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Subject:	Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office - Presidency draft text on Articles 20-26a in the Regulation

Articles 20-26a of the draft Regulation have been discussed and examined in detail in the COPEN working party since the Lithuanian Presidency in 2013. The Presidency considers that sufficient time has now been spent on the analysis of these Articles and the positions of delegations, and that the time has now come to seek agreement on a balanced compromise on the provisions in question. In Annex I, delegations will find the Presidency proposed compromise text, which has been tabled for discussion at the forthcoming JHA Counsellors meeting of 20 and 22 April 2015. Annex I indicates changes made to the Italian Presidency text from December 2014¹ in underline or ~~striketrough~~. Changes made to the Council document discussed in COPEN on 25-26 March 2015² are **highlighted**. In Annex II, delegations will find a clean version of the Presidency proposal. With a view to approaching agreement on the text, the Presidency invites delegations to lift reservations to the extent possible, in order to identify the 'real' substantial open issues.

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

² Doc 7070/15 EPPO 21 EUROJUST 63 CATS 39 FIN 198 COPEN 75 GAF 6.

CHAPTER IV

RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1

CONDUCT OF INVESTIGATIONS

Article 20

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union, and, ~~in accordance with applicable national law~~, the ~~competent~~ authorities of the Member States competent in accordance with applicable national law shall inform the European Public Prosecutor's Office of any conduct which might constitute a criminal offence within its competence in accordance with Article 17:
 - a) without delay where the European Public Prosecutor's Office would be entitled to exercise its rights of evocation in accordance with Article 21a;
 - b) not later than three months after becoming aware of facts of an offence other than mentioned in point a) where the damages caused or likely to be caused exceed EUR 1 000.
2. The information under paragraph 1 (b) may be submitted to the European Public Prosecutor's Office in the form of a summary report every three months.
3. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law may inform the European Public Prosecutor's Office of any other conduct not mentioned in paragraph 1.
4. Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office¹.

¹ The following recital may be considered: "The report shall include, as a minimum, a short description, including place and time, of the offence, available information about victims and perpetrators, and an assessment of the damages caused or likely to be caused. The report may be presented in the form of an automatically generated information from a Member State's criminal case management system."

5. Information provided to the European Public Prosecutor's Office in accordance with paragraph 1(a) shall be registered and verified by the European Public Prosecutor's 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.

6. Where, upon verification, the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in Case Management system. It shall inform the national authority, the Union institution, body, office or agency, and, where necessary, at their request, the person who provided the information, thereof.

7. The European Public Prosecutor's Office may request and receive any information that is relevant for the functions of the Office. The rules of registration and verification set out in this Article shall apply mutatis mutandis if the information received refers to any conduct which might constitute a criminal offence within its competence.

~~Where the conduct caused or is likely to cause damage to the Union's financial interest of less than EUR 10 000, and the national authorities do not have reasons to assume that the Office will exercise its right of evocation in accordance with Article 21a for the reason that the case has does not have repercussions at Union level which require an investigation to be conducted by the Office or has been opened following suspicions that an offence has been committed by officials and other servants of the European Union or members of the institutions, the information obligation may be fulfilled through a summary report [every threesix months] of conduct which might constitute such offences.² Where the conduct has caused or is likely to cause damage to the Union's financial interest which does not exceed EUR 1 000, the information obligation is not mandatory except if the case has repercussions at Union level which require an investigation to be conducted by the Office or if it has been opened following suspicions that an offence has been committed by officials or other servants of the European Union or members of the institutions.~~

² One delegation has requested that non-serious offences for which intent is presumed according to national law should not be covered by the information obligation.

~~The report shall include, as a minimum, a short description, including place and time, of the offence, available information about victims and perpetrators, and an assessment of the damages caused or likely to be caused. The report may be presented in the form of an automatically generated information from a Member State's criminal case management system³.~~

~~2.—The European Public Prosecutor's Office collects and may receive any necessary information 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 European Public Prosecutor's 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.~~

~~4.—Where, upon verification, the European Prosecutor's Office decides that there is no ground to initiate an investigation, the reasons shall be noted in the Case Management System. It shall inform the national authority, the Union institution, body, office or agency, and, where appropriate⁴, the persons who provided the information, thereof.~~

³ A Recital with the following wording or similar will be considered: "Member States should present the report in the form of automatically generated information from the national criminal case management system, but may use other means for reporting if they do not have such a system."

⁴ A few delegations would wish to delete "where appropriate", and a few others would prefer to introduce the words "at their request" as regards persons who provided information.

