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Subject: Proposal for a Regulation on the establishment of the European Public  
Prosecutor's Office  
- Examination of the Presidency document, with a primary focus on Articles  
17-37 of the draft Regulation

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In view of the COPEN meeting on 3-4 September 2015, delegations will find in the Annex the revised text on Articles 17-37 of the draft Regulation.

Draft

**COUNCIL REGULATION**

**on the establishment of the European Public Prosecutor's Office**

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**CHAPTER IIIa**

**COMPETENCE AND EXERCISE OF THE COMPETENCE OF THE  
EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

**SECTION 1**

**COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

*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, including where the set of facts constituting such an offence constitutes as well, under national law, another type of offence.
2. The European Public Prosecutor's Office shall also be competent for those offences
  - a. that have been instrumental to the commission of the offences referred to under paragraph 1, or
  - b. that have been committed with a view to ensuring impunity from an offence referred to under paragraph 1, or
  - c. that have been committed to conceal such an offence.

3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over their competence pursuant to paragraph 2, the national authorities<sup>1</sup> competent to decide on the attribution of competences concerning prosecution at national level shall decide who shall be competent for the offences referred to under paragraph 2.

*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

- 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, or
- c) were committed outside of these territories referred to in point a) of this Article 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, according to its law, has jurisdiction for such offences when committed outside its territory.

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<sup>1</sup> 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.

## SECTION 2

### EXERCISE OF THE COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

#### *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 which might constitute an offence within its competence<sup>2</sup>. 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.
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, there are grounds to initiate an investigation.
3. Where upon verification, 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 paragraph 1.
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 the Case Management System. It shall inform the authority that reported the criminal conduct in accordance with paragraph 1 and, if requested, crime victims and other persons who provided the information, thereof.
5. Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the Office may have been committed, it shall without undue delay inform the competent national authorities.

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<sup>2</sup> 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 centralized system*".

6. Where the criminal conduct caused or is likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000], and neither has repercussions at Union level<sup>3</sup> which require an investigation to be conducted by the Office nor involve a criminal offence that has been committed by officials or other servants of the European Union or members of the institutions, the information obligation of national competent authorities may be fulfilled every six months through a summary report.

The summary report shall group all relevant cases and shall contain for each case, as a minimum, the names of the implicated persons, the damage caused or likely to be caused and the possible legal qualification.

7. Based on such summary reports, the College may request national authorities to provide without delay additional information regarding offences matching a specific pattern likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000] when committed in circumstances deemed to have repercussions at Union level.
8. Based on such summary reports, the College may, for future reports regarding offences of less than EUR [10 000/20 000] when committed in circumstances deemed to have no repercussions at Union level, determine specific modalities for the provision of information.
9. Information referred to in this Article shall be provided in a structured way, as established in the Internal Rules of Procedure. The reports referred to in paragraphs 1, 6, 7 and 8 may be presented in the form of automatically generated information.
10. The European Public Prosecutor's Office may request further information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States that provided the information<sup>4</sup>.

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<sup>3</sup> A definition of "*repercussion at Union level*" will be added in a recital. "*A particular case should be considered as having repercussions at Union level inter alia where a criminal offence has a transnational nature and scale, where such an offence involves a criminal organisation, or where the specific type of offence could be a serious threat to the Union's financial interests or the Union's Institutions credit or the Union's citizens confidence.*"

<sup>4</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 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*'.

*Article 20*

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

1. The European Public Prosecutor's Office shall exercise its competence by initiating an investigation in accordance with Article 22. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise their own competence in respect of the same set of facts.
2. If the European Public Prosecutor's Office has become aware that national authorities intend to initiate or have already initiated an investigation in respect of the same set of facts for which the European Public Prosecutor's Office could be competent, the Office may take over the investigation by exercising its right of evocation. The European Public Prosecutor's Office shall take its decision to evoke as soon as possible but no later than 5 days after having received all relevant information from the national authorities, unless the European Chief Prosecutor 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 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, but shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
3. If the European Public Prosecutor's Office becomes aware, through means other than the information referred to in Article 19(1), 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, and 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 2 of this Article.
4. The European Public Prosecutor's Office 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.

