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

Following the Friends of Presidency/COPEN meeting of 14-15 April 2015, and the meetings of JHA Counsellors on 20 and 22 April 2015, the Presidency has established a new consolidated version of the first 29 Articles of the draft Regulation (see Annex). The consolidated version should give a detailed overview of the current state of play and serve as a basis for further discussions on the text. In the revised versions of this document, established after COPEN of 5-6 May and the JHA Counsellors meeting of 18 May, changes are indicated in underlined and ~~strikethrough.~~

Draft

COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1
Subject matter

This Regulation establishes the European Public Prosecutor's Office and sets out rules concerning its functioning.

Article 2
Definitions[1]

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

a) 'person' means any natural or legal person~~[2]~~;

b) 'financial interests of the Union' means all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budgets of institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them~~[3]~~;

c) 'administrative personal data' means all personal data processed by the European Public Prosecutor's Office except for operational personal data;

d) 'operational personal data' means all [case-related] personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article [37];

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[1] This Article will be finalised only when the full text of the Regulation is known. The definitions will also need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive. ~~The provision in b) will be reformulated in order to be consistent with the final wording of Article 17.~~ The issue of uniformity with EU law needs to be examined further. To be aligned with the final definition of the financial interests of the Union in the PIF Directive. IE has noted that this point appears unnecessary.

~~[2] AT proposes to delete a) as it is used in the text only once.~~

~~[3] To be aligned with the final definition of the financial interests of the Union in the PIF Directive. IE has noted that this point appears unnecessary.~~

e) 'staff of the European Public Prosecutor's Office' means personnel which supports the College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors and the European Delegated Prosecutors in the day-to-day activities in the executions of the tasks of this Office under this Regulation, including with regard to the supervision of cases handled by the European Delegated Prosecutor and the preparation of the decisions to be taken in accordance with Article 9(3). ~~Staff within the meaning of this Regulation shall not have the powers to carry out acts of investigation themselves but may participate in investigations conducted by, or provide assistance to, the national authorities when acting at the request of the European Public Prosecutor's office;~~[4]

f) 'European Delegated Prosecutor handling the case' means the European Delegated Prosecutor responsible for the investigations and prosecutions, which he/she has initiated, which has been allocated to him/her or which he/she has taken over using the right of evocation;

g) 'assisting European Delegated Prosecutor' means the European Delegated Prosecutor located in the Member State, other than the Member State of the European Delegated Prosecutor handling the case, where an investigation or other measure assigned to him/her shall be carried out.

CHAPTER II

Establishment, tasks and basic principles of the European Public Prosecutor's Office

Article 3

Establishment

1. The European Public Prosecutor's Office is established as a body of the Union.
2. The European Public Prosecutor's Office shall have legal personality.
3. The European Public Prosecutor's Office shall cooperate with Eurojust and rely on its support in accordance with Article [57][5].

[4] ~~CY, CZ, DE suggests to deleted this point.~~

[5] ~~IE has questioned whether this provision is in line with Article 86 TFEU.~~

Article 4

Tasks

1. The task of the European Public Prosecutor's Office shall be to combat[6] criminal offences affecting the financial interests of the Union, which are provided for in Directive 2015/xx/EU [7].
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in the criminal offences referred to in paragraph 1. In that respect the European Public Prosecutor's Office shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States in respect of the offences referred to in paragraph 1, until the case has been finally disposed of [8].

Article 5

Basic principles of the activities [9]

1. The European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.
2. The European Public Prosecutor's Office shall be bound by the principles of rule of law, legality and proportionality in all its activities [10].

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6 AT, ES~~A few Member State~~ would replace this term, for example with '*prosecute'*.

7 CZ, IE has suggested that this reference should be to Article 17 and that the second paragraph should be slightly adjusted. DE and NL have a reservation on Article 4, noting~~ed~~ the need to ensure coherence with Article~~s 5(4) and~~ 17. ~~PRES notes that the former Article 5(4) has been deleted.~~

8 The following recital should be considered: *'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, including all existing types extra-ordinary appeals and challenges according to national law.' ~~Some~~* ~~delegations has suggested that this provision should be modified in order to clarify what functions the Office will have after the Court proceedings, in particular as regards the execution of a judgment. A recital highlighting the necessity for each Member State to foresee the function of a prosecutor with the tasks described in this Regulation shall be elaborated.~~

9 ~~CZ would suggest to insert new para 7~~6a in Art. 5, which could read as follows: "*~~The EPPO shall inform the competent national authorities of any suspicions that criminal offence outside of the scope of its competence might have been committed~~*". An accompanying recital along the following lines could be considered/added: *' In the light of the sincere cooperation, both EPPO and competent national authorities should inform each other with the aim to efficiently combat the crime. Even in cases which fall outside the scope of EPPO competence, EPPO should inform the competent national authorities of any facts, which were brought to its attention or which were gained autonomously, and which might constitute a criminal offence, for example a false testimony. Such cases could include various facts, which should not escape the attention of the competent national authorities in order to ensure efficient fight against the crime.'* ~~DE has suggested a new paragraph 8 on avoiding financial short falls in administrative proceedings which are held back in favour of the criminal investigations.~~

3. The investigations and prosecutions on behalf of the European Public Prosecutor's Office shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case~~responsible for the investigations and prosecutions~~ in accordance with Article 12(1)[11]. Where a matter is governed by national law and this Regulation, the latter shall prevail.

4. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence[12], whether inculpatory or exculpatory.

5. The European Public Prosecutor's Office shall open and conduct investigations without undue delay.

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[10] BE, DE and FR would prefer the deletion of the principle of legality. Alternatively, BE could accept it provided that it is specified that it refers to '*the principle of legality of criminal offences and penalties'*. This can be specified either in the text, either in a recital. COM has suggested a recital clarifying that the principle of legality in this Regulation would not hamper the application of the principle of opportunity according to national law.~~IE would prefer to see the principle of legality referred to in a recital.~~

[11] IE has noted that this phrase will have to be revisited in the light of developments of Articles 12(1) and 26a.

[12] SI wishes that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO. CY, IE and MT have argued that it should be made clear in the recitals that the European Delegated Prosecutors should be able to give instructions to the police force to carry out the investigations according to the national legal system.

6. The competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office. Any action, policy or procedure under this Regulation shall be guided by the principle of loyal cooperation. ~~at its request and shall refrain from any action, policy or procedure which may unduly hamper or delay their progress~~ [13].

[13] ~~ES, SE, FR, NL would like delete the part of the phrase starting with '*shall refrain*..', in order to clarify that national authorities may not always be in a position to give priority to PIF-cases. The Presidency would suggest that these concerns should be addressed in a recital.~~DE has suggested an additional provision on avoiding financial short falls in administrative proceedings which are held back in favour of criminal investigations of the European Public Prosecutor's Office that could read as follows: *'To the extent that recovery or collection procedures under administrative law are deferred as a result of decisions taken by the European Public Prosecutor's Office or by national prosecution authorities in connection with investigations or prosecutions to protect the financial interests of the European Union, any financial shortfalls that may occur shall not be borne by the national budget of the respective Member State.*' DE has suggested to add this as a new paragraph to Article 5 or as a new paragraph to Article 21, but is open to discuss further where this issue is to be placed best in the Regulation. Although there was provisional support for the proposal in principle, especially by EE, FI, LT, NL, RO, SK, SI, ES, HU and CZ, a majority of the Member States questioned its relevance to Article 5 or 21. COM has suggested to treat this issue under Chapter IX and Article 69 (General regime of liability).

Article 6

Independence and accountability

1. The European Public Prosecutor's Office shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors as well as the staff of the European Public Prosecutor´s Office shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the office, any Member State or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States and the Union institutions, bodies, offices or agencies shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks[14].
2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for its general activities, and shall issue annual reports in accordance with Article 6a.

[14] ~~SE, with support of COM, suggests that a recital should highlight the rather special position of the European Delegated Prosecutor, for example with the following wording: '*The European Delegated Prosecutors shall be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the Office competence, they shall act exclusively on behalf and in the name of that Office on the territory of their host Member State. This shall entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law, including national prosecutors.*' A number of delegations have questioned the text or the placement of this recital.~~ CZ has argued that it will be necessary to extend the principles and obligations that will be imposed on the EPPO actors in their exercise of its activities, possibly in the internal Rules of Procedure.

