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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee

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Subject: Proposal for a Regulation on the establishment of the European Public Prosecutor's Office  
- *Policy debate*

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A. Background

Building on the achievements of the previous Luxembourg Presidency<sup>1</sup>, the Netherlands Presidency has continued the work to establish a consolidated revised version of the full text of the Regulation. The Presidency has organised five working days in the COPEN Working Party (including two days in a Friends of Presidency setting) and has thereby focused on the provisions on relations with partners, financial and staff provisions and the general provisions. The discussions have been very constructive and have made it possible to advance rapidly on the text of the Articles. It should be noted that all provisions<sup>2</sup> related to the protection and exchange of personal data in the relevant Articles have been excluded from the discussions, in view of addressing these issues in one context with the core provisions on data protection during the second part of the Presidency.

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<sup>1</sup> See doc 15100/15.

<sup>2</sup> Articles 56(2a)-56(a), 57(4)-(4a), 57a(5) and (7), 58(3)-(4), 58a(3)-3(a).

## B. State of Play

The Presidency notes that the Member States, at technical level, have in principle reached or are very close to a compromise on Articles 48-53 (financial provisions), 54-55 (staff provisions), 56-58a (relations with partners) and 62-75 (general provisions) in the draft Regulation, as presented in Annex I to this note. Further on, Member States, at technical level, have in principle reached a compromise on three provisions related to the establishment of an Administrative Director of the European Public Prosecutor's Office (Articles X, XX and XXX as presented in Annex II to this note). These compromise texts should form a good basis for the finalisation of these sections of the Regulation.

The said provisions will be presented to the Council meeting on 11 March 2016, whereby

**Ministers are invited to welcome the progress made on Articles 48-58a, 62-75 and X, XX and XXX, as presented in Annexes I and II to this note.**

## C. The financing of the operational expenditure of the Office - question to Ministers

The discussions at technical level on the financial and staff provisions in the draft Regulation have raised some issues that will need a more careful consideration. The Presidency would invite ministers to consider the following.

Article 49 in the draft regulation (Budget) provides as a rule that the expenditure of the European Public Prosecutor's Office shall include the remuneration of the European Chief Prosecutor, European Prosecutors, European Delegated Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, administrative and infrastructure expenses, and operational expenditure.

During discussions at technical level, it has appeared that Member States have various views on exactly what costs the notion of 'operational expenditure' would encompass. In particular, the issue of who will carry the cost of the expenditure incurred by European Delegated Prosecutors when they act within the framework of the tasks of the European Public Prosecutor's Office has been the subject of discussions.

Most delegations seem to be of the opinion that costs related to investigation measures undertaken by the national authorities on behalf of the European Public Prosecutor's Office should not fall under the operational expenditure of the European Public Prosecutor's Office. One of the arguments for this approach is that Member States under Article 325 TFEU are already obliged to effectively fight fraud against the EU's financial interests, and have to carry the costs of investigations and prosecutions at national level. In the negotiations, the Commission supported this view and recalled that the Impact Assessment accompanying its proposal does not include in EPPO's "operational expenditure" any costs related to investigation measures undertaken by national authorities on behalf of EPPO.

However, some delegations argue for an approach whereby, at least in certain cases, it should be possible that investigative measures undertaken at the national level in the framework of investigations by the European Public Prosecutor's Office are covered as operational expenditure of the European Public Prosecutor's Office, and would as a consequence be paid for by the budget of the Union.

Considering that the costs of the operational activities decided by European Delegated Prosecutors in the Member State will no doubt be important, the Presidency notes that the interpretation of the notion of operational expenditure in Article 49 will have a considerable impact on how the European Public Prosecutor's Office will be financed. In order to advance the negotiations on this issue,

**the Presidency invites ministers to indicate what costs, in their view, should be covered under operational expenditure of the European Public Prosecutor's Office under Article 49 of the draft Regulation, and to note that adding any additional categories of costs to the EPPO would entail additional budget needs.**

