaty adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.

Such transfer does not require further authorisation.

The European Public Prosecutor's Office may conclude working arrangements to implement such agreements or adequacy decisions.

2. By way of derogation from paragraph 1, the European Public Prosecutor may authorise the transfer of personal data to third countries or international organisations or Interpol on a case-by-case basis if:
  - a) the transfer of data is absolutely necessary to safeguard the essential interests of the Union, including its financial interests, within the scope of the objectives of the European Public Prosecutor's Office;

- b) the transfer of the data is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences;
  - c) the transfer is otherwise necessary or legally required on important public interest grounds of the Union or its Member States, as recognised by Union law or by national law, or for the establishment, exercise or defence of legal claims; or
  - d) the transfer is necessary to protect the vital interests of the data subject or another person.
3. Moreover the European Public Prosecutor may, in agreement with the European Data Protection Supervisor, authorise a set of transfers in conformity with points a) to d) above, taking into account the existence of safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, for a period not exceeding one year, renewable.
  4. The European Data Protection Supervisor shall be informed of cases where paragraph 3 was applied.
  5. The European Public Prosecutor's Office may transfer administrative personal data in accordance with Article 9 of Regulation (EC) No 45/2001.

## **CHAPTER IX GENERAL PROVISIONS**

### *Article 62*

#### **Legal status and operating conditions**

1. In each of the Member States the European Public Prosecutor's Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.
2. The necessary arrangements concerning the accommodation provided for the European Public Prosecutor's Office and the facilities made available by the host Member State together with the specific rules applicable in that Member State to the European Public Prosecutor, his/her Deputies and their staff, and members of their families, shall be laid down in a Headquarters Agreement concluded between the European Public Prosecutor's Office and the host Member State no later than [2 years after the entry into force of this regulation].
3. The host Member State of the European Public Prosecutor's Office shall provide the best possible conditions to ensure the functioning of the European Public Prosecutor's Office, including multilingual, European-oriented schooling and appropriate transport connections.

### *Article 63*

#### **Language arrangements**

1. Regulation No 1<sup>10</sup> shall apply to the acts provided in Articles 7 and 72.
2. The translation services required for the functioning of the European Public Prosecutor's Office shall be provided by the Translation Centre of the bodies of the European Union.

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<sup>10</sup> OJ L 17, 6.10.1958, p. 385

*Article 64*

**Confidentiality**

1. The European Public Prosecutor, the Deputies and the staff, European Delegated Prosecutors and their national staff shall be bound by an obligation of confidentiality with respect to any information which has come to their knowledge in the course of the performance of their tasks.
2. The obligation of confidentiality shall apply to all persons and to all bodies called upon to work with the European Public Prosecutor's Office.
3. The obligation of confidentiality shall also apply after leaving office or employment or after the termination of the activities of the persons referred to in paragraphs 1 and 2.
4. The obligation of confidentiality shall apply to all information received by the European Public Prosecutor's Office, unless that information has already been made public or is accessible to the public.
5. Members and the staff of the European Data Protection Supervisor shall be subject to the obligation of confidentiality with respect to any information which has come to their knowledge in the course of the performance of their tasks.

*Article 65*

**Transparency**

1. Regulation (EC) No 1049/2001 shall apply to documents which relate to the administrative tasks of the European Public Prosecutor's Office.
2. The European Public Prosecutor shall, within six months of the date of its establishment, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the European Public Prosecutor's Office under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

*Article 66*

**OLAF and the European Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 1073/1999 of the European Parliament and of the Council<sup>11</sup>, within six months from the day the European Public Prosecutor's Office becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt the appropriate provisions applicable to all the employees of the European Public Prosecutor's Office using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the European Public Prosecutor's Office.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999

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<sup>11</sup> OJ L 136, 31.5.1999, p.1.

and Council Regulation (Euratom, EC) No 2185/96<sup>12</sup> with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the European Public Prosecutor's Office.

4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with third countries and international organisations or Interpol, contracts, grant agreements and grant decisions of the European Public Prosecutor's Office shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

#### *Article 67*

### **Security rules on the protection of classified information**

The European Public Prosecutor's Office shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Commission Decision 2001/844/EC, ECSC, Euratom<sup>13</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of such information.

#### *Article 68*

### **Administrative inquiries**

The administrative activities of the European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

#### *Article 69*

### **General regime of liability**

1. The contractual liability of the European Public Prosecutor's Office shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the European Public Prosecutor's Office.
3. In the case of non-contractual liability, the European Public Prosecutor's Office shall, in accordance with the general principles common to the laws of the Member States and independently of any liability under Article 47, make good any damage caused by the European Public Prosecutor's Office or its staff in the performance of their duties in so far as it may be imputed to them.
4. Paragraph 3 shall also apply to damage caused through the fault of a European Delegated Prosecutor in the performance of his duties.
5. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
6. The national courts of the Member States competent to deal with disputes involving the liability of the European Public Prosecutor's Office as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001<sup>14</sup>

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<sup>12</sup> OJ L 292, 15.11.1996, p.2.

<sup>13</sup> OJ L 317, 3.12.2011, p. 1.

