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**Interinstitutionelles Dossier:**  
**2013/0255 (APP)**

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## VERMERK

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Absender: Vorsitz  
Empfänger: Ausschuss der Ständigen Vertreter/Rat

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Betr.: Vorschlag für eine Verordnung über die Errichtung der Europäischen  
Staatsanwaltschaft  
- *Orientierungsaussprache*

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### A. Hintergrund

Der lettische Vorsitz des Rates hat intensiv an der Fertigstellung der ersten fünf Kapitel der Verordnung gearbeitet. Diese Kapitel regeln die meisten der Fragen, die für das Funktionieren der Europäischen Staatsanwaltschaft wichtig sind, da sie die Vorschriften über den Status, die Organisation und den Aufbau der Europäischen Staatsanwaltschaft, über Ermittlungs-, Strafverfolgungs- und Gerichtsverfahren enthalten.

Während des lettischen Vorsitzes fanden zu diesem Dossier dreizehn Sitzungstage der zuständigen Arbeitsgruppe (COPEN), eine Aussprache im CATS und mehrere Sitzungen der JI-Referenten statt. Das Dossier wurde auch im Rahmen der Ratstagung im März von den Ministern erörtert. Die Sitzungen waren von einer sehr konstruktiven Atmosphäre geprägt, und es wurden beträchtliche Fortschritte erzielt. Dennoch bestehen weiterhin erhebliche Divergenzen zwischen den Standpunkten der Mitgliedstaaten. Der Vorsitz hat zu den ersten 16 Artikeln einen ausgewogenen Kompromisstext (siehe Anlage 1) ausgearbeitet.

In der Anlage 2 ist der vollständige Wortlaut der Artikel 17 bis 33, einschließlich der Fußnoten, wiedergegeben.

## B. Sachstand

I. Hinsichtlich der ersten 16 Artikel (siehe Anlage 1) wurde auf Expertenebene über folgende Aspekte am meisten diskutiert:

- *die Notwendigkeit, eine ausgewogene Verteilung der Arbeitsbelastung der Ständigen Kammern zu gewährleisten*
- *die Befugnisse der Ständigen Kammern bei Ermittlungen und Strafverfolgungsmaßnahmen*
- *die Möglichkeit der Ständigen Kammern, Entscheidungsbefugnisse an den die Aufsicht über das Verfahren führenden Europäischen Staatsanwalt zu übertragen*
- *das Stimmrecht des die Aufsicht über das Verfahren führenden Europäischen Staatsanwalts in der Ständigen Kammer*
- *die Befugnisse der Europäischen Staatsanwälte zur Erteilung von Anweisungen an die Europäischen Delegierten Staatsanwälte*
- *die Mechanismen zur Vertretung unter den Europäischen Staatsanwälten*
- *der Mechanismus für eine vorübergehende Vertretung des Europäischen Staatsanwalts durch einen Europäischen Delegierten Staatsanwalt.*

Die Fassung in Anlage 1 ist ein ausgewogener Kompromissvorschlag zwischen den verschiedenen von den Delegationen im Rahmen der Verhandlungen geäußerten Ansichten und bietet Lösungen für den Großteil der in den Sitzungen der Arbeitsgruppe geäußerten Bedenken.

II. Hinsichtlich der verbleibenden Artikel (17 bis 33) wurde über folgende Aspekte am intensivsten beraten:

- *die Verpflichtung der Mitgliedstaaten, über strafbare Handlungen Bericht zu erstatten, die in die Zuständigkeit der Europäischen Staatsanwaltschaft fallende Straftaten darstellen könnten*
- *die Modalitäten der Berichterstattung, einschließlich eines zusammenfassenden Berichts und seines Inhalts*
- *die Befugnis der Ständigen Kammer, den Europäischen Delegierten Staatsanwalt zur Einleitung von Ermittlungen anzuweisen*

- *die Zuweisung und Neuweisung eines Verfahrens durch die Ständige Kammer*
- *das Evokationsrecht und die Übertragung von Verfahren einzelstaatlicher Behörden an die Europäische Staatsanwaltschaft*
- *die Ermittlungsmaßnahmen und grenzüberschreitende Ermittlungen*
- *Vergleiche.*

Die Fassung in Anlage 2 spiegelt die unter lettischem Vorsitz erzielten Fortschritte wider. Dennoch sind einige dieser Aspekte – wie in den Fußnoten hervorgehoben wird – weiterhin offen und müssen erneut geprüft werden. Die Artikel 30 bis 33 wurden nur kurz angerissen und während des lettischen Vorsitzes nicht geändert.

### C. Fragen

Ungeachtet der endgültigen Entscheidung der einzelnen Mitgliedstaaten über die Beteiligung an der Europäischen Staatsanwaltschaft ersucht der Vorsitz die Minister:

1. **sich grundsätzlich auf den in Anlage 1 wiedergegebenen Wortlaut der ersten 16 Artikel der Verordnung mit der Maßgabe zu einigen, dass Einzelheiten des Texts erneut geprüft werden müssen, sobald der Rat eine grundsätzliche Einigung über den gesamten Text der Verordnung erzielt hat;**
2. **die zu den Artikeln 17 bis 33 erzielten Fortschritte zu begrüßen und die in der Anlage 2 enthaltene derzeitige Fassung dieser Artikel zur Kenntnis zu nehmen.**

Entwurf

**VERORDNUNG DES RATES**

**über die Errichtung der Europäischen Staatsanwaltschaft**

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**KAPITEL I**

**GEGENSTAND UND BEGRIFFSBESTIMMUNGEN**

*Artikel 1*

**Gegenstand**

Mit dieser Verordnung wird die Europäische Staatsanwaltschaft errichtet und ihre Arbeitsweise geregelt.

*Artikel 2*

**Begriffsbestimmungen<sup>1</sup>**

Für die Zwecke dieser Verordnung bezeichnet der Ausdruck

- a) "Person" jede natürliche oder juristische Person;
- b) "finanzielle Interessen der Union" alle Einnahmen, Ausgaben und Vermögenswerte, die im Haushaltsplan der Union und in den Haushaltsplänen der nach den Verträgen geschaffenen Organe, Einrichtungen und sonstigen Stellen oder in den von diesen verwalteten und überwachten Haushaltsplänen erfasst werden;
- c) "verwaltungstechnische personenbezogene Daten" alle von der Europäischen Staatsanwaltschaft verarbeiteten personenbezogenen Daten mit Ausnahme der operativen personenbezogenen Daten;
- d) "operative personenbezogene Daten" alle von der Europäischen Staatsanwaltschaft für die in Artikel [37] festgelegten Zwecke verarbeiteten [fallbezogenen] personenbezogenen Daten;

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<sup>1</sup> This Article will be finalised only when the full text of the Regulation is known. The definitions, as well as the text in general, will need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive. 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.

- e) "Personal der Europäischen Staatsanwaltschaft" das Personal auf zentraler Ebene, das das Kollegium, die Ständigen Kammern, den Europäischen Generalstaatsanwalt, die Europäischen Staatsanwälte und die Europäischen Delegierten Staatsanwälte bei ihren laufenden Tätigkeiten in der Ausübung der Aufgaben der Europäischen Staatsanwaltschaft nach dieser Verordnung unterstützt;
- f) "der mit dem Verfahren betraute Europäische Delegierte Staatsanwalt" den für die von ihm eingeleiteten, ihm zugewiesenen oder ihm durch Wahrnehmung seines Evokationsrechts übertragenen Ermittlungen und Strafverfolgungsmaßnahmen zuständigen Europäischen Delegierten Staatsanwalt;
- g) "unterstützender Europäischer Delegierter Staatsanwalt" den Europäischen Delegierten Staatsanwalt, der in einem anderen Mitgliedstaat als dem des mit dem Verfahren betrauten Europäischen Delegierten Staatsanwalts ansässig ist, in dem ihm zugewiesene Ermittlungen oder andere Maßnahmen ausgeführt werden sollen.

## **KAPITEL II**

### **Errichtung, Aufgaben und Grundprinzipien der Europäischen Staatsanwaltschaft**

#### *Artikel 3*

#### **Errichtung**

1. Die Europäische Staatsanwaltschaft wird als Einrichtung der Union errichtet.
2. Die Europäische Staatsanwaltschaft besitzt Rechtspersönlichkeit.
3. Die Europäische Staatsanwaltschaft arbeitet mit Eurojust zusammen und wird von diesem im Einklang mit Artikel [57] unterstützt.