**CHAPTER VII**  
**FINANCIAL AND STAFF PROVISIONS**

**SECTION 1**

**FINANCIAL PROVISIONS**

*[Article 48*

**Financial actors**

1. The European Chief Prosecutor shall be responsible for preparing decisions on financial and budgetary matters and submitting them to the College for adoption.
2. The Administrative Director shall be responsible for the implementation of the budget of the European Public Prosecutor's Office as authorising officer. ]<sup>3</sup>

*Article 49*

**Budget**

1. The European Chief Prosecutor shall prepare estimates of all the revenue and expenditure of the European Public Prosecutor's Office for each financial year, corresponding to the calendar year, on the basis of a proposal drawn up by the Administrative Director. These estimates shall be shown in the budget of the European Public Prosecutor's Office.
2. The budget of the European Public Prosecutor's Office shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the revenue of the European Public Prosecutor's Office shall comprise:
  - a) a contribution from the Union entered in the general budget of the Union;
  - b) charges for publications and any service provided by the European Public Prosecutor's Office.

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<sup>3</sup> The need for this provision will be considered.

4. The expenditure of the European Public Prosecutor's Office shall include the remuneration of the European Chief Prosecutor, European Prosecutors, European Delegated Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, administrative and infrastructure expenses, and operational expenditure.
5. Where European Delegated Prosecutors act within the framework of the tasks of the European Public Prosecutor's Office, the relevant expenditure incurred by the European Delegated Prosecutors in the course of these activities shall be regarded as operational expenditure of the European Public Prosecutor's Office<sup>4</sup>.

*Article 50*

**Establishment of the budget**

1. Each year the European Chief Prosecutor shall prepare a provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office for the following financial year on the basis of a proposal drawn up by the Administrative Director. The European Chief Prosecutor shall send the provisional draft estimate to the College for adoption.
2. The provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office shall be sent to the Commission no later than 31 January each year. The European Public Prosecutor's Office shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March.
3. The Commission shall send the statement of estimates to the European Parliament and the Council (the budgetary authority) together with the draft general budget of the Union.

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<sup>4</sup> This footnote refers to paragraphs 4 and 5. The following Recital should be considered: 'Operational expenditure should include costs related to the EPPO's investigation and prosecution activities, including missions and translations necessary for the internal functioning of the EPPO such as translations for the Permanent Chamber. It shall not include:

- costs related to investigation measures;
- costs of legal aid.'

For the Commission, the costs related to the secretariat of EDP's should be also excluded from EPPO's operational expenditure.

4. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
5. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the European Public Prosecutor's Office.
6. The budgetary authority shall adopt the establishment plan of the European Public Prosecutor's Office.
7. The College shall adopt the budget of the European Public Prosecutor's Office on a proposal from the European Chief Prosecutor. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted in accordance with the same procedure as for the adoption of the initial budget.
8. For any building project likely to have significant implications for the budget of the European Public Prosecutor's Office, Article 88 of Commission Delegated Regulation (EU) No 1271/2013 shall apply.

#### *Article 51*

#### **Implementation of the budget**

1. The Administrative Director acting as the authorising officer of the European Public Prosecutor's Office, shall implement its budget under his or her own responsibility and within the limits authorised in the budget.
2. Each year the Administrative Director shall send to the budgetary authority all information relevant to the findings of any evaluation procedures.

### Presentation of accounts and discharge

1. [...]
2. By 1 March following each financial year, the accounting officer of the European Public Prosecutor's Office shall send the provisional accounts to the Commission's Accounting Officer and the Court of Auditors.
3. The European Public Prosecutor's Office shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors, by 31 March of the following financial year.
4. By 31 March following each financial year, the Commission's Accounting Officer shall send the provisional accounts of the European Public Prosecutor's Office consolidated with the Commission's accounts to the Court of Auditors.
5. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the European Public Prosecutor's Office.
6. On receipt of the Court of Auditors' observations on the provisional accounts of the European Public Prosecutor's Office pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the European Public Prosecutor's Office shall draw up its final accounts under his/her own responsibility and submit these to the College for an opinion.
7. The accounting officer of the European Public Prosecutor's Office shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors together with the opinion of the College.<sup>5</sup>
8. The final accounts of the European Public Prosecutor's Office shall be published in the Official Journal of the European Union by 15 November of the year following the respective financial year.

