



Council of the
European Union

Brussels, 8 April 2015
(OR. en)

7751/15

LIMITE

EPPO 22
EUROJUST 71
CATS 43
FIN 260
COPEN 85
GAF 7

**Interinstitutional File:
2013/0255 (APP)**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	7070/15 EPPO 21 EUROJUST 63 CATS 39 FIN 198 COPEN 75 GAF 6
Subject:	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office

For the purposes of the Friends of Presidency/COPEN meeting of 14-15 April 2015, the Presidency invites delegations to primarily examine Articles 13-15 and 27-29 of the draft Regulation, as set out in the Annex to this document (which should be read in conjunction with document 7070/15 for a global overview of the text). Changes in relation to the Italian Presidency text from December 2014 ¹ are indicated in underlined or ~~struck through~~.

Depending on available time, the Presidency also plans to revisit Articles 20 - 26b and some aspects of judicial review at the meeting.

¹ Doc 16993/14 EPPO 78 EUROJUST 221 CATS 209 FIN 1006 COPEN 318 GAF 68.

Draft

COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

[...]

SECTION 2

**APPOINTMENT AND DISMISSAL OF THE MEMBERS OF THE EUROPEAN PUBLIC
PROSECUTOR'S OFFICE**

Article 13²

**Appointment and dismissal of the European Chief Prosecutor ~~and of the Deputy European
Chief Prosecutors~~**

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a term of nine years, which shall not be renewable. The Council shall act by simple majority.

² A number of delegations would prefer that the Chief Prosecutor is chosen from among the Members of the College.

2. The European Chief Prosecutor shall be selected from among candidates
 - a) who are active members of the public prosecution service or judiciary of the Member States;
 - b) whose independence is beyond doubt;
 - c) who possess the qualifications required for appointment, in their respective countries, to the highest prosecutorial or judicial offices and have relevant practical experience of national legal systems and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
 - d) who have sufficient managerial experience and qualifications for the position.
3. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which a Selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and the Council. The panel shall comprise [12] persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall ~~adopt a decision~~ establishing the panel's operating rules and adopt a decision appointing its members.³
4. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss the European Chief Prosecutor ~~{or a Deputy European Chief Prosecutor}~~ if it finds that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
5. If the European Chief Prosecutor resigns, ~~if his/her services are no longer necessary to fulfil the duties of the Office~~, if he/she is dismissed or leaves his/her position for any ~~other~~ reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 – 3 above.

³ The composition of the Selection panel remains to be determined. A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

Article 13a

Appointment and dismissal of the Deputy European Chief Prosecutors

1. The College shall appoint two European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of three years. The selection shall follow in accordance with the internal rules of procedure. The Deputy European Chief Prosecutors will retain their status of European Prosecutors.
2. If a European Prosecutor no longer fulfils the conditions required for the performance of his or her duties as Deputy European Chief Prosecutor, the College may in accordance with the internal Rules of Procedure decide that he or she shall not serve as Deputy European Chief Prosecutor.
3. If a Deputy European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraph 1.

Article 14⁴

Appointment and dismissal of the European Prosecutors

1. Each Member State shall nominate three candidates for the position as European Prosecutor from among candidates which:
 - a) are active members of the public prosecution service or judiciary of the Member States ;
 - b) whose independence is beyond doubt, and
 - c) who possess the qualifications required for appointment, in their respective countries, to high prosecutorial or judicial office and have relevant practical experience of national legal systems and of international judicial cooperation in criminal matters.

⁴ Some delegations are of the opinion that it would be enough for each Member State to nominate one candidate for the position as European Prosecutor.

2. The Council shall, after having heard the Selection panel⁵, select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the Selection Panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.
3. The European Prosecutors shall be selected and appointed for a non- renewable term of nine years by the Council, acting by simple majority.
4. Every three years there shall be a partial replacement of a third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules⁶ for the appointment of European Prosecutors for and during their first mandate period.
5. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss a European Prosecutor if it finds that he or she no longer fulfils the conditions required for the performance of his or her duties or that he or she is guilty of serious misconduct.
6. If a European Prosecutor resigns, ~~if his/her services are no longer necessary to fulfil the duties of the Office~~, if he/she is dismissed or leaves his/her position for any other reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 and 2 above.
7. The College shall, upon nomination of every European prosecutor, designate among the European delegated prosecutors of the same Member State a person to substitute the European prosecutor who is unable to carry out his/her functions or who left his/her position according to paragraphs 5 and 6 above.