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 intend to initiate an investigation in respect of an offence falling under the scope of Articles 17 and 18. Where a European Delegated Prosecutor 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 the appropriate measures.
6. Notwithstanding paragraphs 1 to 5, where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR [10 000/20 000] the European Public Prosecutor's Office shall refrain from exercising its competence, 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 or other servants of the European Union, or members of the Institutions.

The Office shall, where appropriate, 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 met.

7. Where the Office has refrained from exercising its right of evocation, 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 the facts have not yet been brought to judgment before a court. The decision shall be taken within the time frame set out in paragraph 2 of this Article.

*Article 21<sup>5</sup>*

**Referrals and transfers of proceedings to the national authorities**

1. Where an investigation initiated 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 to refer the case without undue delay to the competent national authorities.
2. Where an investigation initiated by the European Public Prosecutor's Office reveals that the specific conditions for the exercise of its competence set out in Article 20(6) are no longer met, the competent Permanent Chamber may decide to refer the case to the competent national authorities at any time before initiating prosecution before national courts.
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) or (2), 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) or (2), the European Public Prosecutor's Office shall inform the relevant Union institutions, bodies and agencies, as well as suspects or accused persons and the injured party, thereof. 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.

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<sup>5</sup> It is the understanding of the Presidency that the decision-making power of the chamber referred to in paragraphs 1 and 2 needs to be inserted in the Article dealing with the decision-making powers of the chamber (currently Article 9(3)).



## CHAPTER IV

# RULES OF PROCEDURE ON INVESTIGATIONS, INVESTIGATION MEASURES, PROSECUTION AND ALTERNATIVES TO PROSECUTION

## SECTION 1

### RULES ON INVESTIGATIONS

#### *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(6), initiate an investigation and note this in the Case Management System<sup>6</sup>.
2. The Permanent Chamber to which the case has been allocated shall instruct the European Delegated Prosecutor to initiate the investigation<sup>7</sup>, in accordance with the criteria referred to in paragraph 3, where no investigation has been initiated by a European Delegated Prosecutor.

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<sup>6</sup> 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*".

<sup>7</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*".

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 State 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:
  - 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.
4. 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:
  - d) reallocate a case to a European Delegated Prosecutor in another Member State;
  - e) merge or split<sup>8</sup> cases and in each case choose the European Delegated Prosecutor handling the case;

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<sup>8</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 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*".

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.

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.

### *Article 23*

#### **Conducting the investigation**

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 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 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. At any time during the 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 undue delay inform the handling European Delegated Prosecutor of the urgent measures taken.
3. The supervising European Prosecutor may propose to the competent 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. In exceptional cases, 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, 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.

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 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.*]<sup>9</sup>

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<sup>9</sup> This paragraph should be moved to the provisions on confidentiality in article 64 of the Commission's initial proposal.

*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 Chief Prosecutor 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 Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

## SECTION 2

### RULES ON INVESTIGATION MEASURES AND OTHER MEASURES

#### *Article 25*

##### **Investigation measures and other measures**

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
  - a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
  - b) obtain the production of any relevant object or document, or of stored computer data, including traffic data and banking account data, encrypted or decrypted, either in original or in some other specified form;
  - c) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court and where there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation;
  - d) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using.
2. The European Delegated Prosecutors shall, in addition to the measures referred to in paragraph 1, be entitled to request or to order any other measures in their Member State which are available<sup>10</sup> to prosecutors under national law in similar national cases.
3. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 2 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.

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<sup>10</sup> A recital similar to recital 10 in the EIO directive could give an explanation of the term "*available*".

**Cross-border investigations**

**OPTION 1:**

1. The European Delegated Prosecutors shall act in close cooperation by assisting 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 located in the Member State where that measure needs to be carried out.
2. The European Delegated Prosecutor handling the case may assign any measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the European Delegated Prosecutor handling the case.
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. If a judicial authorisation for a measure foreseen in paragraph 1 is required, it can only be requested in the Member State of the assisting European Delegated Prosecutor by the latter. If judicial authorisation for the assigned measure is refused, the European Delegated Prosecutor handling the case shall withdraw the assignment.
5. The assisting European Delegated Prosecutor shall undertake the assigned notified measure, or instruct the competent national authority to do so. The assisting European Delegated Prosecutor shall thereby comply with the formalities and procedures expressly indicated by the European Delegated Prosecutor handling the case, provided that such formalities and procedures are not contrary to fundamental principles of law .