<sup>14</sup> OJ L 12, 16.1.2001, p. 1. Regulation (EC) 44/2001 is replaced by Regulation (EU) No 1215/2012 as from 10.01.2015.

7. The personal liability of its staff towards the European Public Prosecutor's Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

#### *Article 70*

#### **Reporting**

1. The European Public Prosecutor's Office shall issue an Annual Report on its general activities. It shall transmit this report to the European Parliament and to national Parliaments, as well as to the Council and the Commission.
2. The European Public 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, taking into account the obligation of discretion and confidentiality. Upon request, he/she shall also appear before the Commission.
3. National Parliaments may invite the European Public Prosecutor or European Delegated Prosecutors to participate in an exchange of views in relation to the general activities of the European Public Prosecutor's Office.

## **CHAPTER X FINAL PROVISIONS**

#### *Article 71*

#### **Transitional provisions**

1. Before exercising its tasks the European Public Prosecutor shall take any measures necessary for the setting up of the European Public Prosecutor's Office.
2. Without prejudice to Article 9, the first appointment of two of the Deputies to the European Public Prosecutor, to be chosen by lot, shall be made for a period of 6 years.
3. Member States shall remain competent until the date on which the European Public Prosecutor's Office has been set up and assumed its tasks in accordance with Article 75(2). The European Public Prosecutor's Office shall exercise its competence with regard to any offence within its competence committed after that date. The European Public Prosecutor's Office may also exercise its competence with regard to any offence within its competence committed before that date if no competent national authority is already investigating or prosecuting it.

#### *Article 72*

#### **Administrative rules and programme documents**

The European Public Prosecutor shall:

- a) adopt each year the programming document containing annual and multi-annual programming of the European Public Prosecutor's Office;
- b) adopt an anti-fraud strategy, which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented;
- c) adopt rules for the prevention and management of conflicts of interest in respect of the European Delegated Prosecutors;
- d) adopt rules on the status, performance criteria, rights and obligations of the Deputies and the European Delegated Prosecutors, as well as the rotation of European Delegated Prosecutors for the purpose of implementing Article 7;

- e) adopt rules on the handling of transactions made in accordance with Article 29 and the modalities to calculate the amounts of the fine to be paid;
- f) adopt rules on the modalities of giving feedback to persons or entities which have provided information to the European Public Prosecutor's Office;
- g) adopt detailed rules concerning the application of Regulation (EC) No 1049/2001 in its activities;
- h) implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.

#### *Article 73*

#### **Notifications**

Each Member State shall designate the authorities which are competent for the purposes of Articles 6(6), 13(3), 17(2) and 26(4). Information on the designated authorities, as well as on any subsequent change, shall be notified simultaneously to the European Public Prosecutor, the Council and the Commission.

#### *Article 74*

#### **Review clause**

1. By [*five years after the start of application of this Regulation*] at the latest the Commission shall present its evaluation report to the European Parliament and the Council on the implementation of this Regulation, which may be accompanied by any legislative proposals. The report shall contain its findings on the feasibility and advisability of extending the competence of the European Public Prosecutor's Office to other criminal offences in accordance with Article 86(4) of the Treaty.
2. The Commission shall submit legislative proposals to the European Parliament and the Council if it concludes that more detailed rules on the setting up of the European Public Prosecutor's Office, its functions or the procedure applicable to its activities are necessary. It may recommend to the European Council the extension of the competence of the European Public Prosecutor's Office in accordance with Article 86(4) of the Treaty.

#### *Article 75*

#### **Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. The European Public Prosecutor's Office shall assume the investigative and prosecutorial tasks conferred on it by this Regulation on a date to be determined by a decision of the Commission on a proposal of the European Public Prosecutor once the European Public Prosecutor's Office is set up. The decision of the Commission shall be published in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*  
*The President*



## Annex

### *Categories of personal data*

1.
  - a) surname, maiden name, given names and any alias or assumed names;
  - b) date and place of birth;
  - c) nationality;
  - d) sex;
  - e) place of residence, profession and whereabouts of the person concerned;
  - f) social security numbers, driving licences, identification documents, passport data, customs and Tax Identification Numbers;
  - g) information concerning legal persons if it includes information relating to identified or identifiable individuals who are the subject of a judicial investigation or prosecution;
  - h) bank accounts and accounts with other financial institutions;
  - i) description and nature of the alleged offences, the date on which they were committed, the criminal category of the offences and the progress of the investigations;
  - j) the facts pointing to an international extension of the case;
  - k) details relating to alleged membership of a criminal organisation;
  - l) telephone numbers, e-mail addresses, traffic data and location data, as well as the related data necessary to identify the subscriber or user;
  - m) vehicle registration data;
  - n) DNA profiles established from the non-coding part of DNA, photographs and fingerprints.
2.
  - a) surname, maiden name, given names and any alias or assumed names;
  - b) date and place of birth;
  - c) nationality;
  - d) sex;
  - e) place of residence, profession and whereabouts of the person concerned;
  - f) the description and nature of the offences involving them, the date on which they were committed, the criminal category of the offences and the progress.

