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NOTE

From: Presidency
To: Delegations
Subject: Proposal for a regulation on the establishment of the European Public Prosecutor's Office

After having discussed the file during 7 working days in COPEN/Friends of Presidency, three times in CATS, as well as at the informal ministerial meeting in Milan in July and in JHA Council of 10 October, the Italian Presidency now proposes a consolidated redraft of the first 33 Articles of the Regulation. The new draft is based on the draft 19 Articles elaborated under the Hellenic Presidency¹, in which some modifications are proposed in view of ensuring a coherent text. Changes in relation to earlier texts are marked in ~~striketrough~~ or underlined.

Delegations are invited to examine this redraft at the COPEN meeting of 3-4 November 2014. As stated in particular in footnotes n° 93, 105, 112,115, 116 and 117, the Presidency is aware that some provisions need to be further developed and/or expanded. Therefore Delegations are also invited to provide the Presidency with written proposals, in particular with regard to these provisions.

The Presidency intends to examine the text in its entirety, whereby delegations are also invited to indicate also if some of the footnotes, to a large extent taken from doc 9834/1/14, can now be deleted.

¹ Doc 9834/1/14 EPPO 24 EUROJUST 97 CATS 69 FIN 361 COPEN 150 GAF 28.

Draft

COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

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
Definitions²

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

- a) 'person' means any natural or legal person;
- b) 'criminal offences affecting the financial interests of the Union' means the offences provided for by Directive 2014/xx/EU, as implemented by national law³;

² The definitions will need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive.

³ This provision will be reformulated in order to be consistent with the final wording of Article 17. The issue of uniformity with EU law needs to be examined further.

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

CHAPTER II

Establishment, tasks and basic principles of the European Public

Prosecutor's Office

Article 3

Establishment

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

Article 4

Tasks

1. The task of the European Public Prosecutor's Office shall be to combat 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 supervise⁴ investigations, and carry out acts of prosecution⁵ and exercise the functions of prosecutor in the competent courts of the Member States in respect of the offences referred to in paragraph 1 until the case has been finally disposed of⁶.

Article 5

Basic principles of the activities

1. The European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.
2. The European Public Prosecutor's Office shall be guided by the principle of proportionality in all its activities⁷.
3. The investigations and prosecutions on behalf of the European Public Prosecutor's Office shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State where the European Delegated Prosecutor in charge of an investigation is located⁸. Where a matter is governed by national law and this Regulation, the latter shall prevail.

⁴ The Commission and some delegations would prefer another wording, which would state that the EPPO shall direct, conduct and supervise investigations.

⁵ A recital highlighting the necessity for each Member State to foresee the function of a prosecutor with the tasks described in this Regulation shall be elaborated.

⁶ One delegations has suggested that the final word of this provision should be deleted.

⁷ A number of delegations have suggested that references to at least the principles of legality and of rule of law must be added here.

⁸ The issue of the applicable law on investigation measures is addressed in Article 26 in the original Commission proposal and will be revisited at a later stage of negotiations.

4. The European Public Prosecutor's Office shall have competence to investigate, prosecute and bring to judgment the perpetrators of, and accomplices in the criminal offences against the Union's financial interests as determined in Articles 17 and 18 and exercise this competence in accordance with Article 19 in this Regulation.⁹
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 open investigations without undue delay and ensure that investigations and prosecutions are conducted speedily¹⁰.
7. The competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office at its request and shall refrain from any action, policy or procedure which may delay or hamper their progress.¹¹

Article 6

Independence and accountability

1. The European Public Prosecutor's Office and all its staff shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors as well as the staff of the European Public Prosecutor's Office shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the office, any Member State or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States and the Union institutions, bodies,

⁹ The Commission and some delegations would like to underline here that the EPPO will have a priority to prosecute and investigate the relevant offences. Others have noted that the priority of the EPPO is already clearly following from Article 19 in this text.

¹⁰ Some delegations would prefer to replace the word "speedily" with another term.

¹¹ A number of delegations would suggest to reformulate this provision in view of clarifying that national authorities may not always be in a position to give priority to PIF-cases. The Hellenic Presidency would suggest that these concerns should be addressed in a recital.

offices or agencies shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks.

2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for ~~its~~the general activities of the Office, and ~~shall in particular by issuing giving an~~ annual reports in accordance with Article [6a]¹².

Article 6a

Reporting

1. Every year the European Public Prosecutor's Office shall issue an Annual Report on its general activities. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and the Council to give account of the general activities of the European Public Prosecutor's Office, bearing in mind the Office's obligation of discretion and confidentiality.
3. National Parliaments may invite the European Chief Prosecutor or his/her Deputies to participate in an exchange of views in relation to the general activities of the European Public Prosecutor's Office.

¹² ~~A few delegations have suggested that a reference to the accountability of the Office to national parliaments should be added here.~~

CHAPTER III

STATUS, STRUCTURE AND ORGANISATION OF EPPO

SECTION 1

STATUS AND STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 7

Structure of the European Public Prosecutor's Office

1. The European Public Prosecutor's Office shall be an indivisible Union body with a decentralised structure.
2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of a College, its Permanent Chambers, a European Chief Prosecutor, his/her deputies and the Members of the College, as well as the staff of the Office¹³. ~~The Members of the College shall be referred to as European Prosecutors.~~
4. The decentralised level shall consist of European Delegated Prosecutors located in the Member States.

Article 8

The College

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor [and his/her Deputies] and one Member per Member State, who shall be referred to as European Prosecutors. The European Chief Prosecutor shall chair the meetings of the College and have responsibility for their preparation.

¹³ The inclusion of "staff" in this provision has been questioned.

2. The College shall meet regularly. It shall be responsible for monitoring¹⁴ the activities of the Office and for taking decisions on strategic matters, in particular in view of ensuring coherence and consistency in the prosecution policy of the Office throughout the Union, as well on other matters as specified in this Regulation. The College shall not be involved in operational decisions in individual cases. However, it may decide on strategic matters or issues of general application arising from individual cases¹⁵.
3. On a proposal by the European Chief Prosecutor, the College shall set up Permanent Chambers to direct and monitor the casework of the European Public Prosecutor's Office¹⁶.
4. The College shall propose internal Rules of Procedure of the European Public Prosecutor's Office for adoption by the Council in accordance with Article 16 and adopt the organigram and the establishment plan of the Central Office¹⁷.