Article 21

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

1. Where, in accordance with this Regulation and the applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case, or in cases referred to in Article 9(3)(a) a Permanent Chamber, shall initiate an investigation and note this in the Case Management System⁵. ~~If more than one Member State has jurisdiction, the competence shall in principle be exercised by the European Prosecutor or a European Delegated Prosecutor in the Member State where the focus of the criminal activity is.~~
2. Taking into account the criteria set out in paragraph 3 of this Article, the competent Permanent Chamber:
 - shall allocate the case in accordance with Article 12(1), after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, if an investigation in respect of the same offence has already been initiated by the European Public Prosecutor's Office;
 - may allocate the case to a European Delegated Prosecutor in another Member State, which according to its law has jurisdiction in the case if an investigation in respect of the same offence had not already been initiated.

~~Upon receipt of such information of initiation of an investigation in accordance with paragraph 1 of this Article, the Central Office shall verify whether an investigation has not already been initiated by the European Public Prosecutor's Office. If an investigation in respect of the same offence had not already been initiated, the competent Permanent Chamber may, taking into account the criteria set out in paragraph 3, allocatessign the case to a European Delegated Prosecutor with origin in another Member State, which according to its law would havehas jurisdiction in the case.~~

⁵ It is the understanding of the Presidency that the notification in the Case Management System will cover the necessary information from the European Delegated Prosecutor to the Central Office.

If an investigation in respect of the same offence has already been initiated by the European Public Prosecutor's Office, the competent Permanent Chamber shall, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned and taking into account the criteria set out in paragraph 3 of this Article, allocate the case in accordance with Article 12(1).

3. A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competence of the Office have been committed, the Member State where the bulk of the offences has been committed. When allocating a case in accordance with paragraph 2 of this Article, the competent Permanent Chamber, after clarifying that the Member State has jurisdiction, may deviate from that principle on sufficiently justified grounds, taking into account in particular the following criteria, in order of priority:
 - (a) the place where the accused person has his/her habitual residence;
 - (b) the nationality of the accused person;
 - (c) the place where the direct victim has its seat.
4. In the course of an investigation and until a decision to prosecute in accordance with Article 27 is taken, the Permanent Chamber monitoring and directing a case concerning more than one Member State may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to reallocate a case to a 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 the choice of the ~~competent~~ handling European Delegated Prosecutor set out in paragraph 3 in this Article.

Article 21a

Right of evocation and transfer of proceedings to the European Public Prosecutor's Office

1. When a judicial authority or a law enforcement authority of a Member State exercises competence in respect of an offence where the European Public Prosecutor's Office could exercise its right of evocation in accordance with paragraph 3 of this Article referred to in Article 17 or 18, it shall without delay inform the European Public Prosecutor's Office so that the latter may decide whether to exercise its right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible but no later than [10] days after having received the information from the national authority, unless the European Chief Prosecutor in a specific case takes a reasoned decision to prolong the time frame of [10 days] with a maximum prolongation of [10 days]. During this timeperiod the national authority shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation. The competent national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution with regard to an offence within the competence of the European Public Prosecutor's Office. The Member States' judicial and law enforcement authorities are not required to inform the European Public Prosecutor's Office of cases where the damage caused or likely caused by the alleged offender does not exceed 10 000 Euros unless they have reasons to assume that the Office would exercise its right of evocation in accordance with paragraph 2 and 3 of this Article.
2. If the European Public Prosecutor's Office ~~is informed in accordance with paragraph 1 or~~ becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the judicial or law enforcement authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence within the time periods of the previous paragraph.

- 2a. The European Public Prosecutor's Office shall, where appropriate, consult with ~~these~~ judicial or law enforcement authorities of the Member State concerned before ~~and shall thereafter~~ deciding⁶ whether to ~~open its own investigation by exercising~~ its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation~~competence~~, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor's Office in accordance with Article 23.
3. Where a criminal offence caused 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 right of evocation~~competence~~, unless
- (a) a case has repercussions at Union level⁷ 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 Institutions⁸.
- The Office ~~may shall, where appropriate~~, consult relevant national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are fulfilled.

⁶ 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.

⁷ Some delegations request that a definition of this concept shall be introduced.

⁸ A few delegations have questioned whether these cases always need to be handled by the Office. Many delegations would like to see a definition or explanation of the concept of "repercussions at Union level" included in the text.