Where the College acknowledges the need for temporary substitution, the designated person shall be nominated as an interim European prosecutor pending replacement or return of the European prosecutor.

⁵ The composition of the panel remains to be determined.

⁶ A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

Recourse to such possibility shall be left to the discretion of the College, where deemed necessary, taking into account the workload of the office and the duration of the absence, as well as in the cases referred to in paragraph 6 until the European prosecutor's position is filled in accordance with the procedure set out in paragraphs 1 and 2 above.

Article 15

Appointment and dismissal of the European Delegated Prosecutors

1. The College shall, upon proposal by the European Chief Prosecutor, appoint the European Delegated Prosecutors from among candidates nominated by the Member States. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2.
2. The European Delegated Prosecutors shall be appointed for a term of five years, which shall be renewable.
2. The European Delegated Prosecutors shall, from the time of his or her appointment as a European Delegated Prosecutor until dismissal, be active members of the public prosecution service or the judiciary of the Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system.⁷ ~~Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.~~
3. ~~The appointment of European Delegated Prosecutors shall take effect upon the decision of the College.~~
4. The College shall dismiss a European Delegated Prosecutor if it finds that he or she no longer fulfils the requirements set out in paragraph 2 or the criteria applicable to the performance of their duties⁸, or that he or she is guilty of serious misconduct.

⁷ With regard to the first phrase of the paragraph, the Presidency considers that it will be sufficient to clarify in a recital that the Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.

⁸ Some delegations⁸ have suggested that additional criteria should be added here.

5. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor, it shall consult the European Chief Prosecutor before taking action. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his activities under this Regulation⁹ unless the College has given its agreement.
6. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the Central Office and, where necessary, nominate another prosecutor to be appointed as the new European Delegated Prosecutor¹⁰ in accordance with paragraph 1.

[...]

SECTION 3

TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION

Article 27¹¹

Prosecution before national courts

- ~~1. The European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of investigations, prosecution and bringing a case to judgment in their Member States of origin, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.~~

⁹ Some delegations have noted that a differentiation between the respective roles of an EDP and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them. One delegation has noted that it must be clarified what the notion "connected with his activities" actually means.

¹⁰ Some Member States have questioned whether the words "where necessary" are sufficient in order to clarify that Member States do not always need to replace EDP's that leave their position.

¹¹ It has been suggested that a new Article with an enumeration of the decisions that the Office can take to terminate an investigation are indicated should be introduced before this provision.

2. When the ~~competent~~handling European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable, a draft indictment ~~and the list of evidence~~¹² to the competent European Prosecutor and Permanent Chamber for review. Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations.¹³ ~~If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative.~~
3. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case ~~and bearing in mind the proper administration of justice~~, 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 handling European Delegated Prosecutor ~~assigned the case in accordance with Article 21(2)~~. The Chamber may determine another Member State if there are sufficiently justified grounds related to the criteria for determining the ~~competent~~handling European Delegated Prosecutor in Article 21 (2) and (3)¹⁴.
4. The competent national court is 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, agencies of the indictment.

¹² ~~A number of delegations would prefer the deletion of the words "and the list of evidence"~~

¹³ The phrase "If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative" has been deleted following recent discussions in Council, during which a majority of delegations have spoken out against decision-making through written procedure.

¹⁴ Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

Article 28

Dismissal of the case

1. The competent Permanent Chamber shall, on proposal from the handling European Delegated Prosecutor, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds¹⁵:
 - a) death of the ~~suspected~~ 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 limitation¹⁶ to prosecute;
 - e) the ~~suspected~~ or accused person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29 (~~transaction~~);
 - f) lack of relevant evidence.
- ~~2. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.~~
3. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which become known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the European Chief Prosecutor or a Deputy European Chief Prosecutor.