¹⁴ In this document, the terms "monitoring", "directing and monitoring" and "supervision" are used to describe different control activities. These terms will need more detailed definitions in the text and recitals. In general terms, the preliminary understanding of the [Hellenic] Presidency is that

- ✓ "Monitoring" refers to a general oversight of the activities of the Office, in which instructions are in principle only given on issues which will have a horizontal importance for the Office;
- ✓ "Directing and monitoring" refers both to the general oversight just described and to certain clear powers to direct individual investigations and prosecutions when such directions appear to be necessary.
- ✓ "Supervision" refers to a closer and rather continuous oversight of investigations and prosecutions, including full powers to at any time intervene and give instruction on investigations and prosecution matters.

¹⁵ Some delegations believe that the powers of the College may be too limited by this provision, and some have questioned the two last phrases of the provision. Others wish to exclude that the College can have any operational powers.

¹⁶ A number of delegations have requested that detailed criteria for the composition and set up of the Chambers shall be set out in the Regulation. Some have argued in favour of specialised chambers, whereas others appear to advocate a system where there is always one Chamber on duty. It has also been suggested that the European Prosecutors could be distributed between different Permanent Chambers with account taken to the size of the Member States and the expected number of cases. A few delegations have also suggested that this provision should be moved to Article 9.

¹⁷ The Commission and a number of delegations strongly advocate that the College should adopt its own internal Rules of Procedure. Others have suggested that explanations of the terms organigram and establishment plan are needed.

5. Unless stated otherwise in this Regulation, the College shall take decisions by simple majority. The College shall vote at the request of any of its Members~~European Prosecutor or the European Chief Prosecutor~~. Each Member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College¹⁸.

Article 9

The Permanent Chambers

1. The European Chief Prosecutor, the Deputies and all the other European Prosecutors shall be part of [at least one] Permanent Chamber. Each Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, and have [~~...two~~¹⁹] additional permanent Members.
2. The Permanent Chambers shall direct and monitor the investigations and prosecutions conducted in the Member States²⁰. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College on strategic or prosecution policy matters in accordance with Article 8(2).

¹⁸ The casting vote of the Chief Prosecutor as well as other voting arrangements foreseen have been criticized by some.

¹⁹ ~~Some delegations would prefer to leave the number of members in the Chambers, as well as the number of Chambers, open for the time being.~~

²⁰ The Commission, with the support of some Member States, advocates that the Permanent Chambers should be in charge of supervision in order to create a European system of supervision. The Commission also advocates a solution where one of the Members of a Permanent Chamber - regardless of his or her nationality - will be selected to be Rapporteur of the case in order to ensure the neutrality of the Rapporteur.

3. The Permanent Chambers shall take ~~certain~~ the following decisions as specified in accordance with the conditions and procedures set out by ~~Articles XX ...~~ this Regulation²¹:

- a) to initiate an investigation where no investigations has been initiated by an European Delegated Prosecutor;
- b) to refer to the College strategic matters or issues of general application arising from individual cases;
- c) to reallocate a case;
- d) to determine the Member State in which the trial shall take place;
- e) to dismiss a case;
- f) [...]

²¹ A number of delegations have questioned whether all (or any) important operational decisions always need to be taken by a Permanent Chamber and if such a system would ensure efficient and speedy proceedings. Many have argued that the decentralised level should also be competent to take many of the key decisions, and that a detailed list of all decisions that can be taken by EDP's should be included in the text. The introduction of a rule enabling European Delegated Prosecutors to take certain decisions and then refer the matter to a Permanent Chamber for confirmation has also been suggested. The Commission has argued that important decisions, with the exception of initiating an investigation, should be taken at Chamber level, in view of ensuring full independence of the decision-making. However, it also agrees that a certain flexibility which would allow EDP's to take certain decisions directly is needed, for example to dismiss a case in the event of the death of a suspected person. ~~The following types of decisions could be covered by decision-making at central level (the list has been criticised for being too extensive by a number of delegations; some of them would limit the list to only point e)):~~

- ~~a) Decisions on the initiation of an investigation where the European Delegated Prosecutor has not yet done so;~~
- ~~b) Decisions on the Member State in which an indictment shall be submitted;~~
- ~~c) Decisions to prosecute or to dismiss a case;~~
- ~~[d) Decisions on transactions];~~
- ~~e) Decisions to reallocate a case in accordance with Article 12(4);~~
- ~~f) Decisions to refer a matter of strategic or general importance arising from an individual case to the College.~~

~~A few delegations would like to include a right for the Permanent Chambers to delegate the powers under this provision to individual European Prosecutors.~~

4. The competent Permanent Chamber may give instructions, through the competent European Prosecutor, in a specific investigation or prosecution to the European Delegated Prosecutor who has been allocated a case, whenever necessary in the interest of an efficient and coherent functioning of the European Public Prosecutor's Office.²²
5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its Members. Each Member participating in person in a deliberation shall have one vote. The Chair shall have a casting vote in the event of a tie vote.
6. In addition to the permanent Members, the European Prosecutor or European Prosecutors who are supervising a prosecution or an investigation²³ in accordance with Article 11(1) shall participate in the decisions of the Permanent Chamber as regards that case. A Permanent Chamber may also invite European Delegated Prosecutors to attend their meetings without a right to vote.
7. The Chairs of the Permanent Chambers shall keep the College informed of the decisions taken pursuant to this Article²⁴.

Article 10

The European Chief Prosecutor and the Deputies

1. The European Chief Prosecutor shall be the head of the European Public Prosecutor's Office. The European Chief Prosecutor shall organise the work of the Office, direct its activities²⁵, and take in accordance with this Regulation and the internal Rules of Procedure.²⁶
2. [Five]²⁷ Deputies shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and act as replacement when he/she is absent or is prevented from attending to his/her duties.

²² The provision has been redrafted with regard taken to the text of Article 23(3) in the previous Presidency document.

²³ Some delegations have suggested that the participation in the decision-making should be limited to one of the supervising European Prosecutors, possibly to the one coordinating the investigations (see footnote 30).

²⁴ A few delegations have asked for a clarification of this obligation.

²⁵ The Rules of Procedure should include a provision on the equal distribution of the workload within the Office.

²⁶ A few delegations have suggested that this provision gives too extensive powers to the Chief Prosecutor.

3. When the European Chief Prosecutor ~~has been informed that a case has been initiated—on the basis of information received from a European Delegated Prosecutor or otherwise—has reasonable grounds to believe that an offence within the competence of the Office is being or has been committed, he/she it shall²⁸~~, in accordance with Article [X] and the internal Rules of Procedure, decide which Permanent Chamber shall be in charge of a case²⁹. ~~The Chair of the Permanent Chamber shall then assign the case to a European Prosecutor or European Prosecutors from Member States concerned by the case³⁰—³¹~~
4. The European Chief Prosecutor shall represent the European Public Prosecutor's Office ~~towards the Union Institutions, the Member States³² and third parties~~. The European Chief Prosecutor may also delegate his/her tasks relating to representation to one of the Deputies.
5. The European Chief Prosecutor and his/her Deputies shall be assisted by the staff of the Central Office in their duties under this Regulation.

