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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	13732/15
Subject:	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office *- Partial general approach*

A. Background

Since the October Council, the Presidency has organised eight working days in the COPEN Working Party (including three days in a Friends of Presidency setting). The discussions have been held in a very constructive atmosphere. The main focus of the meetings was on Articles 17-23, 28a (partly) and 36[1] in the draft Regulation. The Articles are presented below in view of preparing for an agreement at the Council meeting on 3 December 2015.

[1] As presented in doc 13467/15 EPPO 41 EUROJUST 186 CATS 103 FIN 722 COPEN 288 GAF 46.

B. State of Play

I. Articles 17, 19, 20, 22a and 28a (2a, 2b and 2c)

The rules in these key provisions, which are mainly treating issues related to the competence and exercise of the competence of EPPO, have been the object of repeated discussions at expert level. Although there is a common understanding of the general content of these provisions, a number of mainly technical issues have required intensive work.

The Luxembourg Presidency notes that the said provisions are closely interlinked, and has therefore elaborated, in the competent Working Party, a compromise package covering the five Articles. The main objective of the Presidency has been to strike a careful balance between the positions of delegations, while at the same time ensuring clear and efficient rules in this area.

The compromise package has generally been welcomed by delegations. It has been analysed in detail at expert level, in CATS and in bilateral meetings, whereby a number of adjustments to the text have been made in order meet concerns of delegations. Following these adjustments, the Presidency considers that the compromise, in its current form as presented in Annex I to this note, could be agreed upon by delegations.

II. Articles 18, 22, 23, and 36

Articles 18, 22 and 23 include important provisions on territorial and personal competence of the Office, as well as on the initiation and conducting of investigations. The rules have been analysed in detail at expert level. Following the very constructive discussions on these provisions during the last months, the Presidency notes that delegations have reached an agreement on the content of these provisions.

The provisions on judicial review of decisions of the Office, Article 36, have been repeatedly discussed at various levels. The Presidency considers that most Member States want to foresee a limited role for the Court of Justice of the European Union (CJEU) in the judicial review of decision of the Office. The discussions on the exact scope of this judicial review are complex.

The Presidency thinks however, that the wording of Article 36, reflecting the principle of a role for the CJEU can be agreed upon by ministers. Consequently, Article 36 does not contain any references to decisions of the European Public Prosecutor's Office, as the Presidency concludes that the provisions on judicial review can only be finalised once the full text of the Regulation has been negotiated, and a clear picture of which decisions need to be submitted for judicial control to the CJEU has been drawn.

C. Questions

As explained above, the Presidency considers that the time is now ripe for Council to agree on the Articles mentioned in section B.I and B.II above and reproduced in Annex 1 and Annex 2 to this note. The partial general approach will be agreed upon on the understanding that the text will - in particular in order to ensure its coherence - be revisited once all Chapters of the Regulation have been agreed upon (following the maxim that nothing is agreed until everything is agreed) and that such partial general approach is without prejudice to any horizontal questions.

Ministers are therefore invited to:

- **agree to a partial general approach on the package compromise on Articles 17, 19, 20, 22a and 28a(2a - 2c) as presented in Annex 1 to this note;**

- **agree to a partial general approach on the provisions cited in Annex 2 to this note**

Article 17

Material competence of the European Public Prosecutor's Office

1. The European Public Prosecutor's Office shall be competent in respect of the criminal offences affecting the financial interests of the Union which are provided for in Directive 2015/xx/EU, as implemented by national law, irrespective of whether the same criminal conduct could be classified, under national law, as another type of offence[2].

1a. In cases where an offence affecting the financial interests of the Union is committed within the framework of a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented by national law, established with a view to commit this type of offences, the European Public Prosecutor's Office shall also be competent with regard to participation in such a criminal organisation.

2. The European Public Prosecutor's Office shall also be competent for any other criminal offence which is inextricably linked[3] to a criminal conduct falling within the scope of paragraph 1.

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[2] FI expressed concerns regarding the legal base.