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Commission proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office

#### 1.2. Policy area(s) concerned in the ABM/ABB structure

Policy area: Justice

Activity: title 33

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

To contribute to the strengthening of the protection of the Union's financial interests and further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union's institutions, while respecting all fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific Objective No 2 Enhance judicial cooperation in criminal matters and thus contribute to creating a genuine European Area of Justice

(part of general Objective n° 2: Strengthen confidence in the European Judicial Area)

ABM/ABB activity(ies) concerned

33 03: Justice in criminal and civil matters

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The establishment of the European Public Prosecutor's Office is expected to increase the protection of the Union's financial interests. Its establishment is expected to lead to an increase in the number of prosecutions of the perpetrators of crimes affecting the financial interests, leading to a higher number of convictions, a higher level of recovery of illegally obtained funds and increased deterrence. In addition, its independence will ensure that investigations and prosecutions of the relevant crimes will be taken forward without direct influence of national authorities.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Increased number and percentage of successful criminal investigations and prosecutions

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term*

Whereas both the Union and the Member States have an obligation to protect the Union's budget, in reality the Union has little control over the expenditure by Member States and virtually no power to intervene in cases of criminal misuse of the EU's funds. The vast majority of the EU budget is managed by national authorities (for example when they award public procurement grants financed through the EU budget) and any criminal investigations or prosecutions concerning offences affecting the Union's budget are within the competence of the Member States. Criminal investigations into fraud and other crimes against the EU budget are often hampered by **divergent legislation** and **uneven enforcement efforts** in the Member States. National law enforcement authorities, prosecutors and judges in the Member States decide in accordance with **priorities set by national criminal policy** and on the basis of national criminal law competences and procedural rules whether and, if so, how they intervene to protect the Union's budget. Consequently, the **level of protection** of the Union's financial interests **differs significantly from one Member State to another**. The fact that the rate of successful prosecutions concerning offences against the EU budget varies considerably across the EU from one Member State to another (from 19% to 91%<sup>15</sup>) shows a **gap in the existing protection mechanisms** and calls for corrective measures.

### 1.5.2. *Added value of EU involvement*

The added value of establishing a European Public Prosecutor's Office is mainly to be found in the **increased number of prosecutions** of crimes affecting the Union's financial interests.

The creation of a European Public Prosecutor's Office would **improve the use of resources and information exchange** necessary to be able to conduct successful investigations and prosecutions of the relevant offences. This, in turn, would strengthen the law enforcement response to these offences in general, and **increase the preventive effect (deterrence)** for potential criminals. The European Public Prosecutor's Office would be able to pool investigative and prosecutorial resources for the needs in a given situation, thereby making law enforcement at European and national level more efficient.

The European Public Prosecutor's Office will direct investigations and prosecutions in the Member States, ensure **effective coordination of investigations and prosecutions**, and

<sup>15</sup> Commission annual Report on the protection of the European Union's financial interests – Fight against fraud; COM(2012) 408

**solve problems related to different applicable legal systems.** The current system, where the Member States are solely responsible for such investigations and prosecutions, supported by Eurojust and Europol, is not efficient enough to deal with the high levels of relevant crime and associated damages.

Ensuring that the limited financial resources of the Union are used in the best interests of EU citizens and are better protected against fraud is indispensable also for the **legitimacy of expenditure** and for ensuring **public trust in the Union**.

### 1.5.3. *Lessons learned from similar experiences in the past*

At **national level**, there is often insufficient information exchange on suspected offences involving EU funds between the authorities responsible for monitoring and control, those dealing with administrative investigations and law enforcement bodies. This partly arises as a result of loopholes in the procedural framework referred to above hampering efficient multidisciplinary investigations involving judicial as well as administrative, customs and tax authorities in the Member States. Agencies managing and controlling the disbursement of EU funds sometimes focus solely on getting their money back through administrative and civil law procedures even if there are strong suspicions that a criminal act has occurred. This may lead to neglecting criminal prosecutions, and with that deterrence and general prevention.

The effective investigation and prosecution of offences against the EU's financial interests is, furthermore, hampered by the fact that law enforcement authorities and prosecutors do not always transmit information about criminal offences to their colleagues in other Member States, or to Eurojust or Europol.

In addition, the classical ways of international cooperation via mutual legal assistance (MLA) requests or via joint investigation teams (JITs) are often not functioning well enough to allow for the effective investigation and prosecution of these offences despite the efforts of European bodies such as Eurojust and Europol. Responses to MLA requests are often very slow and police and judicial authorities experience practical difficulties in contacting and cooperating with colleagues abroad due to language problems and differences in legal systems. In some States, slow and ineffective international cooperation has frequently resulted in the impossibility to pursue the case due to the fact that the prescription period had expired. In addition, cases affecting the EU's financial interests are particularly complex.