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<sup>5</sup> DE and would replace 'College' with 'European Chief Prosecutor' in paragraphs 6 and 7.

9. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September of the following year at the latest. The Administrative Director shall also send this reply to the Commission.
10. The Administrative Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question as laid down in Article 109(3) of Commission Delegated Regulation (EU) no 1271/2013.
11. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

*Article 53*

**Financial rules**

The European Chief Prosecutor shall draw up the draft financial rules applicable to the European Public Prosecutor's Office on the basis of a proposal from the Administrative Director. They shall be adopted by the College after consultation with the Commission. The financial rules shall not depart from Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 unless such departure is specifically required for the operation of the European Public Prosecutor's Office and the Commission has given its prior consent.



## SECTION 2

### STAFF PROVISIONS

#### *Article 54*

##### **General provisions**

1. The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations and those Conditions of Employment of Other Servants shall apply to the European Chief Prosecutor and the European Prosecutors, the European Delegated Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, unless otherwise stipulated in this Regulation.

The European Chief Prosecutor and the European Prosecutors shall be engaged as temporary agents of the European Public Prosecutor's Office under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.

- 1a. The staff of the European Public Prosecutor's Office shall be recruited according to the rules and regulations applicable to officials and other servants of the European Union.
2. The powers conferred on the appointing authority by the Staff Regulations and by the Conditions of Employment of Other Servants to conclude Contracts of Employment shall be exercised by the College. The College may<sup>6</sup> delegate these powers to the Administrative Director with respect to the staff of the European Public Prosecutor's Office. Delegation of powers referred to in in the previous sentence shall not concern the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors and the Administrative Director.

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<sup>6</sup> It will be clarified in a recital that the College should in principle always delegate these powers, unless specific circumstances call for it to exercise this power itself.

3. The College shall adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations. The College shall also adopt staff resource programming as part of the programming document.
4. The Protocol on the Privileges and Immunities of the European Union shall apply to the European Public Prosecutor's Office and its staff.
5. European Delegated Prosecutors shall be engaged as Special Advisors<sup>7</sup> in accordance with Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union.<sup>8</sup> The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy which may adversely affect their career and status in the national prosecution system. In particular, the competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under this Regulation, and ensure that they are fully integrated<sup>9</sup> into their national prosecution services.

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<sup>7</sup> A number of Member States maintain a scrutiny reservation with respect to the practical implications of the status of Special Advisors and the conditions regarding this status. According to COM the status as Special Advisor is the only suitable status for EDPs under the Staff Regulations. The Presidency estimates that this status is necessary in order to ensure the independence and European vocation of the EDPs. It will be clarified in the recitals that the remuneration of the EDPs as special advisers, which will be set through a direct agreement, will be based on a specific decision to be taken by the College. This decision should inter alia ensure that the EDPs will in principle continue to mainly be paid in their capacity as national prosecutors and that the remuneration as special adviser will only relate to the equivalent of the work on behalf of the EPPO in the capacity as an EDP. It could also be stated that 'The European Delegated Prosecutors' contracts should ensure that adequate arrangements are in place so that rights related to social security, pension and insurance coverage under the national scheme are maintained.

<sup>8</sup> The issue of how to address issues of professional insufficiency of European Delegated Prosecutors will be revisited in the context of Article 15 and the general review of the text.

<sup>9</sup> It will be clarified in a recital that the responsibility for other working conditions of the EDPs, such as their work environment, will primarily be a responsibility for the competent national judicial authorities.

## Article 55

### Seconded national experts and other staff

1. The European Public Prosecutor's Office may make use, in addition to its own staff, of Seconded national experts or other staff put at its disposal but not employed by it<sup>10</sup>. The Seconded national experts shall be subject to the authority of the European Chief Prosecutor in the exercise of tasks related to the functions of the European Public Prosecutor's Office.
2. The College shall adopt a decision laying down rules on the secondment of national experts to the European Public Prosecutor's Office.

