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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	11350/1/16 REV 1
Subject:	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office

Following the examination of the draft preamble in COPEN on 8 September and the work on a number of Articles in view of the Council of 14 October, the Presidency has partly redrafted the preamble in line with the discussions. All modifications in relation to document 11350/1/16 REV 1 are indicated in underlined or ~~striketrough~~.

Delegations are invited to examine these recitals at the next meeting of COPEN and indicate if they can agree with them.

Delegations are also invited to provide the Presidency with written comments and suggestions before the meeting, by 24 October cob, to Alexander.Kunosik@mvz.sk and carmen.necula@consilium.europa.eu.

COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

Whereas:

(1) The European Union has set itself the objective of establishing an area of freedom, security and justice.

(2) The possibility of setting up the European Public Prosecutor's Office is foreseen by the Treaty on the Functioning of the European Union (TFEU) in the title concerning the area of freedom, security and justice.

(3) Both the Union and the Member States have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not always sufficiently investigated and prosecuted by the ~~relevant~~ national criminal law authorities.

(4) According to Article 86 TFEU, the European Public Prosecutor's Office should be established from Eurojust. This implies that this Regulation should establish links between them.

(5) The Treaty provides that the material scope of competence of the European Public Prosecutor's Office is limited to criminal offences affecting the financial interests of the Union. The tasks of the European Public Prosecutor's Office should thus be to investigate, prosecute and bring to judgment the perpetrators of offences against the Union's financial interests which are provided for in Directive 2016/xx/EU. Any extension of this competence to include serious crimes having a cross-border dimension requires a unanimous decision of the European Council.

(6) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the criminal prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States, does not always sufficiently achieve that objective. Since the objectives of this Regulation, namely to enhance the fight against the offences affecting the financial interests of the Union by setting up the European Public Prosecutor's Office, cannot be achieved by the Member States alone, given the fragmentation of national prosecutions in the area of offences committed against the Union's financial interests and can therefore, by reason of the fact that the European Public Prosecutor's Office is to have competence to prosecute such offences, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

(7) This Regulation provides for a system of shared competence between the European Public Prosecutor's Office and national authorities in combating crimes affecting the financial interests of the Union, based on the principle of priority for the European Public Prosecutor's Office.

(8) In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve these objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.

(9) In the light of the principle of sincere cooperation, both the European Public Prosecutor's Office and competent national authorities should support and inform each other with the aim to efficiently combat the crimes falling under the competence of the Office.

(10) This Regulation is without prejudice to Member States' national systems concerning the way in which criminal investigations are organised.

(11) Since the European Public Prosecutor's Office is to be granted powers of investigation and prosecution, institutional safeguards should be put in place to ensure its independence as well as its accountability towards the Union institutions.

(12) The European Public Prosecutor's Office should act only in the interest of the Union as a whole and neither seek or take instructions from any person external to the Office.

(13) Strict accountability is a complement to the independence and the powers granted to the European Public Prosecutor's Office under this Regulation. The European Chief Prosecutor is fully accountable for the performance of his/her duties as the head of the European Public Prosecutor's Office and as such he/she carries an overall institutional accountability for its general activities before the European Parliament, the Council and the Commission. As a result, any of these institutions can apply to the Court of Justice of the European Union, ~~within the meaning of Article 251 TFEU, acting in one single instance~~, with a view to his/her removal under certain circumstances, including in cases of serious misconduct. The same procedure should apply for the dismissal of European Prosecutors.

(14) The European Public Prosecutor's Office should issue a public Annual Report on its general activities, which as a minimum should contain statistical data on the work of the Office.

(15) The organisational structure of the European Public Prosecutor's Office should allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States. The structure should also ensure that all national legal systems and traditions of the participating Member States are represented in the Office and that, ~~as a rule~~, prosecutors with knowledge of the individual legal systems will handle investigations and prosecutions in their respective Member States.

(16) To this end, the European Public Prosecutor's Office should be an indivisible Union body operating as a single office. It should be organised at a central level, consisting of a European Chief Prosecutor, who is the head of the Office as a whole and the head of the College of European Prosecutors, organised in Permanent Chambers, and a decentralised level consisting of European Delegated Prosecutors located in the Member States.

(17) In addition, to ensure consistency in its action and thus an equivalent protection of the Union's financial interests, the organisational structure and the internal decision-making process of the European Public Prosecutor's Office should enable the central office to monitor, direct and supervise all investigations and prosecutions undertaken by European Delegated Prosecutors.

(18) In this Regulation, the terms 'general oversight', 'monitoring and directing' and 'supervision' are used to describe different control activities exercised by the European Public Prosecutor's Office. 'General oversight' should be understood as referring to the general administration of the activities of the Office, in which instructions are only given on issues which have a horizontal importance for the Office; 'Monitoring and directing' should be understood as referring to the powers to monitor and direct individual investigations and prosecutions. 'Supervision' should be understood as referring to a closer and continuous oversight of investigations and prosecutions, including, whenever necessary, intervention and instruction-giving on investigations and prosecution matters.

