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Subject:	Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office <i>- Report on the State of Play</i>

Developments under the Luxembourg Presidency

The draft Regulation on the European Public Prosecutor's Office (EPPO) has been one of the priorities of the Luxembourg Presidency in the JHA area. The proposal has been negotiated during 16 working days in the COPEN Working Party (including five days in a Friends of Presidency setting) and during two working days in a dedicated meeting of JHA Counsellors. In addition, aspects of the file have been discussed in CATS at two occasions and by ministers at the Council (JHA) in October and in December as well as at the informal meeting of Justice and Home Affairs ministers in July. The negotiations have focused on Articles 17-36 in the draft Regulation. All meetings have been held in a very constructive atmosphere.

At the Council of 8 October 2015, ministers expressed a very large support to the Articles 24-33 plus Article 35 of the Presidency draft of the Regulation. This result was followed up at the Council of 3 December 2015, where the Council expressed a very large support to the Presidency draft of Articles 17-23, as well as to certain aspects of Article 28a that had been left out of the political discussions at the October Council. These provisions are the core Articles governing the functioning of the future European Public Prosecutor's Office, including its competence, the exercise of its competence, investigative measures as well as cross-border investigations. Because of remaining reserves and questions raised at both Council meetings, it was agreed that the said Articles 17-35 would remain frozen for the time being and horizontal aspects be re-visited once the text in its entirety has been examined.

State of Play

Following the December Council, the Presidency has established a consolidated version of Articles 1-35 in the draft Regulation, as these provisions have been provisionally agreed upon by a very large number of ministers in Council on 15 June 2015¹, on 8 October 2015² and on 3 December 2015³, respectively and are considered frozen in view of the examination of the remainder of the text. A number of technical adaptations have been made in the consolidated version, notably in order to ensure that cross-references are correct. The consolidated version can be found in the Annex to this note.

¹ doc 9372/1/15 EPPO 30 EUROJUST 112 CATS 59 FIN 393 COPEN 142 GAF 15
² doc 12621/15 EPPO 37 EUROJUST 168 CATS 98 FIN 660 COPEN 256 GAF 39
³ doc 14718/15 EPPO 47 EUROJUST 199 CATS 129 FIN 858 COPEN 334 GAF 53

Draft

COUNCIL REGULATION

on the establishment of the European Public Prosecutor's Office

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes the European Public Prosecutor's Office and sets out rules concerning its functioning.

Article 2

Definitions⁴

For the purposes of this Regulation, the following definitions apply:

- a) 'person' means any natural or legal person;
- b) 'financial interests of the Union' means all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budgets of institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them;
- c) 'administrative personal data' means all personal data processed by the European Public Prosecutor's Office except for operational personal data;

⁴ This Article will be finalised only when the full text of the Regulation is known. The definitions, as well as the text in general, will need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive. The issue of uniformity with EU law needs to be examined further. To be aligned with the final definition of the financial interests of the Union in the PIF Directive. IE has noted that this point appears unnecessary.

- d) 'operational personal data' means all [case-related] personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article [37 of the Commissions initial proposal];
- e) 'staff of the European Public Prosecutor's Office' means personnel at the central level which supports the College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors and the European Delegated Prosecutors in the day-to-day activities in the executions of the tasks of this Office under this Regulation;
- f) 'European Delegated Prosecutor handling the case' means the European Delegated Prosecutor responsible for the investigations and prosecutions, which he/she has initiated, which has been allocated to him/her or which he/she has taken over using the right of evocation;
- g) 'assisting European Delegated Prosecutor' means the European Delegated Prosecutor located in the Member State, other than the Member State of the European Delegated Prosecutor handling the case, where an investigation or other measure assigned to him/her shall be carried out.

CHAPTER II

Establishment, tasks and basic principles of the European Public Prosecutor's Office

Article 3

Establishment

1. The European Public Prosecutor's Office is established as a body of the Union.
2. The European Public Prosecutor's Office shall have legal personality.
3. The European Public Prosecutor's Office shall cooperate with Eurojust and rely on its support in accordance with Article [57 of the Commissions initial proposal].

Article 4

Tasks

The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, the criminal offences affecting the financial interests of the Union [which are provided for in Directive 2015/xx/EU and determined by this Regulation]⁵. In that respect the European Public Prosecutor's Office shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of⁶.

Article 5

Basic principles of the activities

1. The European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.
2. The European Public Prosecutor's Office shall be bound by the principles of rule of law and proportionality in all its activities⁷.
3. The investigations and prosecutions on behalf of the European Public Prosecutor's Office shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 12(1). Where a matter is governed by national law and this Regulation, the latter shall prevail.

⁵ IE has suggested that this reference should be to Article 17.

⁶ The following recital should be considered: *'The functions of prosecutor in competent courts apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal. The functions of the prosecution could e.g. exclude representation in proceedings before the highest courts of a Member States by the highest prosecutorial institutions, such as the Advocate General, particularly if they serve the purpose of administration of justice rather than prosecutorial functions'*.

⁷ IT would include the principle of legality here. PT shares the concerns of IT but has noted that the issue could be addressed in the context of Article 22.

4. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence⁸, whether inculpatory or exculpatory.
5. The European Public Prosecutor's Office shall open and conduct investigations without undue delay.
6. The competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation⁹¹⁰.

Article 6

Independence and accountability

1. The European Public Prosecutor's Office shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors as well as the staff of the European Public Prosecutor's Office shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the office, any Member State or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States and the Union institutions, bodies, offices or agencies shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks.
2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for its general activities, and shall issue annual reports in accordance with Article 6a.

⁸ SI wishes that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO.