4. Where the Office, ~~after having been duly informed by the national authorities in accordance with paragraph 1 in this Article,~~ has refrained from exercising its right of evocation, the competent judicial or law enforcement authority shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision. The European Public Prosecutor's Office may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised. The decision shall be taken within the time frame set out in paragraph 1 of this Article.
5. In case of an ancillary competence in accordance with Article 18, the European Public Prosecutor's Office ~~can~~ may exercise its right of evocation in accordance with the conditions set out in that Article.
6. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose judicial or law enforcement authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18. Article 21(2), (3) and (4) shall ~~will~~ apply when the right of evocation is exercised. When taking a decision to allocate the case to a European Delegated Prosecutor from another Member State, the Permanent Chamber shall take due account of the current state of the investigations. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 and 4 of this Article considers not to exercise the right of evocation, he/she shall inform the ~~competent~~ European Prosecutor of his/her Member State with a view to enable the Permanent Chamber to exercise its right in accordance with Article 9(3)(b).

Article 22

Urgent measures

~~The competent national authorities shall 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. If the European Public Prosecutor's Office decides to initiate the investigation or to exercise the right of evocation, it shall confirm, if possible within [48 hours] from the initiation of the investigations, the measures taken by the national authorities, even if such measures have been undertaken and executed under rules other than those of this Regulation.~~

Article 23
Conducting the investigation⁹

1. The handling European Delegated Prosecutor ~~handling the case in accordance with Article 12(1)~~ may, in accordance with national law, either undertake the **investigation and other** 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~~ handling European Delegated Prosecutor, are followed and undertake the ~~investigation~~ measures allocated/signed to them. The handling European Delegated Prosecutor shall ~~regularly~~ report through the competent European Prosecutor to the Permanent Chamber on ~~significant~~ developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure.
2. In cross-border cases, where ~~investigation~~ measures need to be executed in another Member State, the handling European Delegated Prosecutor ~~handling the case in accordance with Article 21~~ shall act in cooperation with the European Delegated Prosecutor where the ~~investigation~~ measure needs to be carried out in accordance with Article 26a.
3. At any time during ~~the~~ investigations **conducted by the European Public Prosecutor's Office,** the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling ~~competent~~ European Delegated Prosecutor. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.
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 case concerning more than one Member State may, after having consulted the European Prosecutor and the European Delegated Prosecutor concerned, decide to reallocate a case to a European Delegated Prosecutor in another Member States, if such reallocation is in the interest of the efficiency of investigations and in accordance with the criteria for jurisdiction set out in Article 21(3).~~

⁹ ~~A general rule on the responsibility of the EDP's as regards the conduct of investigations can be found in Art 12(1). Some delegations have requested that 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.~~

4a. Should the European Delegated Prosecutor fail to follow the instructions of the Permanent Chamber or the European Prosecutor, the European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State.

5. The competent European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take the decision to conduct the investigation himself/herself, if this appears necessary in the interest of the efficiency of the investigation or prosecution on the grounds of one or more of the following criteria¹⁰:

- a) the seriousness of the offence, in particular in view of its possible repercussions on Union level;
- b) when the investigation concerns Members of the institutions of the European Union;
- c) when the handling ~~competent~~ European Delegated Prosecutor in the Member State cannot perform the investigation or prosecution.

When a European Prosecutor ~~decides to conduct~~ conducts the investigation himself/herself, he/she ~~will~~ shall have all the powers of a European Delegated Prosecutor in accordance with this Regulation and national law.

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

6. 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 Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.

¹⁰ ~~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 and asked for better clarity. The Presidency considers that the whole provision will be developed further in detail, in particular as regards applicable national law and judicial review.~~

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 Prosecutor¹¹ 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 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 Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

SECTION 2

INVESTIGATION AND OTHER MEASURES

Article 25

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

1. The European Delegated Prosecutor handling the case shall be entitled to order **or request** the same types of ~~investigative~~ measures in his/her Member State which are available to investigators/prosecutors according to national law in similar national cases. In addition to the conditions set out in national law, such measures may only be ordered where there are reasonable grounds to believe that the specific ~~investigation~~ measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective.

¹¹ A number of delegations have suggested that this request should rather be made by European Delegated Prosecutors.

2. ~~Before ordering any investigation measure referred to in Article 26, the European Delegated Prosecutor handling the case shall request the authorisation of the competent national court.~~

3. ~~Where the European Delegated Prosecutor handling the case, 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.~~

Article 26

Investigation and other measures¹²

Member States shall ensure, at least in cases where the offence subject to the investigation would cause or is likely to cause damages of 100,000 EUR or more, ~~Member States shall ensure that the~~ following ~~investigative~~ measures are also available under their laws to the European Public Prosecutor's Office:

- a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
- 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) freeze instrumentalities or proceeds of crime, including freezing of assets, which 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;~~
- d) 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 or accused person;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using.