## Article 56

### Common provisions

1. In so far as necessary for the performance of its tasks, the European Public Prosecutor's Office may establish and maintain cooperative relations with Union institutions, bodies, offices or agencies in accordance with their respective objectives, and with the authorities of third countries and; international organisations<sup>11</sup>.
2. In so far as relevant to the performance of its tasks, the European Public Prosecutor's Office may, in accordance with Article [67], directly exchange all information, with the exception of personal data, with the entities referred to in paragraph 1, unless otherwise provided for in this Regulation.

[...]

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<sup>10</sup> A recital with the following text should be introduced:

'Seconded national experts (SNEs) should enable the European Public Prosecutor's Office to benefit from the high level of their professional knowledge and experience. They are staff employed by their national authority, and seconded to the Office so that it can use their expertise in a particular field. The SNE's employer shall thus undertake to continue to pay his salary, to maintain his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform the Office of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension. SNEs cannot act and exercise authority on behalf of the EPPO and are not subject to the Protocol on the Privileges and Immunities of the European Union.'

<sup>11</sup> It should be clarified in a recital that Interpol would be covered by the notion of international organisation for the purpose of this Regulation. This could also be clarified in Article 2 in the Regulation under definitions (similar to what has been done in the Eurojust Regulation).

### Relations with Eurojust

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with Eurojust based on mutual cooperation within their respective mandates<sup>12</sup> and the development of operational, administrative and management links between them as defined below<sup>13</sup>.
2. In operational matters, the European Public Prosecutor's Office may associate Eurojust with its activities concerning cross-border cases, including by:
  - a) sharing information, including personal data, on its investigations in accordance with the relevant provisions in this Regulation;
  - b) inviting Eurojust or its competent national member(s) to provide support in the transmission of its decisions or requests for mutual legal assistance to, and execution in, States members of Eurojust but not taking part in the establishment of the European Public Prosecutor's Office or third countries.

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<sup>12</sup> A recital shall be added which is provisionally worded as follows: 'The EPPO and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates. Such cooperation may involve any investigations conducted by the EPPO where an exchange of information or coordination of investigative measures in respect of cases handled by Eurojust is considered to be necessary/appropriate. Whenever the EPPO is requesting such cooperation of Eurojust, the EPPO should liaise with the Eurojust national member of the Member State whose EDP is handling the case. The operational cooperation may also involve third countries which have a cooperation agreement with Eurojust.'

<sup>13</sup> Paragraph 1 to be reviewed after finalisation of paragraphs 3- 5 in this Article, including on the possibility of concluding agreements between EPPO and Eurojust.

3. The European Public Prosecutor's Office shall have indirect access on the basis of a hit/no-hit system to information in Eurojust's Case Management System. Whenever a match is found between data entered into the Case Management System by the European Public Prosecutor's Office and data held by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust. In cases where the data was provided by a third country, Eurojust<sup>14</sup> will only inform that third country of the match found with the consent of the European Public Prosecutor's Office.

[...]

[5. The European Public Prosecutor's Office may/shall rely on the support and resources of the administration of Eurojust. The details of this arrangement shall be regulated by an Agreement. Eurojust may/shall provide [any of] the following services to the European Public Prosecutor's Office<sup>15</sup>:

- a) technical support in the preparation of the annual budget, the programming document containing the annual and multi-annual programming, and the management plan;
- b) technical support in staff recruitment and career-management;
- c) security services;
- d) Information Technology services;
- e) financial management, accounting and audit services;
- f) any other services of common interest.]<sup>16</sup>

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<sup>14</sup> Obligations of Eurojust will be addressed in the context of the Eurojust Regulation.

<sup>15</sup> The details of this arrangement shall be regulated by an Agreement. FR, supported by DE and LU, has suggested that Eurojust shall provide 'services of common interest' to EPPO, and that the provision shall provide that 'The details of this arrangement shall be regulated by an Agreement'.

<sup>16</sup> The content of the list is to be determined later.