[3] The following recital should be added : *"The efficient investigation of crimes affecting the financial interests of the Union may require, in certain cases, that the competent authority extends the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union.*
If these other offences are punished more severely than the offence affecting the financial interest of the Union, national authorities appear to be best placed to investigate on all the inextricably linked offences, including those affecting the financial interest of the EU, and should therefore maintain the competence to do so.
However, in cases where these inextricably linked offences, irrespective of the sanctions provided for them under national law, are merely instrumental and ancillary to the commission of the offence affecting the financial interests of the Union, it is the EPPO that appears best placed to investigate also on these offences, and should therefore have the competence to do so.
The notion of inextricably linked offences should be considered in light of the jurisprudence of the Court of Justice of the European Union (C-436/04 Van Esbroeck).
Such may be the case, for example, for offences which have been committed for the sole purpose of creating the conditions to commit the PIF offence, such as the creation of a criminal organisation in the meaning of Framework Decision 2008/841/JHA, which has the exclusive aim of perpetrating crimes affecting the financial interests of the Union, or offences strictly aimed at ensuring the material or legal means to commit the PIF offence, or to ensure the profit or product thereof."

3. [Within … Member States shall notify the European Public Prosecutor's Office of an extensive list of the national substantive criminal law provisions applicable to the offences defined in Directive 2015/xx/EU[4].]

[…]*Article 19*

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 report without undue delay to the European Public Prosecutor's Office any criminal conduct in respect of which it could exercise its competence in accordance with Articles 17, 20(2) and 20(3)[5].

1a. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the European Public Prosecutor's Office could exercise its competence in accordance with Article 17, 20(2) and 20(3), or where, at any time after the initiation of an investigations, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence in respect of which the European Public Prosecutor's Office could exercise its competence over the criminal conduct in accordance with Articles 17, 20(2) and 20(3), this authority shall without undue delay inform the European Public Prosecutor's Office so that the latter can decide whether to exercise its right of evocation in accordance with Article 22a.

1b. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects and any other involved persons.

1c. The European Public Prosecutor's Office shall also be informed in accordance with paragraphs 1 and 1a in cases where an assessment of whether the criteria laid down in Article 20(2) and 20(3) are met is not possible.

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[4] This paragraph should be further developed and moved to the final provisions of this regulation.

[5] A recital reading as follows could be considered: "*Member States should set up a system which will ensure that information is reported to the EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system".*

2. Information provided to the European Public Prosecutor's Office shall be registered and verified in accordance with its Internal Rules of Procedure. The verification shall aim to assess whether, on the basis of the information provided in accordance with paragraph 1 and 1a, there are grounds to initiate an investigation or to exercise the right of evocation.

3. Where upon verification the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation in accordance with Article 22, or to exercise its right of evocation in accordance with Article 22a, the reasons shall be noted in the Case Management System.

   The European Public Prosecutor's Office shall inform the authority that reported the criminal conduct in accordance with paragraph 1 or 1a, as well as crime victims and if so provided by national law, other persons who reported the criminal conduct.

4. 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 European Public Prosecutor's Office may have been committed, it shall without undue delay inform the competent national authorities.

5. The European Public Prosecutor's Office may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States[6]. The requested information may also concern infringements which caused damage to the Union's financial interests, other than those within the competence of the European Public Prosecutor's Office in accordance with Article 20(2), where it is necessary to establish links with a criminal conduct on which it has exercised its competence. Such information may also be requested in order to enable the College in accordance with Article 8(2)[7] to issue general guidelines on the interpretation of the obligation to inform the European Public Prosecutor's Office of cases falling within the scope of Article 20(2).

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6 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 the competence of the EPPO will be considered. The recital will also clarify that Member States may provide any information to the Office. CZ proposes the following wording to be added in a recital: 'Verification shall aim to assess whether the information shows that the conditions set by Articles 17 and 18 determine the competence of the Office'.

7 It is possible that a slight adaptation of Article 8 may need to be considered at a later stage, in the light of Articles 19(5), 22a(7) and 28a(2a).

Article 20

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

1. The European Public Prosecutor's Office shall exercise its competence either by initiating an investigation in accordance with Article 22 or by deciding to use its right of evocation in accordance with Article 22a. If the European Public Prosecutor's Office decides to exercise its competence, the competent national authorities shall not exercise their own competence in respect of the same criminal conduct.
2. Where a criminal offence falling within the scope of Article 17 caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the European Public Prosecutor's Office may only exercise its competence if:

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

   b) officials or other servants of the European Union, or members of the Institutions could be suspected of having committed the offence.