¹² There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations. A recital similar to recital 10 in the EIO Directive will give an explanation of the term "available" in the first paragraph.

Cross-border investigations

1. 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 handling European Delegated Prosecutor ~~handling the case~~, the latter (~~“handling European Delegated Prosecutor”~~) shall assign the measure to ~~notify~~ the European Delegated Prosecutor located in the Member State where that ~~investigation~~ measure needs to be carried out.
2. The handling European Delegated Prosecutor may assign ~~notify~~ 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~~ and judicial authorisation of such measures shall be governed by the law of the Member States where the adoption, justification and/or judicial authorisation takes place. ~~of the handling European Delegated Prosecutor~~. The enforcement of such measures, including 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 handling 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 handling European Delegated Prosecutor.~~
4. The assignment ~~notification~~ shall set out, in particular, a description of the ~~investigative~~ measures(s) needed, ~~including the evidence to be obtained~~, and where necessary any specific formalities that have to be complied with, the evidence to be obtained, ~~a the~~ description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The assignment ~~request~~ may call for the measure to be undertaken within a given time.

¹³ There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations.

5. ~~Where the law of the Member State of the assisting European Delegated Prosecutor requires judicial authorisation for a particular investigative measure, the said European Delegated Prosecutor shall seek obtain such authorisation, unless it can be established, through prior consultation between the European Delegated Prosecutors involved, that such authorisation was already obtained in the Member State of the handling European Delegated Prosecutor. The authorisation may only be refused if the measures are contrary to fundamental principles of law of the assisting State. Judicial authorisation for a particular measure, when required under national law, shall in principle be obtained by the assisting European Delegated Prosecutor. However, where the law of the Member State of the handling European Delegated Prosecutor requires judicial authorisation for a particular measure, the authorisation shall be obtained by the handling European Delegated Prosecutor in cases where the law of the Member State of the assisting European Delegated Prosecutor does not require such judicial authorisation.~~¹⁴
6. The assisting European Delegated Prosecutor shall undertake the assigned ~~notified~~ measure, or another ~~investigative~~ measure that would achieve the same result, or ask the competent national authority to do so.
7. Where the assisting European Delegated Prosecutor considers that:
- a) the assignment ~~notification~~ is incomplete or contains a manifest relevant error,
 - b) the measure cannot be undertaken within the time limit set out in the assignment notification ~~notification~~ for justified and objective reasons,
 - c) a less intrusive measure would achieve the same results as the measure assigned ~~requested~~, or
 - d) the ~~notified~~ assigned 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 handling European Delegated Prosecutor in order to resolve the matter bilaterally. This consultation shall take no longer than 5 working days.

¹⁴ The following recital maybe considered: "In principle judicial authorisation should be ensured in all the cases if the law of the handling or assisting Member States provides for such authorisation. In order to ensure efficient investigation, the authorisation of the assisting Member State should be given a priority. Authorisation of the handling Member State should only be sought, if the law of the assisting Member State does not require the authorisation, but the law of the handling Member State does."

8. If the European Delegated Prosecutors cannot resolve the matter and the assignment~~request~~ is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the ~~notified~~assigned measure is not undertaken within the time limit set out in the assignment~~notification~~ or within a reasonable time.
9. The competent Permanent Chamber shall decide without undue delay whether and by when the measure needed, 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 or accused person in accordance with national law.
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.

CHAPTER IV
RULES OF PROCEDURE ON INVESTIGATIONS,
PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1
CONDUCT OF INVESTIGATIONS

Article 20

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law shall inform the European Public Prosecutor's Office of any conduct which might constitute a criminal offence within its competence in accordance with Article 17:
 - a) without delay where the European Public Prosecutor's Office would be entitled to exercise its rights of evocation in accordance with Article 21a;
 - b) not later than three months after becoming aware of facts of an offence other than mentioned in point a) where the damages caused or likely to be caused exceed EUR 1 000.
2. The information under paragraph 1 (b) may be submitted to the European Public Prosecutor's Office in the form of a summary report every three months.
3. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law may inform the European Public Prosecutor's Office of any other conduct not mentioned in paragraph 1.
4. Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office ¹.

