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NOTE

From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office - Articles 27 to 32

For the COPEN meeting on 14 and 15 July 2015 dedicated to Articles 27 to 32 as contained in doc. 9372/15 Annex 2, the Presidency would like to ask delegations to pay special attention to the following issues:

Articles 27 and 28

On Articles 27 and 28, the Presidency would like to remind delegations about the alternative proposal (DS 1266/15) tabled by the German delegation. The Presidency further invites delegations to consider the grounds for dismissal in Article 28 paragraph 1, in order to clarify if this list can be accepted or if grounds should be added, deleted or modified.

Article 29

Keeping in mind that a majority of ministers agreed upon a *sui generis* model for transaction during the Council meeting in March 2015 the Presidency invites delegations to consider the following issues:

1) Admission of guilt

The Presidency considers that any “transaction¹” under Article 29 should have legal consequences i.a. in the event of a second offence and in respect of admission to public procurement tenders.

In order to achieve this, the Presidency is of the opinion that a mechanism of criminal records / debarment lists is required, which may *in fine* imply an element of admission of guilt in the transaction.

Any such records or lists might have to be accessible by certain competent authorities and concerned parties.

Delegations are invited to present their observations in this respect and/or possible alternatives to the above.

2) Procedure for the conclusion of an agreement / transaction

During the same Council meeting (March 2015), ministers mandated the experts to continue working on the criteria listed in Article 29, paragraph 1, aa) to d). In order to respond to this request, the Presidency invites delegations to present their observations on the current criteria

The Presidency would further ask delegations to consider the idea of a two-step procedure for the transaction.

A two-step model would allow the involvement of both the permanent chambers (as currently foreseen under article 9(3) c)) and the national jurisdictions (as agreed upon by a majority of ministers in March 2015).

¹ The Presidency is of the opinion that the use of the word “transaction” might have to be reconsidered.

The first step would consist in a mandate from the permanent chamber to the EDP to start negotiations with the suspect. It is the understanding of the Presidency that such a mandate could only be obtained following the procedure set out in article 9(3) c). In addition, the obtaining of such a mandate should be subject to a set of criteria, among which some might already be set out in the current draft (aa) to d)).

Once the mandate has been obtained, the EDP shall start negotiations with the suspect on the exact terms of the transaction. The end result should then be submitted first to the permanent chamber for final decision, as foreseen in Article 9(3) c), and secondly to the competent national jurisdiction for approval (validation / authorisation) if necessary.

The implication of the permanent chamber shall be limited, in both steps, to a formal control of the different conditions set out in the regulation.

3) Allocation of the fine

Article 29(4) of the current draft proposal foresees that the suspect “*pays the fine to the Union budget*”.

Given previous discussions at working group level in this respect, the presidency invites delegations to advise whether the sole allocation of the fine to the Union budget is acceptable or whether alternative allocation models should be considered, and in the affirmative, based on which criteria.

Article 31

The Presidency considers that Article 31 should only contain provisions on the confiscation of assets whereas the provisions dealing with the disposition of the confiscated assets should be set out in a separate article.

The Presidency further invites the delegations to provide observations as to:

- the allocation of the confiscated assets, respectively any proceeds of the sale thereof (Union or Member States Budget);
- how and if the rights of any possible victims and any fees or indemnities that may have been incurred due to the seizure and conservation of the assets have to be dealt with.

In most, if not all the Members States, the confiscated assets are by law allocated to the budget of the State. However, as the Union is always a victim of a PIF offence the question arises whether the Member States shall not transfer part or all of the confiscated assets to the Union depending on the degree of implication of the Union.

Article 32

Bearing in mind the discussions during the CATS meeting in September 2014 and at working group level under the Italian Presidency, the Presidency invites delegations to present their suggestions as to how the rights of victims, suspects and others deriving from the EU instruments on procedural safeguards should be addressed in this Regulation: possible solutions could consist in (i) maintaining the current draft or (ii) replacing paragraph (2) by a general reference to the EU instruments on procedural safeguards as currently in force and implemented by national law.