## Artikel 4

### Aufgaben

Die Europäische Staatsanwaltschaft ist zuständig für die strafrechtliche Untersuchung und Verfolgung sowie die Anklageerhebung in Bezug auf Personen, die als Täter oder Teilnehmer Straftaten zum Nachteil der finanziellen Interessen der Union [die in der Richtlinie 2015/xx/EU vorgesehen und in dieser Verordnung bestimmt sind]<sup>2</sup> begangen haben. Die Europäische Staatsanwaltschaft leitet Ermittlungen ein, ergreift Strafverfolgungsmaßnahmen und nimmt vor den zuständigen Gerichten der Mitgliedstaaten die Aufgaben der Staatsanwaltschaft wahr, bis das Verfahren endgültig abgeschlossen ist<sup>3</sup>.

## Artikel 5

### Grundprinzipien für die Tätigkeit

1. Die Europäische Staatsanwaltschaft gewährleistet, dass bei ihrer Tätigkeit die in der Charta der Grundrechte der Europäischen Union verankerten Rechte beachtet werden.
2. Die Europäische Staatsanwaltschaft ist bei allen ihren Tätigkeiten an die Grundsätze der Rechtsstaatlichkeit und der Verhältnismäßigkeit gebunden<sup>4</sup>.
3. Die Ermittlungen und Strafverfolgungsmaßnahmen im Namen der Europäischen Staatsanwaltschaft unterliegen dieser Verordnung. Soweit eine Frage in dieser Verordnung nicht geregelt ist, gilt einzelstaatliches Recht. Soweit in dieser Verordnung nichts anderes bestimmt ist, ist das anzuwendende einzelstaatliche Recht das Recht des Mitgliedstaats des gemäß Artikel 12 Absatz 1 mit dem Verfahren betrauten Europäischen Delegierten Staatsanwalts<sup>5</sup>. Ist eine Frage im einzelstaatlichen Recht und in dieser Verordnung geregelt, so ist diese Verordnung maßgebend.
4. Die Europäische Staatsanwaltschaft führt ihre Ermittlungen unparteiisch und ermittelt alle sachdienlichen Beweise<sup>6</sup>, belastende wie entlastende.

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<sup>2</sup> IE has suggested that this reference should be to Article 17.

<sup>3</sup> 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'*. AT has suggested to add the following sentence to this recital: *'The functions of the prosecution could e.g. exclude representation in proceedings before the highest courts of a Member States by the highest prosecutorial institutions, such as the Advocate General, particularly if they serve the purpose of administration of justice rather than prosecutorial functions'*.

<sup>4</sup> IT would include the principle of legality here. PT shares the concerns of IT but has noted that the issue could be addressed in the context of Article 21.

<sup>5</sup> This phrase will have to be revisited in the light of developments of Articles 12(1) and 26a.

<sup>6</sup> SI wishes that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO.

5. Die Europäische Staatsanwaltschaft leitet Ermittlungen unverzüglich ein und führt diese zügig durch.
6. Die zuständigen einzelstaatlichen Behörden fördern und unterstützen die Ermittlungen und Strafverfolgungsmaßnahmen der Europäischen Staatsanwaltschaft. Handlungen, politische Maßnahmen und Verfahren nach dieser Verordnung richten sich nach dem Grundsatz der loyalen Zusammenarbeit<sup>78</sup>.

#### *Artikel 6*

### **Unabhängigkeit und Unparteilichkeit**

1. Die Europäische Staatsanwaltschaft ist unabhängig. Der Europäische Generalstaatsanwalt, die Stellvertreter des Europäischen Generalstaatsanwalts, die Europäischen Staatsanwälte, die Europäischen Delegierten Staatsanwälte sowie das Personal der Europäischen Staatsanwaltschaft handelt beziehungsweise handeln im gesetzlich festgelegten Interesse der Union insgesamt und darf beziehungsweise dürfen bei der Erfüllung seiner/ihrer Pflichten im Rahmen dieser Verordnung Weisungen von Personen außerhalb der Europäischen Staatsanwaltschaft, von Mitgliedstaaten oder Organen, Einrichtungen oder sonstigen Stellen der Union weder einholen noch entgegennehmen. Die Mitgliedstaaten und die Organe, Einrichtungen und sonstigen Stellen der Union achten die Unabhängigkeit der Europäischen Staatsanwaltschaft und versuchen nicht, sie bei der Wahrnehmung ihrer Aufgaben zu beeinflussen.
2. Die Europäische Staatsanwaltschaft ist dem Europäischen Parlament, dem Rat und der Europäischen Kommission für ihre allgemeinen Tätigkeiten rechenschaftspflichtig und gibt Jahresberichte nach Artikel 6a heraus.

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<sup>7</sup> An accompanying recital along the following lines could be 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.*'

<sup>8</sup> The following provision shall be included the text of the Regulation (e.g. Chapter VIII, Chapter IX or Article 69): '*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.*'

## Artikel 6a

### **Berichterstattung**

1. Die Europäische Staatsanwaltschaft erstellt und veröffentlicht jährlich einen öffentlichen Jahresbericht<sup>9</sup> über ihre allgemeine Tätigkeit in den Amtssprachen der Organe der Union. Sie übermittelt den Bericht dem Europäischen Parlament und den nationalen Parlamenten sowie dem Rat und der Kommission.
2. Der Europäische Generalstaatsanwalt tritt einmal jährlich vor dem Europäischen Parlament und dem Rat sowie auf Verlangen vor den nationalen Parlamenten auf, um – unbeschadet der Verpflichtung der Europäischen Staatsanwaltschaft zur Verschwiegenheit und Geheimhaltung im Hinblick auf Einzelfälle und personenbezogene Daten – über die allgemeine Tätigkeit der Europäischen Staatsanwaltschaft Bericht zu erstatten. Der Europäische Generalstaatsanwalt kann bei Anhörungen durch die nationalen Parlamente von einem der Stellvertreter vertreten werden.

## **KAPITEL III**

### **STATUS, AUFBAU UND ORGANISATION DER EUROPÄISCHEN STAATSANWALTSCHAFT**

#### **ABSCHNITT 1**

##### **STATUS UND AUBAU DER EUROPÄISCHEN STAATSANWALTSCHAFT**

#### Artikel 7

##### **Aufbau der Europäischen Staatsanwaltschaft**

1. Die Europäische Staatsanwaltschaft ist eine unteilbare Einrichtung der Union, die als eine einheitliche Staatsanwaltschaft mit einem dezentralen Aufbau handelt.
2. Die Europäische Staatsanwaltschaft gliedert sich in eine zentrale Ebene und in eine dezentrale Ebene.

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<sup>9</sup> A recital further clarifying the content of the Annual Report shall be included: *'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'*.



3. Die zentrale Ebene besteht aus der zentralen Europäischen Staatsanwaltschaft am Sitz. Die zentrale Europäische Staatsanwaltschaft setzt sich aus dem Kollegium, den Ständigen Kammern, dem Europäischen Generalstaatsanwalt, seinen Stellvertretern und den Europäischen Staatsanwälten zusammen.
4. Die dezentrale Ebene besteht aus den Europäischen Delegierten Staatsanwälten, die in den Mitgliedstaaten angesiedelt sind.
5. Die zentrale Europäische Staatsanwaltschaft und die Europäischen Delegierten Staatsanwälte werden bei ihren Aufgaben nach dieser Verordnung vom Personal der Europäischen Staatsanwaltschaft unterstützt.

### *Artikel 8*

#### **Das Kollegium**

1. Das Kollegium der Europäischen Staatsanwaltschaft besteht aus dem Europäischen Generalstaatsanwalt und einem Europäischen Staatsanwalt je Mitgliedstaat. Der Europäische Generalstaatsanwalt leitet die Sitzungen des Kollegiums und ist für deren Vorbereitung zuständig.

2. Das Kollegium tritt regelmäßig zusammen und ist für die allgemeine Aufsicht<sup>10</sup> über die Tätigkeiten der Staatsanwaltschaft zuständig. Es entscheidet über strategische Fragen und über allgemeine Angelegenheiten, die sich aus Einzelfällen<sup>11</sup> ergeben, insbesondere mit Blick darauf, die Kohärenz, Effizienz und Konsistenz bei der Strafverfolgungspolitik der Europäischen Staatsanwaltschaft in der gesamten Union sicherzustellen, sowie über in dieser Verordnung angegebene andere Fragen. Das Kollegium trifft keine operativen Entscheidungen in Einzelfällen. In der Geschäftsordnung werden die Modalitäten für die allgemeine Aufsicht über die Tätigkeiten und Entscheidungen über strategische Fragen und über allgemeine Angelegenheiten durch das Kollegium im Einklang mit diesem Artikel geregelt.
3. Auf Vorschlag des Europäischen Generalstaatsanwalts und im Einklang mit der Geschäftsordnung richtet das Kollegium Ständige Kammern ein.
4. Das Kollegium nimmt eine Geschäftsordnung der Europäischen Staatsanwaltschaft gemäß Artikel 16 an und legt ferner die Zuständigkeiten für die Ausführung der Aufgaben der Mitglieder des Kollegiums und des Personals der Europäischen Staatsanwaltschaft fest.