²⁷ A few delegations have suggested that a lower number of Deputies may suffice.

²⁸ This will also trigger the initiation of a case, which is not regulated explicitly in the current document (see Article 16(1)) in the Commission proposal). See also Article 12(2) in the current document.

²⁹ ~~A few delegations have questioned whether the first phrase in paragraph 3 is necessary in this context. A number delegations have suggested that the Regulation should foresee an obligation to ensure an evenly distributed workload between the Chambers and its members.~~

³⁰ Some delegations are of the opinion that the Chambers shall decide on all matters concerning allocation of cases. It is the understanding of the Hellenic Presidency that those decisions will in practice rather be a formality, as the exact criteria for allocation of cases will be laid down in the Regulation and/or the Internal rules of procedure.

³¹ The last phrase of this provision will be moved to Article 21(2).

³² Some delegations would like to introduce a reference to national parliaments here.

Article 11

The European Prosecutors

1. The European Prosecutors shall, on behalf of the Permanent Chamber in charge of the case and in accordance with its instructions, supervise investigations and prosecutions assigned to them³³. They shall function as liaisons and channels of information between the Permanent Chambers and the European Delegated Prosecutors.
2. The European Prosecutors shall monitor the implementation³⁴ of the tasks of the Office in their respective Member States in close consultation with the European Delegated Prosecutors, and shall ensure in accordance with this Regulation and the internal Rules of Procedure that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.
3. The European Prosecutors may temporarily be authorised to discharge their duties on a part-time basis provided that this does not conflict with the interest of the European Public Prosecutor's Office. Such an authorisation may be granted, upon the written request of the national prosecution authorities, by the European Chief Prosecutor for a maximum period of up to 6 months. [This period may upon request be extended by a new decision of the European Chief Prosecutor.] The authorisation may be revoked at any time after consultation with the appropriate authorities.³⁵

³³ A number of delegations have suggested, as regards cases assigned to several European Prosecutors, that one of these European Prosecutors shall be selected to be coordinator/rapporteur of the case in question.

³⁴ Some delegations have suggested that a specific definition on the notion of "monitoring the implementation of the tasks" should be introduced to the text.

³⁵ A number of delegations wish to delete this provision. Various opinions as regards the need and appropriateness of various parts of this provision have been expressed.

Article 12

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in the Member States. The designated-European Delegated Prosecutors shall be responsible for the investigations and prosecutions, which they have initiated or which have been assigned to them by the competent Permanent Chamber, and act on behalf of and under instructions of the European Public Prosecutor's Office, acting through the competent European Prosecutors.
2. ~~Where an investigation is initiated by a European Delegated Prosecutor has reasonable grounds to believe that an offence within the competence of the Office is being or has been committed, he/or she shall immediately open an investigation and inform the Central Office³⁶ immediately, and regularly report on significant developments to the monitoring Permanent Chamber, through the competent European Prosecutor. The European Delegated Prosecutor.³⁷~~
3. ~~The European Delegated Prosecutors shall report on the cases to the competent European Prosecutor and the Permanent Chamber in charge of the case, and shall formulate reasoned proposals concerning the decisions to be taken by the Permanent Chamber.~~
4. ~~There shall be at least two European Delegated Prosecutors in each Member State, whereby one of them may function as a substitute^{38, 39}.~~

³⁶ A few delegations are of the opinion that this provision should be placed in another Chapter of the Regulation.

³⁷ The content of Article 12(2) and (3) has been moved to Article 21(1).

³⁸ ~~Some delegations have asked for more flexibility in this provision, to allow Member States to adapt it to national circumstances. A flexible provision in this sense already exists as regards the contact points in the European Judicial Network.~~

³⁹ The content of this provision has been moved to Article 15(1).

5. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the competent European Prosecutor of such assignments. In the event that they are at any given moment unable to fulfil their tasks as European Delegated Prosecutors because of other commitments, the European Prosecutors may, after consultation with the competent national prosecution authorities, instruct the European Delegated Prosecutor concerned to give priority to their functions deriving from this Regulation and immediately inform the competent national prosecution authorities thereof. The European Chief Prosecutor may also propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same state.⁴⁰

SECTION 2

APPOINTMENT AND DISMISSAL OF THE MEMBERS OF THE EUROPEAN PUBLIC

PROSECUTOR'S OFFICE

Article 13

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

1. The College shall nominate three European Prosecutors⁴¹ with sufficient managerial experience and qualifications to be candidates for the position as European Chief Prosecutor.

⁴⁰ Various opinions have been expressed as regards the wording and content of this provision. In particular, clear rules on conflict of interest have been called for. The Commission has suggested that the reallocation of a case could also be done to an EDP in another Member State. Some Member States would prefer to delete the last sentence of the Article. The Presidency will consider whether the content of the said last sentence can better be addressed in Article 23.

⁴¹ Some delegations believe that it would suffice to let the College nominate one of its members of the position.

The European Parliament and the Council shall appoint by common accord⁴², ~~after obtaining the consent of the European Parliament,~~ appoint one of the said three candidates to be the European Chief Prosecutor for a non-renewable term of office of nine years⁴³. The Council shall act by simple majority.⁴⁴

2. The College shall select [five] Deputy European Chief Prosecutors from among European Prosecutors in accordance with the Internal Rules of Procedure for a non-renewable term of office of ... years.
3. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss the European Chief Prosecutor [or a Deputy European Chief Prosecutor] if it find that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
4. If the European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any other reason, the College shall immediately nominate three candidates for the purpose of the appointment of a successor according to paragraph 1. [If a Deputy European Chief Prosecutor resigns, is dismissed or leaves his/her position for any other reason, the College shall immediately select a new Deputy].

Article 14

Appointment and dismissal of the European Prosecutors

1. The European Prosecutors shall be nominated by the respective Member State for a non renewable term of nine years⁴⁵. The nominated prosecutors shall be appointed by the Council, acting by simple majority and taking into account the opinion of a panel⁴⁶. If the panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.

⁴² Language taken from Article 42 of Regulation 45/2001 (establishment of the EDPS).

⁴³ A few delegations have questioned whether a mandate period of nine years is appropriate.

⁴⁴ The Commission and some Member States have strongly criticised this provision and would prefer to go back to the principles of the original Commission proposal as regarded the appointment of the European Public Prosecutor.

⁴⁵ Alternative mandate periods have been suggested.

⁴⁶ The composition of the panel has been discussed and remains open. The Commission has argued that it should be clarified that the panel should assess all the requirements on a candidate that is foreseen in paragraph 2.