Article 6a ~~15~~

Reporting

1. Every year the European Public Prosecutor's Office shall draw up and issue a public Annual Report[16] in the official languages of the Union institutions on its general activities. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and the Council, and before national parliaments at their request, to give account of the general activities of the European Public Prosecutor's Office, without prejudice to the Office's obligation of discretion and confidentiality as regards individual cases and personal data. The European Chief Prosecutor may be replaced by one of the Deputies for hearings organised by national parliaments.
3. ~~The European Chief Prosecutor shall also appear before national parliaments at their invitation to participate in an exchange of views in relation to the general activities of the EPPO. Taking into account his global workload, the European Chief Prosecutor may ask one of his deputies to substitute him.~~

~~15~~ ~~A few delegations are of the opinion that paragraphs 2 and 3 of this provision need clarification. In particular, a few delegations have requested that the notion of "*general activities*" should be clarified. To that effect, a recital may be added in which it will be clarified that the report should as a minimum contain all relevant statistical data on the work of the Office.~~

16 A recital further clarifying the content of the Annual Report should be considered: '*The report of the European Public Prosecutor's office should be prepared annually, and as a minimum it should contain all relevant statistical data on the work of the Office'.*

CHAPTER III
STATUS, STRUCTURE AND ORGANISATION OF EPPO

SECTION 1

STATUS AND STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 7

Structure of the European Public Prosecutor's Office

1. The European Public Prosecutor's Office shall be an indivisible Union body operating as one single Office with a decentralised structure.

2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.

3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, his/her deputies and the European Prosecutors.

4. The decentralised level shall consist of European Delegated Prosecutors located in the Member States.

5. The Central Office and the European Delegated Prosecutors shall be assisted [17] by the staff of the European Public Prosecutor's Office in their duties under this Regulation.

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[17] ~~A recital to explain the role of the staff will be added, with the following tentative wording: *'The staff of the central office shall assist European Chief Prosecutor, the College and Permanent Chambers to discharge their duties under this Regulation, in particular with regard to the supervision of cases handled by European Delegated Prosecutors and the preparation of the decisions to be taken in accordance with Article 9 (3). The staff of the central office shall not have the powers to carry out acts of investigations themselves but may participate in investigations conducted by, or provide assistance to, the national authorities when acting on behalf of the European Public Prosecutor's Office*'.~~

Article 8

The College

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and be responsible for their preparation.

2. The College shall meet regularly and be responsible for the general oversight[18] of the activities of the Office. It shall take decisions on strategic matters, and on general issues arising from individual cases[19], in particular with a~~in~~ view to~~of~~ ensuring coherence, efficiency and consistency[~~20~~] in the prosecution policy of the Office throughout the Union, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The Internal rules of procedure shall provide for the modalities of the general oversight of activities and decisions on strategic matters and general issues by the college in accordance with this Article.

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[18] In this document, the terms *'general oversight'*, *'monitoring and directing*' and '*supervision*' are used to describe different control activities. These terms will need more detailed explanations in the ~~text and/or~~ recitals, in line with the following:

✓ The *'general oversight'* refers to the general administration of the activities of the Office, in which instructions are only given on issues which will have a horizontal importance for the Office;

✓ *'monitoring and directing'* refers to certain clear powers to monitor and direct individual investigations and prosecutions when such directions appear to be necessary.

✓ '*supervision*' refers to a closer and rather continuous oversight of investigations and prosecutions, including full powers to, whenever necessary, intervene and give instruction on investigations and prosecution matters.

AT and BE oppose the inclusion of the tentative definition of the terms. NL, PT, SI have noted that this tentative definition of supervision may not be acceptable, as it would imply an infringement of the principle of autonomy of their national prosecutors, as laid down in their national law and constitutions.~~, a of supervision s it does not properly reflect the hierarchical structure of the Office. Consequently, according to BE, the permanent chambers should be in charge of the supervision of the work of the Office in the Member States.~~

[19] A recital with the following wording could be considered: *'The College should take decisions on strategic matters, including as regards determining the priorities and policy of the Office, as well as on general issues arising from individual cases, for example as regards to the application of the Regulation, the correct implementation of the policy of the Office or questions of principle or of significant importance for the development of a coherent prosecution policy of the Office'*. CZ and IE, opposed by DE, wish to add the following phrase to the said proposed new recital '*The decision of the College cannot affect the principle of legality as it is applied in the criminal proceedings of Member States'*. Alternatively, CZ would like to see the following text of the recital: '*Decisions of the College on general issues should be of a policy nature and should not affect operational handling of cases, including the duty to investigate and prosecute according to this Regulation and national law'.*

[~~20~~] ~~SE would add the notion of *'efficiency*' here.~~

3. On a proposal by the European Chief Prosecutor and in accordance with the Internal Rules of Procedure, the College shall set up Permanent Chambers.

4. The College shall adopt Internal Rules of Procedure of the European Public Prosecutor's Office in accordance with Article 16, and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the European Public Prosecutor's Office.

5. Unless stated otherwise in this Regulation, the College shall take decisions by simple majority. Any member of the College shall have the right to initiate voting on matters to be decided by the College. Each Member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College[21].

Article 9

The Permanent Chambers[22]

1. The Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, or a European Prosecutor appointed as Chair in accordance with the Internal Rules of Procedure[23]. The Permanent Chamber shall have two additional permanent[24] Members. The number of Permanent Chambers as well as the division of competences between the Chambers shall take due account to the functional needs of the Office and be determined in accordance with the Internal Rules of Procedure.

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21 A recital indicating that the College ~~and the Permanent Chambers~~ should in principle strive towards consensual decision-making will be considered, for example as follows: *'The College ~~and Permanent Chambers~~ should use their best efforts to reach consensus. If such a consensus cannot be reached, decisions should be taken by voting.*' CY, FI, LT and SE would like this recital to be in the body of the text.

22 SE, supported by CY, CZ, FI, HR, HU, IE, MT, NL and SI, maintains its general opinion that a system where the EDP's are responsible for taking the bulk of the operative decisions would contribute significantly the effectiveness of the EPPO. The EDP's should to the furthest extent possible take the necessary decisions in the cases they are handling. SE still believes that the Regulation should move in that direction. This could be achieved in a number of different ways, preferably by shortening the list of decisions that the Chambers should make in Article 9. Other options, such as enhanced possibilities for the Permanent Chambers to delegate their powers to the EDP's and/or introduce extensive possibilities to use written or silent procedures, could be considered.

23 The inclusion of the recital should be considered that during administrative establishment of the EPPO, or if necessary at the later stage, a European Prosecutor should in principle be appointed as a Chair of the Permanent Chamber if there are not enough Deputies.

24 FI and SE suggest~~s~~ to delete '*permanent*'. FI stresses for the need of flexible structure of the chamber, taking into account the unknown workload. A cross reference to 9(6) should also be made. For the same reason, and taking into account the voting right of the concerned EP, FI suggests replacing '*two'* by '*one or more*'.

These shall ensure an equal distribution of workload on the basis of a system of random allocation of cases and shall, in exceptional cases, provide for procedures allowing, where necessary for the proper functioning of the Office, for deviations from the principle of random allocation upon decision by the European Chief Prosecutor.[25]

2. The Permanent Chambers shall monitor[26] and direct[27] the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3 and 4 in this Article[28]. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College in accordance with Article 8(2).

3.[29] The Permanent Chambers shall take the following decisions in accordance with the conditions and procedures set out by this Regulation:

a) to bring a case to judgment in accordance with Article 27(2);

b) to dismiss a case in accordance with Article 28(1)(b), (c), (d), (e) and (f);

c) to dismiss a case through a transaction in accordance with Article 29.

3a. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:

a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 21(1) where no investigation has been initiated by an European Delegated Prosecutor[~~30~~];

b) to evoke a case in accordance with Article 21a where the case has not been evoked by an European Delegated Prosecutor;

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[25] The introduction of the following recital should be considered: *'The allocation of cases should ensure distribution of cases in accordance with established consequence between the Permanent Chambers at the random pace as to ensure equal distribution of workload*'.

[26] SI would like to delete '*monitor*'.

[27] CZ is opposed to the inclusion of the words '*and direct*'.

[28] COM advocates a solution where one of the Members of a Permanent Chamber - regardless of his or her nationality - will be selected to be Rapporteur of the case in order to ensure the neutrality of the Rapporteur. PT, CZ, SI would exclude that the Permanent Chamber shall have the right to intervene in individual cases, except in cases of inactivity or manifest delays.