⁹ An accompanying recital along the following lines could be added: *'In the light of the sincere cooperation, both EPPO and competent national authorities should inform each other with the aim to efficiently combat the crime. Even in cases which fall outside the scope of EPPO competence, EPPO should inform the competent national authorities of any facts, which were brought to its attention or which were gained autonomously, and which might constitute a criminal offence, for example a false testimony. Such cases could include various facts, which should not escape the attention of the competent national authorities in order to ensure efficient fight against the crime.'*

¹⁰ The following provision shall be included in the text of the Regulation (e.g. Chapter VIII, Chapter IX or Article 69 of the Commissions initial proposal): *'To the extent that recovery or collection procedures under administrative law are deferred as a result of decisions taken by the European Public Prosecutor's Office or by national prosecution authorities in connection with investigations or prosecutions to protect the financial interests of the European Union, any financial shortfalls that may occur shall not be borne by the national budget of the respective Member State.'*

Article 6a

Reporting

1. Every year the European Public Prosecutor's Office shall draw up and issue a public Annual Report¹¹ in the official languages of the Union institutions on its general activities. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and the Council, and before national parliaments at their request, to give account of the general activities of the European Public Prosecutor's Office, without prejudice to the Office's obligation of discretion and confidentiality as regards individual cases and personal data. The European Chief Prosecutor may be replaced by one of the Deputies for hearings organised by national parliaments.

CHAPTER III

STATUS, STRUCTURE AND ORGANISATION OF EPPO

SECTION 1

STATUS AND STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article 7

Structure of the European Public Prosecutor's Office

1. The European Public Prosecutor's Office shall be an indivisible Union body operating as one single Office with a decentralised structure.
2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, his/her deputies and the European Prosecutors.

¹¹ A recital further clarifying the content of the Annual Report shall be included: '*The report of the European Public Prosecutor's office should be prepared annually, and as a minimum it should contain all relevant statistical data on the work of the Office*'.

4. The decentralised level shall consist of European Delegated Prosecutors located in the Member States.
5. The Central Office and the European Delegated Prosecutors shall be assisted by the staff of the European Public Prosecutor's Office in their duties under this Regulation.

Article 8

The College

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and be responsible for their preparation.
2. The College shall meet regularly and be responsible for the general oversight¹² of the activities of the Office. It shall take decisions on strategic matters, and on general issues arising from individual cases¹³, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the Office throughout the Union, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The Internal rules of procedure shall provide for the modalities of the general oversight of activities and decisions on strategic matters and general issues by the college in accordance with this Article.

¹² In this document, the terms '*general oversight*', '*monitoring and directing*' and '*supervision*' are used to describe different control activities. These terms will need more detailed explanations in the recitals, in line with the following:

✓ The '*general oversight*' refers to the general administration of the activities of the Office, in which instructions are only given on issues which will have a horizontal importance for the Office;

✓ '*monitoring and directing*' refers to certain clear powers to monitor and direct individual investigations and prosecutions when such directions appear to be necessary.

✓ '*supervision*' refers to a closer and rather continuous oversight of investigations and prosecutions, including, whenever necessary, intervene and give instruction on investigations and prosecution matters. PT and SI have noted that this tentative definition of supervision may not be acceptable, as it would imply an infringement of the principle of autonomy of their national prosecutors, as laid down in their national law and constitutions. Therefore SI has suggested to replace '*supervising*' with '*directing*' throughout the text.

¹³ A recital with the following wording could be considered: '*The College should take decisions on strategic matters, including as regards determining the priorities and policy of the Office, as well as on general issues arising from individual cases, for example as regards to the application of the Regulation, the correct implementation of the policy of the Office or questions of principle or of significant importance for the development of a coherent prosecution policy of the Office. Decisions of the College on general issues should be of a policy nature and should not affect the duty to investigate and prosecute according to this Regulation and national law*'.

3. On a proposal by the European Chief Prosecutor and in accordance with the Internal Rules of Procedure, the College shall set up Permanent Chambers.
4. The College shall adopt Internal Rules of Procedure of the European Public Prosecutor's Office in accordance with Article 16, and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the European Public Prosecutor's Office.
5. Unless stated otherwise in this Regulation, the College shall take decisions by simple majority. Any member of the College shall have the right to initiate voting on matters to be decided by the College. Each Member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College¹⁴.

Article 9

The Permanent Chambers¹⁵

1. The Permanent Chamber¹⁶ shall be chaired by the European Chief Prosecutor or one of the Deputies, or a European Prosecutor appointed as Chair in accordance with the Internal Rules of Procedure¹⁷. The Permanent Chamber shall have two additional permanent Members. The number of Permanent Chambers, their composition as well as the division of competences between the Chambers shall take due account of the functional needs of the Office and be determined in accordance with the Internal Rules of Procedure¹⁸.

¹⁴ A recital with the following wording should be introduced: *'The College should use their best efforts to reach consensus. If such a consensus cannot be reached, decisions should be taken by voting.'*

¹⁵ SE, supported by CY, CZ, FI, HR, HU, IE, MT, NL, PT and SI, maintains its general opinion that a system where the European Delegated Prosecutors are responsible for taking the bulk of the operative decisions would contribute significantly to the effectiveness of the EPPO. The European Delegated Prosecutors should to the furthest extent possible take the necessary decisions in the cases they are handling. SE still believes that the Regulation should move in that direction. This could be achieved in a number of different ways, preferably by shortening the list of decisions that the Chambers should make in Article 9. Other options, such as enhanced possibilities for the Permanent Chambers to delegate their powers to the European Delegated Prosecutors and/or introduce extensive possibilities to use written or silent procedures, could be considered. FR, on the contrary, believes that such mechanisms would water down the powers of the central level of EPPO.