¹ The following recital may be considered: "The report shall include, as a minimum, a short description, including place and time, of the offence, available information about victims and perpetrators, and an assessment of the damages caused or likely to be caused. The report may be presented in the form of an automatically generated information from a Member State's criminal case management system."

5. Information provided to the European Public Prosecutor's Office in accordance with paragraph 1(a) shall be registered and verified by the European Public Prosecutor's 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.
6. Where, upon verification, the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in Case Management system. It shall inform the national authority, the Union institution, body, office or agency, and, where necessary, at their request, the person who provided the information, thereof.
7. The European Public Prosecutor's Office may request and receive any information that is relevant for the functions of the Office. The rules of registration and verification set out in this Article shall apply *mutatis mutandis* if the information received refers to any conduct which might constitute a criminal offence within its competence.

Article 21

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

1. Where, in accordance with this Regulation and the applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case, or in cases referred to in Article 9(3)(a) a Permanent Chamber, shall initiate an investigation and note this in the Case Management System².

² It is the understanding of the Presidency that the notification in the Case Management System will cover the necessary information from the European Delegated Prosecutor to the Central Office.

2. Taking into account the criteria set out in paragraph 3 of this Article, the competent Permanent Chamber:
 - shall allocate the case in accordance with Article 12(1), after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, if an investigation in respect of the same offence has already been initiated by the European Public Prosecutor's Office;
 - may allocate the case to a European Delegated Prosecutor in another Member State, which according to its law has jurisdiction in the case if an investigation in respect of the same offence had not already been initiated.
3. A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competence of the Office have been committed, the Member State where the bulk of the offences has been committed. When allocating a case in accordance with paragraph 2 of this Article, the competent Permanent Chamber, after clarifying that the Member State has jurisdiction, may deviate from that principle on sufficiently justified grounds, taking into account in particular the following criteria, in order of priority:
 - c) the place where the accused person has his/her habitual residence;
 - d) the nationality of the accused person;
 - e) the place where the direct victim has its seat.
4. In the course of an investigation and until a decision to prosecute in accordance with Article 27 is taken, the Permanent Chamber monitoring and directing a case concerning more than one Member State may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to reallocate a case to a 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 the choice of the handling European Delegated Prosecutor set out in paragraph 3 in this Article.

Article 21a

Right of evocation and transfer of proceedings to the European Public Prosecutor's Office

1. When a judicial authority or a law enforcement authority of a Member State exercises competence in respect of an offence where the European Public Prosecutor's Office could exercise its right of evocation in accordance with paragraph 3 of this Article, it shall without delay inform the European Public Prosecutor's Office so that the latter may decide whether to exercise its right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible but no later than 10 days after having received the information from the national authority, unless the European Chief Prosecutor in a specific case takes a reasoned decision to prolong the time frame of 10 days with a maximum prolongation of 10 days. During this timeperiod the national authority shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation. The competent national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution with regard to an offence within the competence of the European Public Prosecutor's Office.

2. If the European Public Prosecutor's Office becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the judicial or law enforcement authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence within the time periods of the previous paragraph.

- 2a. The European Public Prosecutor's Office shall, where appropriate, consult with judicial or law enforcement authorities of the Member State concerned before deciding³ whether to exercise its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor's Office in accordance with Article 23.
3. Where a criminal offence caused 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 right of evocation, unless
- a) a case has repercussions at Union level⁴ 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 Institutions⁵.

The Office shall, where appropriate, consult relevant national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are fulfilled.

³ 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.

⁴ Some delegations request that a definition of this concept shall be introduced.

⁵ A few delegations have questioned whether these cases always need to be handled by the Office. Many delegations would like to see a definition or explanation of the concept of "repercussions at Union level" included in the text.

4. Where the Office, has refrained from exercising its right of evocation, the competent judicial or law enforcement authority shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision. The European Public Prosecutor's Office may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised. The decision shall be taken within the time frame set out in paragraph 1 of this Article.
5. In case of an ancillary competence in accordance with Article 18, the European Public Prosecutor's Office may exercise its right of evocation in accordance with the conditions set out in that Article.
6. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose judicial or law enforcement authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18. Article 21(2), (3) and (4) shall apply when the right of evocation is exercised. When taking a decision to allocate the case to a European Delegated Prosecutor from another Member State, the Permanent Chamber shall take due account of the current state of the investigations. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 and 4 of this Article considers not to exercise the right of evocation, he/she shall inform the-European Prosecutor of his/her Member State with a view to enable the Permanent Chamber to exercise its right in accordance with Article 9(3)(b).