2. The European Prosecutors shall be active members of the public prosecution service or judiciary of the Member States. They shall be nominated among persons whose independence is beyond doubt, shall possess the qualifications required for appointment to high judicial office and have relevant practical experience of national legal systems and of international judicial cooperation in criminal matters⁴⁷.
3. Every three years there shall be a partial replacement of a third of the European Prosecutors~~Members~~. The Council, acting by simple majority, shall adopt transitional rules for the appointment of European Prosecutors for and during their first mandate period.
4. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss a European Prosecutor if it finds that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
5. If a European Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately nominate another person to be European Prosecutor in accordance with paragraph 1.
6. When a European Prosecutor is appointed as European Chief Prosecutor [or a Deputy] the Member State which nominated him or her shall promptly nominate a new European Prosecutor to replace her or him for the duration of the mandate⁴⁸. The provisions in paragraph 1 and 2 shall apply.

Article 15

Appointment~~Nomination~~ and dismissal of the European Delegated Prosecutors

1. The Member States shall nominate at least two European Delegated Prosecutors, whereby one of them may function as a substitute. The College shall appoint the nominated persons on a proposal from the European Chief Prosecutor. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a term of five years, which shall be renewable.

⁴⁷ Some delegations suggest that more criteria should be added to this provision.

⁴⁸ The need to replace the Chief Prosecutor as Member of the College has been questioned by some delegations.

2. The European Delegated Prosecutors shall be active members of the public prosecution service or equivalent [judicial] authority of the Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system. Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.
3. The appointment of European Delegated Prosecutors shall take effect upon the decision of the College.
4. The College shall dismiss a European Delegated Prosecutor if it finds that he or she no longer fulfils the requirements set out in paragraph 2 or the criteria applicable to the performance of their duties⁴⁹, or that he or she is guilty of serious misconduct.
5. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor, it shall consult the European Chief Prosecutor before taking action⁵⁰. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his activities under this Regulation⁵¹.
6. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the Central Office and, where necessary, nominate another prosecutor to be appointed as the new European Delegated Prosecutor⁵² in accordance with paragraph 1.

⁴⁹ Some delegations have suggested that additional criteria should be added here.

⁵⁰ Some delegations have noted that a differentiation between the respective roles of an EDP and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them.

⁵¹ One delegation has noted that it must be clarified what the notion "connected with his activities" actually means.

⁵² Some Member States have questioned whether the words "where necessary" are sufficient in order to clarify that Member States do not always need to replace EDP's that leave their position.

SECTION 3
INTERNAL RULES OF PROCEDURE

Article 16

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

1. The internal Rules of Procedure shall govern the organisation of the work of the Office and shall include general rules on workflow and on the implementation of the rules in this Regulation on allocation of cases⁵³.
2. A proposal for the internal Rules of Procedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the College by two thirds majority ~~of the European Prosecutors~~⁵⁴.
3. The Council, by means of implementing acts⁵⁵, shall adopt the internal Rules of Procedure by simple majority, on a proposal from the College.⁵⁶

SECTION 4

COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 17

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

The European Public Prosecutor's Office shall have competence in respect of the criminal offences affecting the financial interests of the Union, which are provided for in Directive 2014/xx/EU and as implemented by national law⁵⁷.

⁵³ It has been agreed that the Regulation will include very detailed rules on allocation of cases.

⁵⁴ It has been suggested that it should be clearly spelled out that the Rules of Procedure must be adopted without delay once the Office has been set up. Some have questioned if it is necessary to foresee a specific role for the Chief Prosecutor here.

⁵⁵ A recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

⁵⁶ See footnote 17.

⁵⁷ The competence of the EPPO as determined by this Article raises complex legal issues that will need to be considered further. One of the open issues in this Article is whether a dynamic reference (the standard solution ensuring legal certainty) or a static reference to the substantive law should be chosen. Some delegations would prefer to see the offences defined in this Regulation directly.

Article 18⁵⁸

Ancillary competence

1. Where an offence constituting a criminal offence referred to in Article 17 is based on a set of facts which are identical or inextricably linked to a set of facts constituting, in whole or in part under the law of the Member State concerned, a criminal offence other than those referred to in Article 17, the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the condition that the offence referred to in Article 17 is preponderant.
2. Where the offence referred to in Article 17 is not preponderant, the Member State that is competent for the other offence shall also be competent for the offence referred to in Article 17⁵⁹.
3. When assessing whether two set of facts are inextricably linked within the meaning of paragraph 1, account shall be taken as to whether one of the relevant offences has been instrumental in committing the other offence or to whether one offence has been committed with a view to ensuring impunity⁶⁰.
4. An offence in accordance with Article 17 shall be considered to be preponderant:
 - a) if the damage caused or likely to be caused to the Union exceeds the damage caused or likely to be caused by the same act to the Member State or a third party, or⁶¹,
 - b) in case the same act, under the law of the Member State, constitute a different type of offence: if the sanction that may be imposed in respect of the offence in accordance with Article 17 is⁶² more severe than the sanction that may be imposed in respect of the other type of offence.

⁵⁸ Many delegations continue to question whether the legal basis in Article 86 TFEU covers this Article.

⁵⁹ The need for this provision has been questioned by some. Others have noted that it must be seen in the light of the right of evocation as foreseen in Article 19.

⁶⁰ A few delegations have suggested that this provision should rather be a recital. Others have suggested that the text should be given more detail.

⁶¹ Many delegations have pointed out that it would be difficult to measure and compare the financial damage, or that it would at least be difficult to know what the damage is at an early stage of investigation. The assessment of the damage may also change during an investigation. It has been suggested that this rule should be seen as a hierarchical order of criteria. An explanatory recital could be considered to address these concerns.

⁶² The Commission and some delegations would add the words "equal or" here.

5. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority should exercise its competence pursuant to paragraph 1. Where appropriate to facilitate this choice, Eurojust may be associated in accordance with Article [57].
6. [In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the exercise of competence pursuant to in paragraph 1, the competent national authorities⁶³ shall decide who shall exercise the ancillary competence.]

Article 19⁶⁴

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

1. The European Public Prosecutor's Office may⁶⁵ exercise its competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence⁶⁶
- a) was ~~wholly or partly~~ committed in whole or in part within ~~on~~ the territory of one or several Member States, or
 - b) when committed outside of these territories, by a national of a Member State, or by a person who was subject to the Staff Regulations or Conditions of Employment of Other Servants, at the time of the offence, ~~Union staff member or member of the institutions,~~ provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory⁶⁷.

⁶³ Some delegations would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review). Others have noted that the "competent national authorities" can not be those who are involved in the case themselves.