¹⁶ The LU Presidency suggests the following recital: *'The rules of procedure should set up a system of permanence between the Permanent Chambers in order to guarantee the continuity of the service in cases where the competent Permanent Chamber has yet to be designated.'*

¹⁷ The inclusion of a recital with the following wording should be considered *'During administrative establishment of the EPPO, or if necessary at the later stage, a European Prosecutor should in principle be appointed as a Chair of the Permanent Chamber if there are not enough Deputies.'*

¹⁸ A recital with the following wording should be introduced: *'The composition of Permanent Chamber should be determined in accordance with the Internal Rules of Procedure, which may allow, among other things, a European Prosecutor to be a member in more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, even workload of individual European Prosecutors.'*

These shall ensure an equal distribution of workload on the basis of a system of random allocation of cases and shall, in exceptional cases, provide for procedures allowing, where necessary for the proper functioning of the Office, for deviations from the principle of random allocation upon decision by the European Chief Prosecutor.¹⁹

2. The Permanent Chambers shall monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3, 3a and 4 in this Article²⁰. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College in accordance with Article 8(2).
- 3.²¹ The Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out by this Regulation, where applicable after reviewing a draft decision proposed by the handling European Delegated Prosecutor:
 - a) bring a case to judgment in accordance with Article 30(1), (2) and (3)²²;
 - b) dismiss a case in accordance with Article 33(1) (a-f) ²³;
 - c) dismiss a case through a transaction in accordance with [Article 34]
 - [d) to refer a case to the national authorities in accordance with Article 28a(1) or (2)
 - e) to reopen an investigation in accordance with Article 33(2)²⁴.

¹⁹ The introduction of the following recital should be considered: *'The allocation of cases should ensure distribution of cases between the Permanent Chambers in accordance with pre-established criteria and by random as to ensure, to the extent possible, an equal distribution of workload'*.

²⁰ COM advocates a solution where one of the Members of a Permanent Chamber - regardless of his or her nationality - will be selected to be Rapporteur of the case in order to ensure the neutrality of the Rapporteur. PT and SI would exclude that the Permanent Chamber shall have the right to intervene in individual cases, except in cases of inactivity or manifest delays. PT and SI have suggested that the notion of monitoring should be explained as follows in a recital: *'The monitoring role of the Permanent Chamber refers to a general oversight, in which as a general rule instructions may be given against inactivity or manifest delays in pending criminal proceedings.'* AT, RO, DE, IT, LT, BG, ES, FR and COM oppose this recital.

²¹ Article 9(3) and 9 (3a) will be developed further and finalised when other related provisions will be completed.

²² CZ and PT objects to the competence of the Permanent Chamber to decide whether to bring the case to judgment. In the opinion of CZ, this should be decided by the European Delegated Prosecutors.

²³ PT does not agree with the competence of Permanent Chamber to dismiss a case for reasons related to the autonomy of the magistrates and efficiency of the procedure. PT advocates for an *ex post* intervention or a silent procedure mechanism of review.

²⁴ The LU Presidency considers that points d) and e) need to be inserted in order to establish the coherence with the redrafted Articles 28a and 33.

- 3a. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:
- a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 22(1)-(4) where no investigation has been initiated;
 - b) to instruct the European Delegated Prosecutor to evoke a case in accordance with Article 22a(5) where the case has not been evoked;
 - c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 8(2);
 - d) to allocate a case in accordance with Article 22(3);
 - e) to reallocate a case in accordance with Article 22(5) and 23(3);
 - [i) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(4).]
4. The competent Permanent Chamber, acting through the European Prosecutor who is supervising an investigation or a prosecution, may in a specific case give instructions²⁵ in compliance with applicable national law²⁶ to the European Delegated Prosecutor handling the case, whenever necessary for the efficient handling of the investigation or prosecution, or in the interest of justice, or a coherent functioning of the European Public Prosecutor's Office.
5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its Members. Each Member shall have one vote. The Chair shall have a casting vote in the event of a tie vote. The decisions shall be taken in deliberation in meetings of the Chambers where applicable²⁷ on the basis of the draft decision proposed by the handling European Delegated Prosecutor.

²⁵ The following recital will be considered: *'The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. Where he or she considers that the instruction would require him/her to undertake any measure that would not be in compliance with national law, the European Delegated Prosecutor shall ask for a review of the decision and should ultimately be given the possibility to refrain from following the instruction and to request that he/she is relieved from the responsibility for handling the case'*. IT and RO oppose the wording of the recital above.

²⁶ A recital indicating that the supervising European Prosecutor has an active duty to check the instruction's compliance with his/her national law and inform the Permanent Chamber if it does not should be introduced.

²⁷ The following recital should be considered: *'The Permanent Chambers in adopting the decisions in accordance with Article 9(3) should do so on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, the Chamber should be able to adopt decision without a draft decision of the handling European Delegated Prosecutor. In such cases, the European Prosecutor supervising the case may present such a draft decision.'* CZ and SI would replace the word 'may' with 'should' in the last phrase. CZ would wish to delete the term 'where applicable' used in paragraph 5 (and accordingly also in paragraph 3) or at least clearly specify that in

All case material shall at request be accessible to the competent Permanent Chamber in view of the preparation of the decisions.²⁸

5a. The Permanent Chambers may decide to delegate its decision-making power under paragraph 3 point a) or under point b) only in respect of points a) to e) of Article 33(1) to the European Prosecutor supervising the case in accordance with Article 11(1) in cases where such delegations can be duly justified with reference to the degree of seriousness of the offence²⁹ or the complexity of the proceedings in the individual case, with regard to an offence which caused or is likely to cause damage to the financial interests of the Union of less than EUR 100.000. The Internal Rules of Procedure shall set guidelines with a view to ensure the consistent application within the Office³⁰.

The Chamber shall communicate any decision to delegate decision-making power to the European Chief Prosecutor. On reception of this information, the European Chief Prosecutor may within three days request the Chamber to review its decision if she or he considers that the interest to ensure the coherence of the investigations and prosecutions of the Office so requires. If the European Chief Prosecutor is a Member of the relevant Chamber, one of his/her Deputies shall exercise the right to request the said review.

The supervising European Prosecutor shall report to the Permanent Chamber about the final disposal/conclusion of the case as well as any information or circumstance he/she deems likely to necessitate a new assessment of the opportunity to maintain the delegation, in particular in cases referred to in Article 30(2).

A delegation may be withdrawn at any time upon request of one of the Members of the Permanent Chamber and shall be decided in accordance with paragraph 5. A delegation shall be withdrawn when a European Delegated Prosecutor has substituted the European Prosecutor in accordance with Article 14(7).