6. Where the assisting European Delegated Prosecutor considers that:
  - a) the assignment is incomplete or contains a manifest relevant error,
  - b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons,
  - c) an alternative measure would achieve the same results as the measure assigned, or
  - d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his or her Member State,he or she shall consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.
7. 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.

**OPTION 2:**

1. The European Delegated Prosecutors shall act in close cooperation by assisting 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 decide on the adoption of the necessary measure.



2. The European Delegated Prosecutor handling the case may order or request any investigation measures, which are available to him/her in accordance with Article 25 and, where required under the law of his Member State, shall obtain the necessary judicial authorisation or court order. The law of the Member State where the European Delegated Prosecutor handling the case is located shall determine the conditions and applicable procedures for ordering or requesting such cross-border measures and govern their adoption and justification<sup>11</sup>.
3. The European Delegated Prosecutor handling the case shall submit the order and, where applicable, the accompanying judicial authorisation to the assisting European Delegated Prosecutor.
4. The order shall set out, in particular, a description of the required measures, including, where possible, the evidence to be obtained, and, where necessary, specific formalities that have to be complied with, as well as a description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The European Delegated Prosecutor handling the case may call for the measure to be undertaken within a given time frame.
5. The assisting European Delegated Prosecutor shall undertake the requested measure or ask the competent national authority in his/her Member State to do so and, where required under the law of his Member State, shall obtain the necessary judicial authorisation or court order. The court in the Member State of the assisting European Delegated Prosecutor, where the measure is to be enforced, shall not review the grounds, justifications and substantive reasons for the ordered measure.
6. Where the assisting European Delegated Prosecutor considers that:
  - a) the assignment is incomplete or contains a manifest error,
  - b) the measure cannot be undertaken within the time frame 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/her Member State,

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<sup>11</sup> A recital with the following wording could be considered: "*The European Delegated Prosecutor 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.*"

he/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 frame set out in the assignment or within a reasonable time frame.
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. This decision should be communicated through the competent European Prosecutor<sup>12</sup>.

#### *Article 27*

#### **Enforcement of ordered measures**

The enforcement of the ordered measures shall be governed by the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

#### *Article 28<sup>13</sup>*

#### **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.

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<sup>12</sup> It is the understanding of the Presidency that the decision-making power of the chamber referred to in paragraph 8 needs to be inserted in the Article dealing with the decision-making powers of the chamber (currently Article 9(3)).

<sup>13</sup> The Presidency suggests to include the following recital: "*Article 28 is without prejudice to the procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect*".

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 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

### RULES ON PROSECUTION

#### *Article 29*

##### **Termination of the investigation**

1. When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national court or to consider an alternative to prosecution in accordance with Article 33 or 34. Where applicable, the report of the European Delegated Prosecutor shall also provide sufficient reasoning for bringing the case to judgment either at a court of the Member State where he/she is located, or at a court of a different Member State which has jurisdiction over the case. The supervising European Prosecutor shall forward those documents to the competent Permanent Chamber accompanied, if he/she considers it necessary, by his/her own assessment. When the Permanent Chamber, in accordance with Article 9(3), takes the decision as proposed by the European Delegated Prosecutor, he/she shall pursue the matter accordingly.
2. If the Chamber, based on the reports received, considers not to give its consent to the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake a full review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.

#### *Article 30*

##### **Prosecution before national courts**

1. When the competent Chamber, based on the report submitted in accordance with Article 29(1), gives its approval to the proposed decision to prosecute, the European Delegated Prosecutor shall pursue with the prosecution of the case at a competent court.

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.
3. When more than one Member State has jurisdiction over the case, the Permanent Chamber may, based on the report provided by the European Delegated Prosecutor handling the case in accordance with Article 29(1), decide to bring the prosecution to another Member State than the one of the European Delegated Prosecutor handling the case, if there are sufficiently justified grounds to do so, based on the criteria set out in Article 22(3).
4. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law.
5. 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 and agencies of the decision to prosecute.
6. Where, following a judgment of the court, the prosecution has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Chamber and await its instructions. The same procedure shall apply when, in the course of the court proceedings and in accordance with applicable national law, the European Delegated Prosecutor handling the case has to take a position which would have as a result the dismissal of the case.