[29] AT, CY, DE, FI, MT SE believes that 9(3) should be finalized only after work on other Articles has been completed.

[~~30~~] ~~CZ, SK suggests to add the following words at the beginning of the point *'to instruct European Delegated Prosecutors to initiate investigations*'.~~

~~PRES proposes to include a recital making clear that Permanent Chamber takes a decision to initiate the case or evoke a case, if European Delegated Prosecutor has not initiated an investigations or evoked the case. A reference to Article 23 (4a) should also be considered.~~

c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 8(2);

d) to allocate a case in accordance with Article 21(2);

e) to reallocate a case in accordance with Article 21(4) and 23(43a);

~~f) to bring a case to judgment in accordance with Article 27(2)[31];~~

~~g) to dismiss a case in accordance with Article 28(1)[32];~~

~~h) to dismiss a case through a transaction in accordance with Article 29;~~

i) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(~~5~~4).

[31] CZ, NL, PT objects to the competence of the Permanent Chamber to decide whether to bring the case to judgment. In the opinion of CZ, this should be decided by the European Delegated Prosecutors.

[32] CZ prefers to give the Permanent Chamber a possibility to review why criminal proceedings were not initiated, why they were suspended, eventually why criminal prosecution was terminated, rather than to take the original decisions in this sense. CZ suggests to add following wording '*to review dismissal of cases, including the power to annul such dismissals and to decide on the continuation of criminal proceedings or instruct the competent EDPs to proceed*'. PT does not agree with the competence of Permanent Chamber to dismiss a case for reasons related to the autonomy of the magistrates and efficiency of the procedure. PT advocates for an *ex post* intervention or a silent procedure mechanism of review.

4. The competent Permanent Chamber may give instructions [33], in compliance with applicable national law [34] and through the European Prosecutor who is supervising[35] an investigation or a prosecution, in a specific case to the European Delegated Prosecutor handling the case, whenever necessary for the efficient [36] handling of the investigation or prosecution and in the interest of justice and [37] a coherent functioning of the European Public Prosecutor's Office.

5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its Members. Each Member shall have one vote. The Chair shall have a casting vote in the event of a tie vote. The decisions shall be taken in deliberation in meetings of the Chambers on the basis, where applicable, of a summary report presented to the Chamber by the competent European Prosecutor[38].

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33 CZ, NL, PT have suggested that the notion of monitoring should be explained as follows in a recital: *'The monitoring role of the Permanent Chamber refers to a general oversight, in which instructions may be given against inactivity or manifest delays in pending criminal proceedings. However, Permanent Chambers should not be entitled to give specific operational instructions*'. RO, with support from some delegations, has suggested that a recital with the following wording (or similar) should be considered: '*The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. They will however have the right to ask for a review by the Permanent Chamber of an instructions, if it is not compliant with the Regulation or the applicable national law'.* CZ, with support in principle of SI, would like to add the following words in the body of the text *'An EP or the EDP may refuse instructions given by the Permanent Chamber if they are in conflict with this Regulation, applicable national law or because of the diverging written reasoned legal opinion of the EP or the EDP'.*
~~SI suggests to replace '*supervising*' with '*directing*'. The same applies for the subsequent paragraphs of Article 9 and subsequent Articles.~~

34 A recital indicating that the supervising EP has an active duty to check the instruction's compliance with his/her national law and inform the PC if it does not should be introduced.

35 SI suggest to replacing '*supervising'* with '*directing*'. The same applies for the subsequent paragraphs of Article 9 and subsequent Articles.

36 NL has requested the deletion of the reference to efficiency here, and to leave only the reference to interests of justice and a coherent functioning of the EPPO.

37 COM has emitted a reservation with relation to the cumulative criteria of *'the interest of justice and a coherent function of the EPPO*'.

38 NL would add the words '*and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors'.*

All case material shall at request be accessible to the competent Permanent Chamber in view of the preparation of the decisions. [39] ~~The Permanent Chambers may delegate their decision-making power under paragraph 3 g) to the European~~ Delegated ~~Prosecutor~~ handling ~~supervising the case in situations referred to in Article 28(1)(a)~~ [40]. The Internal Rules of Procedure shall ~~may~~ authorise the Chambers~~, where appropriate,~~ to take decisions by means of a written procedure to be laid down in detail in the Internal Rules of Procedure. All decisions taken and instructions given in accordance with paragraphs 3 and 4 shall be recorded in writing and become part of the case file.

6. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 11(1) shall participate in the deliberations of the Permanent Chamber, with a right to vote[41]. A Permanent Chamber may also, either at the request of a European Prosecutor or a European Delegated Prosecutor or at its own initiative, invite other European Prosecutors or European Delegated Prosecutors who are concerned by a case to attend their meetings without a right to vote[42].

7. The Chairs of the Permanent Chambers shall, in accordance with Internal Rules of Procedure, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfill its role in accordance with Article 8(2).

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39 A recital with the following wording should be considered: *'The work of the EPPO should in principle be ensured in electronic form*'.

40 AT, BE, BG, NL, PL and COM have emitted various reservations on the delegation-making power, whereby in particular PL has advocated broader delegation possibilities.

41 COM and AT, BE, BG, DE, ES, FR, IT, RO have voiced concern as regards the voting-right for the supervising European Prosecutor; in their view the voting rights in the chamber should be limited to 'neutral' members and it would not be appropriate to give a voting right only to one of potentially several European Prosecutors who are concerned by the case. FI would delete the words '*In addition to the permanent Members*'.

42 A recital indicating that the Permanent Chambers should in principle strive towards consensual decision-making will be considered, for example as follows: *'The Permanent Chambers should use their best efforts to reach consensus. If such a consensus cannot be reached, decisions should be taken by voting.*' FI, CY, LT and SE would like this recital to be in the body of the text.

Article 10

The European Chief Prosecutor and the Deputies

1. The European Chief Prosecutor shall be the head of the European Public Prosecutor's Office. The European Chief Prosecutor shall organise the work of the Office, direct its activities, and take decisions in accordance with this Regulation and the Internal Rules of Procedure.

2. [Two] Deputies shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and act as replacement when he/she is absent or is prevented from attending to his/her duties.

3. The European Chief Prosecutor shall represent the European Public Prosecutor's Office towards the institutions of the Union and of the Member States, and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputies or to a European Prosecutor.

Article 11

The European Prosecutors[43]

1. The European Prosecutors shall, on behalf of the Permanent Chamber[44] and in compliance with any instructions[45] it has given in accordance with Article 9(3) and 9(4), supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible[46].The European Prosecutors shall present summaries of the cases under his or her supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.

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43 FI, MT would keep the old version of paragraph 3, under which the European Prosecutors could be allowed to fulfil other tasks than those of European Prosecutors.

44 CZ, PT are opposed to the idea that the EPs shall supervise investigations and prosecutions on behalf of the Permanent Chamber.

45 CZ would like to include a sentence providing that the instructions of the EP maybe refused by the EDP.

46 COM and BG oppose the addition of the word '*in their Member State of origin*'. CZ is of the view that one EP alone will not be able to carry out the supervision role efficiently, especially in Member States with many complicated PIF cases. DE agrees with the principle set out in this paragraph but considers it appropriate to foresee that the Internal Rules of Procedure may allow for deviations from this principle.

The Internal Rules of Procedure shall, without prejudice to Article 14(7)[47], provide for a mechanism of substitution between European Prosecutors in case the supervising European Prosecutor is temporarily[48] absent from his/her duties or for other reasons not available to carry out the functions of the European Prosecutors. The substitute European Prosecutor may fulfill any task of a European Prosecutor, except the possibility to conduct an investigation as foreseen under Article 23(~~5~~4).

2. The supervising European Prosecutors, in compliance with applicable national law and in compliance with the instructions[49] given by the competent Permanent Chamber, may give instructions to the European Delegated Prosecutor handling the case, whenever necessary for the efficient handling of the investigation or prosecution and in the interest of justice[50] and a coherent functioning of the European Public Prosecutor's Office.

3. The European Prosecutors shall function as liaisons and channels of information between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States of origin and shall monitor the implementation of the tasks of the Office in their respective Member States, in close consultation with the European Delegated Prosecutors. The European Prosecutors shall ensure, in accordance with this Regulation and the Internal Rules of Procedure that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.