To ensure coherent application of the principle of delegation, each Permanent Chamber shall report annually to the College on the use of delegation.

those exceptional cases, where the Permanent Chambers adopt a decision without a draft decision of the handling European Delegated Prosecutor, they should base these decisions on a draft proposal presented by the European Prosecutor supervising the case.

²⁸ A recital with the following wording should be considered: *'The work of the EPPO should in principle be ensured in electronic form'*.

²⁹ The following recital should be considered: *'When assessing the degree of seriousness of an offence account should in particular be taken to the repercussions at Union level'*.

³⁰ BE and LT have a reservation to this paragraph.

- 5b. The Internal Rules of Procedure shall authorise the Permanent Chambers to take decisions by means of a written procedure to be laid down in detail in the Internal Rules of Procedure.

All decisions taken and instructions given in accordance with paragraphs 3, 3a, 4 and 5a shall be recorded in writing and become part of the case file.

6. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 11(1) shall participate in the deliberations of the Permanent Chamber. The European Prosecutor shall have a right to vote, except for the Permanent Chamber's decisions on delegation or withdrawal of delegation in accordance with Article 9(5a), on allocation and reallocation under Articles 22(3), (4) and (5) and Article 22a(5) and on bringing a case to judgment (Art. 30(2)), where more than one Member States has jurisdiction for the case, as well in situations described in Article 26(7)³¹.

A Permanent Chamber may also, either at the request of a European Prosecutor or a European Delegated Prosecutor or at its own initiative, invite other European Prosecutors or European Delegated Prosecutors who are concerned by a case to attend their meetings without a right to vote.

7. The Chairs of the Permanent Chambers shall, in accordance with Internal Rules of Procedure, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfil its role in accordance with Article 8(2).

Article 10

The European Chief Prosecutor and the Deputies

1. The European Chief Prosecutor shall be the head of the European Public Prosecutor's Office. The European Chief Prosecutor shall organise the work of the Office, direct its activities, and take decisions in accordance with this Regulation and the Internal Rules of Procedure.
2. [Two] Deputies shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and act as replacement when he/she is absent or is prevented from attending to his/her duties.

³¹ COM has voiced concern as regards the voting-right for the supervising European Prosecutor; in their view the voting rights in the chamber should be limited to 'neutral' members and it would not be appropriate to give a voting right only to one of potentially several European Prosecutors who are concerned by the case. MT would like to have voting right in all cases for the European Delegated Prosecutors.

3. The European Chief Prosecutor shall represent the European Public Prosecutor's Office towards the institutions of the Union and of the Member States, and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputies or to a European Prosecutor.

Article 11

The European Prosecutors³²

1. The European Prosecutors shall, on behalf of the Permanent Chamber³³ and in compliance with any instructions it has given in accordance with Article 9(3), 9(3a) and 9(4), supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible³⁴. The European Prosecutors shall present summaries of the cases under his or her supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.

The Internal Rules of Procedure shall, without prejudice to Article 14(7), provide for a mechanism of substitution between European Prosecutors in case the supervising European Prosecutor is temporarily³⁵ absent from his/her duties or for other reasons not available to carry out the functions of the European Prosecutors. The substitute European Prosecutor may fulfill any task of a European Prosecutor, except the possibility to conduct an investigation as foreseen under Article 23(4).

2. The supervising European Prosecutors, in compliance with applicable national law and in compliance with the instructions given by the competent Permanent Chamber, may in specific case give instructions to the European Delegated Prosecutor handling the case, whenever necessary for the efficient handling of the investigation or prosecution or in the interest of justice, or a coherent functioning of the European Public Prosecutor's Office.

³² CY and MT would keep the old version of paragraph 3, under which the European Prosecutors could be allowed to fulfil other tasks than those of European Prosecutors.

³³ PT and SI are opposed to the idea that the European Prosecutors shall supervise investigations and prosecutions on behalf of the Permanent Chamber.

³⁴ COM and BG oppose the addition of the word '*in their Member State of origin*'. COM proposes to allow, under certain circumstances, a European Prosecutor to request that the supervision of individual cases in his Member State of origin is assigned to a European Prosecutor of another Member State of origin.

³⁵ The inclusion of a recital may be considered '*The substitution mechanism should be used in principle in cases when European Prosecutor briefly unable to fulfil his/her duties, for example, due to vacation or illness.*'

3. The European Prosecutors shall function as liaisons and channels of information between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States of origin and shall monitor the implementation of the tasks of the Office in their respective Member States, in close consultation with the European Delegated Prosecutors. The European Prosecutors shall ensure, in accordance with this Regulation and the Internal Rules of Procedure that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.

Article 12

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in their respective Member States³⁶ and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them and under the conditions provided for in this Regulation.

The European Delegated Prosecutors shall be responsible for the investigations and prosecutions which they have initiated, which have been allocated to them or which they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor.

³⁶ The following recital should be considered: *'The European Delegated Prosecutors shall be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the Office competence, they shall act exclusively on behalf and in the name of that Office on the territory of their respective Member State. This shall entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law, including national prosecutors. Notwithstanding their status under this Regulation, the European Delegated Prosecutors shall during their term of office also be active member of the prosecution service of their Member State and shall be granted by their Member State the same powers as national prosecutors.'*

CY, IE and MT have argued that it should be made clear in the recitals that the European Delegated Prosecutors should be able to give instructions to the police force to carry out the investigations according to the national legal system. A such recital could look as follows *'In following the direction and instruction of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor, the European Delegated Prosecutor handling the case should be responsible for the investigations in accordance with national law'*. DE and IT, supported by COM, opposes this recital.

The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in evidence taking and exercise the available remedies in accordance with national law.