(19) The College should take decisions on strategic matters, including determining the priorities and investigation and prosecution policy of the Office, as well as on general issues arising from individual cases, for example regarding the application of the Regulation, the correct implementation of the investigation and prosecution policy of the Office or questions of principle or of significant importance for the development of a coherent investigation and prosecution policy of the Office. Decisions of the College on general issues should not affect the duty to investigate and prosecute according to this Regulation and national law. The College should use its best efforts to take decisions by consensus. If such a consensus cannot be reached, decisions should be taken by voting.

(20) Permanent Chambers should supervise investigations and ensure the coherence of the activities of the Office. The composition of Permanent Chambers should be determined in accordance with the internal rules of procedure, which should allow, among other things, for a European Prosecutor to be a member of more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, an even workload for individual European Prosecutors.

(21) Permanent Chambers should be chaired by the European Chief Prosecutor, one of his deputies or a European Prosecutor, in accordance with principles laid down in the internal rules of procedure. As a general rule, Permanent Chambers should be chaired by the Chief or one of his deputies. However, during the administrative establishment of the European Public Prosecutor's Office, or if necessary at a later stage, a European Prosecutor may be appointed as chair of a Permanent Chamber if there are not enough Deputies.

(22) The allocation of cases between the Permanent Chambers should be based on a system of a random distribution as to ensure, to the extent possible, an equal division of workload. Deviations from this principle should be possible to ensure the proper and efficient functioning of the Office on a decision by the European Chief Prosecutor.

(23) The internal rules of procedure of the European Public Prosecutor's Office should set up a system of permanence between the Permanent Chambers in order to guarantee the continuity of the service in cases where the competent Permanent Chamber has yet to be designated.

(24) A European Prosecutor from each Member State should be appointed to the College. The European Prosecutors should supervise, on behalf of the competent Permanent Chamber, the investigations and prosecutions handled by the European Delegated Prosecutors in their Member State of origin. They should act as liaison between the central office and the decentralised level in their Member States, facilitating the functioning of the Office as a single office. The supervising European Prosecutor should also check any instruction's compliance with national law and inform the Permanent Chamber if it does not.

(25) The European Public Prosecutor's Office should be based on a principle of decentralisation whereby, as a rule, the investigations of the European Public Prosecutor's Office should be carried out by European Delegated Prosecutors in the Member States in accordance with this Regulation and, as regards matters not covered by this Regulation, national law. European Delegated Prosecutors should carry out their tasks under the supervision of the supervising European Prosecutor and the direction and instruction of the competent Permanent Chamber.

(26) The functions of prosecutor in competent courts apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

(27) The European Delegated Prosecutors should be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the competence of the Office, they should act exclusively on behalf and in the name of the Office on the territory of their respective Member State. This should entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law.

(28) Notwithstanding their special status under this Regulation, the European Delegated Prosecutors should during their term of office also be active members of the prosecution service of their Member State, namely a prosecutor or member of the judiciary that is neither retired nor suspended, and should be granted by their Member State the same powers as national prosecutors.

(29) The European Delegated Prosecutors should be bound to follow instructions coming ~~from the central office~~ from the Permanent Chambers and the European Prosecutors. Where a European Delegated Prosecutor considers that the instruction would require him/her to undertake any measure that would not be in compliance with national law, he/she should ask for a review of the decision by the European Chief Prosecutor. ~~The European Delegated Prosecutor should execute the instruction if his/her claim of non-compliance with national law is rejected by the European Chief Prosecutor, unless he/she expressly requests to be relieved from the responsibility for handling the case.~~

(30) The European Delegated Prosecutor handling a case should report any significant developments in a case, such as the performance of investigative or ~~urgent~~ measures or changes to the list of suspected persons, to the supervising European Prosecutor and to the competent Permanent Chamber.

(31) The Permanent Chambers should exercise their decision-making power at specific steps of the proceedings of the Office with a view to ensuring a common investigation and prosecution policy. They should adopt such decisions on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, the Permanent Chamber should be able to adopt a decision without a draft decision of the handling European Delegated Prosecutor. In such cases, the European Prosecutor supervising the case may present such a draft decision.

(32) A Permanent Chamber should be able to delegate its decision-making power to the supervising European Prosecutor in specific cases where an offence is not serious or the proceedings are not complex. When assessing the degree of seriousness of an offence account should be taken of its repercussions at Union level.

(33) A substitution mechanism between European Prosecutors should be provided for in the internal rules of procedure. The substitution mechanism should be used in cases when a European Prosecutor is briefly unable to fulfill his/her duties, for example, due to absence.

(34) In addition, a European Prosecutor should be substituted by one of the European Delegated Prosecutors of his/her Member State when a European Prosecutor resigns, is dismissed or leaves his/her position for any other reason or in cases, for example, of prolonged illness. The substitution should be limited to a period of up to three months. The possibility to prolong this time period should be left to the discretion of the College, where deemed necessary, taking into account the workload of the Office and the duration of the absence, pending replacement or return of the European Prosecutor. The European Delegated Prosecutor substituting the European Prosecutor should, for the time of the substitution, no longer be in charge of investigations and prosecutions handled by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the European Public Prosecutor's Office, which were handled by the European Delegated Prosecutor substituting a European Prosecutor, the Office's rules on reallocation should apply.