*Article 57a*  
**Relations with OLAF**

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and information exchange. The relationship shall aim in particular at ensuring the use of all available means for the protection of the Union's financial interests through the complementarity and support of OLAF to the Office.
2. Without prejudice to the possible actions set out in paragraph 3, where the European Public Prosecutor's Office conducts a criminal investigation in accordance with this Regulation, OLAF shall not open any parallel administrative investigation into the same facts.<sup>17</sup>
3. In the course of an investigation by the European Public Prosecutor's Office, the Office may request OLAF, in accordance with its mandate, to support or complement its activity in particular by:<sup>18</sup>
  - (a) Providing information, analyses (including forensic analyses), expertise and operational support;
  - (b) Facilitating coordination of specific actions of the competent national administrative authorities and EU bodies;
  - (c) Conducting administrative investigations.

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<sup>17</sup> Clarify in a recital that this is without prejudice to the power of OLAF to start an investigation on its own initiative, in close consultation with the EPPO. COM mentioned that this will also need to be addressed in OLAF regulation.

<sup>18</sup> Clarify in a recital that in all actions in support of EPPO, OLAF acts independently from the Commission, in accordance with Regulation (EC, Euratom) No 883/2013.

4. The European Public Prosecutor's Office may, with a view to enabling OLAF to consider appropriate administrative action in accordance with its mandate, provide relevant information to OLAF on cases where it has decided not to conduct an investigation or has dismissed a case.<sup>19</sup>  
[...]
6. The European Public Prosecutor's Office shall have indirect access on the basis of a hit/no hit system to information in OLAF's Case Management System. Whenever a match is found between data entered into the Case Management System by the European Public Prosecutor's Office and data held by OLAF, the fact that there is a match will be communicated to both OLAF and the European Public Prosecutor's Office.  
[...]

#### *Article 58*

#### **Relations with Europol**

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with Europol. To this end, they shall conclude an agreement setting out the modalities of their cooperation.<sup>20</sup>

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<sup>19</sup> This provision would be accompanied by the following recital: 'In cases where it is not conducting an investigation, the European Public Prosecutor's Office should be able to provide relevant information to OLAF, for it to consider appropriate action in accordance with its mandate. In particular, the EPPO could consider informing OLAF in cases where there are no reasonable grounds to believe that an offence within the competence of the Office is being or has been committed, but an administrative investigation by OLAF may be appropriate, or in cases where the EPPO dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery'. The recital should also clarify that EPPO, when providing the information, may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EC, Euratom) No 883/2013.

<sup>20</sup> The provision may need to be developed further, for example to mention concrete systems for cooperation and information exchange. It should however be noted that the Europol Regulation does not provide for the conclusion of agreements with Union bodies .

- [2. The European Public Prosecutor's Office shall have indirect access on the basis of a hit/no-hit system to information provided to Europol for the purposes of [...].

In cases of a hit, Europol shall initiate the procedure by which the information that generated the hit may be shared, in agreement with the provider of the information to the European Public Prosecutor's Office, and only to the extent that the data generating the hit are necessary for the performance of the tasks of the Office.]<sup>21</sup>

[...]

#### *Article 58a*

##### **Relations with other Union institutions, bodies, offices and agencies**

1. The European Public Prosecutor's Office shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting financial interests of the Union. To this end, they shall conclude an agreement setting out the modalities for their cooperation.
2. Without prejudice to the proper conduct and confidentiality of its investigations, the European Public Prosecutor's Office shall without delay, provide the Union institution, body, office or agency concerned sufficient information in order to allow it to take appropriate measures, in particular:

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<sup>21</sup> This provision will need to be elaborated further. However, it should not delay the adoption of the Europol Regulation.



- a) administrative measures, such as precautionary measures to protect the financial interests of the Union. The Office may recommend specific measures to the Union institution, body, office or agency;
- b) intervene as civil party in the proceedings in accordance with national law;
- c) for the purpose of administrative recovery of sums due to the Union budget or disciplinary action.<sup>22</sup>

[...]

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<sup>22</sup> Recital: 'The European Public Prosecutor's Office should enable the Union institutions, bodies, offices or agencies to take any action necessary to protect the interests of the Union. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as civil party in the proceedings in accordance with national law. The exchange of information should take place in full respect of the independence of the European Public Prosecutor's Office, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations'.