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<sup>10</sup> 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 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, whenever necessary, intervene and give instruction on investigations and prosecution matters. [...] 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.

<sup>11</sup> 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. Decisions of the College on general issues should be of a policy nature and should not affect the duty to investigate and prosecute according to this Regulation and national law.*

5. Soweit in dieser Verordnung nichts anderes bestimmt ist, fasst das Kollegium Beschlüsse mit einfacher Mehrheit. Jedes Mitglied des Kollegiums ist berechtigt, über die vom Kollegium zu entscheidenden Fragen eine Abstimmung vorzuschlagen. Jedes Mitglied des Kollegiums hat eine Stimme. Bei Stimmgleichheit in einer vom Kollegium zu entscheidenden Frage gibt die Stimme des Europäischen Generalstaatsanwalts den Ausschlag<sup>12</sup>.

#### Artikel 9

#### Die Ständigen Kammern<sup>13</sup>

1. Den Vorsitz der Ständigen Kammer führt der Europäische Generalstaatsanwalt oder einer der Stellvertreter oder ein gemäß der Geschäftsordnung zum Vorsitzenden benannter Europäischer Staatsanwalt<sup>14</sup>. Der Ständigen Kammer gehören zwei zusätzliche ständige Mitglieder an. Die Anzahl der Ständigen Kammern, ihre Zusammensetzung sowie die Aufteilung der Zuständigkeiten zwischen den Kammern trägt den funktionalen Bedürfnissen der Europäischen Staatsanwaltschaft angemessen Rechnung und wird gemäß der Geschäftsordnung festgelegt<sup>15</sup>.

Damit sollen eine ausgewogene Verteilung der Arbeitsbelastung auf der Grundlage einer Fallzuweisung nach dem Zufallsprinzip gewährleistet werden und in Ausnahmefällen Verfahren bereitstehen, die Abweichungen von der Fallzuweisung nach dem Zufallsprinzip auf Beschluss des Europäischen Generalstaatsanwalts ermöglichen, sofern dies für ein ordnungsgemäßes Funktionieren der Staatsanwaltschaft notwendig ist<sup>16</sup>.

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<sup>12</sup> A recital with the following wording should be introduced: *'The College should use their best efforts to reach consensus. If such a consensus cannot be reached, decisions should be taken by voting.'*

<sup>13</sup> SE, supported by CY, CZ, FI, HR, HU, IE, MT, NL, PT 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 to 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. FR, on the contrary, believes that such mechanisms would water down the powers of the central level of EPPO.

<sup>14</sup> 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.

<sup>15</sup> A recital with the following wording should be introduced: *'The composition of Permanent Chamber should be determined in accordance with the Internal Rules of Procedure, which may allow, among other things, an EP to be a member in more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, even workload of individual EP's.'*

<sup>16</sup> 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, to the extent possible, equal distribution of workload.'*

2. Die Ständigen Kammern überwachen und leiten die von den Europäischen Delegierten Staatsanwälten im Einklang mit den Absätzen 3, 3a und 4 geführten Ermittlungen und Strafverfolgungsmaßnahmen<sup>17</sup>. Sie gewährleisten außerdem die Koordinierung der Ermittlungen und Strafverfolgungsmaßnahmen in grenzübergreifenden Fällen und die Durchführung der vom Kollegium gemäß Artikel 8 Absatz 2 getroffenen Entscheidungen.
- 3.<sup>18</sup> Die Ständigen Kammern treffen gemäß den Bedingungen und Verfahren dieser Verordnung, gegebenenfalls nach Überprüfung des vom betrauten Europäischen Delegierten Staatsanwalt vorgeschlagenen Entscheidungsentwurfs, Entscheidungen bezüglich [...]:
  - a) der Anklageerhebung gemäß Artikel 27 Absatz 2<sup>19</sup>;
  - b) der Einstellung eines Verfahrens gemäß Artikel 28 Absatz 1 Buchstaben a bis f<sup>20</sup>;
  - c) der Einstellung eines Verfahrens durch einen Vergleich gemäß Artikel 29.
- 3a. Soweit erforderlich, treffen die Ständigen Kammern gemäß den Bedingungen und Verfahren dieser Verordnung Entscheidungen, die darauf abzielen,
  - a) den Europäischen Delegierten Staatsanwalt anzuweisen, Ermittlungen gemäß den Bestimmungen des Artikels 21 Absätze 1 bis 3 einzuleiten, sofern noch keine Ermittlungen eingeleitet wurden;
  - b) den Europäischen Delegierten Staatsanwalt anzuweisen, ein Verfahren nach Artikel 21a Absatz 6 an sich zu ziehen, sofern das Verfahren noch nicht zugewiesen wurde;

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<sup>17</sup> 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 and SI would exclude that the Permanent Chamber shall have the right to intervene in individual cases, except in cases of inactivity or manifest delays. NL, PT and SI 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 as a general rule instructions may be given against inactivity or manifest delays in pending criminal proceedings.'* AT, RO, DE, IT, LT, BG, ES, FR and COM oppose this recital.

<sup>18</sup> AT, CY, CZ, DE, FI, MT and SE believe that 9(3) and 9 (3a) should be finalized only after work on other Articles has been completed. BE, BG, ES, FR, IT, LT, RO and COM have expressed strong reserves as regards the latest wording of Article 9(3)(a) and 9(5).

<sup>19</sup> 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.

<sup>20</sup> 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.

- c) strategische Fragen oder allgemeine Angelegenheiten gemäß Artikel 8 Absatz 2 an das Kollegium zu verweisen;
  - d) ein Verfahren gemäß Artikel 21 Absatz 2 zuzuweisen;
  - e) ein Verfahren gemäß Artikel 21 Absatz 4 und Artikel 23 Absatz 3a neu zuzuweisen;
  - [i) den Beschluss eines Europäischen Staatsanwalts zu genehmigen, die Ermittlungen selbst gemäß Artikel 23 Absatz 4 durchzuführen.]
4. Die zuständige Ständige Kammer kann über die Aufsicht<sup>21</sup> über die Ermittlungen oder die Strafverfolgungsmaßnahmen führenden Europäischen Staatsanwalt in spezifischen Verfahren dem mit dem Verfahren betrauten Europäischen Delegierten Staatsanwalt im Einklang mit dem geltenden nationalen Recht<sup>22</sup> Anweisungen<sup>23</sup> erteilen, sofern dies für die effiziente Durchführung der Ermittlungen oder Strafverfolgungsmaßnahmen oder im Interesse der Rechtspflege oder einer kohärenten Funktionsweise der Europäischen Staatsanwaltschaft notwendig ist.

<sup>21</sup> SI suggest to replacing '*supervising*' with '*directing*'. The same applies for the subsequent paragraphs of Article 9 and subsequent Articles.

<sup>22</sup> 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 Permanent Chamber [...]if it does not should be introduced.

<sup>23</sup> RO, with support from IT and BE, 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*'. 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*'. DE, supported by AT, CZ and NL, is in addition to the RO recital proposing the following text: '*Where he or she considers that the instruction would require him/her to undertake any measure that would not be in compliance with national law, the European Delegated Prosecutor shall ask for a review of the decision and should ultimately be given the possibility to refrain from following the instruction and to request that he/she is relieved from the responsibility for handling the case. Being active members of the public prosecution service or the judiciary of the Member States, the European Delegated Prosecutors should not be obliged to follow, under any circumstances, instructions where this would be conflicting with national disciplinary provisions.*'

- [5. Die Ständige Kammer fasst Beschlüsse mit einfacher Mehrheit. Die Kammer stimmt auf Antrag eines ihrer Mitglieder ab. Jedes Mitglied hat eine Stimme. Bei Stimmengleichheit gibt die Stimme des Vorsitzenden den Ausschlag. Die Entscheidungen werden im Rahmen von Beratungen der Kammern auf der Grundlage eines zusammenfassenden Berichts, der der Kammer durch den zuständigen Europäischen Staatsanwalt vorgelegt wird, und grundsätzlich<sup>24</sup> auf der Grundlage eines vom betrauten Europäischen Delegierten Staatsanwalt vorgeschlagenen Entscheidungsentwurfs getroffen.