⁶⁴ The Hellenic Presidency considered that the current text of the Article constitutes a balanced compromise between the diverging views expressed by delegations.

⁶⁵ A few delegations would prefer the word "shall" here. It has also been suggested to reformulate the first phrase, starting with "The European Public Prosecutor's Office has competence to investigate and prosecute..."

⁶⁶ This jurisdiction provision should be in principle identical with the corresponding jurisdiction provision in the PIF-Directive.

⁶⁷ Some delegations would introduce a reference to "participating Member States" in this and other provisions.

2. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise their own competence. If the national authorities have already started a criminal investigation, the Office may take over the investigation by exercising its right of evocation in accordance with paragraph 3.⁶⁸

⁶⁸ Some delegations would prefer to reword this provision to underline the priority competence of the EPPO.

3. If the European Public Prosecutor's Office is informed in accordance with Article ~~20(1)~~~~X~~ or becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the authorities of a Member State, the European Public Prosecutor's Office shall consult with these authorities and shall thereafter decide⁶⁹ whether to open its own investigation and request the respective Member State's authorities to transfer the ~~case proceedings~~ to the European Public Prosecutor's Office ~~in accordance with Article X (right of evocation)~~⁷⁰. Where the European Public Prosecutor's Office exercises its competence, the competent authorities of the Member States shall forthwith transfer the ~~case proceedings~~ to the Office and refrain from carrying out further acts of investigation in respect of the same offence. The European Prosecutor's Office may exercise the right of evocation at any time during the investigation.

⁶⁹ Some Member States would indicate certain conditions under which such a decision could be taken. It has also been suggested that it should be indicated who within the European Public Prosecutor's Office should be entitled to take such decisions. Others have strongly opposed any condition to the right of evocation; some have suggested that the national competence should only be exercised when EPPO has taken a formal decision not to use its own competence.

⁷⁰ ~~Tentatively, the Article X mentioned in this provision could have the following wording (whereby Article 19(4) in the text of this document would be replaced by paragraph 3 of Article X below):~~

~~"1. The authorities of the Member States shall inform without delay the European Public Prosecutor's Office of any investigation they initiate with regard to an offence affecting the Union's financial interests [unless the damage caused or potentially caused does not exceed EUR 500/1 000/5 000] and there are no reasons to assume that the case may have repercussions at Union level.~~

~~2. Upon receipt of the information in accordance with paragraph 1, the European Chief Prosecutor shall decide [within 5 working days] [following consultation with the relevant European Prosecutor / Permanent Chamber] whether to exercise the Office's competence with regard to the offence subject to the notification and inform the competent authorities of the Member State concerned of his/her decision.~~

~~3. Where a criminal offence would cause or is likely to cause damage to the Union's financial interests of less than EUR 500/1 000/10 000, the European Public Prosecutor's Office shall refrain from exercising its competence, unless the case has repercussions at Union level which require an investigation to be conducted by the Office."~~

- 3a. Upon receipt of the information in accordance with Article 20(1), the European Chief Prosecutor shall decide [within 5 working days] [following consultation with the relevant European Prosecutor / Permanent Chamber] whether to exercise the Office's competence with regard to the offence subject to the notification and inform the competent authorities of the Member State concerned of his/her decision.
4. Where a criminal offence would cause or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the European Public Prosecutor's Office shall refrain from exercising its competence, unless
- (a) a case has repercussions⁷¹ at Union level which require an investigation to be conducted by the Office, or
 - (b) a case has been opened following suspicions that an offence has been committed by officials and other servants of the European Union, or members of the Institutions⁷².
5. If the European Public Prosecutor's Office decides to refrain from exercising its competence in accordance with paragraph 3, the case shall be referred to the competent national authorities for follow up. The latter authorities shall inform the Central Office if their investigation reveals that the offence is likely to cause a damage to the Union's financial interests of more than EUR 10 000, or the case is likely to have repercussions at Union level, or it is likely that an offence has been committed by officials and other servants of the European Union, or members of the Institutions. In such cases, the European Prosecutor's Office may, at any stage of the investigation, take over the case by exercising its right of evocation.
6. 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.

⁷¹ Many delegations would like to see a definition or explanation of such repercussions at Union level included in the text.

⁷² A few delegations have questioned whether these cases always need to be handled by the Office.

CHAPTER IV

RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1 CONDUCT OF INVESTIGATIONS

Article 20

Registration and verification of information

1. All national authorities of the Member States and all institutions, bodies, offices and agencies of the Union shall, within their competence, immediately inform⁷³ the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence⁷⁴. In cases of offences which are unlikely to cause damage to the Union's financial interests of more than EUR 10 000, the information obligation may be fulfilled through a summary report [every six months] of conduct which might constitute such offences.
2. The European Public Prosecutor's Office ~~may~~shall collect or receive information from any person or source on conduct which might constitute an offence within its competence.
3. Any information brought to the attention of the European Public Prosecutor's Office shall be registered and verified by ~~the Central Office or~~ European Public Prosecutor's Office ~~the European Delegated Prosecutor~~⁷⁵ ~~who received it directly, or, when the information was addressed directly to it, by the Central Office,~~ in accordance with the internal rules of procedure. The verification shall aim at assessing whether there are grounds for the European Public Prosecutor's Office to initiate an investigation under this Regulation.

⁷³ Some delegations have requested that the procedures for providing this information should be described in detail.

⁷⁴ Many delegations have suggested that this obligation should be delimited and have made various suggestions in this sense.

⁷⁵ A number of delegations request that the roles within the Office should be clarified in this sense.

4. Where, upon verification, it appears that there is no ground to initiate an investigation, the European Delegated Prosecutor concerned or the Central Office shall decide not to open a 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 21

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

1. Where, upon verification, there are reasonable grounds⁷⁶ to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State that will have jurisdiction of a case⁷⁷, ~~European Prosecutor~~ for in cases referred to in Article 9(3)(a) a Permanent Chamber, shall⁷⁸ initiate investigations and note this in the Case Management System. A European Delegated Prosecutor shall also immediately inform the Central Office that an investigation has been initiated.
2. Upon receipt of such ~~information notification~~, the Central Office shall verify⁷⁹ that an investigation has not already been initiated by another European Delegated Prosecutor. If an investigation in respect of the same offence had not already been initiated, the Permanent Chamber may assign the case to a European ~~Delegated~~ Prosecutor of a Member State ~~which would have jurisdiction determined in accordance with Article 10(3) and the criteria set out in Article 27(4).~~⁸⁰ If an investigation in respect of the same offence had already been initiated, the competent Permanent Chamber, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, shall decide on the European ~~Delegated~~ Prosecutor who shall be assigned lead the investigation, in accordance with the criteria set out in Article 27(4).