(35) The procedure for the appointment of the European Chief Prosecutor and the European Prosecutors should guarantee their independence. Their legitimacy should be drawn from the Union institutions involved in the appointment procedure. The Deputies to the European Chief Prosecutor should be appointed by the College from among its members.

(36) A selection panel should establish a short list of candidates for the position as European Chief Prosecutor is drawn up. The power to establish the panel's operating rules and to appoint its members should be conferred on the Council, based on a proposal from the Commission. Such an implementing power mirrors the specific powers conferred on the Council under Article 86 of the Treaty and reflects the specific nature of the European Public Prosecutor's Office, which will remain firmly embedded in national legal structures while at the same time being a European body. The European Public Prosecutor's Office will be acting in an environment where most other actors will be national, such as Courts, police and other law enforcement authorities, and therefore the Council has a specific interest in being closely involved in the appointment procedure. Conferring these powers on the Council also adequately takes into account the potential sensitive nature of any decision-making powers with direct implications for the national judicial and prosecution structures. The European Parliament and the Council should appoint, by common accord, one of the shortlisted candidates as Chief.

(37) Each Member State should nominate three candidates for the position of European Prosecutor to be selected and appointed by the Council. With a view to ensuring the continuity of the work of the College, there should be a partial replacement of a third of the European Prosecutors every ~~third~~ three years. The power to adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period should be conferred on the Council. This implementing power mirrors the power of the Council to select and appoint the European Prosecutors. This is also justified by the specific nature of the European Prosecutors as being linked to their respective Member States while at the same time being Members of the College and more generally, by the specific nature of the European Public Prosecutor's Office following the same logic underlying the implementing power conferred on the Council to establish the panel's operating rules and to appoint its members. The Council should take into account the geographical range of the Member States when deciding on the partial replacement of a third of the European Prosecutors during their first mandate period.

(38) The procedure for the appointment of the European Delegated Prosecutors should ensure that they are an integral part of the European Public Prosecutor's Office, while they remain integrated at an operational level into the national legal systems and prosecution structures. Member States should nominate candidates for the position of European Delegated Prosecutor, to be appointed by the College on a proposal by the Chief.

~~(39) The Member State that has nominated a European Delegated Prosecutor should ensure that, from the time of his/her appointment, he or she is a prosecutor under national law, if he or she did not have this status already at the time of nomination as European Delegated Prosecutor.~~

(40) There should be two or more European Delegated Prosecutors in each Member State to ensure the proper handling of the caseload of the Office. The European Chief Prosecutor should approve the number of European Delegated Prosecutors per Member State, and the functional and territorial division of tasks among them, in consultation with each Member State. In such consultations, due account should be taken of the organisation of the national prosecution systems. The notion of functional division of competences between European Delegated Prosecutors could allow for a division of tasks whereby certain European Delegated Prosecutors would handle cases and take certain specific decisions on the initiation of investigations, and other European Delegated Prosecutors would be in charge of dealing with complaints against such decisions.

(41) The total number of European Delegated Prosecutors in a Member State may be modified with the approval of the European Chief Prosecutor, ~~as long as the number of full-time equivalent European Delegated Prosecutors remains the same~~ within the limits of the annual budget of the European Public Prosecutor's Office.

(42) The College should be responsible for disciplinary procedures concerning European Delegated Prosecutors acting in accordance with this Regulation. Since European Delegated Prosecutors remain active members of the public prosecution or the judiciary of the Member States, and may also exercise functions as national prosecutors, national disciplinary provisions may apply for reasons not connected with this Regulation. ~~However, in such cases the European Chief Prosecutor should consent to the dismissal or to any disciplinary action, given his responsibilities for the management of the Office and in order to protect its integrity and independence.~~

(43) The work of the European Public Prosecutor's Office should in principle be ensured in electronic form. A case management system should be established, owned and managed by the European Public Prosecutor's Office. The information in the case management system should include information received about possible offences falling under the Office's competence, as well as the investigations and prosecution case files, also when those have been closed. The European Public Prosecutor's Office should, when establishing the case management system, ensure that the system allows the European Public Prosecutor's Office to operate as a single office, where the case files administered by European Delegated Prosecutors are available to the central office for the exercise of its decision-making, monitoring, direction and supervision tasks.

(44) National competent authorities should inform the European Public Prosecutor's Office without delay of any conduct that could constitute an offence within the competence of the Office. In cases which fall outside its scope of competence, the European Public Prosecutor's Office should inform the competent national authorities of any facts that it becomes aware of, and which might constitute a criminal offence, for example a false testimony.