*Article 31*

**Admissibility of evidence**

1. Evidence presented by the prosecutors of the European Public Prosecutor's Office to the trial court shall be considered admissible in accordance with the procedures and conditions provided for by the law of the State where the case is tried. It shall not be admissible where the court considers that its use as evidence would adversely affect the fairness of the procedure, the rights of defence, other rights as enshrined in the Charter of Fundamental Rights of the European Union, Member States' obligations under Article 6 TEU or other fundamental rights protected by national law.
2. The trial court may, in accordance with applicable national law, assess freely the evidence presented by the prosecutors of the European Public Prosecutor's Office. However it shall not deny admission of or refrain from assessing evidence, presented by the prosecutors of the European Public Prosecutor's Office or the defendant, merely on the grounds that the evidence was gathered in another Member State.

*Article 32*

**Disposition of the confiscated assets**

Where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42 of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, 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, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for their damage.

**SECTION 4**  
**RULES ON ALTERNATIVES TO PROSECUTION**

*Article 33*

**Dismissal of the case**

1. The Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case, decide to dismiss the case against a person where prosecution has become impossible, pursuant to the law of the Member State of the European Delegated Prosecutor handling the case, on account of any of the following grounds:
  - 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 to prosecute;
  - e) the suspect or accused person has already been finally acquitted or convicted of the same facts within the Union;
  - f) lack of relevant evidence.
2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which could not have been known to the European Public Prosecutor's Office at the time of the decision, and which become known thereafter and before expiry of applicable statutory limitation in the Member States where the case could be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber<sup>14</sup>.
3. Where the European Public Prosecutor's Office exercises its competence in accordance with Article 17(2), it shall dismiss a case only after consultation with the national authorities of the Member State referred to in Article 17(3). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 21 paragraphs 3 to 5.

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<sup>14</sup> It is the understanding of the Presidency that the decision-making power of the chamber referred to in paragraph 2 needs to be inserted in the Article dealing with the decision-making powers of the chamber (currently Article 9(3)).

4. 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 persons and the injured party, thereof. 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.

*[Article 34*

*Transactions*<sup>15</sup>

(...)]

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<sup>15</sup> Further to the discussion during the COPEN meeting of 14 et 15 July 2015 and the answers to its questions in document ST10577/15 on Article 29, the Presidency is going to propose a new text for this Article at a later stage. The main changes in that text would be replacing the term "transaction", introducing a two-step model allowing the involvement of both the Permanent Chambers and the national jurisdictions as well as introduction mechanisms relating to the admission of guilt and the legal consequences.



# CHAPTER V

## PROCEDURAL SAFEGUARDS

### *Article 35*

#### **Scope of the rights of the suspects and accused persons**

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 defence.
2. Any suspect and accused person 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 of 20 October 2010 on the right to translation and interpretation in criminal proceedings,
  - (b)<sup>16</sup> 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 of 22 Mai 2012 on the right to information in criminal proceedings,
  - (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,

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<sup>16</sup> AT raised a general question on the right to access to information and access to the case material by the suspects and accused persons. The Presidency considers that this matter should be addressed in the section concerning processing of information (Articles 20 to 24 of the Commission's initial proposal).

- (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 VI**

### **LEGAL REMEDIES**

#### *Article 36*

##### **Judicial review before the Court of Justice of the European Union**

1. Procedural measures taken by the European Public Prosecutor's Office on the basis of Articles 9(3), 9(3a)<sup>17</sup>, 20 and 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.

#### *Article 37*

##### **Legal remedies for cross-border measures**

1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case are applicable to cross-border measures of the European Public Prosecution Office.
2. The grounds, justifications and substantive reasons for ordering the measure may only be challenged at a court in the Member State of the handling European Delegated Prosecutor.

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<sup>17</sup> This assumes that the square brackets in article 9(3a) point i) will be deleted.