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47 DE has a reservation on the insertion of the words *'without prejudice to Article 14(7)*', due to the need of finalization of Article 14.

48 The inclusion of a recital may be considered *'The substitution mechanism should be used in principle in cases when European Prosecutor briefly unable to fulfil his/her duties, for example, due to vacation or illness.*'

49 SI would like to clarify that this only refers to instructions on the basis of Article 9(3).

50 SI believes that '*in the interest of justice*' is too general; further clarification is required.

Article 12

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in their respective Member States[51] and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to ~~final~~ judgment, in addition and subject to the specific powers and status conferred on them and under the conditions provided for in this Regulation.

   The European Delegated Prosecutors shall be responsible for the investigations and prosecutions which they have initiated, which have been allocated to them or which they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor.[52]

   The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in evidence taking and exercise the available remedies in accordance with national law. The European Delegated Prosecutors shall take the decisions referred to in Article 28(1)(a).

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51 SE, with support of COM, suggests that a recital should highlight the rather special position of the European Delegated Prosecutor, for example with the following wording: '*The European Delegated Prosecutors shall be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the Office competence, they shall act exclusively on behalf and in the name of that Office on the territory of their host Member State. This shall entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law, including national prosecutors.*'
A number of delegations have questioned the text or the placement of this recital. DE has suggested the following alternative wording: '*The European Delegated Prosecutors shall be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the Office competence, they shall act exclusively on behalf and in the name of that Office on the territory of their respective Member State. This shall entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law, including national prosecutors. Notwithstanding their status under this Regulation, the European Delegated Prosecutors shall during their term of office also be active member of the prosecution service of their Member State and shall be granted by their Member State the same powers as national prosecutors.*'

52 CZ would like to provide for a possibility to refuse instructions of the Permanent Chamber and/or EP. COM notes that this provision is without prejudice to the future discussions in the context of the administrative provisions in the second half of the regulation, about the number of full time equivalent EDP positions to be financed by the EU budget.

2. There shall be two [53] or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant Member State's authorities, approve [54] the number [55] of the European Delegated Prosecutors, as well as the functional[56] and territorial division of competences between the European Delegated Prosecutors in each Member State.

3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the supervising European Prosecutor of such functions. In the event that a European Delegated Prosecutor at any given moment is unable to fulfil his/her tasks as European Delegated Prosecutors because of such other commitments, he/she shall notify the supervising European Prosecutor, who shall consult with the competent national prosecution authorities in order to determine whether priority should be given to their functions deriving from this Regulation[57]. The European Prosecutor may propose to the Permanent Chamber to reallocate the case in accordance with Article 23(5)[58].

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53 CY is of the opinion that as minimum there should be one European Delegated Prosecutor in each Member State. COM notes that this provision is without prejudice to future discussions, in the context of the administrative provisions in the second half of the Regulation, about the number of full-time equivalent EDP positions to be financed by the EU budget.

54 The inclusion of the following recital may be considered *'When the European Chief Prosecutor is consulting with relevant Member State on the number of the EDP and the functional and territorial division of competences between the EDP in each Member State, due account should be taken of the organisation of the national prosecution system. The notion of function could thereby refer to the possibility of Member States to create vertical structures among the EDP's'*.

55 DE, PL question the appropriateness of referring here to the *'number of EDP*s' and considers that the text in paragraph 2 will need to be reviewed again in the context of the provisions of the formal status of the EDPs ('special advisors') and the financial provisions.

56 CZ suggests that the following recital is added in this context: '*The notion of functional division of competences between EDP's should allow for such a division of tasks, whereby certain EDP's could be in charge of dealing with cases and taking certain specific decisions on initiation of investigations and other EDP's could be in charge of dealing with complaints or appeals against such decisions'*.

57 Various opinions have been expressed as regards the wording and content of this provision. In particular, clear rules on conflict of interest have been called for. COM has suggested that the reallocation of a case could also be done to an EDP in another Member State. Some Member States would prefer to delete the last sentence of the Article. PT considers that the decision to determine the priority should belong to the national authorities in consultation with the EP, since a Permanent Chamber has always the possibility to reallocate the case.

58 HU would find it useful to let the EP to propose the reallocation of the case also to another EDP from the same Member State.

SECTION 2

APPOINTMENT AND DISMISSAL OF THE MEMBERS OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 13 [59]

Appointment and dismissal of the European Chief Prosecutor

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a term of seven years, which shall not be renewable. The Council shall act by simple majority.

2. The European Chief Prosecutor shall be selected from among candidates

   a) who are active members of the public prosecution service or judiciary of the Member States, or active European Prosecutors;
   b) whose independence is beyond doubt;
   c) who possess the qualifications required for appointment, in their respective countries, to the highest prosecutorial or judicial offices and have relevant practical experience of national legal systems, financial investigations and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
   d) who have sufficient managerial experience and qualifications for the position.

[59] PT, IE, MT, HU, ES, HR, CZ, PL, opposed by AT, BE, DE, IT and RO, would prefer that the Chief Prosecutor is chosen from among the Members of the College.

3. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which a Selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and the Council. The panel shall comprise [12] [60] persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust[61], members of national supreme courts, high level prosecutors and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall establish the panel's operating rules and adopt a decision appointing its members on a proposal from the Commission[62-63] It shall act on initiative of the European Chief Prosecutor.

3a. If a European Prosecutor is appointed to be the European Chief Prosecutor, his or her position of European Prosecutor shall immediately be filled in accordance with the procedure set out in Article 14(1) and (2).

4. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss the European Chief Prosecutor if it finds that he or she is no longer able to fulfils the conditions for the exercise of the function, as required for the performsance of his or her duties, or that he or she is guilty of serious misconduct[64].

5. If the European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 – 3 above.

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[60] COM and ES would like to see 7 persons in the Panel.

[61] DE would delete the reference to former members of Eurojust.

[62] The following recital should be considered '*The Selection panel should be set up for election of European Chief Prosecutor and European Prosecutors. For the purposes of efficiency and timing it should be possible to set up one Panel to elect both.*' Moreover, a A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

[63] COM considers that it should be responsible for the establishment of the panel.

[64] The concept of serious misconduct may be explained in a recital, tentatively as follows: '*Members of the Office should also be dismissed also if they are guilty of serious misconduct, for example if they through their actions have caused or risked to cause serious harm to the Office*"'. AT and DE has noted that it opposes such a definition.

Article 13a

Appointment and dismissal of the Deputy European Chief Prosecutors

1. The College[65] shall appoint [two] European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of three years, which shall however not exceed their mandate period as European Prosecutors. The selection process shall be regulated by the Internal Rules of procedure. The Deputy European Chief Prosecutors shall retain their status of European Prosecutors.

2. The rules and conditions for the exercise of the function of Deputy European Chief Prosecutor shall be set out in the Internal Rules of Procedure. If a European Prosecutor is no longer able to ~~fulfils the conditions~~[66] ~~required for the~~ performance of his or her duties as Deputy European Chief Prosecutor, the College may in accordance with the Internal Rules of Procedure decide that he or she shall not serve as Deputy European Chief Prosecutor and be dismissed from this position.

3. If a Deputy European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position as a Deputy for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraph 1. Subject to the rules in Article 14, he or she shall remain European Prosecutor[67].

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65 COM maintains that the Deputies, like the European Chief Prosecutor, are appointed by the Council and the EP.

66 ~~LT, IT, PT, IE, MT, NL, ES would like to see the conditions to be specified in the text. DE would reformulate this phrase. PRES notes that Article 10(2) should be taken into account in this regard.~~

67 DE has noted that they consider the second phrase superfluous.

Article 14[68]

Appointment and dismissal of the European Prosecutors

1. Each Member State shall nominate three candidates for the position as European Prosecutor from among candidates which:

   a) are active members of the public prosecution service or judiciary of the Member States;

   b) whose independence is beyond doubt, and

   c) who possess the qualifications required for appointment, in their respective countries, to high prosecutorial or judicial office and have relevant practical experience of national legal systems, of financial investigations and of international judicial cooperation in criminal matters.

2. The Council shall, after having received the ~~heard~~ reasoned opinion of a Selection Panel referred to in Article 13(3)[69], select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the Selection Panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.

3. The European Prosecutors shall be selected and appointed for a non-renewable term of six years by the Council, acting by simple majority.