(45) Union institutions, bodies, agencies and offices, and national authorities, should provide without delay any information to the European Public Prosecutor's Office about offences in which which could ~~fall under~~ exercise its competence. The Office may also receive or gather information from other sources, such as private parties. A verification mechanism in the Office should aim to assess whether, on the basis of the information received, the conditions for material, territorial and personal competence of the European Public Prosecutor's Office are fulfilled.

(46) In order to comply fully with their obligation to inform the European Public Prosecutor's Office where a suspicion of an offence within its competence is identified, the national authorities of the Member States as well as all institutions, bodies, offices and agencies of the Union should follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them. The institutions, bodies, offices and agencies of the Union may make use of OLAF to that effect.

(47) Member States' authorities should set up a system that ensures that information is reported to the European Public Prosecutor's Office as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system.

(48) ~~Member States are to report offences which fall within the competence of the European Public Prosecutor's Office and over which it could exercise such competence.~~ Compliance with this reporting obligation is essential for the Office's good functioning and should be interpreted broadly as to ensure that national authorities report cases where the assessment of some criteria is not immediately possible (for example the level of damage or the applicable penalty). The European Public Prosecutor's Office should also be able to request information to the Member States about other offences affecting the Union's financial interests, where necessary to establish links between cases or for the College to exercise its role of ensuring coherence, efficiency and consistency of the Office's investigation and prosecution policy.

(49) The efficient investigation of crimes affecting the financial interests of the Union and the principle of *ne bis in idem* may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union. The notion of inextricably linked offences should be considered in light of the jurisprudence of the Court of Justice of the European Union. Such may be the case, for example, for offences which have been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as offences strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or to ensure the profit or product thereof. In such cases of inextricably linked offences, where the offence affecting the Union's financial interests is preponderant, the competence of the European Public Prosecutor's Office should be exercised after consultation with the competent authorities of the Member State concerned. Preponderance should be established primarily on the basis of the offences' gravity, as reflected in the applicable sanctions.

(50) The notion of offences relating to the participation in a criminal organisation should be subject to the definition provided in national law in accordance with Framework Decision 2008/841/JHA, and may cover, for example, the membership in, or the organisation and leadership of such a criminal organisation.

(51) The competence of the European Public Prosecutor's Office regarding offences affecting the financial interests of the Union should take priority over national claims of ~~jurisdiction~~ competence so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. With regard to these offences the authorities of Member States should refrain from acting, unless urgent measures are required, until the Office has decided whether to conduct an investigation.

(52) In case of disagreement over the questions of exercise of competence, the competent national authorities should decide on the attribution of competence. The notion of competent national authorities should be understood as any judicial authorities who have competence to decide on the attribution of competence in accordance with national law.

(53) As the European Public Prosecutor's Office should bring prosecutions before national courts, its competence should be defined by reference to the criminal law of the Member States, which criminalises acts or omissions affecting the Union's financial interests and determines the applicable penalties by implementing the relevant Union legislation, in particular [*Directive 2016/xx/EU*], in national legal systems.

(54) The European Public Prosecutor's Office should exercise its ~~territorial~~ competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States.

(55) The investigations and prosecutions of the European Public Prosecutor's Office should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory, either *motu proprio* or on the request of the defence.

(56) In order to ensure legal certainty and ~~zero tolerance towards~~ to effectively combat offences affecting the Union's financial interests, the investigation and prosecution activities of the European Public Prosecutor's Office should be guided by the legality principle of mandatory prosecution, whereby the Office will strictly apply the rules laid down in this Regulation relating in particular to competence and its exercise, the initiation of investigations, the termination of investigations, the referral of a case, the dismissal of the case and simplified procedures.

~~(57) In order to best safeguard the rights of the defendant, in principle a suspect or accused person should only face one investigation or prosecution by the European Public Prosecutor's Office. Where an offence has been committed by several persons, the European Public Prosecutor's Office should in principle initiate only one case and conduct investigations in respect of all suspect or accused persons jointly.~~

(58) Where several European Delegated Prosecutors have opened investigations in respect of the same criminal offence, the Permanent Chamber should ~~in principle~~ where appropriate merge such investigations. The Permanent Chamber may decide not to merge or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, for example if proceedings against one suspect or accused person can be terminated at an earlier stage, whereas proceedings against other suspect or accused persons still have to be continued, or if splitting the case could shorten the period of pre-trial detention of one of the suspects. Where different Permanent Chambers are in charge of the cases to be merged, the internal rules of procedure should determine the appropriate competence and procedure. In case the Permanent Chamber decides to split a case, its competence for the resulting cases should be maintained.

(59) The European Public Prosecutor's Office should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of ~~loyal~~ sincere cooperation, all national authorities and the relevant Union bodies, including Europol, Eurojust and OLAF, should actively support the investigations and prosecutions of the European Public Prosecutor's Office as well as cooperate with it to the fullest extent possible, from the moment a suspected offence is reported to the European Public Prosecutor's Office until it determines whether to prosecute or otherwise dispose of the case.

