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NOTE

From: Presidency
To: Working Party on Cooperation in criminal matters (COPEN)
Subject: Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office

The principles behind Articles 15-19 in the Commission proposal were touched upon briefly during the Lithuanian Presidency¹, but without touching upon the wording of the Articles. However, the content of the Articles is also closely linked to the topics discussed in COPEN under the Greek Presidency, which led to the elaboration of the revised text of the first 19 Articles of the Regulation² which was generally welcomed by the JHA Council of 6 June 2014.

It is in the light of these discussions that the Italian Presidency has tentatively redrafted the said Articles 15-19 (renumbered as Articles 20-24 in the text in annex), which have been formulated to be coherent with the above-mentioned 19 Articles. Delegations are invited to examine this redraft at the COPEN meeting of 24-25 September 2014.

¹ Doc 18120/13 EPPO 37 EUROJUST 153 CATS 106 FIN 966 COPEN 252.

² Doc 9834/1/14 EPPO 24 EUROJUST 97 CATS 69 FIN 361 COPEN 150 GAF 28.

CHAPTER III
RULES OF PROCEDURE ON INVESTIGATIONS,
PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1
CONDUCT OF INVESTIGATIONS

Article 20

Sources of investigation³

1. All national authorities of the Member States and all institutions, bodies, offices and agencies of the Union shall immediately inform the European Public Prosecutor's Office of any conduct which might constitute an offence within its competence.
2. The European Public Prosecutor's Office may collect or receive information from any person or source on conduct which might constitute an offence within its competence.
3. Any information brought to the attention of the European Public Prosecutor's Office shall be registered and verified by the Central Office or the European Delegated Prosecutor who received it directly. Where, upon verification, it appears that there is no ground to initiate an investigation, the Central Office or the European Delegated Prosecutor concerned shall close the case and note the reasons in the Case Management System. They shall inform the national authority, the Union institution, body, office or agency, which provided the information, thereof, and at their request, where appropriate, the persons who provided the information.

³ Rules on the information obligation of EDP's can be found in Art 12(2) in the text presented to JHA Council of 6 June 2014.

Article 21

Initiation of investigations and allocation of competences within the European Public Prosecutor's Office⁴.

1. Where, upon verification, 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, a European Prosecutor or a Permanent Chamber shall initiate investigations.
2. Where the investigation is initiated by a European Delegated Prosecutor, he/she shall immediately notify the case to the Central Office.
3. Upon receipt of such notification, the Central Office shall verify that an investigation has not already been initiated by another European Delegated Prosecutor. If an investigation in respect of the same offence had already been initiated, the Chair of the competent Permanent Chamber, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, shall decide on the European Delegated Prosecutor who shall lead the investigation in accordance with Article 10(3)⁵. If an investigation in respect of the same offence had not already been initiated, the Permanent Chamber may assign the case to a European Delegated Prosecutor of a Member State, which would have jurisdiction.
4. If in a particular case more than one Member State has jurisdiction over the offence committed and if investigation measures are required in more than one of these Member States, the Permanent Chamber may associate several European Delegated Prosecutors with the investigation and determine the European Delegated Prosecutor who shall lead the investigations.

⁴ Certain rules on the initiation of investigations are already contained in Articles 10(3) and 12(2) in the text presented to JHA Council of 6 June. The most appropriate position in the text of these rules will be considered at a later stage.

⁵ In the the text presented to JHA Council of 6 June

Article 22

Conducting the investigation⁶

1. The European Delegated Prosecutor handling the case may either undertake the investigation measures on his/her own or, in accordance with national law, instruct the competent law enforcement authorities in the Member State where he/she is located. These authorities shall ensure that all instructions from the European Public Prosecutor's Office are followed and execute the investigation measures assigned to them.
2. In cross-border cases, where investigation measures need to be executed in a Member State other than the one where the investigation was initiated, the European Delegated Prosecutor handling the case shall act in close consultation with the European Delegated Prosecutor in the Member State where the investigation measure needs to be carried out. That European Delegated Prosecutor shall either undertake the investigation measures himself/herself or instruct the competent national authorities to execute them.
3. The competent Permanent Chambers shall monitor⁷ the investigations conducted by the European Delegated Prosecutors and ensure, where required, their coordination. The European Prosecutor to whom the Chair of the Permanent Chamber has assigned the case in accordance with Article 10, shall have the powers to instruct, on behalf of his/her Chamber, the European Delegated Prosecutor(s) handling the case whenever necessary in the interest of an efficient and coherent functioning of the European Public Prosecutor's Office⁸.

⁶ A general rule on the responsibility of the EDP's as regards the conduct of investigations can be found in Art 12(1) in the text presented to JHA Council of 6 June.

⁷ It is recalled that the terms monitoring and supervision will be defined in detail at a later stage.

⁸ To be read in conjunction with Article 12(1) in the text presented to JHA Council on 6 June.

4. In the course of an investigation and until a decision to prosecute in accordance with Article ... is taken, the Permanent Chamber monitoring the case may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to reallocate a case to another European Delegated Prosecutor if such reallocation is in the interest of the efficiency of investigations and in accordance with the criteria set out in Article X⁹. The Permanent Chamber may also decide to associate several European Delegated Prosecutors to the case in accordance with Article 21(4).
5. The European Prosecutor to whom the case was assigned by the Chair of the competent Permanent Chamber may - with the approval of that Permanent Chamber - take the decision to lead the investigation himself/herself if this appears necessary in the interest of the efficiency of the investigations or prosecution on the grounds of one or more of the following criteria:
 - a) the seriousness of the offence, in particular in view of its possible repercussions on Union level;
 - b) when the investigation concerns a high-level official of the European Union;
 - c) when there is no European Delegated Prosecutor in the Member State concerned who could perform the investigation properly.
6. Where the lead of the investigation is taken over by a European Prosecutor directly, he/she shall inform the European Delegated Prosecutor in the Member State where investigation measures need to be carried out. Any investigation measure conducted by the European Prosecutor shall be carried out in liaison with the authorities of the Member State whose territory is concerned. Coercive measures shall be executed by the competent national authorities.

⁹ An Article X outlining these criteria in detail will be considered. See Article 12(5) in the text presented to JHA Council on 6 June.

7. 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. Authorities participating in the investigations of the European Public Prosecutor's Office are also bound to respect professional secrecy as provided under the applicable national law.

Article 23

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 Public Prosecutor's Office 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 Union law, 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 Public Prosecutor's Office shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.