Die gesamte Verfahrensakte wird der zuständigen Ständigen Kammer auf Verlangen im Hinblick auf die Vorbereitung der Entscheidungen zur Verfügung gestellt.<sup>25</sup>

Vorbehaltlich der vorherigen Zustimmung durch den Europäischen Generalstaatsanwalt kann die Ständige Kammer in einem besonderen Fall ihre Entscheidungsbefugnisse gemäß Absatz 3 Buchstaben a und b an den die Aufsicht über das Verfahren führenden Europäischen Staatsanwalt im Einklang mit Artikel 11 Absatz 1 übertragen, wenn die Straftat

- a) einen Schaden von weniger als 50 000 Euro zum Nachteil der finanziellen Interessen der Union verursacht hat bzw. verursachen könnte;
- b) keine Auswirkungen auf Ebene der Europäischen Union hat und
- c) nicht von Beamten und sonstigen Bediensteten der Europäischen Union oder Mitgliedern der Organe begangen wurde.

Auf Antrag eines Mitglieds der Ständigen Kammer wird diese Befugnisübertragung jederzeit zurückgezogen.

Der die Aufsicht führende Europäische Staatsanwalt unterrichtet die Kammer über alle Informationen oder Umstände, die nach seinem Dafürhalten wahrscheinlich eine Neubewertung der Frage, ob es zweckmäßig ist, die Befugnisübertragung aufrechtzuerhalten, erforderlich machen.

Damit eine kohärente Anwendung des Grundsatzes der Befugnisübertragung gewährleistet wird, erstattet jede Ständige Kammer dem Kollegium jährlich über die Anwendung der Befugnisübertragung Bericht. Das Kollegium kann bei Bedarf Leitlinien herausgeben, damit die Konsistenz bei der Strafverfolgungspolitik der Europäischen Staatsanwaltschaft gewährleistet werden kann.

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<sup>24</sup> The following recital should be considered: *'The Permanent Chambers in adopting the decisions in accordance with Article 9 (3a) and (3b) should base them following the draft decision proposed by the handling EDP. However, in exceptional cases, the Chamber should be able to adopt decision without a draft decision.'*

<sup>25</sup> A recital with the following wording should be considered: *'The work of the EPPO should in principle be ensured in electronic form'*.

Die Geschäftsordnung gestattet den Kammern, Entscheidungen im Wege eines schriftlichen Verfahrens zu treffen, das in der Geschäftsordnung im Einzelnen festzulegen ist.

Sämtliche Entscheidungen und Anweisungen, die im Einklang mit den Absätzen 3, 3a und 4 getroffen bzw. erteilt werden, sind schriftlich festzuhalten und werden Teil der Verfahrensakte.]

6. [Zusätzlich zu den ständigen Mitgliedern nimmt der Europäische Staatsanwalt, der eine Ermittlung oder eine Strafverfolgungsmaßnahme gemäß Artikel 11 Absatz 1 beaufsichtigt, an den Beratungen der Ständigen Kammer teil. Der die Aufsicht über das Verfahren führende Europäische Staatsanwalt ist stimmberechtigt, außer bei Entscheidungen der Ständigen Kammer zur Zuweisung und Neuzuweisung gemäß Artikel 21 Absätze 3 und 4, Artikel 21a Absatz 5 und zur Anklageerhebung (Artikel 27 Absatz 2), wenn mehr als ein Mitgliedstaat für das Verfahren zuständig ist, sowie in den in Artikel 26a Absatz 8 umschriebenen Fällen<sup>26</sup>.

Eine Ständige Kammer kann außerdem entweder auf Antrag eines Europäischen Staatsanwalts oder eines Europäischen Delegierten Staatsanwalts oder auf eigene Initiative andere von einem Verfahren betroffene Europäische Staatsanwälte oder Europäische Delegierte Staatsanwälte ohne Stimmrecht zur Teilnahme an ihren Sitzungen einladen.]

7. Die Vorsitzenden der Ständigen Kammern halten das Kollegium im Einklang mit der Geschäftsordnung über die gemäß diesem Artikel gefassten Beschlüsse auf dem Laufenden, damit das Kollegium seine Funktion gemäß Artikel 8 Absatz 2 ausüben kann.

#### *Artikel 10*

#### **Der Europäische Generalstaatsanwalt und die Stellvertreter**

1. Der Europäische Generalstaatsanwalt ist der Leiter der Europäischen Staatsanwaltschaft. Der Europäische Generalstaatsanwalt organisiert die Arbeit der Europäischen Staatsanwaltschaft, leitet ihre Tätigkeit und fasst Beschlüsse im Einklang mit dieser Verordnung und der Geschäftsordnung.
2. Es werden [zwei] Stellvertreter ernannt, die den Europäischen Generalstaatsanwalt bei der Erfüllung seiner Aufgaben unterstützen und ihn bei Abwesenheit oder Verhinderung vertreten.

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<sup>26</sup> COM and AT, BE, BG, DE, ES, FR, IT, LT, 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. MT, supported by FI, would like to have voting right in all cases for EDP.

3. Der Europäische Generalstaatsanwalt vertritt die Europäische Staatsanwaltschaft gegenüber den Organen der Union und der Mitgliedstaaten und Dritten. Der Europäische Generalstaatsanwalt kann seine Aufgaben in Verbindung mit der Repräsentation auf einen der Stellvertreter oder einen Europäischen Staatsanwalt übertragen.

### Artikel 11

#### Die Europäischen Staatsanwälte<sup>27</sup>

1. Die Europäischen Staatsanwälte beaufsichtigen im Namen der Ständigen Kammer<sup>28</sup> und im Einklang mit den von dieser gemäß Artikel 9 Absatz 3, Artikel 9 Absatz 3 Buchstabe a und Artikel 9 Absatz 4 erteilten Anweisungen die Ermittlungen und Strafverfolgungsmaßnahmen, für die die mit dem Verfahren betrauten Europäischen Delegierten Staatsanwälte in ihrem Herkunftsmitgliedstaat zuständig<sup>29</sup> sind. Die Europäischen Staatsanwälte unterbreiten Zusammenfassungen zu den jeweils von ihnen beaufsichtigten Verfahren und gegebenenfalls – auf der Grundlage von Entscheidungsentwürfen, die von den Europäischen Delegierten Staatsanwälten ausgearbeitet werden – Vorschläge für die von der Ständigen Kammer zu fassenden Entscheidungen.

In der Geschäftsordnung ist unbeschadet des Artikels 14 Absatz 7 ein Mechanismus zur Vertretung unter den Europäischen Staatsanwälten vorzusehen, falls der die Aufsicht führende Europäische Staatsanwalt zeitweilig<sup>30</sup> abwesend ist oder aus anderen Gründen zur Wahrnehmung der Aufgaben eines Europäischen Staatsanwalts nicht zur Verfügung steht. Der vertretende Europäische Staatsanwalt kann – abgesehen von der Möglichkeit, eine Ermittlung gemäß Artikel 23 Absatz 4 durchzuführen – jede Aufgabe eines Europäischen Staatsanwalts ausführen.

2. Der die Aufsicht führende Europäische Staatsanwalt kann im Einklang mit geltendem nationalen Recht und im Einklang mit den Anweisungen der zuständigen Ständigen Kammer dem mit dem Verfahren betrauten Europäischen Delegierten Staatsanwalt in einem spezifischen Verfahren Anweisungen erteilen, sofern dies für die effiziente Durchführung der Ermittlungen oder Strafverfolgungsmaßnahmen und im Interesse der Rechtspflege oder einer kohärenten Funktionsweise der Europäischen Staatsanwaltschaft notwendig ist.

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<sup>27</sup> CY, 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.

<sup>28</sup> PT and SI are opposed to the idea that the EPs shall supervise investigations and prosecutions on behalf of the Permanent Chamber.

<sup>29</sup> COM and BG oppose the addition of the word '*in their Member State of origin*'. [...]