**CHAPTER IX**  
**GENERAL PROVISIONS**

*Article 62*

**Legal status and operating conditions**

1. In each of the Member States the European Public Prosecutor's Office shall have legal capacity accorded to legal persons under their laws.
2. The necessary arrangements concerning the accommodation provided for the European Public Prosecutor's Office and the facilities made available by the host Member State together with the specific rules applicable in that Member State to the Members of the College, the Administrative Director and the staff of the European Public Prosecutor's Office, and members of their families, shall be laid down in a Headquarters Agreement concluded between the European Public Prosecutor's Office and the host Member State no later than 2 years after the entry into force of this regulation.

*Article 63*

**Language arrangements**

1. Regulation No 1 shall apply to the acts provided in Articles 16 and 72.
  - 1a. The College shall decide by a two-thirds majority of its members on the internal language arrangements of the European Public Prosecutor's Office<sup>23</sup>.
2. The translation services required for the administrative functioning of the European Public Prosecutor's Office at the central level shall be provided by the Translation Centre of the bodies of the European Union, unless the urgency of the matter requires another solution. European Delegated Prosecutors shall decide on the modalities of translation for the purpose of investigations in accordance with applicable national law<sup>24</sup>.

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<sup>23</sup> FR has emitted a reservation as regards this provision.

<sup>24</sup> COM and LU have emitted a reservation as regards this provision.

## *Article 64*

### **Confidentiality**<sup>25</sup>

1. The members of the College, the Administrative Director and the staff of the European Public Prosecutor's Office, seconded national experts, European Delegated Prosecutors and other staff shall be bound by an obligation of confidentiality in accordance with Union legislation with respect to any information held by the European Public Prosecutor's Office.
2. Any other person participating or assisting in carrying out the functions of the European Public Prosecutor's Office at national level shall be bound by an obligation of confidentiality as provided for under applicable national law.
3. The obligation of confidentiality shall also apply after leaving office or employment and after the termination of the activities of the persons referred to in paragraphs 1 and 2.
4. The obligation of confidentiality shall, in accordance with applicable national or Union law, apply to all information received by the European Public Prosecutor's Office, unless that information has already lawfully been made public.

## *Article 65*

### **Transparency**

1. Regulation (EC) No 1049/2001 shall apply to documents which relate to the administrative tasks of the European Public Prosecutor's Office<sup>26</sup>.
2. The European Chief Prosecutor shall, within six months of the date of its establishment, prepare the detailed rules for applying this provision for adoption by the College.

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<sup>25</sup> COM has emitted a reservation on this provision; if the current wording of Article 64(2) remains, it asks for the inclusions of an Article 64a (professional secrecy).

<sup>26</sup> The relevant recital will be strengthened in order to fully justify this provision and interpret it in such a way that in principle, documents which relate to the EPPO's operational tasks should not be disclosed; this Recital should also specify that the EPPO's proceedings are transparent in accordance with Article 15(3) TFEU and that specific provisions on how the right of public access to documents is ensured, will need to be adopted by the College. COM, FI and SE have entered a reservation to the said limitation of the scope of the provision. The following recital will also be added "Nothing in this Regulation is intended to restrict the right of public access to documents in so far it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter and other relevant provisions".

3. Decisions taken by the European Public Prosecutor's Office under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

*Article 66*

**OLAF and the European Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 883/2013, within six months from the date of application of this Regulation, the European Public Prosecutor's Office shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) and adopt the appropriate provisions applicable to the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, seconded national experts, European Delegated Prosecutors and other staff using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Union funds from the European Public Prosecutor's Office
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 883/2013 and Council Regulation (Euratom, EC) No 2185/9612 with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the European Public Prosecutor's Office.
4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with Union bodies, authorities of third countries and international organisations, contracts of the European Public Prosecutor's Office shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

## *Article 67*

### **Rules on the protection of sensitive non-classified and classified information**

1. The European Public Prosecutor's Office shall establish internal rules on the protection of sensitive non-classified information, including the creation and processing of such information at the European Public Prosecutor's Office.
2. The European Public Prosecutor's Office shall establish internal rules on the protection of the European Union classified information which shall be consistent with Council Decision [2013/488/EU](#) in order to ensure an equivalent level of protection for such information.