2. There shall be two ³⁷ or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant Member State's authorities, approve ³⁸ the number of the European Delegated Prosecutors, as well as the functional ³⁹ and territorial division of competences between the European Delegated Prosecutors in each Member State.
3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the supervising European Prosecutor of such functions. In the event that a European Delegated Prosecutor at any given moment is unable to fulfil his/her tasks as European Delegated Prosecutors because of such other commitments, he/she shall notify the supervising European Prosecutor, who shall consult with the competent national prosecution authorities in order to determine whether priority should be given to their functions deriving from this Regulation. The European Prosecutor may propose to the Permanent Chamber to reallocate the case in accordance with Article 23(3) and (4).

³⁷ This provision should be without prejudice to future discussions, in the context of the administrative provisions in the second half of the Regulation, about the number of full-time equivalent European Delegated Prosecutors positions to be financed by the EU budget. The text in paragraph 2, and in particular '*the number of European Delegated Prosecutors*', may need to be reviewed again in the context of the provisions of the formal status of the European Delegated Prosecutors ('special advisors') and the financial provisions.

³⁸ The following recital will be included in the text: '*When the European Chief Prosecutor is consulting with relevant Member State on the number of the European Delegated Prosecutors and the functional and territorial division of competences between the European Delegated Prosecutors in each Member State, due account should be taken of the organisation of the national prosecution system.*'

³⁹ The following recital will be included in the text: '*The notion of functional division of competences between European Delegated Prosecutors should allow for such a division of tasks, whereby certain European Delegated Prosecutors could be in charge of dealing with cases and taking certain specific decisions on initiation of investigations and other European Delegated Prosecutors could be in charge of dealing with complaints against such decisions.*'

SECTION 2

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

*Article 13*⁴⁰

Appointment and dismissal of the European Chief Prosecutor

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a term of seven years, which shall not be renewable. The Council shall act by simple majority.
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, or active European Prosecutors;
 - 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, financial investigations 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, high level prosecutors and lawyers of recognised competence, one of whom shall be proposed by the European Parliament⁴¹. The Council shall establish the panel's operating rules and adopt a decision appointing its members on a proposal from the Commission⁴².

⁴⁰ CY, PT, MT, HU, ES, HR and PL would prefer that the European Chief Prosecutor is chosen from among the Members of the College.

⁴¹ The following recital should be added: '*Account should be taken of a balanced membership of the panel, both in geographical terms and in terms of representation of the legal systems of the Member States.*'

⁴² A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

- 3a. If a European Prosecutor is appointed to be the European Chief Prosecutor, his or her position of European Prosecutor shall immediately be filled in accordance with the procedure set out in Article 14(1) and (2).
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 if it finds that he or she is no longer able to perform his or her duties, or that he or she is guilty of serious misconduct.
5. If the 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 paragraphs 1 – 3 above.

Article 13a

Appointment and dismissal of the Deputy European Chief Prosecutors

1. The College ⁴³ shall appoint [two] European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of three years, which shall however not exceed their mandate period as European Prosecutors. The selection process shall be regulated by the Internal Rules of procedure. The Deputy European Chief Prosecutors shall retain their status of European Prosecutors.
2. The rules and conditions for the exercise of the function of Deputy European Chief Prosecutor shall be set out in the Internal Rules of Procedure. If a European Prosecutor is no longer able to perform 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 and be dismissed from this position.
3. If a Deputy European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position as a Deputy for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraph 1. Subject to the rules in Article 14, he or she shall remain European Prosecutor.

⁴³ COM maintains that the Deputies, like the European Chief Prosecutor, should be appointed by the Council and the EP.

Article 14

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, of financial investigations and of international judicial cooperation in criminal matters.
2. The Council shall, after having received the reasoned opinion of a Selection Panel referred to in Article 13(3), 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 six years by the Council, acting by simple majority. The Council may decide to extend the mandate for a maximum of three more years at the end of the six-years period.
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 rules⁴⁴ for the appointment of European Prosecutors for and during their first mandate period⁴⁵.
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 is no longer able to perform his or her duties or that he or she is guilty of serious misconduct.

⁴⁴ A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

⁴⁵ The following recital will be added in this context: *'The Council should take into account the geographical range of the Member States when deciding on the partial replacement of a third of the European Prosecutors during their first mandate period'*.

6. If a European Prosecutor resigns, 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. If the European Prosecutor serves as Deputy European Chief Prosecutor, he or she shall automatically be dismissed also from the latter position.
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 above⁴⁶.

Where the College acknowledges the need for substitution, the designated person shall act as an interim European Prosecutor pending replacement or return of the European Prosecutor for a time period that shall not exceed 3 months. The College may upon request prolong the time period if necessary⁴⁷. The mechanisms and modalities of temporary substitution shall be determined and governed by the Internal Rules of Procedure⁴⁸.

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 nominated by the Member States⁴⁹. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a term of [five] years⁵⁰, which shall be renewable.

⁴⁶ The following accompanying recital will be considered: *'The European Delegated Prosecutor substituting the European Prosecutor in accordance with Article 14(7) should for the time of the substitution not be in charge of the investigation led by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the EPPO, which were led by the European Delegated Prosecutor substituting a European Prosecutor, Article 23(3) should apply.'*

⁴⁷ A recital with the following wording will be added: *'Recourse to such possibility should 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.'*

⁴⁸ The following recital should be introduced in this sense: *'Substitution of a European Prosecutor by one of the European Delegated Prosecutors of the respective Member States may take place in cases referred to in Article 14 (6) or in cases, for example, of prolonged illness, whereas a European Prosecutor shall be substituted by another European Prosecutor according to the Internal Rules of Procedure (Article 11(1)), if he or she is e.g. not available due to vacation, a business trip etc.'*

⁴⁹ COM maintains that European Delegated Prosecutors should be appointed by the College based on a list with a sufficient number of candidates from each Member State, allowing for a choice.

⁵⁰ The appropriate maximum term of office will need to be decided in the context of negotiations on their formal status under EU law.