4. Every two years there shall be a partial replacement of a third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules[70] for the appointment of European Prosecutors for and during their first mandate period[71].

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68 HR and PL ~~Some delegations~~ are of the opinion that it would be enough for each Member State to nominate one candidate for the position as European Prosecutor.

69 ~~The composition of the Selection Panel shall be determined by the Council.~~

70 A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU. RO notes that the transitional rules must deal with the specific situation of a Deputy which might be affected by the first partial replacement of a third of EPs, due to difference between the 3 years term of office, respectively the first replacement after 2 years. This gap is not excluded for the functioning of the EPPO on regular basis so that the provisions which set different durations of office should foresee/take into account these consequences.

71 CZ, MT and RO would like to include geographical balance as a criterion for the appointment in a recital.

5. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss a European Prosecutor if it finds that he or she is no longer able to ~~fulfils the conditions required for the~~ perform~~anceof~~ his or her duties or that he or she is guilty of serious misconduct.

6. If a European Prosecutor resigns, if he/she is dismissed or leaves his/her position for any other reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 and 2 above. If the European Prosecutor serves as Deputy European Chief Prosecutor, he or she shall automatically be dismissed also from the latter position.

7. The College shall, upon nomination of every European Prosecutor, designate among the European Delegated Prosecutors of the same Member State a person to for a limited period of time ~~temporarily~~ substitute the European Prosecutor who is unable to carry out his/her functions or who left his/her position according to paragraphs 5 and 6 above[72].

   Where the College acknowledges the need for ~~temporary~~ substitution, the designated person shall act ~~be nominated~~ as an interim European prosecutor pending replacement or return of the European prosecutor for a time period that shall not exceed 3 months.

   Recourse to such possibility shall 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, as well as in the cases referred to in paragraph 6 until the European prosecutor's position is filled in accordance with the procedure set out in paragraphs 1 and 2 above. The mechanisms and modalities of temporary substitution shall be determined and governed by the Internal Rules of Procedure[73].

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72 The following accompanying recital will be considered: '*The EDP substituting the EP in accordance with Article 14(7) shall for the time of the substitution not be in charge of the investigation led by him/her as an EDP or as national prosecutor. With regard to proceedings of the EPPO, which were led by the EDP substituting an EP, Article 23(3)(a) shall apply'.*

73 AT, DE and FI considers that the further work is needed to clarify the relation between this substitution mechanism and the one described in Article 11(1). The following recital could be considered in this sense: 'Substitution of an EP by one of the EDPs of the respective Member Stats may take place in cases referred to in Article 14(5) or (6) whereas an EP shall be substituted by another EP according to the Internal Rules of Procedure (Article 11(1)), if he or she is e.g. not available due to vacation, a business trip etc.'

Article 15

Appointment and dismissal of the European Delegated Prosecutors

1. The College shall, upon proposal by the European Chief Prosecutor, appoint the European Delegated Prosecutors nominated by the Member States[74]. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a term of five years[75], which shall be renewable.

2. The European Delegated Prosecutors shall, from the time of his or her appointment as a European Delegated Prosecutor until dismissal, be active members of the public prosecution service or the judiciary of the Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system.[76]

3. The College shall dismiss a European Delegated Prosecutor if it finds that he or she no longer fulfils the requirements set out in paragraph 2 or is not able to ~~the criteria applicable to the~~ perform~~ance of their~~ his or her duties[77], or that he or she is guilty of serious misconduct.

4. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor for reasons not connected with his/her responsibilities under this Regulation, it shall inform ~~consult~~ the European Chief Prosecutor before taking such action. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his/her responsibilities ~~activities~~ under this Regulation[78] without the consent of the European Chief Prosecutor. ~~unless the College has given its consent.~~

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74 COM maintains that EDPs be appointed by the College based on a list with a sufficient number of candidates from each MS allowing for a choice.

75 AT and DE have noted that the appropriate term of office will need to be decided in the context of negotiations on their formal status under EU law.

76 With regard to the first phrase of the paragraph, the Presidency considers that it will be sufficient to clarify in a recital that the Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.

77 CZ, DE and SK~~Some delegations~~ have suggested that additional criteria should be added here, or that the criteria may need to be clarified further.

78 CY, CZ, FR and SE ~~Some delegations~~ have noted that a differentiation between the respective roles of an EDP and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them. The provision may need to be examined again, in conjunction with the whole

5. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the European Chief Prosecutor and, where necessary[79], nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

Regulation. ~~One delegation has noted that it must be clarified what the notion '*connected with his activities'* actually means.~~

[79] Some Member States have questioned whether the words '*where necessary'* are sufficient in order to clarify that Member States do not always need to replace EDP's that leave their position. A recital should clarify that the number of EDP's may not be modified without account taken to the rule in Article 12(2) on the approval of theEuropean Chief Prosecutor of the number of the European Delegated Prosecutors.

SECTION 3

INTERNAL RULES OF PROCEDURE

Article 16[80]

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

1. The Internal Rules of Procedure shall govern the organisation of the work of the Office[81].

2. A proposal for the Internal Rules of Procedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the [College][82] by two thirds majority without delay once the Office has been set up.

3. A modifications in the Internal Rules of Procedure may be proposed by any European Prosecutor and shall be adopted by the [College] by two thirds majority.

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80 CZ has suggested that a written opinion regarding the binding nature of the Rules of Procedure in relation with national legislation should be requested from the legal service. The Presidency believes that oral opinions emitted by the legal service was sufficient.

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

82 AT, CY, ES, FI, FR, IT, LT, NL, SI, SK ~~Some delegations~~ believe that the Internal Rules of Procedure should be confirmed by the Council. The Presidency suggests to come back to this issue at a later stage of negotiations, when a clearer picture of what rules will need to be included in the Internal Rules of Procedure is at hand.

SECTION 4

COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 17[83]

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

The European Public Prosecutor's Office shall have competence in respect of the criminal offences affecting the financial interests of the Union, which are provided for in Directive 2015/xx/EU84. The European Public Prosecutor's Office shall exercise this competence on the basis of the applicable national law implementing this Directive[85].

Article 18 [86]

Ancillary competence

1. Where an offence constituting a criminal offence referred to in Article 17 is based on a set of facts which are identical or inextricably linked to a set of facts constituting, in whole or in part under the law of the Member State concerned, a criminal offence other than those referred to in Article 17, the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the condition that the offence referred to in Article 17 is preponderant. Where the offence referred to in Article 17 is not preponderant, the Member State that is competent for the other offence shall also be competent for the offence referred to in Article 17[87].

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83 PL is of the opinion that the question in art. 17 is linked to the negotiations on the scope of PIF directive. This includes the sensitive issue of VAT fraud. Therefore this provision should be finalized only after the scope of PIF directive has been clarified and confirmed.

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

85 COM and CZ have a reservation on this wording and proposes to go back to the previous text ('[...] *which are provided for in Directive 2015/xx/EU, as implemented in national law*'). This is considered necessary because the national law implementing the PIF Directive will not and cannot govern the exercise of EPPO's competence. DE has proposed an alternative Article 17, which would be linked to modifications in other provisions as well (DS 1245/15). The proposal of DE has the support, fully or in part, from a number of delegations. Other delegations have suggested that the applicable national law should be made available in an Annex to the Regulation or a dedicated website.

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

87 The need for this provision has been questioned by some. Others have noted that it must be seen in the light of the right of evocation as foreseen in Article 21a.

2. When assessing whether two set of facts are inextricably linked within the meaning of paragraph 1, account shall be taken as to whether one of the relevant offences has been instrumental in committing the other offence or to whether one offence has been committed with a view to ensuring impunity[88].

3. An offence in accordance with Article 17 shall be considered to be preponderant:

   a) if the damage caused or likely to be caused to the Union exceeds the damage caused or likely to be caused by the same act to the Member State or a third party, or[89],

   b) in case the same act, under the law of the Member State, constitutes a different type of offence: if the sanction that may be imposed in respect of the offence in accordance with Article 17 is[90] more severe than the sanction that may be imposed in respect of the other type of offence.

4. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority should exercise its competence pursuant to paragraph 1. Where appropriate to facilitate this choice, Eurojust may be associated in accordance with Article [57].

5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the exercise of competence pursuant to this Article, the national authorities[91] competent to decide on the attribution of competences concerning prosecution at national level[92] shall decide who shall exercise the ancillary competence.