⁷⁶ A few delegations have questioned the term "reasonable grounds" and suggested that a more precise term should be found.

⁷⁷ The criteria for jurisdiction in this sense remain to be decided.

⁷⁸ Compare with Article 19(1), where the term "may" is used.

⁷⁹ Some delegations have noted that this verification should be done already by the EDP, before investigations are opened.

⁸⁰ This reference will remain to be assessed.

3. If in a particular case more than one Member State would have jurisdiction over the offence committed and if investigation measures are required in more than one of these Member States⁸¹, the Permanent Chamber may associate several European Prosecutors and European Delegated Prosecutors with the investigation and determine the European Delegated Prosecutor who shall lead the investigations.

Article 22⁸²

Urgent measures and referrals

1. ~~Immediate action is required, the competent national authorities shall –regardless of whether they intend to exercise their own competence or not– take any urgent measures necessary to ensure effective investigation and prosecution with regard to an offence within the competence of the European Public Prosecutor’s Office. The national authorities shall subsequently without delay inform the European Public Prosecutor’s Office in accordance with Article 20. If the European Public Prosecutor's Office then decides to initiate the investigation or to exercise the right of evocation ~~revoke the case in accordance with Article 19(3), it shall in due time confirm, if possible within [48] hours⁸³ 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.~~

⁸¹ Some delegations have requested that the criteria in this sense should be clarified.

⁸² Broadly corresponding to Art. 17 from the Commission proposal; has not yet been discussed.

⁸³ A few delegations prefer the phrase "in due time".

~~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.~~

Article 23

Conducting the investigation⁸⁴

1. The European Delegated Prosecutor handling the case may, in accordance with national law, either undertake the investigation measures on his/her own or instruct the competent law enforcement authorities in the Member State where he/she is located. These authorities shall, in accordance with national law, ensure that all instructions from the European Public Prosecutor's Office, coming through the competent European Delegated Prosecutor, are followed and undertake execute the investigation measures assigned to them. The European Delegated Prosecutor shall regularly report on significant developments to the Permanent Chamber, through the competent European Prosecutor.
- ~~2. In cross-border cases, where investigation measures need to be executed in a Member State other than the one where the investigation was initiated, the European Delegated Prosecutor handling the case shall request that the European Delegated Prosecutor in the Member State where the investigation measure needs to be carried out undertake that measure. The latter European Delegated Prosecutor shall then, in accordance with national law, decide either to undertake the investigation measures himself/herself or request instruct the competent law enforcement authorities to executeundertake them. If In the event that the of disagreement between the European Delegated Prosecutor who receives this request does not agree with itconcerned, he/she those European Delegated Prosecutors shall refer the matter to the competent Permanent Chamber for instruction in accordance with Article 9.⁸⁵~~

In cross-border cases, where investigation measures need to be executed in another Member State, the European Delegated Prosecutor handling the case, shall act in cooperation with the European Delegated Prosecutor where the investigation measure needs to be carried out in accordance with Article 26a.

⁸⁴ A general rule on the responsibility of the EDP's as regards the conduct of investigations can be found in Art 12(1) in the text presented to JHA Council of 6 June. Some delegations have requested that the "national" chain of command, according to which EP's always are those instructing EDP's from their own state, shall be mentioned explicitly in this provision.

⁸⁵ See Article 26a.

- ~~3⁸⁶. The competent Permanent Chambers shall direct and monitor⁸⁷ the investigations conducted by the European Delegated Prosecutors and ensure their coordination⁸⁸. The European Prosecutor to whom the Chair of the Permanent Chamber has assigned the case in accordance with Article 10, shall have the powers, in his or her Member State of origin, to instruct, on behalf of his/her Chamber, the European Delegated Prosecutor(s)⁸⁹ handling the case⁹⁰ whenever necessary in the interest of an efficient and coherent functioning of the European Public Prosecutor's Office.~~
4. In the course of an investigation and until a decision to prosecute in accordance with Article 27 is taken, the Permanent Chamber monitoring a the case concerning more than one Member State⁹¹ may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to reallocate a case to another European Prosecutor and European Delegated Prosecutor in another Member State if such reallocation is in the interest of the efficiency of investigations and in accordance with the general criteria for jurisdiction set out in Article 27(4) in this Regulation⁹².
5. The European Prosecutor to whom the case was assigned by the ~~Chair of the~~ competent Permanent Chamber may - with the approval of that Permanent Chamber - in exceptional cases take the decision to conduct the investigation himself/herself in his/her Member State of origin, if this appears necessary in the interest of the efficiency of the investigations or prosecution on the grounds of one or more of the following criteria⁹³:

⁸⁶ This provision may duplicate Article 9(2) and (4).

⁸⁷ It is recalled that the terms monitoring and supervision will be defined in detail at a later stage.

⁸⁸ Some delegations have suggested that the notion coordination in this context should be clarified.

~~⁸⁹ Some delegations have suggested that specific grounds for when the EDP can refuse instructions from the Central Office should be indicated in this Article.~~

~~⁹⁰ To be read in conjunction with Article 12(1) in the text presented to JHA Council on 6 June.~~

⁹¹ It has been questioned whether this provision should only be applicable to cases concerning more than one Member State. The Presidency considers that this should be the case, considering that paragraph 5 opens a possibility to reassign a case within one Member State (through the European Prosecutor).

⁹² This reference will be considered again in the light of the discussion on Article 21.

⁹³ A number of delegations oppose that a European Prosecutor should have any right to take over the conduct of investigations, and argue that it is sufficient that they have the right to supervise and instruct. Some have also suggested that the provision should be more flexible. Many delegations have criticised the wording of the criteria in this provision. The Presidency considers that the whole provision will be developed further in detail, in particular as regards applicable national law and judicial review.

- a) the seriousness of the offence, in particular in view of its possible repercussions on Union level;
- b) when the investigation concerns a high-level⁹⁴ Union staff members or Members of the institutions, bodies, offices and agencies of the European Union;
- c) when ~~there is no~~ competent European Delegated Prosecutor or competent national authority in the Member State cannot ~~concerned which could~~ perform the investigation, for reasons such as health impediments or incompatibilities with respect to the object of the investigation.

When a European Prosecutor decide to conduct the investigation himself/herself, he/she will have all the powers of a European Delegated Prosecutor.

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

- ~~6. Where the conduct of the investigation is taken over by a European Prosecutor directly in accordance with paragraph 5, he/she shall, through the European Prosecutor from the Member State where investigation measures need to be carried out, inform the competent European Delegated Prosecutor.~~
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.⁹⁵

⁹⁴ ~~A definition of "high level" will be considered.~~

⁹⁵ This provision and its link with Article 64 in the Commission proposal will be considered further.