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.⁵¹
3. 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 is not able to perform his or her duties, or that he or she is guilty of serious misconduct.
4. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor for reasons not connected with his/her responsibilities under this Regulation, it shall inform⁵² the European Chief Prosecutor before taking such action. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his/her responsibilities under this Regulation⁵³ without the consent of the European Chief Prosecutor. If the European Chief Prosecutor does not consent, the Member State concerned may request the College to review the matter.
5. 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 European Chief Prosecutor and, where necessary⁵⁴, nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

⁵¹ The following recital should be considered: *'The Member State that has nominated a European Delegated Prosecutor should ensure that he or she is a prosecutor under national law, if he or she did not have this status already at the time of his or her appointment as European Delegated Prosecutor'*.

⁵² COM would replace *'inform'* with *'consult'*.

⁵³ CY have noted that a differentiation between the respective roles of a European Delegated Prosecutor 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 as regards their activities as national prosecutors. The provision may need to be examined again, in conjunction with the whole Regulation. The following recital should be considered: *'Being active members of the public prosecution service or the judiciary of the Member States, national disciplinary provision should apply accordingly.'*

⁵⁴ A recital should clarify that the number of European Delegated Prosecutors may not be modified without account taken to the rule in Article 12(2) on the approval of the European Chief Prosecutor of the number of the European Delegated Prosecutors.

SECTION 3
INTERNAL RULES OF PROCEDURE

*Article 16*⁵⁵

Internal rules of Procedure of the European Public Prosecutor's Office

1. The Internal Rules of Procedure shall govern the organisation of the work of the Office.
2. A proposal for the Internal Rules of Procedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the [College]⁵⁶ by two thirds majority without delay once the Office has been set up.
3. A modifications in the Internal Rules of Procedure may be proposed by any European Prosecutor and shall be adopted by the [College] by two thirds majority.

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]⁵⁷, irrespective of whether the same criminal conduct could be classified, under national law, as another type of offence.

⁵⁵ CZ expressed some doubts regarding the binding nature of the Rules of Procedure in relation with national legislation.

⁵⁶ The Internal Rules of Procedure, depending on their content and the final analysis as regards the binding nature of the Rules, may need to be confirmed by the Council. The Presidency suggests to come back to this issue at a later stage of negotiations, when a clearer picture of what rules will need to be included in the Internal Rules of Procedure is at hand.

⁵⁷ The part between brackets needs to be reviewed once the negotiations in the PIF Directive have reached an agreement.

- 1a. The European Public Prosecutor's Office shall also be competent for offences regarding participation⁵⁸ in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit the offences referred to in paragraph 1.
2. The European Public Prosecutor's Office shall also be competent for any other criminal offence which is inextricably linked⁵⁹ to a criminal conduct falling within the scope of paragraph 1. The competence with regard to such criminal offences may only be exercised in conformity with Article 20(3).
3. *[Within ... Member States shall 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.]*⁶⁰

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:⁶¹

- 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, provided that a Member State has jurisdiction for such offences when committed outside its territory, or

⁵⁸ The following recital should be added: '*The notion of "offences relating to the participation in a criminal organisation" should be subject to the definition provided in national law in accordance with Framework Decision 2008/841/JHA, and may cover, for example, the membership in, or the organisation and leadership of such a criminal organisation.*'

⁵⁹ The following recital should be added: '*The efficient investigation of crimes affecting the financial interests of the Union may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union.*'

The notion of inextricably linked offences should be considered in light of the jurisprudence of the Court of Justice of the European Union.

Such may be the case, for example, for offences which have been committed for the main purpose of creating the conditions to commit the PIF offence, such as offences strictly aimed at ensuring the material or legal means to commit the PIF offence, or to ensure the profit or product thereof.'

⁶⁰ This paragraph should be further developed and moved to the final provisions of this regulation.

⁶¹ This jurisdiction provision should in principle be identical with the corresponding jurisdiction provision in the PIF-Directive.

- c) were committed outside of the territories referred to in point a) 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 has jurisdiction for such offences when committed outside its territory.

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 in respect of which it could exercise its competence in accordance with Articles 17, 20(2) and 20(3)⁶².
- 1a. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the European Public Prosecutor's Office could exercise its competence in accordance with Articles 17, 20(2) and 20(3), or where, at any time after the initiation of an investigation, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence in respect of which the European Public Prosecutor's Office could exercise its competence over the criminal conduct in accordance with Articles 17, 20(2) and 20(3), this authority shall without undue delay inform the European Public Prosecutor's Office so that the latter can decide whether to exercise its right of evocation in accordance with Article 22a.
- 1b. 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.

⁶² 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 centralised system*'.

- 1c. The European Public Prosecutor's Office shall also be informed in accordance with paragraphs 1 and 1a in cases where an assessment of whether the criteria laid down in Article 20(2) and 20(3) are met is not possible, or where an assessment of the instrumental nature of the inextricably linked offence referred to in Article 20(3)(aa) has to be made.
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 and 1a, there are grounds to initiate an investigation or to exercise the right of evocation.
3. Where upon verification the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation in accordance with Article 22, or to exercise its right of evocation in accordance with Article 22a, the reasons shall be noted in the Case Management System.

The European Public Prosecutor's Office shall inform the authority that reported the criminal conduct in accordance with paragraph 1 or 1a, as well as crime victims and if so provided by national law, other persons who reported the criminal conduct.

4. 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 European Public Prosecutor's Office may have been committed, it shall without undue delay inform the competent national authorities.
5. The European Public Prosecutor's Office may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States⁶³. The requested information may also concern infringements which caused damage to the Union's financial interests, other than those within the competence of the European Public Prosecutor's Office in accordance with Article 20(2), where it is necessary to establish links with a criminal conduct on which it has exercised its competence. Such information may also be requested in order to enable the College in accordance with Article 8(2) to issue general guidelines on the interpretation of the obligation to inform the European Public Prosecutor's Office of cases falling within the scope of Article 20(2).

⁶³ 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 either by initiating an investigation in accordance with Article 22 or by deciding to use its right of evocation in accordance with Article 22a. If the European Public Prosecutor's Office decides to exercise its competence, the competent national authorities shall not exercise their own competence in respect of the same criminal conduct.
2. Where a criminal offence falling within the scope of Article 17 caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the European Public Prosecutor's Office may only exercise its competence if:
 - a) the case has repercussions at Union level which require an investigation to be conducted by the European Public Prosecutor's Office, or
 - b) officials or other servants of the European Union, or members of the Institutions could be suspected of having committed the offence.