   The European Public Prosecutor's Office shall, where appropriate, consult the competent national authorities or Union bodies to establish whether the criteria defined in (a) and (b) are met.

3. The European Public Prosecutor's Office shall refrain from exercising its competence in respect of any offence falling within the scope of Article 17 and shall, upon consultation with the competent national authorities and, refer the case without undue delay to the latter in accordance with Article 28a if :

   a) the maximum sanction provided for by national law for an offence falling within the scope of Article 17(1) is less severe than the maximum sanction for an inextricably linked offence as referred to in Article 17(2) or;

   b) there is a reason to assume that the damage caused or likely to be caused to the Union's financial interests by an offence as referred to in Article 17 does not exceed the damage caused or likely to be caused to another victim.

4. The European Public Prosecutor's Office shall inform the competent national authorities without undue delay of any decision to exercise or to refrain from exercising its competence.

5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the question whether the criminal conduct falls within the scope of Article 17(1a), 17(2), 20(2) or 20(3) the national authorities[8] competent to decide on the attribution of competences concerning prosecution at national level shall decide who shall be competent for the investigation of the case. Member States shall define the national authority which will decide on the attribution of competence.

[…]

Article 22a

Right of evocation

1. Upon receiving all relevant information in accordance with Article 19(1a), the European Public Prosecutor's Office shall take its decision whether to exercise its right of evocation as soon as possible, but no later than 5 days after having received the information from the national authorities and shall inform the national authorities thereof. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time frame with a maximum prolongation of 5 days, and shall in such case inform the national authorities thereof.

1a. During this time frame the national authorities shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation.

The national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.

[8] A recital explaining that the notion of "*national authorities*" in this provision refers to judicial authorities or other independent authorities who have competence to decide on the attribution of competence in accordance with national law should be added.

2. If the European Public Prosecutor's Office becomes aware, through means other than the information referred to in Article 19(1a), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay**.** After being duly informed in accordance with Article 19(1a), the European Public Prosecutor's Office shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time frame set out in paragraph 1 of this Article.
3. The European Public Prosecutor's Office shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.
4. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the European Public Prosecutor's Office and refrain from carrying out further acts of investigation in respect of the same offence.
5. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence falling under the scope of Articles 17 and 18. Where a European Delegated Prosecutor, who has received the information in accordance with Article 19(1a), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 9(3a).
6. Where the European Public Prosecutor's Office has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. The competent national authorities shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision.

   The European Public Prosecutor's Office may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to and received by a court. The decision shall be taken within the timeframe set out in paragraph 1 of this Article.

7. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 8(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.

   The guidelines shall define with all necessary precision the cases to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to get a full recovery of the damage to the Union's financial interests.

8. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 7 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

[…]

Article 28a[9]

Referrals and transfers of proceedings to the national authorities

1. *Where an investigation conducted by the European Public Prosecutor's Office reveals that the facts subject to investigation do not constitute a criminal offence for which it has a competence in accordance with Articles 17 and 18, the competent Permanent Chamber shall decide*[10] *to refer*[11] *the case without undue delay to the competent national authorities.*

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9 JHA Council on 9 October 2015 expressed very large support for paragraphs 1, 2, 3, 4 and 5. Changes made are simple alignments to the rest of the text.

10 It is the understanding of the Presidency that the decision-making power of the chamber referred to in paragraph 1 needs to be inserted in the Article dealing with the decision- making powers of the chamber (currently Article 9(3)).

11 A recital should be added explaining that in case of a referral by the EPPO national authorities shall preserve full prerogatives under national law to open, continue or to dismiss the investigation.

2. *Where an investigation conducted by the European Public Prosecutor's Office reveals that the specific conditions for the exercise of its competence set out in Article 20(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without* undue *delay and before initiating prosecution before national Courts.*

2a. Where, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Article 8(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities.

To ensure coherent application of the guidelines, each Permanent Chamber shall report annually to the College on the application of the guidelines.

Such referrals shall also include any inextricably linked offences within the competence of the European Public Prosecutor Office as referred to in Article 17(2).

*2*b. The Permanent Chamber shall communicate any decisions to refer a case to national authorities on the basis of paragraph 2a to the European Chief Prosecutor. On reception of this information, the European Chief Prosecutor may within three days request the Permanent Chamber to review its decision if she or he considers that the interest to ensure the coherence of the referral policy of the Office so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of his/her Deputies shall exercise the right to request the said review.