~~(60) It is necessary to determine the rules applicable to the conduct of investigations and the gathering of evidence by the European Public Prosecutor's Office.~~

(61) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the European Public Prosecutor's Office is able to gather evidence ~~throughout the Union~~ by using a minimum set of investigative measures, while bearing in mind the principle of proportionality.

These measures should be available with regard to the offences within the mandate of the European Public Prosecutor's Office, at least in cases where they are punishable by a maximum penalty of at least four years of imprisonment, for the purpose of its investigations and prosecutions and be , i.e. only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned. Once ordered by the European Public Prosecutor's Office or by the competent judicial authority at its request, they should be carried out in accordance with national law. In addition, the European Public Prosecutor's Office should have access to all relevant data sources, including public and private registers.

(63) In addition to the minimum set of investigation measures listed in this Regulation, European Delegated Prosecutors should be entitled to request or to order any measures which are available to prosecutors under national law in similar national cases. Availability should be ensured in all situations where the indicated investigative measure exists ~~under national law~~ but may be subject to limitations ~~and be , i.e. only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned.~~

(62) In cross-border cases, the European Delegated Prosecutor handling the case should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States. If judicial authorisation was required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation. If an investigation measure is finally refused by the judicial authorities, i.e. when all legal remedies have been exhausted, the European Delegated Prosecutor handling the case should withdraw the request or the order.

(64) The possibility foreseen in this Regulation to have recourse to legal instruments on mutual recognition or cross-border cooperation should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.

(65) The provisions relating to pre-trial arrest and cross-border surrender should be without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect or accused person.

(66) The ~~European Public Prosecutor's Office~~ handling European Delegated Prosecutor should be entitled to issue or request European Arrest Warrants within ~~its~~ the area of competence of the European Public Prosecutor's Office.

(67) The European Public Prosecutor's Office should be entitled to refer a case to national authorities, where an investigation reveals that the offence under investigation is outside the competence of the Office. In the case of such a referral, national authorities should preserve their full prerogatives under national law to open, continue or to dismiss the investigation.

(68) ~~Article 86 of the Treaty~~ This Regulation requires the European Public Prosecutor's Office to exercise the functions of the prosecutor, which includes taking decisions on a suspect or accused person's indictment and the choice of ~~jurisdiction~~ trial court. The decision whether to indict the suspect or accused person should be made by the competent Permanent Chamber so that there is a common prosecution policy.

(69) The ~~jurisdiction of trial~~ court should be chosen by the competent Permanent Chamber on the basis of a set of criteria laid down in this Regulation. The Permanent Chamber should take its decision on the basis of a report and a draft decision by the European Delegated Prosecutor handling the case, transmitted by the supervising European Prosecutor alongside, if necessary, his/her own assessment. The supervising European Prosecutor should retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in this Regulation.

(70) The evidence presented by the European Public Prosecutor's Office to the trial court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law in another Member State, provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter of Fundamental Rights of the European Union.

This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member State's constitutions in their respective fields of application. In line with these principles, and in respecting the different legal systems and traditions of the Member States as provided in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the trial courts from applying fundamental principles of national law on fairness of the procedure as they apply in national systems, including common law systems such as in the framework of a trial by jury¹.

(71) Taking into account the principle of mandatory prosecution, the investigations of the European Public Prosecutor's Office should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution. The grounds for dismissal of a case should be exhaustively laid down in the Regulation.

(72) The national legal systems provide for various types of simplified prosecution procedures, which may or may not include involvement of a court, for example in the form of transactions with the suspect or accused person. If such procedures exist, the European Delegated Prosecutor should have the power to apply them under the conditions provided for in national law and in the situations foreseen by this Regulation. These situations should include cases where the final damage of the offence, after possible recovery of an amount corresponding to the damage, is not significant. Considering the interest of coherent and effective prosecution policy of the Office, the competent Permanent Chamber should always be called to give its consent to the use of such procedures. When the simplified procedure has been successfully applied, the case should be finally disposed of.

¹ CY has emmited a reservation on this recital.

(73) This Regulation requires the European Public Prosecutor's Office to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by European Public Prosecutor's Office. The activities of the European Public Prosecutor's Office should thus be exercised in full compliance with these rights and the Regulation should be applied and interpreted accordingly.

~~(74) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member State's constitutions in their respective fields of application. In line with these principles, and in respecting the different legal systems and traditions of the Member States as provided in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the trial courts from applying fundamental principles of national law on fairness of the procedure as they apply in national systems, including common law systems such as in the framework of a trial by jury².~~

(75) Article 82(2) of the Treaty allows the Union to establish minimum rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. These minimum rules have been gradually set out by the Union legislator in Directives on specific rights.

² ~~CY has emitted a reservation on this recital.~~

(76) The rights of defence provided for in the relevant Union legislation, such as Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceeding, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, ~~and~~ 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 on the right to communicate upon arrest, Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, Directive 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Directive 2016/xxx/EU of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, as implemented by national law, should apply to the activities of the European Public Prosecutor's Office. Any suspect or accused person in respect of whom the European Public Prosecutor's Office initiates an investigation should benefit from them.