## *Article 68*

### **Administrative inquiries**

The administrative activities of the European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

## *Article 69*

### **General regime of liability**

1. The contractual liability of the European Public Prosecutor's Office shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the European Public Prosecutor's Office.
3. In the case of non-contractual liability, the European Public Prosecutor's Office shall, in accordance with the general principles common to the laws of the Member States and independently of any liability under Article [47], make good any damage caused by the European Public Prosecutor's Office or its staff in the performance of their duties in so far as it may be imputed to them.

4. Paragraph 3 shall also apply to damage caused through the fault of a European Delegated Prosecutor in the performance of his duties.<sup>27</sup>
5. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
6. The national courts of the Member States competent to deal with disputes involving the contractual liability of the European Public Prosecutor's Office as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001.
7. The personal liability of its staff towards the European Public Prosecutor's Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

[...]

*[Article 72<sup>28</sup>*

#### **Administrative rules and programme documents**

[The College/European Chief Prosecutor shall:

- [a) adopt each year the programming document containing annual and multi-annual programming of the European Public Prosecutor's Office;
- b) adopt an anti-fraud strategy, which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented;
- c) adopt rules on the conditions of employment, performance criteria, rights and obligations of the European Delegated Prosecutors, including rules on the prevention and management of conflicts of interest;

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<sup>27</sup> EE has requested that the issue of damage or compensation to persons who are, for example, deprived of liberty but later freed from all charges, should be examined. The Presidency takes the view that this issue does not relate to Article 69.

<sup>28</sup> The list below will be completed later; some of the points may be addressed in the Internal Rules of Procedure.

- [d) adopt rules on the handling of transactions made in accordance with Article 33 and the modalities to calculate the amounts of the fine to be paid;]
- e) adopt rules on the modalities of giving feedback to persons or entities which have provided information to the European Public Prosecutor's Office as foreseen in...;
- f) adopt detailed rules concerning the application of Regulation (EC) No 1049/2001 in its activities;
- g) implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.]

### *Article 73*

#### **Notifications**

Each Member State shall designate the authorities which are competent for the purposes of implementing this Regulation . Information on the designated authorities, as well as on any subsequent change, shall be notified simultaneously to the European Chief Prosecutor, the Council and the Commission. Member States shall also 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] and other relevant national legislation.

### *Article 74*

#### **Review clause**

1. No later than [*five years after the start of application of this Regulation*], and every 5 years thereafter, the Commission shall commission an evaluation and submit an evaluation report of the implementation and impact of this Regulation, as well as the effectiveness and efficiency of the European Public Prosecutor's Office and its working practices. The Commission shall forward the evaluation report together with its conclusions to the European Parliament and national Parliaments and the Council. The findings of the evaluation shall be made public.
2. The Commission shall submit legislative proposals to the European Parliament and the Council if it concludes that additional or more detailed rules on the setting up of the European Public Prosecutor's Office, its functions or the procedure applicable to its activities are necessary.

*Article 75*

**Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. The European Public Prosecutor's Office shall exercise its competence with regard to any offence within its competence committed after the date on which this Regulation has entered into force<sup>29</sup>.

The European Public Prosecutor's Office shall assume the investigative and prosecutorial tasks conferred on it by this Regulation on a date to be determined by a decision of the Commission on a proposal of the European Chief Prosecutor once the European Public Prosecutor's Office is set up. The decision of the Commission shall be published in the Official Journal of the European Union.

The date to be set by the Commission shall not be earlier than [X]<sup>30</sup> years after the entry into force of this Regulation and not earlier than the day of implementation of the Directive on the fight against fraud to the Union's financial interests.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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<sup>29</sup> The date when the reporting obligation following Article 20 should start to apply will be discussed further.

<sup>30</sup> The number of years indicated here will be discussed at a later stage.