<sup>30</sup> 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.*'



3. Die Europäischen Staatsanwälte fungieren als Verbindungsstellen und Informationskanäle zwischen den Ständigen Kammern und den Europäischen Delegierten Staatsanwälten in ihrem jeweiligen Herkunftsmitgliedstaat und überwachen die Durchführung der Aufgaben der Europäischen Staatsanwaltschaft in ihrem jeweiligen Mitgliedstaat in enger Abstimmung mit den Europäischen Delegierten Staatsanwälten. Die Europäischen Staatsanwälte stellen im Einklang mit dieser Verordnung und der Geschäftsordnung sicher, dass alle einschlägigen Informationen aus der zentralen Europäischen Staatsanwaltschaft den Europäischen Delegierten Staatsanwälten zur Verfügung gestellt werden und umgekehrt.

#### *Artikel 12*

### **Die Europäischen Delegierten Staatsanwälte**

1. Die Europäischen Delegierten Staatsanwälte handeln im Namen der Europäischen Staatsanwaltschaft in ihrem jeweiligen Mitgliedstaat<sup>31</sup> und haben neben bzw. vorbehaltlich der ihnen übertragenen besonderen Befugnisse und des ihnen zuerkannten besonderen Status und nach Maßgabe dieser Verordnung in Bezug auf Ermittlungen, Strafverfolgungsmaßnahmen und Anklageerhebung die gleichen Befugnisse wie einzelstaatliche Staatsanwälte.

Die Europäischen Delegierten Staatsanwälte sind für die von ihnen eingeleiteten, für die ihnen zugewiesenen oder für die durch Wahrnehmung ihres Evokationsrechts von ihnen übernommenen Ermittlungen und Strafverfolgungsmaßnahmen zuständig. Die Europäischen Delegierten Staatsanwälte befolgen die Weisungen und die Anweisungen der für das Verfahren zuständigen Ständigen Kammer sowie die Anweisungen des die Aufsicht führenden Europäischen Staatsanwalts.

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<sup>31</sup> The following recital should be considered: *'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.'*

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. A such recital could look as follows *'In following the direction and instruction of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor, the European Delegated Prosecutor handling the case should be responsible for the investigations in accordance with national law'*. [...], DE and IT, supported by COM, opposes this recital.

Die Europäischen Delegierten Staatsanwälte sind ferner für die Anklageerhebung zuständig und haben insbesondere die Befugnis, vor Gericht zu plädieren, an der Beweisaufnahme teilzunehmen und die zur Verfügung stehenden Rechtsbehelfe im Einklang mit dem nationalen Recht einzulegen.

2. In jedem Mitgliedstaat muss es zwei<sup>32</sup> oder mehr Europäische Delegierte Staatsanwälte geben. Der Europäische Generalstaatsanwalt genehmigt<sup>33</sup> nach Beratung und Einigung mit den Behörden des jeweiligen Mitgliedstaats die Anzahl der Europäischen Delegierten Staatsanwälte sowie die räumliche und sachliche<sup>34</sup> Aufteilung der Zuständigkeiten zwischen den Europäischen Delegierten Staatsanwälten in jedem einzelnen Mitgliedstaat.
3. Die Europäischen Delegierten Staatsanwälte können auch ihre Aufgaben als einzelstaatliche Staatsanwälte wahrnehmen, soweit sie dadurch nicht daran gehindert sind, ihren Pflichten nach dieser Verordnung nachzukommen. Sie unterrichten den die Aufsicht führenden Europäischen Staatsanwalt über solche Aufgaben. Ist ein Europäischer Delegierter Staatsanwalt zu irgendeinem Zeitpunkt wegen dieser anderen Verpflichtungen nicht in der Lage, seinen Aufgaben als Europäischer Delegierter Staatsanwalt nachzukommen, so setzt er den die Aufsicht führenden Europäischen Staatsanwalt davon in Kenntnis; dieser legt nach Rücksprache mit den zuständigen einzelstaatlichen Strafverfolgungsbehörden fest, ob den sich aus dieser Verordnung ergebenden Aufgaben Vorrang einzuräumen ist. Der Europäische Staatsanwalt kann der Ständigen Kammer vorschlagen, das Verfahren gemäß Artikel 23 Absätze 3a und 4 neu zuzuweisen.

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<sup>32</sup> This provision should be 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. The text in paragraph 2, and in particular *'the number of EDP's*, may need to be reviewed again in the context of the provisions of the formal status of the EDPs ('special advisors') and the financial provisions.

<sup>33</sup> The inclusion of the following recital will be included in the text: *'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.'*

<sup>34</sup> The following recital will be included in the text: *'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 against such decisions.'*

## ABSCHNITT 2

### ERNENNUNG UND ENTLASSUNG DER MITGLIEDER DER EUROPÄISCHEN STAATSANWALTSCHAFT

#### *Artikel 13<sup>35</sup>*

#### **Benennung und Entlassung des Europäischen Generalstaatsanwalts**

1. Das Europäische Parlament und der Rat ernennen in gegenseitigem Einvernehmen den Europäischen Generalstaatsanwalt für eine Amtszeit von sieben Jahren; Wiederernennung ist nicht zulässig. Der Rat beschließt mit einfacher Mehrheit.
2. Der Europäische Generalstaatsanwalt wird unter Bewerbern ausgewählt, die
  - a) aktive Mitglieder der Staatsanwaltschaft oder der Justiz in den Mitgliedstaaten oder aktive Europäische Staatsanwälte sind;
  - b) jede Gewähr für Unabhängigkeit bieten;
  - c) in ihrem jeweiligen Land die für die höchsten staatsanwaltlichen oder richterlichen Ämter erforderlichen Voraussetzungen erfüllen und über einschlägige praktische Erfahrungen im Rahmen der nationalen Rechtssysteme, der Finanzausmittlungen und der internationalen justiziellen Zusammenarbeit in Strafsachen verfügen oder das Amt des Europäischen Staatsanwalts ausgeübt haben und
  - d) hinreichende Erfahrungen und Qualifikationen als Führungskraft für das Amt besitzen.

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<sup>35</sup> CY, PT, MT, HU, ES, HR and 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. Die Auswahl wird auf der Grundlage einer im Amtsblatt der Europäischen Union zu veröffentlichenden offenen Aufforderung zur Einreichung von Bewerbungen vorgenommen, nach der ein Auswahlausschuss eine Auswahlliste der qualifizierten Bewerber erstellt, die dem Europäischen Parlament und dem Rat vorzulegen ist. Der Ausschuss setzt sich aus [12] Personen zusammen, die aus dem Kreis ehemaliger Mitglieder des Gerichtshofs und des Rechnungshofs, ehemaliger nationaler Mitglieder von Eurojust, der Mitglieder der höchsten einzelstaatlichen Gerichte, hochrangiger Staatsanwälte und der Juristen von anerkannt hervorragender Befähigung ausgewählt werden, wobei eine von ihnen vom Europäischen Parlament vorgeschlagen wird<sup>36</sup>. Der Rat legt die Regeln für die Tätigkeit des Ausschusses fest und nimmt einen Beschluss zur Ernennung seiner Mitglieder auf Vorschlag der Kommission an<sup>37</sup>.
- 3a. Wird ein Europäischer Staatsanwalt zum Europäischen Generalstaatsanwalt ernannt, so wird sein Amt als Europäischer Staatsanwalt im Einklang mit dem Verfahren des Artikels 14 Absätze 1 und 2 sofort wieder besetzt.
4. Der Gerichtshof der Europäischen Union kann auf Antrag des Europäischen Parlaments, des Rates oder der Kommission den Europäischen Generalstaatsanwalt entlassen, wenn er zu der Feststellung gelangt, dass er seine Aufgaben nicht mehr wahrnehmen kann oder dass er sich eines schweren Fehlverhaltens schuldig gemacht hat.
5. Tritt der Europäische Generalstaatsanwalt zurück, wird entlassen oder scheidet aus einem anderen Grund aus dem Amt aus, so wird die Stelle nach dem Verfahren der Absätze 1 bis 3 sofort wieder besetzt.