The European Public Prosecutor's Office shall, where appropriate, consult the competent national authorities or Union bodies to establish whether the criteria defined in (a) and (b) are met.

3. The European Public Prosecutor's Office shall refrain from exercising its competence in respect of any offence falling within the scope of Article 17 and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter in accordance with Article 28a if:
 - a) the maximum sanction provided for by national law for an offence falling within the scope of Article 17(1) is less severe than the maximum sanction for an inextricably linked offence as referred to in Article 17(2) or;
 - aa) the maximum sanction provided for by national law for an offence falling within the scope of Article 17(1) is equal to the maximum sanction for an inextricably linked offence as referred to in Article 17(2) unless the latter offence has been instrumental to commit the offence falling within the scope of Article 17(1) or;

- b) there is a reason to assume that the damage caused or likely to be caused to the Union's financial interests by an offence as referred to in Article 17 does not exceed the damage caused or likely to be caused to another victim.
4. The European Public Prosecutor's Office shall inform the competent national authorities without undue delay of any decision to exercise or to refrain from exercising its competence.
5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the question whether the criminal conduct falls within the scope of Articles 17(1a), 17(2), 20(2) or 20(3) the national authorities⁶⁴ competent to decide on the attribution of competences concerning prosecution at national level shall decide who shall be competent for the investigation of the case. Member States shall define the national authority which will decide on the attribution of competence.

Article 21

[...] ⁶⁵

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

⁶⁴ 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.

⁶⁵ The substantial content of the former Article 21, which was included in doc 9372/15 but later deleted, can now be found in Article 22.

according to its national law has jurisdiction in the case shall, without prejudice to the rules set out in Article 20(2) and (3), initiate an investigation and note this in the Case Management System⁶⁶.

2. Where upon verification in accordance with Article 19(2), 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 Article 19(1) or 19(1a).
3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions of paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.
4. A case shall as a rule be initiated and 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 European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation 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.
5. 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:
 - a) reallocate a case to a European Delegated Prosecutor in another Member State;

⁶⁶ 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'*.

- b) merge or split⁶⁷ cases and in each case choose the European Delegated Prosecutor handling the case;

if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph 4.

6. 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.
7. The European Public Prosecutor's Office shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

Article 22a

Right of evocation

1. Upon receiving all relevant information in accordance with Article 19(1a), the European Public Prosecutor's Office shall take its decision whether to exercise its right of evocation as soon as possible, but no later than 5 days after having received the information from the national authorities and shall inform the national authorities thereof. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time frame with a maximum prolongation of 5 days, and shall in such case inform the national authorities thereof.

⁶⁷ 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*'.

- 1a. 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.
The national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
2. If the European Public Prosecutor's Office becomes aware, through means other than the information referred to in Article 19(1a), 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. After being duly informed in accordance with Article 19(1a), the European Public Prosecutor's Office 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 1 of this Article.
3. The European Public Prosecutor's Office shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.
4. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the European Public Prosecutor's Office and refrain from carrying out further acts of investigation in respect of the same offence.
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 have initiated an investigation in respect of an offence falling under the scope of Articles 17 and 18. Where a European Delegated Prosecutor, who has received the information in accordance with Article 19(1a), 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 a decision in accordance with Article 9(3a).

6. Where the European Public Prosecutor's Office has refrained from exercising its competence, 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 an indictment has not been submitted to and received by a court. The decision shall be taken within the timeframe set out in paragraph 1 of this Article.

7. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 8(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.

The guidelines shall define with all necessary precision the cases to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to get a full recovery of the damage to the Union's financial interests.

8. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 7 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

Article 23

Conducting the investigation⁶⁸

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/her 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 Case Management System to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure⁶⁹.
2. At any time during the investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures in accordance with national law 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 competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide 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.

⁶⁸ The following recital will be added: *'This Regulation is without prejudice to Member State's national systems concerning the way criminal investigation are organised'*.

⁶⁹ The notion of *'significant developments'* should be explained in a recital.

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, either by undertaking the investigation measures and other measures on his/her own or by instructing the competent authorities in his/her Member State 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.

In such exceptional cases Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that 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 undue 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.*]⁷⁰

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.

⁷⁰ This paragraph should be moved to the provisions on confidentiality in article 64 of the Commission's initial proposal.

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 either in original or in some other specified form;
 - bb) obtain the production of stored computer data, encrypted or decrypted, either in original or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to Article 15(1), second sentence, of the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;
 - 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 or accused person, on any electronic communication connection that the suspected or accused person is using⁷¹;
- 1a. Without prejudice to Article 24, the investigation measures set out in paragraph 1 may be subject to conditions in accordance with the applicable national law if the latter are explicitly foreseen for specific categories of persons or professionals legally bound by an obligation of confidentiality.
- 1b. The investigation measures set out in paragraph 1(bb), and (d) may be subject to further conditions foreseen by the applicable national law. In particular, Member States may limit the application of paragraph 1(d) to specific serious offences, as listed in Annex X. This Annex shall be updated in accordance with the procedure provided in Article Z.
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 available⁷² 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. The procedures and modalities for taking the measures shall be governed by the applicable national law.

Article 26

Cross-border investigations

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting 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 and assign it to a European Delegated Prosecutor located in the Member State where that measure needs to be carried out.

⁷¹ MT wishes to see this point deleted.

⁷² The following recital could give an explanation of the term 'available': *Availability should refer to occasions where the indicated investigative measure exists under national law but is only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned.*

2. The European Delegated Prosecutor handling the case may assign any measures, which are available to him or her in accordance with Article 25. 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. Where the European Delegated Prosecutor handling the case assigns an investigation measure to one or several European Delegated Prosecutors of another Member State, he shall at the same time inform his supervising European Prosecutor.
3. If a judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor such authorisation shall be obtained by the latter in accordance with the law of that Member State.