As regards **cooperation at Union level**, mixed experiences have been reported regarding the cooperation with Eurojust and Europol, and between the Member States and OLAF. Eurojust and Europol do not always receive the information they need to be able to support the Member States. OLAF provides support to Member States through its ability to grant specialised technical and operational assistance as required by Article 7 of second Protocol to the Convention on the Protection of the European Communities' Financial Interests. At the same time, OLAF's investigations are conducted subject to specific conditions, in particular when it comes to transmitting information to the national judiciary, including applicable data protection rules. For this reason, the cooperation with OLAF has also been criticised on occasion, in particular with respect to the long time it sometimes takes for OLAF to share information with national prosecutors. Some Member States also restrict the cooperation with non-judicial bodies like OLAF based on rules of judicial secrecy.

OLAF's annual statistics demonstrate that **the cases which are transferred to national investigation and judicial authorities are not equally effectively and efficiently prosecuted across the EU**. In its eleventh operational report, OLAF analysed the judicial follow-up given by Member States to its cases over 12 years and found "very substantial differences between countries with respect to their capacity to bring EU-budget related judicial investigations and prosecutions to a conviction within a reasonable time". The fact

that the average prosecution rate lies under 50% shows that there are serious difficulties in achieving overall effectiveness of investigation and prosecution in the Member States.

#### 1.5.4. *Compatibility and possible synergy with other appropriate instruments*

##### **Anti-fraud Directive proposal**

The Union's current actions to protect its financial interests include administrative investigations, controls and audits, as well as legislative action, including the Commission's proposal for a Directive on the fight against fraud to the Union's financial interest by means of criminal law, but do not address the deficiencies identified with respect to the investigation and prosecution of criminal offences related to the protection of the EU's financial interests.

##### **Eurojust**

Eurojust can only coordinate and encourage investigations and prosecutions, and assist with information exchange. If a Member State refuses to investigate or prosecute a case, Eurojust cannot compel it to do so. The National Members of Eurojust often lack the powers to ensure effective follow-up in the Member States, or if they do, they usually refrain from using the powers which they derive from national laws – most decisions on these sort of issues are arrived at through consensus.

The proposal on the establishment of the European Public Prosecutor's Office is accompanied by a proposal on the **reform of Eurojust** which will align it with the common approach on European agencies agreed by the Council, the European Parliament and the Commission, and will establish a link between Eurojust and the European Public Prosecutor's Office. This reform might lead to more efficient information exchange and better cooperation between the national authorities.

There are, and will always be, cases where both the European Public Prosecutor's Office and Eurojust need to be involved, in particular cases where the suspects are involved in both crimes affecting the Union's financial interests and other forms of crime. This implies that there will be a need for continuous close cooperation. To ensure that this takes place, provisions have been included in both Regulations to set out that the European Public Prosecutor's Office may request that Eurojust, or its national members, intervene, coordinate, or otherwise use their powers in a given case.

In addition it is envisaged that Eurojust will provide practical support services, on a zero cost basis, to the European Public Prosecutor's Office in administrative issues, such as personnel, finance and IT. This approach delivers considerable synergies. One example of such synergy is that the European Public Prosecutor's Office will be able to use the IT infrastructure of Eurojust, including using its Case Management System, temporary work files and index for its own cases. The details of this arrangement will be laid down in an agreement between the European Public Prosecutor's Office and Eurojust.

##### **OLAF**

Currently OLAF conducts administrative investigations for the protection of EU's financial interests. OLAF has specialised staff with significant experience in cooperating with national criminal authorities. Many members of OLAF staff have a relevant background in their national enforcement and judicial administrations (police, customs, and prosecutorial functions).

A part of OLAF's resources would thus be used in order to set up the European Public Prosecutor's Office, taking into account their experience in the conduct of administrative investigations and the objective of avoiding duplication of administrative and criminal

investigations. Another important aspect is that of using the current networks which OLAF has developed over the years in the area of anti-fraud investigations.

Finally, OLAF would contribute to the setting up of the European Public Prosecutor's Office with specialised support to facilitate forensic analysis and technical and operational support to investigations and for the establishment of evidence in criminal cases affecting the Union's financial interests.

A proposal to amend Regulation 1073/1999 concerning investigations conducted by OLAF (**OLAF reform**) is under inter-institutional negotiation. While this proposal improves the information exchange between OLAF and EU institutions bodies, agencies and offices (IBOA), as well as with the Member States and it provides better governance for OLAF and a set of procedural guarantees for the persons concerned by investigations, it does not provide OLAF with any additional means of action, in particular criminal investigation powers.

### **Europol**

The role of Europol is limited to providing intelligence and support to national law enforcement activities. It cannot ensure follow-up to its analyses in the Member States, nor direct national investigations. The powers of Europol are also limited by the TFEU. Under Article 88 TFEU Europol cannot independently investigate crime, and any operational action must be carried out by Europol in liaison and with the agreement of the national law enforcement authorities. Whilst the support functions of Europol are certainly important, these cannot substitute for the powers to independently investigate criminal behaviour.

A **proposal for a Regulation on Europol** was adopted by the Commission in March 2013, focusing on aligning Europol's competences with the TFEU and to make it a hub for information exchange, while granting new responsibilities regarding training. It does not comprise police investigation and law-enforcement powers in the area of the protection of EU's financial interests.

## **1.6. Duration and financial impact**

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2017 to 2023,
- followed by full-scale operation.