Article 24

Lifting privileges or immunities

1. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under national law, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor⁹⁶ shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.
2. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under ~~the Union~~ law of the European Union, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European ~~Chief 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

INVESTIGATION MEASURES

Article 25

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

- ~~1.~~ When conducting ~~For the purpose of~~ investigations and prosecutions in the territory of the Union's Member States, ~~shall be considered a single legal area in which~~ the European Public Prosecutor's Office shall operate as one single office⁹⁷.

⁹⁶ A number of delegations have suggested that this request should rather be made by European Delegated Prosecutors.

⁹⁷ The coherence of the terminology used in this sense (Union body, indivisible Union body, single office ...) will be further assessed.

~~2. Where the European Public Prosecutor's Office decides to exercise its competence over an offence which concerns a third country 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, when appropriate, 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 measures⁹⁸

1. Member States shall ensure that ~~prosecutors in the European Delegated Public Prosecutors Office have~~ the right to request or to order the same types of investigative measures which are available to investigators/prosecutors according to national law in similar national cases of crime⁹⁹.
- ~~2. Where the designated European Delegated Prosecutor or a competent authority acting on his/her instructions in accordance with Article 23 (1) undertakes investigative measures, the law of the Member State in which the measures are undertaken shall apply and determine the conditions, modalities and procedures for the investigative measures available to the European Public Prosecutor's Office.~~
- ~~3. Where in a cross-border investigation in accordance with Article 23(3), the European Delegated Prosecutor entrusted with the investigations requests certain investigative measures to be taken in another Member State, the national law of that Member State ("executing state") shall apply and determine the conditions, modalities and procedures for taking the investigative measure on request of the European Public Prosecutor's Office. Member States shall ensure that at least the following investigative measures¹⁰⁰ are available in accordance with their ~~under their~~ laws:~~

⁹⁸ The content of this Article will be influenced by the final content of Article 25 (and the discussions in JHA Council of 9-10 October).

⁹⁹ A number of delegations have suggested that the scope of paragraphs 1 and 2 should be limited to cross-border cases.

¹⁰⁰ Delegations are asked to indicate which of these measures they do not consider necessary to list here.

- [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.]¹⁰¹

¹⁰¹ A number of delegations have requested that the list of measures is deleted; others wish to shorten the list considerably.

4. The individual investigative measures shall not be ordered without reasonable grounds¹⁰² or if less intrusive means can achieve the same objective.
- ~~4. [In case of a cross-border investigation as referred to in paragraph 3, the European Delegated Prosecutor in the executing State may postpone the execution of the measure where:~~
- ~~— its execution might prejudice an ongoing criminal investigation or prosecution until such time as the Delegated Prosecutor deems reasonable;~~
 - ~~— the objects, documents, or data concerned are already being used in other proceedings until such time as they are no longer required for this purpose.~~
- ~~— As soon as the grounds for postponement have ceased to exist, the European Delegated Prosecutor shall forthwith take the necessary measures to execute the investigation measure in question.]~~
- ~~5. 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.¹⁰³¹⁰⁴~~

¹⁰² The use of the notion "reasonable grounds" has been questioned by a few delegations.

¹⁰³ Finland has, with support from some Member States suggested that the following text could be added to ~~Article 26:~~

~~"The European Prosecutor may issue, or request the delegated prosecutor, or the competent national authority, to issue a European Arrest Warrant, a European Investigation Order, or a Freezing Order, according to the relevant EU instruments."~~

~~In general, Member States support the inclusion of a specific rule on extradition and detention of suspects.~~

¹⁰⁴ This provision has been moved to Article 26b.

Cross-border investigations

- 1¹⁰⁵. The European Delegated Prosecutors shall assist each other in cross-border cases. Where an investigation measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter (“requesting European Delegated Prosecutor”) shall request the assistance of the European Delegated Prosecutor located in the Member State where that investigation measure needs to be carried out (“assisting European Delegated Prosecutor”).
2. The requesting European Delegated Prosecutor may request any investigation measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the requesting European Delegated Prosecutor. The enforcement of such measures conditions, modalities and procedures for taking such measures shall be governed by the law of the Member State of the assisting European Delegated Prosecutor.
3. Where this Regulation or the law of the Member State of the requesting European Delegated Prosecutor requires a judicial authorisation for the measure in question, that European Delegated Prosecutor shall obtain the authorisation according to national law and/or in accordance with special procedural requirements provided for by the law of the Member State of the requesting European Delegated Prosecutor.
4. The request for assistance shall set out, in particular, a description of the investigative measures(s) requested, including the evidence to be obtained, a description of the facts and the legal qualification of the criminal act which is the subject of the investigation. Where the law of the Member State of the assisting European Delegated Prosecutor requires a court authorisation for such measures, he or she shall obtain such authorisation. The request may call for the measure to be undertaken within a given time.
5. The assisting European Delegated Prosecutor shall undertake the requested measure or ask the competent national authority to do so.

¹⁰⁵ ~~Current Article 23 (2) (Conducting the investigation)~~ This provision needs to be further developed.

6. Where the assisting European Delegated Prosecutor considers that:
- a) the request is incomplete or contains a manifest relevant error,
 - b) the measure cannot be undertaken within the time limit set out in the request for justified and objective reasons,
 - c) a less intrusive measure would achieve the same results as the measure requested, or
 - d) the requested measure does not exist or would not be available in a similar domestic case under the law of his or her Member State,
- he or she shall consult with the requesting European Delegated Prosecutor in order to resolve the matter bilaterally. This consultation shall take no longer than [5] working days.
7. If the European Delegated Prosecutors cannot resolve the matter and the request is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the requested measure is not undertaken within the time limit set out in the request or within a reasonable time.
8. The competent Permanent Chamber shall decide without undue delay whether and by when the measure requested, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor.

