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European Union

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**NOTE**

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

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**I. Introduction**

A preliminary objective of the incoming Latvian Presidency of the Council will be to finalize the first five chapters of the Regulation. The Presidency considers that the Annex to the report on the State of Play issued by the Italian Presidency<sup>1</sup> (hereafter: the draft text) will serve as a good basis for the work in this sense.

The Presidency intends to conduct a complete reading of the text of the report annex. However, considering that most provisions have already been examined and analysed in depth, the discussions should *a priori* focus on issues which have been left partly open and/or which are of particular importance for the text. The Presidency therefore invites delegations to consider the two focal issues presented below.

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

It is the intention of the Presidency to devote all necessary time to find answers to these focal questions. The discussions at the COPEN meeting of 8-9 January 2015 will be started with issue A, and then continue with issue B depending on the progress on the first issue.

## **II. Focal issues**

### ***A. The monitoring and supervision of investigations and prosecutions and related issues***

The terms "monitoring", "directing and monitoring" and "supervision" are of key importance for the Regulation, not the least since they will determine the exact role of the Central Office in the investigations in the Member States, which in turn could have a significant impact on the efficiency and independence of the EPPO. Footnote 7 in the draft text acknowledges that these terms will need more detailed definitions. In addition, many delegations have in recent discussions argued that the rules on the powers, competence and responsibilities of the Permanent Chambers, the European Prosecutors and the European Delegated Prosecutors need further clarification, as has been highlighted in for example footnotes 11-14 in the draft text.

The Presidency considers that the examination of the proposal has now reached a phase in which it is necessary to address these issues in detail either in the Regulation or, for more technical matters, in the Internal Rules. Delegations are therefore invited to re-examine in particular Articles 8-12 in the draft text, and to reflect on the following questions:

1. Definitions of the terms "monitoring", "directing and monitoring" and "supervision" have tentatively been suggested in footnote 11 in the draft text.
  - In the light of how these terms are used in Articles 8(2), 9(2) and 11(1), do delegations agree with the general thrust of these definitions? Do they reflect the functions attributed to the various layers of the EPPO?
  - How - and where in the text - should they be developed further?

2. Article 9(3) enumerates the decisions that shall be taken by a Permanent Chamber.
  - How should the decision-making process of the Chambers in this sense be organised in practice? - Are the procedures set out in the Articles corresponding to the various decisions, e.g. in Articles 27 – 28 for prosecution and dismissal decisions, sufficient?
  - Depending on the nature of the decision to be taken, would it be sufficient if the Chamber has access to a summary of the file (e.g. for initiating an investigation), translated to a working language of the EPPO, or must a wider access to documents relevant to the case be foreseen (e.g. for prosecution and dismissal decisions)?
  - Shall the decisions always be taken in deliberation in the Chamber, or could a written or silent procedure be foreseen (for some or all cases)?
3. Article 9(4) sets out the main rule for when the Permanent Chamber can give instructions in a concrete case to the European Delegated Prosecutors.
  - Delegations are invited to consider if the rule in Article 9(4) needs to be developed further and, if so in what aspects.
  - Would it be necessary to include in the text explicit definitions of the criteria "necessary for the efficient handling" and "in the interest of a coherent functioning"?
  - Should a right for the European Delegated Prosecutor to ask for a review or even refuse certain instructions from the Chamber (for example if they cannot be legally implemented in the Member State in question) be foreseen?
4. Article 9(6) foresees that the European Prosecutor or European Prosecutors who are supervising a prosecution or an investigation in accordance with Article 11(1) shall participate in the decisions of the Permanent Chamber as regards that case.
  - What shall this participation imply in practice (e.g. right to vote)?

5. Article 11(1) states that the European Prosecutors shall, on behalf of the Permanent Chamber in charge of the case and in accordance with its instructions, supervise investigations and prosecutions assigned to them.

- Do the supervisory powers of the European Prosecutors include the right to give any operational instructions to the European Delegated Prosecutors that the Central Office deems appropriate, as may be implied in the definition of “supervision” in footnote 7, or should a limitation of the supervisory powers be considered?

***B. Exercise of the competence of the Office and the right of evocation***

Delegations have broadly agreed that there is a need to foresee a priority competence for the EPPO, combined with a right of evocation of cases falling under its competence. However, the formulation of the EPPO’s priority competence as well as the terms and conditions for the exercise of the right of evocation have been the subject of intense discussions. To mirror these discussions, the Italian Presidency has in the draft text suggested new wordings for Articles 19 and 21a, which have not yet been discussed at working group level.

- Delegations are invited to indicate whether they agree with the new wording of Article 19 and 21a, and whether an explicit reference to the priority competence of the EPPO should be added to Article 19.

**III. Written contributions**

Delegations are invited to also present their written comments on the questions above. The comments should be sent to [inga.melnace@mfa.gov.lv](mailto:inga.melnace@mfa.gov.lv) and [michael.carlin@consilium.europa.eu](mailto:michael.carlin@consilium.europa.eu) by 12.00 on 7 January 2015 at the latest.

In view of facilitating the further planning of the Presidency, delegations are also invited to send their general comments on the draft text to [inga.melnace@mfa.gov.lv](mailto:inga.melnace@mfa.gov.lv) and [michael.carlin@consilium.europa.eu](mailto:michael.carlin@consilium.europa.eu).

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