## **1.7. Management mode(s) envisaged**

**Direct management** by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies;

**Shared management** with the Member States

**Indirect management** by delegating implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 208 and 209 of the Financial Regulation;

- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the "Comments" section.*

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The European Public Prosecutor's Office shall issue an annual report on its activities. The European Public Prosecutor shall appear before the European Parliament and the Council once a year to give account of the results and priorities of the investigations and prosecutions of the European Public Prosecutor's Office, taking into account the obligation of discretion and confidentiality.

The European Public Prosecutor or European Delegated Prosecutors may also be invited to provide information to national Parliaments.

In addition, within five years following the entry into force of the Regulation establishing the European Public Prosecutor's Office, the European Commission shall assess its implementation, including the feasibility and advisability of extending the competence of the European Public Prosecutor's Office to other offences in accordance with Article 86 (4) TFEU.

### 2.2. Management and control system

#### 2.2.1. Risk(s) identified

Investigation and prosecution measures, including enforcements powers are sensitive activities which partially affecting human rights and therefore, can trigger claims for damages.

Processing of personal data in pending investigations can also be a reason for claims for damages in case of unlawful processing.

#### 2.2.2. Control method(s) envisaged

Under the **standard discharge procedure** the European Public Prosecutor's Office is under the obligation, inter alia:

- to send the provisional accounts to the Commission's Accounting Officer and the Court of Auditors;
- to send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors;
- to submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question.

Moreover, as regards **combating fraud and audits by the European Court of Auditors**, once operational:

- The European Public Prosecutor’s Office shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt the appropriate provisions applicable to all the employees of the Office using the template set out in the Annex to that Agreement.
- The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Office.
- OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down the applicable EU rules with a view to establishing whether there has been any irregularity affecting the financial interests of the Union in connection with a grant or a contract funded by the European Public Prosecutor’s Office.
- Working arrangements with third countries and international organisations, contracts, grant agreements and grant decisions of the European Public Prosecutor’s Office shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

Adoption of an anti-fraud strategy, which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented.

Adoption rules for the prevention and management of conflicts of interest in respect of its staff members



### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line              | Type of expenditure     | Contribution        |                          |                      |   |
|--|--------------------------|-------------------------|---------------------|--------------------------|----------------------|---|
|  | Number<br>[Heading.....] | Diff./non-diff.<br>(16) | from EFTA countries | from candidate countries | from third countries | within the meaning of Article 18(1)(aa) of the Financial Regulation |
|  |                          |                         |                     |                          |                      |   |

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line              | Type of expenditure | Contribution        |                          |                      |   |
|--|--------------------------|---------------------|---------------------|--------------------------|----------------------|---|
|  | Number<br>[Heading.....] | Diff./non-diff.     | from EFTA countries | from candidate countries | from third countries | within the meaning of Article 18(1)(aa) of the Financial Regulation |
| 3  | 33.03.YY.YY<br>EPPO      | DIFF                | NO                  | NO                       | NO                   | NO  |

#### 3.2. Estimated impact on expenditure

##### 3.2.1. Summary of estimated impact on expenditure (in 2013 prices)

EUR million (to three decimal places)

|  |          |                          |
|--|----------|--------------------------|
| <b>Heading of multiannual financial Framework:</b> | Number 3 | Security and Citizenship |
|--|----------|--------------------------|

| EPPO <sup>17</sup>    |             |      | 2017  | 2018  | 2019  | 2020   | TOTAL  |
|-----------------------|-------------|------|-------|-------|-------|--------|--------|
| Title 1 <sup>18</sup> | Commitments | (1)  | 1.393 | 4.144 | 6.895 | 11.039 | 23.471 |
|                       | Payments    | (2)  | 1.393 | 4.144 | 6.895 | 11.039 | 23.471 |
| Title 2 <sup>19</sup> | Commitments | (1a) | 0.099 | 0.194 | 0.293 | 0.487  | 1.073  |

<sup>16</sup> Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

<sup>17</sup> Only investigation and prosecution staff and corresponding costs are calculated. Administrative support structures will be provided by EUROJUST on a zero cost basis.

<sup>18</sup> A progressive recruitment (10 % 20 % - 30 % - 40 % - 50 % - 75 % - 100 %) has been foreseen.

<sup>19</sup> It is expected that the host Member State offers a building and ensures the first fitting of the building with all office, IT and security equipment. Purely utility costs and ICT costs per square meter has been included here. Provided that the host Member State does not offer this deal, this title will need to be revised.

|                                      |             |              |       |       |        |        |               |
|--------------------------------------|-------------|--------------|-------|-------|--------|--------|---------------|
|                                      | Payments    | (2a)         | 0.099 | 0.194 | 0.293  | 0.487  | <b>1.073</b>  |
| Title 3 <sup>20</sup>                | Commitments | (3a)         | 1.052 | 2.455 | 3.507  | 4.558  | <b>11.572</b> |
|                                      | Payments    | (3b)         | 1.052 | 2.455 | 3.507  | 4.558  | <b>11.572</b> |
| <b>TOTAL appropriations for EPPO</b> | Commitments | =1+1a<br>+3a | 2.544 | 6.793 | 10.695 | 16.084 | <b>36.116</b> |

|  |          |                              |
|--|----------|------------------------------|
| <b>Heading of multiannual financial framework:</b> | <b>5</b> | ‘Administrative expenditure’ |
|--|----------|------------------------------|