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

(78) According to Article 86(2) of the Treaty the European Public Prosecutor's Office exercises its functions of prosecutor before the competent courts of the Member States. Acts undertaken by the European Public Prosecutor's Office in the course of its investigations are closely related to the prosecution which may result therefrom and have effects in the legal order of the Member States. In ~~most~~ many cases they will be carried out by national law enforcement authorities acting under the instructions of European Public Prosecutor's Office, sometimes after having obtained the authorisation of a national court. It is therefore appropriate to consider that procedural acts of ~~investigation~~ of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law.

This should ensure that the ~~investigative~~ procedural acts of the European Public Prosecutor's Office adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons whose rights may be adversely affected by such acts) are subject to judicial review by national courts. Procedural acts relating to the choice of the Member State whose courts will be competent to hear the prosecution, which is to be determined on the basis of the criteria laid down in this Regulation, produce legal effects vis-à-vis third parties and should therefore be subject to judicial review before national courts at the latest at the trial stage. Actions before competent national courts for failures of the European Public Prosecutor's Office to act are those regarding procedural acts which the Office is under legal obligation to adopt and which are intended to produce legal effects vis-à-vis third parties. Where national law provides for judicial review concerning procedural acts other than those ~~which relate to the investigation or concerning acts~~ concerning acts which do not produce legal effects vis-à-vis third parties or for legal actions concerning other failures to act, this Regulation should not be interpreted as ~~replacing or amending~~ affecting such legal provisions. In addition, ~~this Regulation does not affect the powers of the national trial court. Actions before competent national courts for failures of the European Public Prosecutor's Office to act are only possible regarding procedural acts which the Office is under a legal obligation to adopt and which are intended to produce legal effects vis-à-vis third parties. Member States should not be required to provide for judicial review by the competent national courts concerning procedural acts which do not produce legal effects vis-à-vis third parties, such as the appointment of experts or the reimbursement of witness costs. Finally, the provisions of this Regulation do not concern the powers of the national court.~~

(79) The legality of procedural acts of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties should be subject to judicial review before national courts. In this regard, effective remedies should be ensured in accordance with the second paragraph of Article 19(1) TEU. Furthermore, in accordance with the case law of the Court of Justice, the national procedural rules governing actions for the protection of individual rights granted by Union law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Union law (principle of effectiveness).

When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law, which applies to the extent that a matter is not dealt with by this Regulation. ~~National courts should refer to the Court of Justice preliminary questions when they entertain doubts about the validity of those acts vis-à-vis Union law.~~ In accordance with the case law of the Court of Justice, national courts should always refer to its preliminary questions when they entertain doubts about the validity of those acts vis-à-vis Union law. However, they may not refer to the Court of Justice preliminary questions on the validity of the procedural acts of investigation of the European Public Prosecutor's Office with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them. This is however without prejudice to preliminary references concerning the interpretation of any provision of primary law, including the Treaty and the Charter of Fundamental Rights of the European Union, or the interpretation and validity of any provision of Union secondary law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of the procedural acts of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties with regard to the principle of proportionality as enshrined in national law.

(80) ~~The provision of this Regulation on judicial review only concerns the actions to which it refers and is wholly without prejudice to the possibility for~~ does not alter the powers of the Court of Justice to review administrative decisions of that Office, i.e. decisions which are not taken in the performance of its functions of investigating, prosecuting or bringing to judgement and which have legal effects vis-à-vis third parties. This regulation is also without prejudice to the possibility for a Member State, the European Parliament, the Council or the Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU, and to infringement proceedings under Articles 258 and 259 TFEU.

(81) ~~The competence concerning the dismissal of the European Chief Prosecutor and European Prosecutors, including the Deputy European Chief Prosecutors, is attributed to the Court of Justice within the meaning of Article 19(2), first subparagraph, TEU, and Article 251 TFEU, which will decide in one single instance.~~

(82) Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³ applies to the processing of administrative personal data performed by the European Public Prosecutor's Office⁴.

(83) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Union. ~~As a consequence, Regulation (EC) No 45/2001 will need to be adapted in accordance with Articles 2(3) and 98 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC⁵.~~

(84) ~~In Declaration 21 on the protection of personal data in the fields of judicial co-operation in criminal matters and police co-operation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of such data in the fields of judicial co-operation in criminal matters and police co-operation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.~~

(85) ~~Pending the adaptation of Regulation (EC) 45/2001, this Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office. These rules should be reviewed in the context of the adaptation of Regulation (EC) 45/2001. As a result of such a review, the general rules relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office could be those laid down in the adapted Regulation (EC) 45/2001, with the exception of those rules which particularise and complement Regulation (EC) No 45/2001, as adapted, for the processing of personal data by the European Public Prosecutor's Office which would continue to be laid down in this Regulation.~~

³ OJ L 8, 12.1.2001, p. 1.

⁴ FR has emitted a general reservation on recitals 82-94 in relation with the Regulation 45/2001.