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<sup>36</sup> The following recital should be added: '*Account should be taken of a balanced membership of the panel, both in geographical terms and in terms of representation of the legal systems of the Member States.*'

<sup>37</sup> A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

## Artikel 13a

### **Ernennung und Entlassung der Stellvertreter des Europäischen Generalstaatsanwalts**

1. Das Kollegium<sup>38</sup> ernennt [zwei] Europäische Staatsanwälte für eine verlängerbare Amtszeit von drei Jahren zu Stellvertretern des Europäischen Generalstaatsanwalts, wobei ihre jeweilige Amtszeit als Europäischer Staatsanwalt nicht überschritten werden darf. Das Auswahlverfahren wird in der Geschäftsordnung geregelt. Die Stellvertreter des Europäischen Generalstaatsanwalts behalten ihren Status als Europäische Staatsanwälte.
2. In der Geschäftsordnung werden die Regeln und Bedingungen für die Ausübung der Funktion der Stellvertreter des Europäischen Generalstaatsanwalts festgelegt. Kann ein Europäischer Staatsanwalt seine Aufgaben als Stellvertreter des Europäischen Generalstaatsanwalts nicht mehr wahrnehmen, so kann das Kollegium im Einklang mit der Geschäftsordnung beschließen, dass er das Amt als Stellvertreter des Europäischen Generalstaatsanwalts nicht ausüben darf und aus diesem Amt zu entlassen ist.
3. Tritt ein Stellvertreter des Europäischen Generalstaatsanwalts zurück, wird entlassen oder scheidet aus einem anderen Grund aus seinem Amt als Stellvertreter aus, so wird die Stelle nach dem Verfahren des Absatzes 1 sofort wieder besetzt. Vorbehaltlich der Bestimmungen des Artikels 14 bleibt er Europäischer Staatsanwalt.

## Artikel 14<sup>39</sup>

### **Ernennung und Entlassung der Europäischen Staatsanwälte**

1. Jeder Mitgliedstaat benennt drei Kandidaten für das Amt eines Europäischen Staatsanwalts aus Bewerbern, die
  - a) aktive Mitglieder der Staatsanwaltschaft oder der Justiz in den Mitgliedstaaten sind;
  - b) jede Gewähr für Unabhängigkeit bieten und
  - c) in ihrem jeweiligen Land die für hohe staatsanwaltliche oder richterliche Ämter erforderlichen Voraussetzungen erfüllen und über einschlägige praktische Erfahrungen im Rahmen der nationalen Rechtssysteme, der Finanzermittlungen und der internationalen justiziellen Zusammenarbeit in Strafsachen verfügen.

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<sup>38</sup> COM maintains that the Deputies, like the European Chief Prosecutor, should be appointed by the Council and the EP.

<sup>39</sup> [...]

2. Nach Eingang der begründeten Stellungnahme eines Auswahlausschusses gemäß Artikel 13 Absatz 3 wählt der Rat einen der Kandidaten aus und ernennt ihn zum Europäischen Staatsanwalt des betreffenden Mitgliedstaats. Stellt der Auswahlausschuss fest, dass ein Bewerber nicht die erforderlichen Voraussetzungen für die Wahrnehmung der Aufgaben eines Europäischen Staatsanwalts erfüllt, so ist die Stellungnahme des Ausschusses bindend für den Rat.
3. Die Europäischen Staatsanwälte werden vom Rat mit einfacher Mehrheit ausgewählt und für eine Amtszeit von sechs Jahren ernannt; Wiederernennung ist nicht zulässig. Der Rat kann beschließen, das Mandat am Ende der sechsjährigen Amtszeit um höchstens drei weitere Jahre zu verlängern.
4. Alle drei Jahre findet eine teilweise Neubesetzung eines Drittels der Stellen der Europäischen Staatsanwälte statt. Der Rat erlässt mit einfacher Mehrheit Übergangsvorschriften<sup>40</sup> für die Ernennung der Europäischen Staatsanwälte für deren erste Amtszeit und während deren erster Amtszeit<sup>41</sup>.
5. Der Gerichtshof der Europäischen Union kann auf Antrag des Europäischen Parlaments, des Rates oder der Kommission einen Europäischen Staatsanwalt entlassen, wenn er zu der Feststellung gelangt, dass dieser nicht mehr in der Lage ist, die für die Erbringung seiner Aufgaben erforderlichen Voraussetzungen zu erfüllen, oder dass er sich eines schweren Fehlverhaltens schuldig gemacht hat.
6. Tritt ein Europäischer Staatsanwalt zurück, wird entlassen oder scheidet aus einem anderen Grund aus dem Amt aus, so wird die Stelle nach dem Verfahren der Absätze 1 und 2 sofort wieder besetzt. Übt dieser Europäische Staatsanwalt das Amt eines Stellvertreters des Europäischen Generalstaatsanwalts aus, so wird er automatisch auch aus diesem Amt entlassen.

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<sup>40</sup> A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

<sup>41</sup> The following recital will be added in this context: *'The Council should take into account the geographical range of the Member States when deciding on the partial replacement of a third of the European Prosecutors during their first mandate period'*.

7. Das Kollegium bestimmt nach der Benennung jedes Europäischen Staatsanwalts unter den Europäischen Delegierten Staatsanwälten desselben Mitgliedstaats eine Person zum Stellvertreter des Europäischen Staatsanwalts, der seine Aufgaben nicht wahrnehmen kann oder gemäß den Absätzen 5 und 6 aus seinem Amt ausgeschieden ist<sup>42</sup>.

Erkennt das Kollegium die Notwendigkeit einer Vertretung an, so wird die so bestimmte Person bis zur Ersetzung oder Rückkehr des Europäischen Staatsanwalts für einen befristeten Zeitraum von höchstens drei Monaten als Europäischer Interims-Staatsanwalt tätig. Auf Antrag kann das Kollegium den Zeitraum gegebenenfalls verlängern<sup>43</sup>. Die Mechanismen und die Modalitäten für eine vorübergehende Vertretung werden in der Geschäftsordnung festgelegt und geregelt<sup>44</sup>.

### Artikel 15

#### **Ernennung und Entlassung der Europäischen Delegierten Staatsanwälte**

1. Das Kollegium ernennt auf Vorschlag durch den Europäischen Generalstaatsanwalt die von den Mitgliedstaaten benannten Europäischen Delegierten Staatsanwälte<sup>45</sup>. Das Kollegium kann die benannte Person ablehnen, wenn sie den Kriterien nach Absatz 2 nicht genügt. Die Europäischen Delegierten Staatsanwälte werden für eine Amtszeit von [fünf] Jahren<sup>46</sup> ernannt; Wiederernennung ist zulässig.

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<sup>42</sup> The following accompanying recital will be considered: *'The EDP substituting the EP in accordance with Article 14(7) should 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) should apply.'*

<sup>43</sup> A footnote with the following wording will be added: *'Recourse to such possibility should be left to the discretion of the College, where deemed necessary, taking into account the workload of the office and the duration of the absence, 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.'*

<sup>44</sup> The following recital should be introduced in this sense: *'Substitution of an EP by one of the EDPs of the respective Member States may take place in cases referred to in Article 14 (6) or in cases, for example, of prolonged illness, 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.'*

<sup>45</sup> COM maintains that EDPs should be appointed by the College based on a list with a sufficient number of candidates from each MS allowing for a choice.

<sup>46</sup> AT and DE have noted that the appropriate maximum term of office will need to be decided in the context of negotiations on their formal status under EU law.

2. Die Europäischen Delegierten Staatsanwälte sind ab dem Zeitpunkt ihrer Ernennung zum Europäischen Delegierten Staatsanwalt bis zur Amtsentlassung aktive Mitglieder der Staatsanwaltschaft oder der Justiz des Mitgliedstaats, der sie ernannt hat. Sie müssen jede Gewähr für Unabhängigkeit bieten und sie müssen über die erforderlichen Voraussetzungen und über einschlägige praktische Erfahrungen im Rahmen ihres nationalen Rechtssystems verfügen<sup>47</sup>.
3. Das Kollegium entlässt einen Europäischen Delegierten Staatsanwalt, falls es zu der Feststellung gelangt, dass er die Voraussetzungen nach Absatz 2 nicht mehr erfüllt oder seine Aufgaben nicht wahrnehmen kann oder dass er sich eines schweren Fehlverhaltens schuldig gemacht hat.
4. Beschließt ein Mitgliedstaat, einen nationalen Staatsanwalt, der zum Europäischen Delegierten Staatsanwalt ernannt wurde, aus Gründen, die nicht mit seinen Pflichten nach dieser Verordnung im Zusammenhang stehen, zu entlassen oder disziplinarische Maßnahmen gegen ihn zu ergreifen, so informiert<sup>48</sup> er den Europäischen Generalstaatsanwalt, bevor er tätig wird. Ein Mitgliedstaat darf einen Europäischen Delegierten Staatsanwalt nicht ohne Zustimmung des Europäischen Generalstaatsanwalts aus Gründen, die im Zusammenhang mit seinen Pflichten nach dieser Verordnung stehen, entlassen oder disziplinarische Maßnahmen gegen ihn ergreifen<sup>49</sup>. Erteilt der Europäische Generalstaatsanwalt seine Zustimmung nicht, so können die betroffenen Mitgliedstaaten das Kollegium um Überprüfung der Angelegenheit ersuchen.
5. Tritt ein Europäischer Delegierter Staatsanwalt zurück, sind seine Dienste für die Erfüllung der Aufgaben der Europäischen Staatsanwaltschaft nicht mehr erforderlich, wird er entlassen oder scheidet er aus anderem Grund aus dem Amt, so unterrichtet der betroffene Mitgliedstaat unverzüglich den Europäischen Generalstaatsanwalt und benennt, soweit erforderlich, umgehend einen anderen Staatsanwalt, damit dieser im Einklang mit Absatz 1 zum neuen Europäischen Delegierten Staatsanwalt ernannt wird<sup>50</sup>.