Article 26b

Pre-trial arrest and cross-border surrender

1. The European Public Prosecutor's Office may request from the competent judicial authority the arrest or pre-trial detention of the suspected person in accordance with national law.¹⁰⁶
2. Where the arrest and surrender of a person who is not present in the Member State in which the European Delegated Prosecutor handling the case is located, is necessary, the latter shall request, for the purpose of conducting a criminal prosecution, the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

SECTION 3

TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION

Article 27

Prosecution before national courts

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

¹⁰⁶ Text from Article 26(5). ~~Finland has, with support from some Member States suggested that the following text could be added to — Article 26:~~
~~"The European Prosecutor may issue, or request the delegated prosecutor, or the competent national authority, to issue a European Arrest Warrant, a European Investigation Order, or a Freezing Order, according to the relevant EU instruments."~~
~~In general, Member States support the inclusion of a specific rule on extradition and detention of suspects.~~

2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable¹⁰⁷, a draft indictment and the list of evidence to the competent European Prosecutor and Permanent Chamber for review. ~~Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct~~ After having submitted the summary of the case, the European Delegated Prosecutor may to bring the case before the competent national court with an indictment, ~~or refer it back for further investigations~~¹⁰⁸. ~~The competent European 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 competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the Member State in which the trial shall take place ~~jurisdiction of trial~~ in accordance with the following criteria, in this order of priority¹⁰⁹:
 - a) the place where the offence, or in case of several offences, the [most serious /the bulk of the] ~~majority of the offences was/were~~ committed;
 - b) the Member State ~~place~~ where the accused person is a national ~~has his/her habitual residence~~;
 - ~~c) the place where most of the evidence is located;~~
 - d) the place where the direct victims have their seat or habitual residence.
- 4a. The competent national court is determined on the basis of national law.

¹⁰⁷ “Where applicable” refers to cases where the EDP proposes a transaction or to dismiss a case.

¹⁰⁸ It may need to be clarified what role the Central Office will play in this model.

¹⁰⁹ Many delegations have noted that the competent jurisdiction shall/will rather be chosen early in the investigation phase. Accordingly, some have called for moving this provision to Article 21, or to add a provision linking the jurisdiction of investigation with the jurisdiction of prosecution. Most delegations have noted that the list of criteria must be made coherent with the final text of the PIF-Directive. Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the decision taken by the European Public Prosecutor's Office Chamber in accordance with this Regulation.

Article 28

Dismissal of the case

1. The competent Permanent Chamber shall¹¹⁰, on proposal from the European Delegated Prosecutor, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds¹¹¹:
- a) death of the suspected person;
 - b) ~~the conduct subject to investigation does not constitute amounts to a criminal offence which does not fall under within the competence of the European Public Prosecutor's Office;~~
 - c) amnesty granted;
 - d) immunity granted to the suspect, unless it has been lifted.
 - e) expiry of the national statutory limitation to prosecute;
 - f) 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;
 - g) lack of relevant evidence.

¹¹⁰ Some delegations have noted that it may be sufficient if the Permanent Chamber confirms the decision ex post.

¹¹¹ Delegations have made a number of suggestions as regards the grounds. In particular: the criterion of "amnesty granted" has been questioned, a criterion regarding permanently deranged persons has been called for, and a link to the prescription rules may also be needed.

2. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.
- 2a. A decision in accordance with paragraph 1 g) shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which became known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment.¹¹²
3. Where a case has been finally dismissed, the Central Office shall officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies and agencies, as well as the injured party, thereof.¹¹³
4. 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.¹¹⁴

¹¹² A number of delegations have requested that a more detailed rule on *ne bis in idem* is inserted here (or under another paragraph of the Article).

¹¹³ The right of victims of review will be addressed here or in a general provision.

¹¹⁴ This provision was previously to be found in Article 22. The provision could possibly be linked to Article 19(5).

Article 29
Transaction¹¹⁵

1. Where the case is not dismissed and it would serve the purpose of proper administration of justice, the competent European Delegated Prosecutor or competent European Prosecutor may, after the damage has been compensated, propose to the suspected person to pay a lump-sum. If the suspected person agrees, the proposed transaction shall be submitted to the competent Permanent Chamber for validation. The suspected person shall thereafter 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 validated and paid by the suspected person, the competent Permanent Chamber 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 and injured parties thereof.

¹¹⁵ It has been suggested that this term should be replaced with "Settlement" in the final English version of the text. Many delegations have questioned the need for this provision, in particular in the light of the current wording of Article 19. In any case, most Member States have requested additional details and criteria to determine when recourse to transactions can be made. A specific rule on judicial confirmation and/or judicial review of these decisions has also been requested by some. The Presidency will consider how more detail can be given to this provision.

SECTION 4
ADMISSIBILITY OF EVIDENCE

Article 30

Admissibility of evidence¹¹⁶

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

¹¹⁶ Many delegations have noted that this provision can only be finalised when the final wording of Article 25 will be. Some delegations have called for a more explicit and detailed rule, in particular as regards illegally collected evidence. A few delegations have asked for a reference to national constitutions to be added. The text of this Article may need to be reassessed as a result of the outcome of discussions on Article 26a.

SECTION 5 CONFISCATION

Article 31

Disposition of the confiscated assets¹¹⁷

Where 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 and subject to other legitimate claims and to administrative measures such as the recovery of any amounts lost as a result of irregularities or negligence.

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.

¹¹⁷ Some delegations have requested that detailed provisions on, for example, how money should be collected should be added, how claims should be made, how the monetary value shall be decided etc. It has also been requested that it must be ensured that the EU will not receive the same money twice, first through recovery and then from confiscated proceeds.

2. Any suspect and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, adopted on the basis of Article 82(2) of the Treaty such as¹¹⁸:

- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council,
- (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council,
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,
- (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant,
- ~~(f) the right to present evidence, appoint experts and hear witnesses,~~
- ~~(g) ...~~

¹¹⁸ Many delegations would prefer to delete the list of instruments in this provision, and move it to the recitals. The Presidency maintains that the list may be necessary in view of future negotiations with the Parliament. Some would also prefer to refer to Article 82(2)(b) only in the first phrase of the provision. Some have also noted that precisions as regards applicable law are needed.

3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

~~4. The rights referred to 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.~~

CHAPTER V

JUDICIAL REVIEW

Article 33

Judicial review¹¹⁹

OPTION 1:

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

OPTION 2:

Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles 18(6)¹²⁰, 27(4) [and] shall be subject to review of their legality before the Court of Justice of the European Union in accordance with Article 263 of the Treaty¹²¹.

Other procedural measures taken by the European Public Prosecutor's Office in the performance of its functions, in particular investigation measures provided for in Article 26 and procedural measures taken by it after the indictment has been acknowledged by the competent national court, shall be subject to judicial review before the competent courts of the Member States¹²².

¹¹⁹ A relative majority of delegations prefer option 2, but most delegations still believe that the options need to be modified slightly or clarified.

¹²⁰ Article 18(6) on ancillary competence should be redrafted as a consequence of this provision.

¹²¹ A Recital should set out the criteria taken into account to limit the competence of the ECJ on actions for annulment to those specific cases, in the light of the objectives and principles referred to in the CLS legal opinion (doc. 13302/1/14 REV1) .

¹²² A Recital should clarify that this provision is without prejudice to Article 267 of the Treaty, in particular preliminary rulings on the validity of procedural measures taken by the European Public Prosecutor's Office.