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MEETING DOCUMENT

From: Presidency

To: Delegations

Subject: Proposal for a Council Regulation on the establishment of the European
Public Prosecutor's Office
- Presidency proposal for Articles 20, 26 and 26a

Following the meeting of JHA Counsellors of 20 April 2015, delegates will find in Annex a revised drafting proposal from the Presidency on Articles 20, 26 and 26a.

*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 shall inform the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence¹. Where the conduct caused or is likely to cause damage to the Union's financial interest of less than EUR 10 000, and 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 three months of conduct which might constitute such offences.
2. Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office. The report shall include, as a minimum and to the extent available, a short description, including place and time, of the conduct, 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.
3. Information provided to 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 to assess whether the information on its face shows that the conditions set in Article 17 and, where applicable, Article 18 as grounds for the competence of the European Public Prosecutor's Office had been met².

¹ This information obligation is of a general nature, i.e. it may often refer to situations where an investigation has not (yet) been initiated.

² CZ would add an explicit rule obliging EPPO to inform national authorities about offences that would not fall under its competence.

4. 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, crime victims and other persons who provided the information, thereof.
5. The European Public Prosecutor's Office may request and receive any information that is relevant for the functions of the Office ³.

Article 26

Investigation and other measures ⁴

Member States shall, in addition to the measures indicated in Article 25, ensure, [OPTION 1: *at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment* / OPTION 2: *in accordance with the conditions foreseen in national law for the application of these measures*], 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;
- 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;

³ A recital explaining that 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 will be considered.

⁴ 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. Some delegations have noted that it may be necessary to include an explicit reference to the conditions and safeguards mentioned in Article 25 here. A recital similar to recital 10 in the EIO Directive will give an explanation of the term "available" in the first paragraph.

- 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*⁵

Cross-border investigations

1. The European Delegated Prosecutors shall assist and regularly consult each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter shall assign the measure to a European Delegated Prosecutor⁶ located in the Member State where that measure needs to be carried out.
2. The European Delegated Prosecutor handling the case 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 and justification of such measures shall be governed by the law of the Member States of the European Delegated Prosecutor handling the case. 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. 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, where available and relevant for the handling of the case, the evidence to be obtained, 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 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.

⁶ A separate provision ensuring clarity as regards the right European Delegated Prosecutor to contact will be added to the Regulation.

4. 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 European Delegated Prosecutor handling the case requires judicial authorisation for a particular measure, the authorisation shall be obtained by the European Delegated Prosecutor handling the case in cases where the law of the Member State of the assisting European Delegated Prosecutor does not require such judicial authorisation.⁷

If judicial authorisation for the assigned measure is refused, the European Delegated Prosecutor handling the case shall withdraw the assignment.

5. The assisting European Delegated Prosecutor shall undertake the assigned notified measure, or instruct the competent national authority to do so. The assisting European Delegated Prosecutor shall thereby comply with the formalities and procedures expressly indicated by the European Delegated Prosecutor handling the case, provided that such formalities and procedures are not contrary to fundamental principles of law.
6. 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) an alternative 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 European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.

⁷ The following recital may be considered: "The purpose of the rules on judicial authorisation of measures in cross-border cases should ensure that the duplication of the procedure of judicial authorisation can be avoided. 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 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".

In principle, the remedies against decisions regarding such judicial authorisation shall be governed by the law of the Member State in which the decision is taken. The place in the Regulation of the provision saying this remains to be determined.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days 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.
 8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then 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.
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