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<sup>47</sup> 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.

<sup>48</sup> COM would replace '*inform*' with '*consult*'.

<sup>49</sup> CY and FR 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 as regards their activities as national prosecutors. The provision may need to be examined again, in conjunction with the whole Regulation.

<sup>50</sup> 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 the European Chief Prosecutor of the number of the European Delegated Prosecutors.



## ABSCHNITT 3

### GESCHÄFTSORDNUNG

#### *Artikel 16<sup>51</sup>*

#### **Geschäftsordnung der Europäischen Staatsanwaltschaft**

1. Die Geschäftsordnung regelt die Organisation der Arbeit der Europäischen Staatsanwaltschaft.
  2. Ein Vorschlag für die Geschäftsordnung der Europäischen Staatsanwaltschaft wird vom Europäischen Generalstaatsanwalt ausgearbeitet und – sobald die Europäische Staatsanwaltschaft errichtet wurde – unverzüglich vom [Kollegium]<sup>52</sup> mit Zweidrittelmehrheit angenommen.
  3. Änderungen der Geschäftsordnung können von jedem Europäischen Staatsanwalt vorgeschlagen werden und müssen vom [Kollegium] mit Zweidrittelmehrheit angenommen werden.
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<sup>51</sup> 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 were sufficient.

<sup>52</sup> The Internal Rules of Procedure, depending on their content and the final analysis as regards the binding nature of the Rules, may need to 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<sup>1</sup>*

**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/EU<sup>2</sup>. The European Public Prosecutor's Office shall exercise this competence on the basis of the applicable national law implementing this Directive<sup>3</sup>.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

*Article 18*<sup>4</sup>

**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<sup>5</sup>.
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<sup>6</sup>.
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<sup>7</sup>,
  - 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<sup>8</sup> more severe than the sanction that may be imposed in respect of the other type of offence.

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<sup>4</sup> Many delegations continue to question whether the legal basis in Article 86 TFEU covers this Article.

<sup>5</sup> 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.

<sup>6</sup> A few delegations have suggested that this provision should rather be a recital. Others have suggested that the text should be given more detail.

<sup>7</sup> 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.

<sup>8</sup> COM, CZ and some delegations would add the words '*equal or*' here.

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<sup>9</sup> competent to decide on the attribution of competences concerning prosecution at national level<sup>10</sup> shall decide who shall exercise the ancillary competence.

*Article 19<sup>11</sup>*

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

1. The European Public Prosecutor's Office shall have has priority<sup>12</sup> competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence<sup>13 14</sup>
  - 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 these 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.

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<sup>9</sup> 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.

<sup>10</sup> IT [...]some delegations and COM would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review).

<sup>11</sup> 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.

<sup>12</sup> FI, MT, NL and PL would delete the word 'priority' here.

<sup>13</sup> 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.

<sup>14</sup> 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.

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.

# CHAPTER IV

## RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

### SECTION 1

#### REPORTING AND BASIC RULES ON INVESTIGATIONS

##### *Article 20*<sup>15</sup>

##### **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 criminal conduct which might constitute an offence within its competence.<sup>16</sup> 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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<sup>15</sup> 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 *'The 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 than 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.

<sup>16</sup> 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.'*

The College may, in consultation with national authorities, 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. 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.

2. Where the criminal conduct caused or is likely to cause damage to the Union's financial interest of less than EUR [20 000]<sup>17</sup>, and neither has repercussions at Union level<sup>18</sup> which require an investigation to be conducted by the Office nor which does not involve 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<sup>19</sup>. [...] The content of the summary report may be limited to the number of criminal proceedings initiated, a number of cases where an investigation has not been initiated, the number of proceedings dismissed, the number resulting in a conviction, the number resulting in an acquittal and the number of ongoing proceedings. The report may be presented in the form of automatically generated information.

Based on such summary reports, the College [...] shall be entitled to request national authorities to report without delay offences matching a specific [...] pattern [...] likely to cause damage to the Union's financial interest of less than EUR 20 000 when committed in circumstances deemed to have repercussions at Union level.

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<sup>17</sup> PL and SE, supported by AT, BE, CY, CZ, EE, ES FI, FR, HR, HU, IT, LT, 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). IT, RO, ES, CZ, LT, DE, HR, BE, BG and COM would prefer the 10 000 threshold.

<sup>18</sup> A definition of repercussion at Union level will be added in a recital. FR, supported by EE, ES, HR, IT and LT, 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.*' The exact wording of this recital is under discussion. BE has suggested that the College could elaborate guidelines on the meaning of the notion of repercussions.

<sup>19</sup> COM reservation: reports should be more frequent (every 3 months as in previous versions).

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 <sup>20</sup>.
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, if requested 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.
5. The European Public Prosecutor's Office may collect or request<sup>21</sup> any information that is relevant for the functions of the Office <sup>22</sup>.

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<sup>20</sup> CZ proposes the following wording: '*Verification shall aim to assess whether the information shows that the conditions set by Articles 17 and 18 determine the competence of the Office*'. The Presidency, supported by ES, would prefer to include this text in a recital.

<sup>21</sup> 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.

<sup>22</sup> 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.



## Article 21

### **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 shall<sup>23</sup>, without prejudice to the rules in Article 19(2) and 21(a)(3), initiate an investigation and note this in the Case Management System<sup>24</sup>.
2. The Permanent Chamber which receives the information shall instruct the European Delegated Prosecutor to initiate the investigation<sup>25</sup>, in accordance with the criteria referred in paragraph 3, where no investigation has been initiated by a European Delegated Prosecutor.
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 principles is duly justified, taking into account the following criteria, in order of priority<sup>26</sup>:
  - 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<sup>27</sup>.

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<sup>23</sup> FR and NL would prefer the word "may" here.

<sup>24</sup> 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.

<sup>25</sup> The following recital should be introduced in this context: '*An investigation should be systematically initiated where there are reasonable grounds to believe that an offence falling within the EPPO's competence is being or has been committed. Such an obligation should not preclude subsequent decisions of the EPPO not to prosecute, by dismissing the case or proposing a transaction.*'

<sup>26</sup> HU has emitted a reservation on this paragraph.

<sup>27</sup> 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.

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;
  - b) merge or split<sup>28</sup> 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 reallocate, merge or split a case it shall take due account of the current state of the investigations.

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<sup>28</sup> 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-trial 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*'. COM considers that splitting a case is against the spirit of EPPO, being one single office.

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

1. When a judicial or law enforcement authority<sup>30</sup> of a Member State exercises competence in respect of a criminal 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 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<sup>31</sup> 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.
- 2a. The European Public Prosecutor's Office<sup>32</sup> shall, where appropriate, consult competent authorities of the Member State concerned before deciding 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.

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<sup>29</sup> 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.

<sup>30</sup> MT, FI, SE would prefer to refer to 'competent authorities' here.

<sup>31</sup> FI has a reservation as regards the level of European Chief Prosecutor here.

<sup>32</sup> CZ, NL, SK\_ would prefer to refer to the European Delegated Prosecutor here.

3. Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR [20 000]<sup>33</sup> 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<sup>34</sup>.

The Office shall, where appropriate<sup>35</sup>, 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.

4. 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<sup>36</sup>.
5. 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)<sup>37</sup> upon instruction by a Permanent Chamber. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 and 4 of this Article considers not to exercise the right of evocation, he/she shall inform the European Prosecutor of his/her Member State[...]with a view to 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.
6. 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.

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<sup>33</sup> See footnote 17 above.

<sup>34</sup> A few delegations have questioned whether these cases always need to be handled by the Office. DE would like to include a recital to address this issue. Many delegations would like to see a definition or explanation of the concept of '*repercussions at Union level*' included in the text.

<sup>35</sup> CZ, NL, SK wish to delete the words '*where appropriate*'. RO would oppose such a deletion.

<sup>36</sup> CY, FI, MT, NL and SI have emitted general reservations as regards Article 18 in the Regulation.