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

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

90 COM and CZ ~~The Commission and some delegations~~ would add the words '*equal or*"' here.

91 A recital explaining that the notion of national authorities in this provision refers to judicial authorities or other authorities how have competence to decide on the attribution of competence in accordance with national law.

92 IT ~~and some delegations COM~~ would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review).

Article 19[93]

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

1. The European Public Prosecutor's Office shall have ~~has~~ priority[94] competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence [95] ~~96~~
   a) was committed in whole or in part within the territory of one or several Member States, or
   b) was committed by a national of a Member State, or
   c) when committed outside of the~~se~~ territories referred to in point a) of this Article by a person who was subject to the Staff Regulations or Conditions of Employment of Other Servants, at the time of the offence, provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory.
2. The European Public Prosecutor's Office shall exercise its competence by initiating an investigation in accordance with Article 21 unless the Office has become aware that national authorities have already opened an investigation in respect of the same offence. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise an own competence in respect of the same offence. ~~If the national authorities have already started a criminal investigation in respect of the same offence, the European Public Prosecutor's Office may take over the investigation initiated by the national authority by exercising its right of evocation in accordance with Article 21a.~~

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[93] COM has a reservation on the lack of proper safeguards for the EPPO's priority competence: Member States should refrain from starting investigations –with the exception of taking urgent measures- until the EPPO has decided not to exercise its competence.

[94] FI, MT, NL and PL would delete the word '*priority*' here.

[95] This jurisdiction provision should at term be in principle identical with the corresponding jurisdiction provision in the PIF-Directive. Some delegations would introduce a reference to "participating Member States" in this and other provisions.

[96] ~~One delegation has requested that non-serious offences for which intent is presumed according to national law should not be covered by the competence of the Office.~~

CHAPTER IV

RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

Article 20 [97]

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 without delay the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence.[98] 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, a short description of the conduct, including an assessment of the damages caused or likely to be caused, and available information about victims and suspects. The report may be presented in the form of automatically generated information.

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[97] FR proposes to include the following additional paragraph: '*The College may, in consultation with national authorities, upon proposal by the European delegated prosecutors, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences, in particular customs infringements violating Union customs legislation. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutor's Office deems to be best dealt with by national authorities under domestic law.'* The provision should be joined with the following recital 'T*he European Public Prosecutor's Office, on decision by the College, upon proposal by the European delegated prosecutors, should be entitled to determine specific modalities of information or discharge the national authorities from their obligation to report regarding certain types of offences, including where the conduct caused or is likely to cause damage to the Union's financial interest of more that EUR 20 000. Recourse to such possibility could be envisaged in particular in cases of offences of minor nature in order to ensure an even exercise of competence by the European Public Prosecutor's Office, taking into account possible discrepancies in Member States' criminal law.'*
BE, ES and COM would oppose a threshold of EUR 20 000.
SI, BE has proposed that the information obligation could be linked to a review clause.

[98] A recital stating the following should be considered: '*Member States should set up a system which will ensure that information is reported to EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralized system."*

2. Where the conduct caused or is likely to cause damage to the Union's financial interest of less than EUR 10 000[99], and neither has repercussions at Union level[100] which require an investigation to be conducted by the Office nor to involve ~~has been opened following suspicions that~~ a criminal 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 six months[101]. The content of the summary report may be limited to a summary description of the relevant criminal conduct and an assessment of damages caused or likely to be caused.

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, on the basis of the information provided in accordance with Article 21(1), there are grounds to initiate an investigation [102].

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. Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the Office may have been committed, it shall without undue delay inform the competent national authorities.

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99 PL and SE, supported by AT, BE, CY, CZ, EE, ES FI, FR, HR, HU, IT, NL, SI, have a reservation on the reporting obligation as regard offences causing or likely to cause damages of less than EUR 10 000 (DS 1249/15 and DS 1274/15).

100 A definition of repercussion at Union level will be added in a recital. FR proposes the following wording: '*A particular case should be considered as having repercussions at Union level inter alia where a given fraud has a transnational nature and scale, where such fraud involves a criminal organisation, or where, given the nature of the case, the European Public Prosecutor's Office would be best placed to investigate, in view of the seriousness of the damage caused to the Union's financial interests or the Union Institutions' credit and Union citizen' confidence*.'

101 COM reservation: reports should be more frequent (every 3 months as in previous versions).

102 ~~CY and~~CZ proposes the following wording: *'Verification shall aim to assess to whether the information shows that the conditions set by Articles 17 and 18 determine the competence of the Office*'.The Presidency would prefer to include this text in a recital.~~add an explicit rule obliging EPPO to inform national authorities about offences that would not fall under its competence. (see Article 5)~~

5. The European Public Prosecutor's Office may collect or request[103] any information that is relevant for the functions of the Office [104].

Article 21[105][106]

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

1. Where, in accordance with 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~~ [107]~~,~~ shall[108] initiate an investigation and note this in the Case Management System [109].
2. The competent Permanent Chamber in charge of a the case may ~~shall~~ instruct the ~~competent European Prosecutor to allocate the case to a~~ European Delegated Prosecutor to initiate the investigation, in accordance with the criteria referred in paragraph 3, where no investigation has been initiated by a European Delegated Prosecutor.

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103 DE has a reservation on the words 'may request', arguing that the text could be interpreted that the recipient of the request is required – under any circumstance – to provide the requested information.

104 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. The recital will also clarify that Member States may provide any information to the Office.

105 DE has suggested an additional provision on avoiding financial short falls in administrative proceedings which are held back in favour of criminal investigations of the European Public Prosecutor's Office - see footnote with regard to Article 5. ~~DE has proposed a new paragraph 21(5), as follows: '*To the extent that recovery or collection procedures under administrative law are deferred as a result of decisions taken by the European Public Prosecutor's Office or by national prosecution authorities in connection with investigations or prosecutions to protect the financial interests of the European Union, any financial shortfalls that may occur shall not be borne by the national budget of the respective Member State.*' Although there was provisional support for the proposal in principle, a majority of the Member States questioned it relevance to Article 21.~~

106 An investigation should be initiated where there are reasonable grounds to believe that an offence falling with the EPPO's competence is being or has been committed. Such an obligation should not preclude a subsequent decision of the EPPO not to prosecute, by dismissing the case or proposing a transaction.

~~107~~ ~~A specific rule on how the Permanent Chamber will take such decisions may be considered. The inclusion of the following text in Article 9 (5) should be considered '*When a decision in accordance with Article 9 (3) (a) and (b) shall be taken by the Permanent Chamber, the materials should be prepared by the staff of Permanent Chamber, if the case has not yet been allocated to a European Delegated Prosecutor'.*~~

108 ~~AT,~~ ~~BE,~~ BG, CZ, FR, ~~IT,~~ NL RO would prefer the word "may" here.

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

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 competences of the Office have been committed, the Member State where the bulk of the offences has been committed. A Permanent Chamber may only instruct a European Delegated Prosecutor of a different Member States to initiate an investigation where that Member State has jurisdiction for the case and where a deviation from the above mentioned princples is duly justified,~~The Permanent Chamber, in its decision to instruct allocate a case to the European Delegated Prosecutor to initiate an investigation, may deviate from the above mentioned principles on sufficiently justified grounds, making sure that the newly commissioned European Delegated Prosecutor's Member State has jurisdiction and~~ taking into account ~~in particular~~ the following criteria, in order of priority [110]:

   a) the place where the suspect or accused person has his/her habitual residence;

   b) the nationality of the suspect or accused person;

   c) the place where the main financial damage has occurred [111].

4. Until a decision to prosecute in accordance with Article 27 is taken, the competent Permanent Chamber in a case concerning the jurisdiction of more than one Member State may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

   a) reallocate a case to a European Delegated Prosecutor in another Member State;

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110 HU, SI have emitted reservations on this paragraph.

111 HU and SK would like to add additional criteria, in particular the location of the evidence. PL prefers to follow the model of bases of jurisdiction contained in other EU criminal law instruments, where "habitual residence" is absent or - at most - optional – hence no reason to put it in the first place in order of priority. See e.g. Directive 2001/93 and Directive 2013/40.

b) merge or split[112] cases and in each case choose the EDP handling the case;

if such decisions are in the interest of the efficiency of investigations and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph 3 in this Article.