⁵ OJ L 119, 4.5.2016, p. 1.

(86) The rules of this Regulation on the protection of personal data should be interpreted and applied in accordance with the interpretation and application of Regulation (EC) 45/2001, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁶, which will be replaced by Regulation (EU) 2016/679, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁷, which will be replaced Directive (EU) 2016/8680.

~~(87) Directive (EU) 2016/8680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA applies to the processing of personal data by Member States' competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.~~

(88) The data protection principle of fair processing is a distinct notion from the right to a fair trial as defined in Article 47 of the Charter and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

(89) The data protection provisions of this Regulation are without prejudice to the applicable rules on admissibility of personal data as evidence in criminal court proceedings.

⁶ OJ L 281 , 23.11.1995 p.31.

⁷ OJ L 350, 30.12.2008, p. 60.

(90) All Member States are affiliated to the International Criminal Police Organisation (Interpol). To fulfil its mission, Interpol receives, stores and circulates personal data to assist competent authorities in preventing and combating international crime. It is therefore appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where personal data are transferred from the European Public Prosecutor's Office to Interpol, and to countries which have delegated members to Interpol, this Regulation, in particular the provisions on international transfers, should apply. This Regulation should be without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA⁸ and Council Decision 2007/533/JHA⁹

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

~~(92) The European Data Protection Supervisor should monitor the processing of personal data by the European Public Prosecutor's Office.~~

(93) In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Regulation as regards operational personal data, as required by Article 8 of the Charter of Fundamental Rights, the European Data Protection Supervisor should have the tasks laid down in this Regulation and effective powers, including investigative, corrective, and advisory powers which constitute necessary means to perform its tasks. However, the powers of the European Data Protection Supervisor should not unduly interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary.

⁸ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

⁹ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

(94) In order to enable the European Public Prosecutor's Office to fulfil its tasks and to take account of developments in information technology and in the light of the state of progress in the information society, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifying the personal data and the categories of data subjects listed in the Annex, ~~which could be processed by the European Public Prosecutor's Office for the purposes of this Regulation~~. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

(95) The European Public Prosecutor's Office should work closely with other Union institutions, bodies, offices and agencies in order to facilitate the exercise of its functions under this Regulation and establish, where necessary, formal arrangements on detailed rules relating to exchange of information and cooperation. Cooperation with Europol and OLAF should be of particular importance to avoid duplication and enable the European Public Prosecutor's Office to obtain the relevant information at their disposal as well as to draw on their analysis in specific investigations.

(96) The European Public Prosecutor's Office should be able to obtain any relevant information falling within its competence stored in databases and registers of the institutions, bodies, offices and agencies of the Union.

(97) The European Public Prosecutor's Office and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates. Such cooperation may involve any investigations conducted by the European Public Prosecutor's Office where an exchange of information or coordination of investigative measures in respect of cases handled by Eurojust is considered to be necessary or appropriate. Whenever the European Public Prosecutor's Office is requesting such cooperation of Eurojust, the European Public Prosecutor's Office should liaise with the Eurojust national member of the Member State of the handling European Delegated Prosecutor. The operational cooperation may also involve third countries which have a cooperation agreement with Eurojust.

(98) The European Public Prosecutor's Office and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates, and avoiding duplication. In this regard, OLAF should in principle not open any administrative investigations parallel to an investigation conducted by the European Public Prosecutor's Office into the same facts. This should, however, be without prejudice to the power of OLAF to start an administrative investigation on its own initiative, in close consultation with the European Public Prosecutor's Office.

(99) In all actions in support of European Public Prosecutor's Office, OLAF will act independently from the Commission, in accordance with Regulation (EC, Euratom) No 883/2013.

(100) In cases where it is not conducting an investigation, the European Public Prosecutor's Office should be able to provide relevant information to OLAF, for it to consider appropriate action in accordance with its mandate. In particular, the EPPO could consider informing OLAF in cases where there are no reasonable grounds to believe that an offence within the competence of the Office is being or has been committed, but an administrative investigation by OLAF may be appropriate, or in cases where the European Public Prosecutor's Office dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery. When the European Public Prosecutor's Office provides information, it may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EC, Euratom) No 883/2013.

(101) The European Public Prosecutor's Office should enable the Union institutions, bodies, offices or agencies and other victims to take appropriate measures. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as civil party in the proceedings in accordance with national law. The exchange of information should take place in full respect of the independence of the European Public Prosecutor's Office, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations.

(102) In so far as necessary for the performance of its tasks, the European Public Prosecutor's Office should also be able to establish and maintain cooperative relations with the authorities of third countries and international organisations. For the purpose of this Regulation, international organisations means international organisations and their subordinate bodies governed by public international law or other bodies which are set up by, or on the basis of, an agreement between two or more countries as well as Interpol.

(102a) Where the College identifies an operational need for cooperation with a third country or an international organisation, it should be able to suggest to the Council that the latter draw the attention of the Commission to the need for an adequacy decision or for a recommendation for the opening of negotiations on an international agreement.