*Article X*

**Status of the Administrative Director**

1. The Administrative Director shall be engaged as a temporary agent of the European Public Prosecutor's Office under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.
2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the European Chief Prosecutor, following an open and transparent selection procedure in accordance with the Rules of Procedure of the European Public Prosecutor's Office. For the purpose of concluding the contract of the Administrative Director, the European Public Prosecutor's Office shall be presented by the European Chief Prosecutor.
3. The term of office of the Administrative Director shall be four years. By the end of this period, the College shall undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.
4. The College, acting on a proposal from the European Chief Prosecutor which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for no more than four years.
5. An Administrative Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Administrative Director shall be accountable to the European Chief Prosecutor and the College.
7. Upon a decision of the College on the basis of a two-thirds majority of its members and without prejudice to the applicable rules pertaining to the termination of contract within the Staff Regulations and the Conditions of Employment of Other Servants the Administrative Director may be removed from the office.

*Article XX*

**Responsibilities of the Administrative Director**

1. For administrative and budgetary purposes, the European Public Prosecutor's Office shall be managed by its Administrative Director.
2. Without prejudice to the powers of the College or the European Chief Prosecutor, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other body.
3. The Administrative Director shall be the legal representative of the European Public Prosecutor's Office for administrative and budgetary purposes. The Administrative Director shall implement the budget of the European Public Prosecutor's Office.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to the European Public Prosecutor's Office , in particular:
  - a) the day-to-day administration of the European Public Prosecutor's Office and staff management;
  - b) implementing the decisions adopted by the European Chief Prosecutor or the College;
  - c) preparing a proposal for the annual and multi-annual programming document and submitting it to the European Chief Prosecutor;
  - d) implementing the annual and multi-annual programming document and reporting to the College on its implementation;
  - e) preparing the administrative and budgetary parts of the annual report on the European Public Prosecutor's Office's activities;
  - f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting to them and to the College [twice a year];

- g) preparing an internal anti-fraud strategy for the European Public Prosecutor's Office and presenting it to the College for approval;
- h) preparing a proposal for the draft financial rules applicable to the European Public Prosecutor's Office and submitting it to the European Chief Prosecutor;
- i) preparing a proposal for the European Public Prosecutor's Office's draft statement of estimates of revenue and expenditure and submitting it to the European Chief Prosecutor;
- j) providing necessary administrative support to facilitate the operational work of the European Public Prosecutor's Office;
- k) providing support to the European Chief Prosecutor and the Deputies in the carrying out of their duties.

*Article XXX*

**Provisional administrative arrangements of the European Public Prosecutor's Office**

1. Based on provisional budgetary appropriations allocated in its own budget, the Commission shall be responsible for the establishment and initial administrative operation of the European Public Prosecutor's Office until the latter has the capacity to implement its own budget. For that purpose the Commission may:
  - a) designate, after consulting with the Council, a Commission official to act as interim Administrative Director and exercise the duties assigned to the Administrative Director, including the powers conferred by the Staff Regulations and the Conditions of Employment of Other Servants of the European Union on the appointing authority regarding administrative staff of the European Public Prosecutor's Office, in respect of any staff positions which need to be filled before the Administrative Director takes up his or her duties in accordance with Article X;
  - (b) offer assistance to the European Public Prosecutor's Office, in particular by seconding a limited number of Commission officials necessary to carry out the administrative activities of the Office under the responsibility of the interim Administrative Director.

2. The interim Administrative Director may authorise all payments covered by appropriations entered in the European Public Prosecutor's Office's budget and may conclude contracts, including staff contracts, except contracts of the European Chief Prosecutor, the European Prosecutors and the European Delegated Prosecutors.
  
3. The interim Administrative Director shall cease to exercise that function when the Administrative Director takes up his duties following his appointment by the College in accordance with Article [X].
  
4. Until the Administrative Director takes up its duties in accordance with paragraph 3, the Commission shall exercise its functions set out in this Article in consultation with a group of experts<sup>31</sup> composed of representatives of the Member States participating in the establishment of the EPPO.

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<sup>31</sup> The composition and character of this group remain to be discussed.