EUR million (to three decimal places)

|                                    |                | 2017  | 2018  | 2019  | 2020  | TOTAL        |
|------------------------------------|----------------|-------|-------|-------|-------|--------------|
| <b>DG: JUST</b>                    |                |       |       |       |       |              |
| • Human Resources                  |                | 0.170 | 0.170 | 0.170 | 0.170 | <b>0.680</b> |
| • Other administrative expenditure |                | 0.050 | 0.050 | 0.050 | 0.050 | <b>0.200</b> |
| <b>TOTAL DG JUST</b>               | Appropriations | 0.220 | 0.220 | 0.220 | 0.220 | <b>0.880</b> |
| • Human Resources                  |                | 0.131 | 0.131 | 0.131 | 0.131 | <b>0.524</b> |
| • Other administrative expenditure |                | 0.050 | 0.050 | 0.050 | 0.050 | <b>0.200</b> |
| <b>TOTAL OLAF</b>                  | Appropriations | 0.181 | 0.181 | 0.181 | 0.181 | <b>0.724</b> |

|  |                                      |       |       |       |       |              |
|--|--------------------------------------|-------|-------|-------|-------|--------------|
| <b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b> | (Total commitments = Total payments) | 0.401 | 0.401 | 0.401 | 0.401 | <b>1.604</b> |
|--|--------------------------------------|-------|-------|-------|-------|--------------|

EUR million (to three decimal places)

|  |             | 2017         | 2018         | 2019          | 2020          | TOTAL         |
|--|-------------|--------------|--------------|---------------|---------------|---------------|
| <b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b> | Commitments | <b>2.945</b> | <b>7.194</b> | <b>11.096</b> | <b>16.485</b> | <b>37.720</b> |
|  | Payments    | <b>2.945</b> | <b>7.194</b> | <b>11.096</b> | <b>16.485</b> | <b>37.720</b> |

|  |          |                              |
|--|----------|------------------------------|
| <b>Reductions in order to achieve cost-efficiencies in Heading of multiannual financial framework:</b> | <b>5</b> | ‘Administrative expenditure’ |
|--|----------|------------------------------|

<sup>20</sup> This title is calculated based on the experience of OLAF in investigative work. In addition the costs for the service contracts with up to 36 FTE delegated European Prosecutors at 80 % of an AD 10 salary estimate are included. The progression rate for those is 50 % - 75 % - 100 %.

| Reduction in Heading 5 (OLAF)        |             |              | 2017          | 2018          | 2019          | 2020           | TOTAL          |
|--------------------------------------|-------------|--------------|---------------|---------------|---------------|----------------|----------------|
| Title 1 <sup>21</sup>                | Commitments | (1)          | -1.393        | -4.144        | -6.895        | -11.039        | <b>-23.471</b> |
|                                      | Payments    | (2)          | -1.393        | -4.144        | -6.895        | -11.039        | <b>-23.471</b> |
| Title 2 <sup>22</sup>                | Commitments | (1a)         | -0.099        | -0.194        | -0.293        | -0.487         | <b>-1.073</b>  |
|                                      | Payments    | (2a)         | -0.099        | -0.194        | -0.293        | -0.487         | <b>-1.073</b>  |
| Title 3 <sup>23</sup>                | Commitments | (3a)         | -0.350        | -1.051        | -1.401        | -1.750         | <b>-4.552</b>  |
|                                      | Payments    | (3b)         | -0.350        | -1.051        | -1.401        | -1.750         | <b>-4.552</b>  |
| <b>TOTAL reductions in Heading 5</b> |             | =1+1a<br>+3a | <b>-1.842</b> | <b>-5.389</b> | <b>-8.589</b> | <b>-13.276</b> | <b>-29.096</b> |

During the phase-in period any resource increase in appropriations or FTE in EPPO is compensated by a corresponding decrease in OLAF resources of the same amount in appropriations or FTE.

### Difference, i.e. costs related to the service contracts of the EDPs (title 3)

|  |             |     | 2017  | 2018  | 2019  | 2020  | TOTAL        |
|--|-------------|-----|-------|-------|-------|-------|--------------|
|  | Commitments | (1) | 0.702 | 1.404 | 2.106 | 2.880 | <b>7.020</b> |
|  | Payments    | (2) | 0.702 | 1.404 | 2.106 | 2.880 | <b>7.020</b> |

These are the costs of 9, 18, 27 and 36 EDPs in FTE calculated.

These costs need to be covered by the margin of title 3 or by reductions in other agencies.