2c. Where the competent national authorities do not accept to take over the case in accordance with paragraph 2 and 2a within a timeframe of maximum 30 days, the European Public Prosecutor's Office shall remain competent to prosecute or dismiss the case according to the rules laid down in this Regulation.

3. *Where the European Public Prosecutor's Office considers a dismissal in accordance with Article 33(3), and if the national authority so requires, the Permanent Chamber shall refer the case without delay to the latter.*

4. *If, following a referral in accordance with paragraphs (1), (2) or (2a) and Article 20(3), the national authority decides to open an investigation, the European Public Prosecutor's Office shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.*

5. *If a file is transferred in accordance with paragraph (1), (2) or (2a) and Article 20(3), the European Public Prosecutor's Office shall inform the relevant Union institutions, bodies and agencies, as well as, where appropriate in accordance with national law, suspects or accused persons and the crime victims, thereof. The cases dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery or other administrative follow-up.*

Article 18

Territorial and personal competence of the European Public Prosecutor's Office

The European Public Prosecutor's Office shall be competent for the offences referred to in Article 17 where such offences: [12]

a) were committed in whole or in part within the territory of one or several Member States, or

b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or

c) were committed outside of the territories referred to in point a) by a person who was subject to the Staff Regulations of Officials or to the Conditions of Employment of Other Servants of the European Communities, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

Article 22

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, without prejudice to the rules set out in Article 20(2) and (3), initiate an investigation and note this in the Case Management System[13].

[12] This jurisdiction provision should at term be in principle identical with the corresponding jurisdiction provision in the PIF-Directive.

[13] The following recital may be considered: "*The European Public Prosecutor's Office should, when establishing the Case Management System, ensure that the necessary information from the European Delegated Prosecutors to the Central Office is covered*".

2. Where upon verification in accordance with Article 19(2), the European Public Prosecutor's Office decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 19(1) or 19(1a).

3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions of paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation**.**

4. A case shall as a rule be initiated and 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 European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber[14] to initiate an investigation where a deviation from the above mentioned principles is duly justified, taking into account the following criteria, in order of priority:

   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.

[14] A recital to be added to Article 9 in order to ensure permanence amongst Permanent Chambers in situations where no Permanent Chamber is yet designated should be considered.

5. Until a decision to prosecute in accordance with Article 30 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and 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[15] cases and in each case choose the European Delegated Prosecutor handling the case;

   if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph 4.

6. 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.

7. The European Public Prosecutor's Office shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

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[15] 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 have 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. Where different Permanent Chambers are in charge of the cases to be merged, the Rules of Procedure should determine the appropriate competence and procedure. In case the Permanent Chamber decides to split a case its competence for the cases should be maintained*".

Article 23

Conducting the investigation[16]

1. The European Delegated Prosecutor handling the case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. These authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report through the Case Management System to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure[17].

2. At any time during the investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures in accordance with national law 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 undue delay inform the handling European Delegated Prosecutor of the urgent measures taken.

3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide 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.

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16 CY, FI, IE and MT proposed a new recital reading as follows: *"This Regulation is without prejudice to Member States' national systems concerning the way criminal investigation are organised".*

17 The notion of "s*ignificant developments"* should be explained in a recital.

4. In exceptional cases [18], and after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation himself/herself, either by undertaking the investigation measures and other measures on his/her own or by instructing the competent authorities in his/her Member State 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 at Union level;

   b) when the investigation concerns officials or other servants of the European Union or members of the Institutions;

   c) in case of failure of the reallocation mechanism foreseen in paragraph 3.

   In such exceptional cases Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that 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 undue delay of the decision taken under this paragraph.

[*5. Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union legislation. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.*][19]

[18] BE emitted a reservation on this provision.

[19] This paragraph should be moved to the provisions on confidentiality in article 64 of the Commission's initial proposal.

[…]

Article 36

Judicial review before the Court of Justice of the European Union[20]

1. Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles […][**21**] shall be subject to review before the Court of Justice of the European Union in accordance with Article 263 of the Treaty.
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.

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[20] The principles guiding this Article have been agreed by Member States. The exact references to be inserted will be determined at a later stage.

[**21**] The Presidency is of the opinion that at least Article 30(2) should be covered.