Article 23
Conducting the investigation

1. The handling European Delegated Prosecutor may, in accordance with national law, either undertake the investigation and other 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 handling European Delegated Prosecutor, are followed and undertake the measures allocated to them. The handling European Delegated Prosecutor shall report through the competent European Prosecutor to the Permanent Chamber on developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure.

2. In cross-border cases, where measures need to be executed in another Member State, the handling European Delegated Prosecutor shall act in cooperation with the European Delegated Prosecutor where the measure needs to be carried out in accordance with Article 26a.
3. At any time during investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.
- 4a. Should the European Delegated Prosecutor fail to follow the instructions of the Permanent Chamber or the European Prosecutor, the European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State.
5. The competent European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take the decision to conduct the investigation himself/herself, if this appears necessary in the interest of the efficiency of the investigation or prosecution on the grounds of one or more of the following criteria:
 - a) the seriousness of the offence, in particular in view of its possible repercussions on Union level;
 - b) when the investigation concerns Members of the institutions of the European Union;
 - c) when the handling European Delegated Prosecutor in the Member State cannot perform the investigation or prosecution.

When a European Prosecutor conducts the investigation himself/herself, he/she shall have all the powers of a European Delegated Prosecutor in accordance with this Regulation and national law.

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

6. 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. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.

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 Prosecutor⁶ 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 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 Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

⁶ A number of delegations have suggested that this request should rather be made by European Delegated Prosecutors.

SECTION 2
INVESTIGATION AND OTHER MEASURES

Article 25

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

1. The European Delegated Prosecutor handling the case shall be entitled to order or request the same types of measures in his/her Member State which are available to investigators/prosecutors according to national law in similar national cases. In addition to the conditions set out in national law, such measures may only be ordered where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective.
2. Before ordering any investigation measure referred to in Article 26, the European Delegated Prosecutor handling the case shall request the authorisation of the competent national court.

Article 26

Investigation and other measures⁷

Member States shall ensure, at least in cases where the offence subject to the investigation would cause or is likely to cause damages of 100,000 EUR or more, that the following measures are also available under their laws to the European Public Prosecutor's Office:

- a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

⁷ There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations. A recital similar to recital 10 in the EIO Directive will give an explanation of the term "available" in the first paragraph.

- 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) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court;
- d) 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 or accused person;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using.

*Article 26a*⁸

Cross-border investigations

1. The European Delegated Prosecutors shall assist each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter shall assign the measure to the European Delegated Prosecutor located in the Member State where that measure needs to be carried out.
2. The handling European Delegated Prosecutor may assign any 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, justification and judicial authorisation of such measures shall be governed by the law of the Member States where the adoption, justification and/or judicial authorisation takes place. The enforcement of such measures, including conditions, modalities and procedures for taking such measures, shall be governed by the law of the Member State of the assisting European Delegated Prosecutor.

⁸ There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations.

4. The assignment shall set out, in particular, a description of the measures(s) needed, and where necessary any specific formalities that have to be complied with, the evidence to be obtained, a the description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The assignment may call for the measure to be undertaken within a given time.
5. Judicial authorisation for a particular measure, when required under national law, shall in principle be obtained by the assisting European Delegated Prosecutor. However, where the law of the Member State of the handling European Delegated Prosecutor requires judicial authorisation for a particular measure, the authorisation shall be obtained by the handling European Delegated Prosecutor in cases where the law of the Member State of the assisting European Delegated Prosecutor does not require such judicial authorisation.⁹
6. The assisting European Delegated Prosecutor shall undertake the assigned measure, or another measure that would achieve the same result, or ask the competent national authority to do so.
7. Where the assisting European Delegated Prosecutor considers that:
 - a) the assignment is incomplete or contains a manifest relevant error,
 - b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons,
 - c) a less intrusive measure would achieve the same results as the measure assigned, or
 - d) the assigned 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 handling European Delegated Prosecutor in order to resolve the matter bilaterally. This consultation shall take no longer than 5 working days.

⁹ The following recital maybe considered: "In principle judicial authorisation should be ensured in all the cases if the law of the handling or assisting Member States provides for such authorisation. In order to ensure efficient investigation, the authorisation of the assisting Member State should be given a priority. Authorisation of the handling Member State should only be sought, if the law of the assisting Member State does not require the authorisation, but the law of the handling Member State does."

8. If the European Delegated Prosecutors cannot resolve the matter and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
9. The competent Permanent Chamber shall decide without undue delay whether and by when the measure needed, 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 or accused person in accordance with national law.
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.