<sup>37</sup> DE has a reservation as regards the words '*or in cases referred to in Article 9(3)(a) and (b)*.'

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 that an indictment has not been submitted to and received by a court. The decision shall be taken within the time frame set out in paragraph 1 of this Article .

### *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 <sup>38</sup> 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 <sup>39</sup>, coming through the European Delegated Prosecutor handling the case<sup>40</sup>, are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report <sup>41</sup> 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.
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.

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<sup>38</sup> DE would like to see the words '*and other measures*' deleted.

<sup>39</sup> NL would like to replace "*European Public Prosecutor's Office*" with "*European Delegated Prosecutors*" in this paragraph.

<sup>40</sup> COM and DE wishes to delete the reference to the European Delegated Prosecutor here.

<sup>41</sup> 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.

- 3a.<sup>42</sup> 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<sup>43</sup>, 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<sup>44</sup>;
  - 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<sup>45</sup>.

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.

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<sup>42</sup> CZ and HU would like to explicitly clarify the consequences when the instructions given are "wrong".

<sup>43</sup> 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.

<sup>44</sup> BE, SI considers this criterion to be too broad.

<sup>45</sup> PT has noted that an explanatory recital is 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*'.

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.<sup>46</sup>

#### *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<sup>47</sup> 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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<sup>46</sup> 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'*.

<sup>47</sup> 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.<sup>48</sup>

#### Article 26

#### **Investigation and other measures**<sup>49</sup>

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<sup>50</sup> under their laws to the European Public Prosecutor's Office:

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

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<sup>48</sup> 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.

<sup>49</sup> 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.



- 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<sup>51</sup>;
- 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<sup>52</sup>;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using<sup>53</sup>.

*Article 26a*<sup>54</sup>

**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<sup>55</sup> located in the Member State where that measure needs to be carried out.

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<sup>51</sup> DE would like c) to be deleted.

<sup>52</sup> DE, PL would like d) to be deleted, COM and FR oppose the deletion.

<sup>53</sup> MT would like to delete e), based on the reluctance of national authorities to use it.

<sup>54</sup> 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.

<sup>55</sup> 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<sup>56</sup>.  
  
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.<sup>57</sup>

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

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<sup>56</sup> 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.'*

<sup>57</sup> 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<sup>58</sup>.
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<sup>59</sup>,
- 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<sup>60</sup>.

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<sup>58</sup> Some delegations have questioned the need for the last 14 words of this Article.

<sup>59</sup> 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.

<sup>60</sup> 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 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**<sup>61</sup>

**TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION**

*Article 27*<sup>62</sup>

**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.<sup>63</sup>

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<sup>61</sup> DE proposes a new Article X, as well as a redrafting of Articles 27 and 28 (DS 1266/15).

<sup>62</sup> 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.

<sup>63</sup> 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) <sup>64</sup>.
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**<sup>65</sup>

1. The competent Permanent Chamber shall, on proposal from the European Delegated Prosecutor handling the case<sup>66</sup>, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds<sup>67</sup>:
  - 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<sup>68</sup> to prosecute;
  - 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.

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<sup>64</sup> Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

<sup>65</sup> 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.

<sup>66</sup> It may be necessary to clarify that the law of the EDP handling the case will apply here.

<sup>67</sup> 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.

<sup>68</sup> SK raised the question under which national law this should be assessed in cross-border cases.

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.<sup>69</sup> 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.

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<sup>69</sup> 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).

### Transactions

1. After obtaining the approval of the competent Permanent Chamber, the European Delegated Prosecutor handling the case may propose<sup>71</sup>, 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 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<sup>72</sup> 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.

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<sup>70</sup> 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, SI are of the opinion that a thorough revision of this Article is necessary. AT has submitted an alternative drafting proposal for the Article (DS 1310/15). [...]

<sup>71</sup> BE, FI, HU, MT, NL, PT and SE would keep a reference to national law here.

<sup>72</sup> FR and NL believe the threshold to be too low.

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)<sup>73</sup>.
- 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.
- 3b. Where the European Public Prosecutor's Office exercises a competence in accordance with Article 18 (1), the decision to offer a transaction shall be taken only with the consent of the competent national authorities of the Member State concerned. Where the competent authorities deny giving their consent, the European Public Prosecutor's Office may refer the case to the judicial authorities of the Member State for further investigation or prosecution [in accordance with Article 28a (2)].
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.

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<sup>73</sup> RO has requested that a more precise method for calculation should be included already in this Article.



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[...]

## **SECTION 4**

### **ADMISSIBILITY OF EVIDENCE**

#### *Article 30*

#### **Admissibility of evidence**<sup>74</sup>

1. Evidence presented by the prosecutors of the European Public Prosecutor's Office to the trial court, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence or other rights as enshrined in the Charter of Fundamental Rights of the European Union, shall [not be subject to/be admitted in the trial without] any validation or similar legal process even if the national law of the Member State where the court is located provides for different rules on the collection or presentation of such evidence.
2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the prosecutors of the European Public Prosecutor's Office at trial shall not be affected.

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<sup>74</sup> Many delegations have noted that this provision can only be finalised when the final wording of Article 27 will be there. Some delegations have called for a more explicit and detailed rule, in particular as regards illegally collected evidence. A few delegations have asked for a reference to national constitutions to be added. The text of this Article may need to be reassessed as a result of the outcome of discussions on Article 26a.

## SECTION 5 CONFISCATION

### *Article 31*

#### **Disposition of the confiscated assets**<sup>75</sup>

Where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the European Public Prosecutor's Office, Member States shall ensure that the monetary value of such property or proceeds shall ultimately be transferred to the Union's budget, to the extent necessary to compensate the prejudice caused to the Union and to administrative measures such as the recovery of any amounts lost as a result of irregularities or negligence. This transfer shall not prejudice the rights of other victims subject to their legitimate claims.

## CHAPTER IV PROCEDURAL SAFEGUARDS

### *Article 32*<sup>76</sup>

#### **Scope of the rights of the suspects and accused persons as well as other persons involved**

1. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspected persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defense.

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<sup>75</sup> Some delegations have questioned whether there is a legal basis for this provision. Others have suggested that national law should apply in this area. Some delegations have requested that clarifying and detailed provisions on, for example, how money should be collected must be added, how claims should be made, how the monetary value shall be decided etc. It has also been requested that it must be ensured that the EU will not receive the same money twice, first through recovery and then from confiscated proceeds.

<sup>76</sup> Many delegations have underlined that provisions on access to the file for in particular suspected persons must be included in the Regulation. Some delegations would prefer to delete the list of instruments in this provision, and move it to the recitals. Some have also noted that precisions as regards applicable law are needed.

2. Any suspect and accused persons as well as other persons who are a party in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, such as:
- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council,
  - (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council,
  - (c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,
  - (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,
  - (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant,
3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

# CHAPTER V

## JUDICIAL REVIEW

*Article 33*

**Judicial review**<sup>77</sup>

### OPTION 1:

When adopting procedural measures in the performance of its functions, the European Public Prosecutor's Office shall be considered as a national authority for the purpose of judicial review.

### OPTION 2:

1. Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [18(6)<sup>78</sup>, 27(4)] [and ...] shall be subject to review of their legality before the Court of Justice of the European Union in accordance with Article 263 of the Treaty<sup>79</sup>.
2. Without prejudice to Article 267 of the Treaty, the courts of Member States shall be competent to review other procedural decisions taken by the European Public Prosecutor's Office in the performance of its functions, in accordance with the requirements and procedures laid down by national law<sup>80</sup>.

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<sup>77</sup> A relative majority of delegations prefer option 2, but most delegations still believe that the options need to be modified slightly or clarified.

<sup>78</sup> Article 18(6) on ancillary competence should be redrafted as a consequence of this provision.

<sup>79</sup> A Recital should set out the criteria taken into account to limit the competence of the ECJ on actions for annulment to those specific cases, in the light of the objectives and principles referred to in the CLS legal opinion (doc. 13302/1/14 REV1).

<sup>80</sup> A Recital should be added to explain that the principles of equivalence and effectiveness as interpreted by the case law of the Court of Justice should be respected. Another recital should clarify that this provision is without prejudice to Article 267 of the Treaty, in particular preliminary rulings on the interpretation of Union law, on the validity of this Regulation and of procedural decisions taken by the European Public Prosecutor's Office. Finally another Recital should also clarify the issue of judicial review of procedural decisions taken by the European Public Prosecutor's Office which are governed by national law.