5. Whenever the Permanent Chamber is taking a decision to ~~instruct a European Delegated Prosecutor to initiate an investigation~~allocate, reallocate, merge or split a case it shall take due account of the current state of the investigations.

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[112] The term '*split*' will be explained in a recital, which could have the following wording: *'In principle a suspect shall only face one investigation or prosecution by the EPPO in order to best safeguard the rights of the defendant. Therefore the Permanent Chamber should seek to merge/combine proceedings concerning the same suspect but may refrain from doing so where this is in the interest of the efficiency of investigations or prosecutions. Where an offence has been committed by several persons, the EPPO should in principle initiate only one case and conduct investigations in respect of all suspects jointly. Where several European Delegated Prosecutors had opened investigations in respect of the same criminal offence, the Permanent Chamber should in principle merge/combine such investigations. The Permanent Chamber may decide not to merge/combine or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, e.g. if proceedings against one suspect can be terminated at an earlier stage whereas proceedings against other suspects still have to be continued or if splitting the case could shorten the period of pre-trail detention of one of the suspects etc. In case the Permanent Chamber decides to split a case its competence for the cases should be maintained*'.

Article 21a[113]

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

1. When a competent authority[114] of a Member State exercises competence in respect of an offence where the European Public Prosecutor's Office could be competent and have a right of evocation in accordance with this Regulation, it shall without delay inform the European Public Prosecutor's Office ~~competent European Delegated Prosecutor or Permanent Chamber~~ so that the latter may decide whether to exercise the Office's right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible but no later than 5 days after having received all relevant information from the national authority, unless the European Chief Prosecutor[115] in a specific case takes a reasoned decision to prolong the time frame of 5 days with a maximum prolongation of 5 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, but shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
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 competent authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence, after being duly informed under paragraph 1, within the time periods of the previous paragraph.

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113 CZ would like to include new para on the right to delegate a case from EPPO to the competent national authorities, if EPPO finds out that it is not competent any more (for example for the reason of the damage which showed up to be lower than previously estimated and is below the threshold of the EPPO competence). COM reservation on this article: the EPPO should enjoy priority competence, and Member States should refrain from starting investigations – with the exception of taking urgent measures - until the EPPO has decided not to exercise its competence

114 DE would refer to "judicial or law enforcement authority" here.

115 FI, HU has a reservation as regards the level of European Chief Prosecutor here.

2a. The European Public Prosecutor's Office[116] shall, where appropriate, consult competent authorities of the Member State concerned before deciding[117] 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[118], the European Public Prosecutor' s Office shall refrain from exercising its right of evocation, unless

a) a case has repercussions at Union level which require an investigation to be conducted by the Office, or

b) a case has been opened following suspicions that an offence has been committed by officials and other servants of the European Union, or members of the Institutions [119].

The Office shall, where appropriate [120], consult the competent 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.

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116 CZ, NL would prefer to refer to the European Delegated Prosecutor here.

117 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.

118 FR, supported by AT, FI, NL, proposes to raise the threshold to EUR 20 000. ES, RO and COM have reservations on that proposal.

119 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.

120 CZ, NL, SK wish to delete the words '*where appropriate'*.

4. ~~Where the Office has refrained from exercising its right of evocation, it shall inform the competent national authority without undue delay. The competent judicial or law enforcement authorities 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 and submitted to a court. The decision shall be taken within the time frame set out in paragraph 1 of this Article~~[121]~~.~~

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[122].

6. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose competent authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18, or in cases referred to in Article 9 (3)(a) and (b)[123] by a Permanent Chamber. ~~Article 21(2), (3) and (4) shall apply when the right of evocation is exercised.~~ 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[124] with a view to enabling the Permanent Chamber to exercise the Office's right in accordance with Article 9(3)(b). Article 21(2), (3) and (4) shall apply when the right of evocation is exercised.

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121 CZ would like to specify the moment in time when the EPPO may not exercise its right of evocation any more. The sole reference to the finalisation of investigation might not be precise enough.

122 CY, CZ, FI, MT, NL and SI have emitted general reservations as regards Article 18 in the Regulation.

123 DE has a reservation has regards the words *'or in cases referred to in Article 9(3)(a) and (b).'*

124 CZ would like to include obligation of the European delegated prosecutor to inform the competent national authorities.

7. Where the Office has refrained from exercising its right of evocation, it shall inform the competent national authority without undue delay. The competent judicial or law enforcement authorities 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 and submitted to a court. The decision shall be taken within the time frame set out in paragraph 1 of this Article [125].

Article 23

Conducting the investigation

1. The European Delegated Prosecutor handling the case may, in accordance with national law, either undertake the investigation and other measures[126] on his/her own or instruct the competent 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[127], coming through the European Delegated Prosecutor handling the case[128], are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report[129] 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 measures need to be executed in another Member State, the European Delegated Prosecutor handling the case shall act in cooperation with the European Delegated Prosecutor where the measure needs to be carried out in accordance with Article 26a[~~130~~].

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125 CZ would like to specify the moment in time when the EPPO may not exercise its right of evocation any more. The sole reference to the finalisation of investigation might not be precise enough.

126 DE would like to see the words *'and other measures'* deleted.

127 NL would like to replace "*European Public Prosecutor's Office*" with "*European Delegated Prosecutors*" in this paragraph.

128 COM and DE wishes to delete the reference to the European Delegated Prosecutor here.

129 CZ wishes to see a recital explaining the exact meaning of the notion of report, such as how these reports should look like, how they should be prepared and who will translate them. It is presumable that EDP's could take advantage of automated systems (see Article 20(2)) and that they will not be in charge of translation of the reports; it will be up to the central level to ensure necessary translations.

~~130 CZ would like to delete this provision.~~

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 European Delegated Prosecutor handling the case. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.

3a.[131] ~~Should the European Delegated Prosecutor fail to follow the instructions of the Permanent Chamber or the European Prosecutor, t~~The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State when the European Delegated Prosecutor handling the case

a) cannot perform the investigation or prosecution, or

b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

4. The supervising European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take a reasoned decision to conduct the investigation himself/herself[132], if this appears indispensable 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**[133]**;

b) when the investigation concerns Members of the institutions of the European Union;

c) when the European Delegated Prosecutor handling the case in the Member State cannot perform the investigation or prosecution[134].

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131 ~~AT, DE would like to enlarge the scope of the provision to include other grounds for reallocation~~. CZ and HU would like to explicitly clarify the consequences when the instructions given are "wrong".

132 CY, IE, NL opposes this provision. CY, MT have noted that the provision is, as such, difficult to conciliate with common law systems. FI, HR, SI have asked for it to be clarified that a European Prosecutor who conducts the investigation himself or herself shall be appointed to be national prosecutor.

133 BE, SI considers this criterion to be too broad.

134 PT has noted that an explanatory recital in necessary for this point. Such a recital could have the following wording '*This condition entails that the EDP or the national authorities in charge of the investigation under his/her instructions are unable or unavailable to undertake certain measures or finalise the investigation within the time-frame set'*.

When a European Prosecutor conducts the investigation himself/herself, he/she shall have all the powers, responsibilities and obligations 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.

5. 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.[135]

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 Delegated Prosecutor handling the case[136] 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 Delegated Prosecutor handling the case shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

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135 CZ would add another provision here, to deal with evidence-related issues. CZ proposes the following paragraph: '*For using the information obtained within the investigation and prosecution conducted by the European Public Prosecutor's Office as evidence for the purpose of the criminal proceedings by the competent national authorities, it is not necessary to have the consent of the European Public Prosecutor's Office*'

136 BE, BG, IT, RO and COM have suggested that this request should rather be made by European Chief Prosecutor, or following instructions from the European Chief Prosecutor or a Permanent Chamber.

SECTION 2

INVESTIGATION AND OTHER MEASURES

Article 25

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

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.[137]

Article 26

Investigation and other measures [138]

Member States shall, in addition to the measures indicated in Article 25, ensure, at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, and in accordance with the conditions and procedural requirements foreseen in national law and in Article 25 in this Regulation for the application of these measures, that the following measures are also available[139] under their laws to the European Public Prosecutor's Office:

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137 DE, IT and COM would reintroduce the old paragraph 2 (see doc 7070/15), and FI, FR, LT the old paragraph 3, in this Article. COM opposes that the EDPs deal with the lifting of immunities under EU law.