Pending the conclusion of new international agreements by the Union or the accession by the Union to international agreements already concluded by one or more Member States on legal assistance in criminal matters and extradition, the Member States should facilitate the exercise by the European Public Prosecutor's Office of its functions pursuant to the principle of sincere cooperation enshrined in Article 4(3) of the TEU. If permitted under the relevant international agreement and subject to the third country's acceptance, the Member States should recognise and, where applicable, notify the European Public Prosecutor's Office as a competent authority for the purpose of the implementation of those international agreements. This may entail, in certain cases an amendment to those agreements but the renegotiation of such agreements should not be regarded as a mandatory step, since it may not always be possible, in particular for bilateral agreements between Member States and third countries.

Indeed in the case of certain extradition agreements, where other authorities than national prosecutors could be competent authorities for the purposes of those agreements, the European Public Prosecutor's Office could not be notified as another competent authority. In that case, the European Public Prosecutor's Office, in the same way as a national prosecutor, should only trigger the extradition procedure provided for in national law with the competent national authority (such as a court or a ministry) which would then transmit requests to the competent authorities of third countries. Therefore, where the notification of the European Public Prosecutor's Office as a competent authority for the purposes of international agreements already concluded by one or more Member States with third countries is not possible or is not accepted by the third country and pending the Union accession to those international agreements, European Delegated Prosecutors who have to be national prosecutors may use this function toward third countries, provided that they are transparent on the fact that they will use the evidence collected from third countries on the basis of those international agreements, in investigations and prosecutions carried out by the European Public Prosecutor's Office. The Member States may also notify the European Public Prosecutor's Office as a competent authority for the purpose of the implementation of other international agreements on legal assistance in criminal matters concluded by them, including, by way of an amendment to those agreements. Where this mechanism is not possible, in particular where the third country opposes the subsequent use of evidence by the European Public Prosecutor's Office, the latter should be able to rely on reciprocity or international comity vis a vis the authorities of third countries. This should however be carried out on a case by case basis, within the limits of the European Public Prosecutor's Office material competence and subject to possible conditions set by the authorities of the third countries.

(102aa) The Commission should if appropriate, submit proposals in order to ensure effective judicial cooperation in criminal matters between the European Public Prosecutor's Office and Member States which are not bound by this Regulation. This should in particular concern the rules relating to legal assistance in criminal matters and surrender, fully respecting the Union acquis in this field.

(103) To guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union. The financial, budgetary and staff regime of the European Public Prosecutor's Office should follow the relevant Union standards applicable to bodies referred to in Article 208 of Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council, with due regard, however, to the fact that the competence of the European Public Prosecutor's Office to carry out criminal investigations and prosecutions at Union-level is unique.

(104) The costs of investigation measures of the European Public Prosecutor's Office should in principle be covered by the national authorities carrying them out. Exceptionally high costs for investigation measures such as complex experts' opinions, extensive police operations or surveillance activities over a long period of time could partly be reimbursed by the Office in accordance with this Regulation and the applicable financial rules.

(105) The College should in principle always delegate its powers conferred on the appointing authority by the Staff Regulations and by the Conditions of Employment of Other Servants to conclude Contracts of Employment, to the Administrative Director, unless specific circumstances call for it to exercise this power.

(106) The Administrative Director, as authorising officer, is responsible for the implementation of the budget of the EPPO. When consulting with the Permanent Chamber regarding exceptionally costly investigation measures, the Administrative Director is responsible for deciding on the amount of the grant to be awarded, based on the available financial resources and in accordance with the criteria set out in the internal rules of procedure.

(107) The remuneration of the European Delegated Prosecutors as special advisers, which will be set through a direct agreement, should be based on a specific decision to be taken by the College. This decision should inter alia ensure that the European Delegated Prosecutors, in the specific case that they also exercise functions as national prosecutors in accordance with Article 12(3), will in principle continue to be paid in their capacity as national prosecutors and that the remuneration as special adviser will only relate to the equivalent of the work on behalf of the European Public Prosecutor's Office in the capacity as a European Delegated Prosecutor. ~~Expenses related to their social security coverage should continue to be borne by the Member States exclusively.~~ Each Member State retains the power to determine in its legislation, in compliance with the European law, the conditions for granting benefits under social security scheme.

(108) The European Public Prosecutor's Office's proceedings should be transparent in accordance with Article 15(3) TFEU and specific provisions on how the right of public access to documents is ensured, would need to be adopted by the College. Nothing in this Regulation is intended to restrict the right of public access to documents in so far it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter and other relevant provisions.

(109) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office but only with regard to its administrative tasks so as not to jeopardise in any manner the requirement of confidentiality in its operational work. In the same manner, administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office. In view of ensuring the integrity of the investigations and prosecutions of the Office, documents relating to the operational activity should not be covered by the rules of transparency.

(110) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish [not] [to take part] in the adoption and application of this Regulation.

(111) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

[(112) The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003 have determined the seat of the European Public Prosecutor's Office.]