¹⁵ ~~Delegations have made a number of suggestions as regards the grounds. A criterion regarding permanently deranged persons has been called for, and a link to the prescription rules has also been asked for.~~

¹⁶ The question under which national law this should be assessed in cross-border cases has been raised.

4. Where a case has been ~~finally~~ dismissed, the Central Office shall officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies and agencies, as well as the injured party, thereof.¹⁷ 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.
5. Where an investigation initiated by the European Public Prosecutor's Office reveals that the conduct subject to investigation constitutes a criminal offence, which is not within its competence, the European Public Prosecutor's Office shall refer the case without delay to the competent national law enforcement and judicial authorities.

Article 29¹⁸

Transactions

1. ~~After obtaining the approval of the competent Permanent Chamber, Where the case is not dismissed according to Article 28 and where the suspected persons' guilt is considered to be of a minor nature and it would serve the purpose of proper administration of justice, the handling European Delegated Prosecutor or competent European Prosecutor may, after the damage has been compensated,~~ propose to the suspected person to pay a lump-sum fine (hereafter: fine) which, once paid, entails the final dismissal of the case (transaction), if the following cumulative criteria are satisfied:
 - a) the damages caused in total, to the Union's financial interests as well as to other victims, does not exceed 50 000 euros;
 - aa) the offence has not been committed in circumstances that may be considered to be particularly serious
 - b) it would serve the purpose of proper administration of justice and the general criminal law objectives;
 - c) the damage has been compensated to all victims;

¹⁷ ~~The right of victims of review of such decisions should be addressed here or in a general provision.~~ A number of delegations have also requested that a more detailed rule on *ne bis in idem* should be inserted in this Article, in particular in relation to point e).

¹⁸ Some delegations would prefer if this Article is deleted from the Regulation, of that the provision give Member States the possibility to apply alternative mechanisms instead. .

d) the suspect has neither been the subject of a transaction under this Regulation nor been convicted of offences affecting the Union's financial interests before.

If the suspected person agrees, he/she shall pay the lump sum fine to the Union within a period of maximum four months.

2. The suspected person shall receive legal advice on the advisability of accepting or refusing the proposal for the transaction as well as on its legal consequences, in accordance with national law. The European Delegated Prosecutor or the European Prosecutor handling the case may propose a transaction in cases which can not be considered serious, or where the damage caused to the Union's financial interests does not exceed [xxx Euros], and the suspected person has not been convicted of offences affecting the interests of the Union before
3. The European Public Prosecutor's Office shall ensure that the amount of the fine is proportionate to the damage caused and to the suspected person's financial means. The amount of the fine shall be calculated in accordance with the method of calculation defined by the rules referred to in Article 72 (e)¹⁹.
4. The transaction proposal shall set out the alleged facts, the identity of the suspected person, the alleged offence, the compensation made and the commitment of the European Public Prosecutor's Office to dismiss the case if the suspected person agrees with this proposal and pays the finelump sum to the Union budget, as well as the time-limit within which the suspected person has to pay the finelump sum, which shall not exceed 4 months. Where the suspected person agrees to such proposal, he/she shall pay within the set time-limit following receipt of the proposal of the European Public Prosecutor's Office. The European Public Prosecutor's Office can upon the request of the suspected person extend the period for the payment by another [15/30/45] days, where this is justified.

¹⁹ A number of delegations have requested that a more precise method for calculation should be included already in this Article.

5. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction. Where the ~~transaction~~fine is paid by the suspected ~~person~~ within the time-limit set out in paragraph 4, the handling European Delegated Prosecutor ~~or the European Prosecutor handling the case~~ shall finally²⁰ dismiss the case and notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies and injured parties thereof. The transaction shall be noted in the Case Management System of the European Public Prosecutor's Office.
6. If the proposed fine is not paid within the time set out in paragraph 4 the handling European Delegated Prosecutor ~~or the European Prosecutor handling the case~~ shall continue the prosecution of the case.
7. The European Public Prosecutor's Office or the competent national authorities may not prosecute the suspected ~~person~~ for the same facts which constituted the offence being the subject of the final dismissal through a transaction.

²⁰ A number of delegations have argued that the dismissal should only be final after the transaction has been confirmed in a national Court, at least if such a confirmation is foreseen in national law.