138 The inclusion of following recital should be considered '*Taking into account the status of European Delegated Prosecutors in their respective Member States, they should be able to use investigative or other measures available to the national prosecutors, to the extent these measures would be lawfully available to national prosecutors in a concrete situation*.'

DE, SI, NL, SE has a reservation on the Article. SE sees three options for changing Article 26: (1) deletion of the whole article, (2) inclusion of a clear cut reference to national law without the provisions of "shall ensure", "in addition", "also". Thus it would be more or less an information and not really adding to the Regulation, but that is also our intention, or (3) keep the first paragraph but delete the last two points d) and e). Point d) is not really fully available in our legal system as the text is currently proposed. Point e) is of course available but demands a different/higher threshold than foreseen in the current wording of article 26.

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[140];

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[141];

e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using[142].

Article 26a [143]

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 Prosecutor [144] located in the Member State where that measure needs to be carried out.

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140 DE would like c) to be deleted.

141 DE, PL would like d) to be deleted, COM and FR oppose the deletion.

142 MT would like to delete e), based on the reluctance of national authorities to use it.

143 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. AT, DE have proposed an alternative content and structure of the Article, and have received support from a number of delegations for this (DS 1237/15). FI, with support of AT, CZ, DE, MT, PL, SE has suggested an additional Article to be added to the AT/DE proposal (DS 1238/15). Some delegations have also suggested that the EDP's should be able to apply the instruments of mutual recognition. SE has noted a reservation on the whole text of the Article.

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

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[145]. 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.

4. Where the law of the Member State of the assisting European Delegated Prosecutor requires judicial authorisation for a particular measure, it shall be obtained by him/her. Where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the European Delegated Prosecutor handling the case requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor.[146]

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

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145 A recital with the following wording will be considered: *'The EDP handling the case should assess the specific need for certain evidence gathering measures, taking into account, from a procedural perspective, the prerequisites set in the law of his MS for ordering the evidence gathering measure or for asking the judicial authorisation, in full respect of the division of judicial powers.*'

146 Many delegations have criticised this paragraph on different grounds. The following recital maybe considered to accompany the paragraph: '*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.

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[147].

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[148],

   he or she shall consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.

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[149].

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147 Some delegations have questioned the need for the last 14 words of this Article.

148 Some delegations have suggested that it should explicitly be stated that also national law implementing Article 26 a) to e) is covered by this provision.

149 A number of delegations have noted that the link between this provision and Article 9(6) may need to be clarified.

Article 26b

Pre-trial arrest and cross-border surrender

1. The European Delegated Prosecutors may order or 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, for the purpose of conducting a criminal prosecution, issue ~~order~~ or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

SECTION 3[150]

TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION

Article 27[151]

Prosecution before national courts

1. When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable, a draft indictment to the competent European Prosecutor and Permanent Chamber for review. Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations.[152]

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150 DE proposes a new Article X, as well as a redrafting of Articles 27 and 28 (DS 1266/15).

151 It has been suggested that a new Article with an enumeration of the decisions that the Office can take to terminate an investigation are indicated should be introduced before this provision. CZ would prefer the wording included in doc 14710/14.

152 The phrase '*If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative'* has been deleted following recent discussions in Council, during which a majority of delegations have spoken out against decision-making through silent procedure.

2. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case, the Member State in which the prosecution shall be brought. The Permanent Chamber shall in principle bring the prosecution in the Member State of the European Delegated Prosecutor handling the case. The Chamber may determine another Member State, which has jurisdiction in the case, if there are sufficiently justified grounds related to the criteria for determining the European Delegated Prosecutor handling the case in Article 21 (2) and (3) [153].

3. The competent national court is determined on the basis of national law.

4. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

Article 28

Dismissal of the case[154]

1. The competent Permanent Chamber shall, on proposal from the European Delegated Prosecutor handling the case[155], dismiss the case against a person where prosecution has become impossible on account of any of the following grounds[156]:

   a) death of the suspect or accused person;

   b) amnesty granted in the state which has jurisdiction in the case;

   c) immunity granted to the suspect, unless it has been lifted;

   d) expiry of the national statutory limitation[157] to prosecute;

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153 Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

154 CZ has concerns as regards cases when an accused person insists on prosecution. CZ has also noted further concerns regarding this Article linked to the handling of investigation in practice in CZ.

155 It may be necessary to clarify that the law of the EDP handling the case will apply here.

156 Delegations have made a number of suggestions as regards the grounds. A criterion regarding permanently deranged persons has been called for, and a link to the prescription rules has also been asked for.

157 SK raised the question under which national law this should be assessed in cross-border cases has been raised.

e) the suspect or accused person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29;

f) lack of relevant evidence.

2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which become known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.

3. Where a case has been dismissed, the Central Office shall officially notify the competent national authorities and shall inform the relevant Union institutions, bodies and agencies, as well as suspects or accused and the injured party, thereof.[158] The cases dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.

4. Where an investigation initiated by the European Public Prosecutor's Office reveals that the conduct subject to investigation may constitute a criminal offence, which is not within its competence, the European Public Prosecutor's Office shall refer the case without delay to the competent national authorities.

[158] A number of delegations have requested that a more detailed rule on *ne bis in idem* should be inserted in this Article, in particular in relation to point e). PL enters a reservation due to imposition of further harmonization only on Member States which provide for transaction.

Article 29[159]

Transactions

1. After obtaining the approval of the competent Permanent Chamber, the European Delegated Prosecutor handling the case may propose, provided that such possibility is foreseen in applicable national law[160], to the suspect to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction), if the following cumulative criteria[161] are satisfied:

   aa) the offence has not been committed in circumstances that may be considered to be particularly serious, for example since the level of guilt of the suspect can not be considered to be particularly severe;

   a) the damages caused in total, to the Union's financial interests as well as to other victims, does not exceed 50 000 euros;

   b) it would serve the purpose of proper administration of justice and the general criminal law objectives;

   c) the damage has been compensated to all victims;

   d) the suspect has neither been the subject of a transaction under this Regulation nor been convicted of offences affecting the Union's financial interests before.

2. The suspect shall have the right to receive legal advice on the advisability of accepting or refusing the proposal for the transaction as well as on its legal consequences, in accordance with national law.

3. The European Public Prosecutor's Office shall ensure that the amount of the fine is proportionate to the damage caused and to the suspect's financial means. The amount of the fine shall be calculated in accordance with the method of calculation defined by the rules referred to in Article 72 (e)[162].

3a. When a judicial authorisation of a transaction is required under the law of the Member State of the European Delegated Prosecutor handling the case, the said European Delegated Prosecutor shall seek such authorisation before communicating the final transaction proposal to the suspect.

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159 Some delegations would prefer if this Article is deleted from the Regulation, of that the provision give Member States the possibility to apply alternative mechanisms instead. CZ, DE are of the opinion that a thorough revision of this Article is necessary.

160 COM and DE oppose the reference to national law here.

161 DE has noted that the list of conditions in paragraph 1 is too complex.

162 RO and SK has requested that a more precise method for calculation should be included already in this Article.

4. The transaction proposal shall set out the alleged facts, the identity of the suspect, the alleged offence, the compensation of the damage caused and the commitment of the European Public Prosecutor's Office to dismiss the case if the suspect agrees with this proposal and pays the fine to the Union budget, as well as the time-limit within which the suspect has to pay the fine, which shall not exceed 4 months. Where the suspect agrees to such proposal, he/she shall pay within the set time-limit following receipt of the proposal of the European Public Prosecutor's Office. The European Public Prosecutor's Office can upon the request of the suspect extend the period for the payment by another [15/30/45] days, where this is justified.
5. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction. Where the fine is paid by the suspect within the time-limit set out in paragraph 4, the European Delegated Prosecutor handling the case shall finally dismiss the case and notify the competent national authorities and shall inform the relevant Union institutions, bodies, agencies and injured parties thereof. The transaction shall be noted in the Case Management System of the European Public Prosecutor's Office.
6. If the proposed fine is not paid within the time set out in paragraph 4 the European Delegated Prosecutor handling the case shall continue the prosecution of the case.
7. The European Public Prosecutor's Office or the competent national authorities may not prosecute the suspect for the same facts which constituted the offence being the subject of the final dismissal through a transaction[163].

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[163] DE would like to foresee an obligation for the Office ~~to~~, in case of investigations involving ancillary offences, to consult the competent national authorities before offering a transaction.