#### 3.2.2. Estimated impact on [body]'s appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as described below:
  - Commitment appropriations in EUR million (to three decimal places) in 2013 prices

| Indicate objectives and outputs |                               |  | 2017 | 2018 | 2019 | 2020 | TOTAL |
|---------------------------------|-------------------------------|--|------|------|------|------|-------|
|                                 | <b>RÉALISATIONS (outputs)</b> |  |      |      |      |      |       |

<sup>21</sup> A progressive recruitment (10 % 20 % - 30 % - 40 % - 50 % - 75 % - 100 %) has been foreseen.

<sup>22</sup> It is expected that the host Member State offers a building and ensures the first fitting of the building with all office, IT and security equipment. Purely utility costs and ICT costs per square meter has been included here. Provided that the host Member State does not offer this deal, this title will need to be revised.

<sup>23</sup> This title is calculated based on the experience of OLAF in investigative work. In addition the costs for the service contracts with up to 36 FTE delegated European Prosecutors at 80 % of an AD 10 salary estimate are included. The progression rate for those is 50 % - 75 % - 100 %. As the EDPs will be suggested by the Member States it is likely that this progression rate might not be achieved.

|  | Type  | Average costs | Number <sup>24</sup> | Costs        | Number | Costs        | Number | Costs         | Number | Costs         | Total | Total Costs                |
|--|-------|---------------|----------------------|--------------|--------|--------------|--------|---------------|--------|---------------|-------|----------------------------|
| SPECIFIC OBJECTIVE NO 1<br>Protection of financial interest investigations |       |               |                      |              |        |              |        |               |        |               |       |                            |
| - Réalisation  | cases | 0.008         | 184                  | 1.526        | 491    | 4.076        | 773    | 6.417         | 1163   | 9.650         |       | 21.669                     |
| Subtotal for specific objective N° 1                                       |       |               |                      | 1.526        |        | 4.076        |        | 6.417         |        | 9.650         |       | 21.669                     |
| SPECIFIC OBJECTIVE NO 2<br>Protection of financial interest prosecutions   |       |               |                      |              |        |              |        |               |        |               |       |                            |
| - Réalisation  | cases | 0.008         | 92                   | 0.763        | 246    | 2.038        | 387    | 3.208         | 581    | 4.825         |       | 10.834                     |
| Subtotal for specific objective N° 2                                       |       |               |                      | 0.763        |        | 2.038        |        | 3.208         |        | 4.825         |       | 10.834                     |
| SPECIFIC OBJECTIVE NO 3<br>Cooperation with others                         |       |               |                      |              |        |              |        |               |        |               |       |                            |
| - Réalisation  |       | 0.008         | 31                   | 0.254        | 82     | 0.679        | 129    | 1.069         | 194    | 1.608         |       | 3.610                      |
| Subtotal for specific objective N° 3                                       |       |               |                      | 0.254        |        | 0.679        |        | 1.069         |        | 1.608         |       | 3.610                      |
| <b>TOTAL COSTS</b>   |       |               |                      | <b>2.543</b> |        | <b>6.793</b> |        | <b>10.694</b> |        | <b>16.083</b> |       | <b>36.113<sup>25</sup></b> |

### 3.2.3. Estimated impact on EPPO's human resources

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as described below:

| Human resources                                 | 2017      | 2018      | 2019      | 2020       |
|---|-----------|-----------|-----------|------------|
| <b>Establishment plan posts (in headcounts)</b> | 18        | 36        | 54        | 90         |
| - Of which AD                                   | 12        | 24        | 36        | 60         |
| - Of which AST                                  | 6         | 12        | 18        | 30         |
| <b>External personnel (FTE)</b>                 | 6         | 11        | 17        | 28         |
| - Of which contract agents                      | 5         | 9         | 14        | 23         |
| - Of which Seconded National Experts (SNE)      | 1         | 2         | 3         | 5          |
| <b>Total staff</b>                              | <b>24</b> | <b>47</b> | <b>71</b> | <b>118</b> |

<sup>24</sup> The number of cases is based on the assumptions analysed in the Impact assessment accompanying the draft proposal.

<sup>25</sup> The difference to the overall costs of 36.116 million euros mentioned under section 3.2.1 comes from rounding rules.

EUR million (to three decimal places)

| Staff expenditure                          | 2017         | 2018         | 2019         | 2020          | Total         |
|--|--------------|--------------|--------------|---------------|---------------|
| <b>Establishment plan posts</b>            | <b>1.179</b> | <b>3.537</b> | <b>5.895</b> | <b>9.432</b>  | <b>20.043</b> |
| - Of which AD                              | 0.786        | 2.358        | 3.930        | 6.288         | 13.362        |
| - Of which AST                             | 0.393        | 1.179        | 1.965        | 3.144         | 6.681         |
| <b>External personnel</b>                  | <b>0.214</b> | <b>0.607</b> | <b>1.000</b> | <b>1.607</b>  | <b>3.428</b>  |
| - Of which contract agents                 | 0.175        | 0.490        | 0.805        | 1.295         | 2.765         |
| - Of which Seconded National Experts (SNE) | 0.039        | 0.117        | 0.195        | 0.312         | 663           |
| <b>Total staff expenditure</b>             | <b>1.393</b> | <b>4.144</b> | <b>6.895</b> | <b>11.039</b> | <b>23.471</b> |

Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as described below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

|   | 2017              | 2018       | 2019       | 2020       |
|---|-------------------|------------|------------|------------|
| <b>• Establishment plan posts (officials and temporary staff)</b> |                   |            |            |            |
| <b>33 01 01 01 Staff JUST</b>                                     | <b>1.3</b>        | <b>1.3</b> | <b>1.3</b> | <b>1.3</b> |
| <b>24 01 07 00 01 01 Staff OLAF</b>                               | <b>1</b>          | <b>1</b>   | <b>1</b>   | <b>1</b>   |
| XX 01 01 02 (Delegations)   |                   |            |            |            |
| XX 01 05 01 (Indirect research)                                   |                   |            |            |            |
| 10 01 05 01 (Direct research)                                     |                   |            |            |            |
| <b>• External staff (in Full Time Equivalent: FTE)</b>            |                   |            |            |            |
| XX 01 02 01 (CA, SNE, INT from the 'global envelope')             |                   |            |            |            |
| XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)         |                   |            |            |            |
| <b>XX 01 04 yy</b>  | - at Headquarters |            |            |            |
|   | - in delegations  |            |            |            |
| XX 01 05 02 (CA, SNE, INT - Indirect research)                    |                   |            |            |            |
| 10 01 05 02 (CA, SNE, INT- Direct research)                       |                   |            |            |            |
| Other budget lines (specify)                                      |                   |            |            |            |
| <b>TOTAL</b>  | <b>2.3</b>        | <b>2.3</b> | <b>2.3</b> | <b>2.3</b> |

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

|                               |  |
|-------------------------------|--|
| Officials and temporary staff | Policy follow-up and advise to the EPPO, budgetary and financial advice to the EPPO and actual payments of the subsidy, discharge, draft budget procedures |
| External staff                | Not applicable   |

Description of the calculation of cost for FTE equivalent should be included in the Annex, section 3.

During the phase-in period any resource increase in appropriations or FTE in EPPO is compensated by a corresponding decrease in OLAF resources of the same amount in appropriations or FTE.

| Human resources reductions in OLAF              | 2017       | 2018       | 2019       | 2020        |
|---|------------|------------|------------|-------------|
| <b>Establishment plan posts (in headcounts)</b> | -18        | -36        | -54        | -90         |
| - Of which AD                                   | -12        | -24        | -36        | -60         |
| - Of which AST                                  | -6         | -12        | -18        | -30         |
| <b>External personnel (FTE)</b>                 | -6         | -11        | -17        | -28         |
| - Of which contract agents                      | -5         | -9         | -          | -23         |
| - Of which Seconded National Experts (SNE)      | -1         | -2         | -3         | -5          |
| <b>Total staff</b>                              | <b>-24</b> | <b>-47</b> | <b>-71</b> | <b>-118</b> |

EUR million (to three decimal places) in 2013 prices

| Reductions in Staff expenditure related to OLAF | 2017          | 2018          | 2019          | 2020           | Total          |
|---|---------------|---------------|---------------|----------------|----------------|
| <b>Establishment plan posts</b>                 | <b>-1.179</b> | <b>-3.537</b> | <b>-5.895</b> | <b>-9.432</b>  | <b>-20.043</b> |
| - Of which AD                                   | -0.786        | -2.358        | -3.930        | -6.288         | -13.362        |
| - Of which AST                                  | -0.393        | -1.179        | -1.965        | -3.144         | -6.681         |
| <b>External personnel</b>                       | <b>-0.214</b> | <b>-0.607</b> | <b>-1.000</b> | <b>-1.607</b>  | <b>-3.428</b>  |
| - Of which contract agents                      | -0.175        | -0.490        | -0.805        | -1.295         | -2.765         |
| - Of which Seconded National Experts (SNE)      | -0.039        | -0.117        | -0.195        | -0.312         | -663           |
| <b>Total staff expenditure 24.0107</b>          | <b>-1.393</b> | <b>-4.144</b> | <b>-6.895</b> | <b>-11.039</b> | <b>-23.471</b> |

#### 3.2.4. Compatibility with the current multiannual financial framework

- Proposal/initiative is compatible with the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.
- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Heading 5 should be reduced to translate the decrease of the establishment plan of OLAF.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

|                                 | Year<br>2017 | Year<br>2018 | Year<br>2019 | Year<br>2020 | Total |
|---------------------------------|--------------|--------------|--------------|--------------|-------|
| Specify the co-financing body   |              |              |              |              |       |
| TOTAL appropriations cofinanced |              |              |              |              |       |

3.3.

**Estimated impact on revenue**

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

| Budget revenue line: | Appropriations available for the current financial year | Impact of the proposal/initiative |      |      |      |
|----------------------|---|-----------------------------------|------|------|------|
|                      |   | 2017                              | 2018 | 2019 | 2020 |
| Article XX           |   | pm                                | pm   | pm   | pm   |

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

[...]

Specify the method for calculating the impact on revenue.

The revenues will be composed from so called “transaction fees” which should be paid directly to the EU budget. As this point of time it is not possible to reliably specify amounts.