If judicial authorisation for the assigned measure is refused⁷³, the European Delegated Prosecutor handling the case shall withdraw the assignment.

However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the European Delegated Prosecutor handling the case requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.
5. 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 but less intrusive 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 inform his supervising European Prosecutor and consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.

⁷³ The term '*refused*' refers to the final refusal, i.e. the refusal after all legal remedies have been exhausted. This will be clarified in a recital.

- 5a. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.⁷⁴
6. 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.
7. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide, in accordance with applicable national law as well as this Regulation, without undue delay whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor.

Article 27

Enforcement of assigned measures

The assigned measures shall be carried out in accordance with this Regulation and 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.

⁷⁴ The following recital will be inserted in the Preamble: *'The possibility to have recourse to legal instruments on mutual recognition or cross-border cooperation is not meant to replace the provision on cross-border investigations under this Regulation. It rather supplements it to ensure that cross-border measures which don't exist in national law for a purely domestic situation can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.'*

Pre-trial arrest and cross-border surrender

1. The European Delegated Prosecutor handling the case may order or request the arrest or pre-trial detention of the suspected or accused person in accordance with national law applicable in similar domestic cases.
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 Warrant⁷⁶ in accordance with Council Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States.

SECTION 3⁷⁷

RULES ON PROSECUTION

Article 28a

Referrals and transfers of proceedings to the national authorities

1. Where an investigation conducted 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 refer⁷⁸ the case without undue delay to the competent national authorities.

⁷⁵ The Presidency suggests to include the following recital: '*Article 28 is without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect*'.

⁷⁶ A recital indicating that a procedure equivalent to a European Arrest Warrant may also be used will be considered. NL has suggested that it should be indicated in a recital that the EPPO will only be entitled to issue or request Arrest Warrants within its area of competence.

⁷⁷ PT and SI have emitted reservations on several provisions in sections 3 and 4, with reference to constitutional concerns.

⁷⁸ A recital should be added explaining that in case of a referral by the EPPO national authorities shall preserve full prerogatives under national law to open, continue or to dismiss the investigation.

2. Where an investigation conducted by the European Public Prosecutor's Office reveals that the specific conditions for the exercise of its competence set out in Article 20(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without undue delay and before initiating prosecution before national Courts.

2a. Where, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Article 8(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities.

To ensure coherent application of the guidelines, each Permanent Chamber shall report annually to the College on the application of the guidelines.

Such referrals shall also include any inextricably linked offences within the competence of the European Public Prosecutor Office as referred to in Article 17(2).

2b. The Permanent Chamber shall communicate any decisions to refer a case to national authorities on the basis of paragraph 2a to the European Chief Prosecutor. On reception of this information, the European Chief Prosecutor may within three days request the Permanent Chamber to review its decision if he/she considers that the interest to ensure the coherence of the referral policy of the Office so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of his/her Deputies shall exercise the right to request the said review.

2c. Where the competent national authorities do not accept to take over the case in accordance with paragraph 2 and 2a within a timeframe of maximum 30 days, the European Public Prosecutor's Office shall remain competent to prosecute or dismiss the case according to the rules laid down in this Regulation.

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), (2) or (2a) and Article 20(3), 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), (2) or (2a) and Article 20(3), the European Public Prosecutor's Office shall inform the relevant Union institutions, bodies and agencies, as well as, where appropriate in accordance with national law, suspects or accused persons and the crime victims, thereof. The cases dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery or other administrative follow-up.

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 a referral of the case, a dismissal or a transaction in accordance with Article 28a, 33 or [34]. 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 accordingly⁷⁹.

⁷⁹ A recital clarifying that the European Prosecutor will, in the context of this provision, retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in Article 11(2) will be added to the preamble.

2. If the Permanent Chamber, based on the reports received, considers not to take the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake its own review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.
3. 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, in accordance with Article 22(4) at a Court of a different Member State which has jurisdiction over the case.

Article 30

Prosecution before national Courts

1. When the competent Permanent Chamber takes a decision to prosecute following the procedures set out in Article 29, the European Delegated Prosecutor shall bring the case to judgment at a competent Court of his/her Member State.
2. Where more than one Member State has jurisdiction over the case, the Permanent Chamber shall in principle decide to bring the case to prosecution in the Member State of the European Delegated Prosecutor handling the case. The Permanent Chamber may, taking into account the report provided in accordance with Article 29(1), decide to bring the case to prosecution in a different Member State, if there are sufficiently justified grounds to do so, taking into account the criteria set out in Article 22(4) and 22(5), and instruct a European Delegated Prosecutor of that Member State accordingly.
3. Before deciding to bring a case to judgment, the competent Permanent Chamber may, on the proposal of the European Delegated Prosecutor handling the case, decide to join several cases, where investigations have been conducted by different European Delegated Prosecutors against the same person(s) with a view to prosecution of these cases at the Court of one Member State which, in accordance with its law, has jurisdiction for each of these cases.

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 Permanent Chamber and await its instructions. Should this be impossible within the deadline set by national law, the European Delegated Prosecutor shall be entitled to lodge the appeal without prior instructions of the Permanent Chamber, and shall subsequently submit the report to the Permanent Chamber without delay. The Permanent Chamber shall then instruct the European Delegated Prosecutor to either maintain or withdraw the appeal. 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 would take a position which would lead to the dismissal of the case.⁸⁰

Article 31

Evidence⁸¹

1. Evidence presented by the prosecutors of the European Public Prosecutor's Office or the defendant to a Court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.

⁸⁰ A recital clarifying that the European Prosecutor should, in the context of this provision, be consulted and retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in Article 11(2) will be added to the preamble.

⁸¹ A recital inspired by recital 39 in the EIO Directive will be inserted in the preamble, with the following tentative wording: '*This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member State's constitutions in their respective fields of application. In line with these principles, and in respecting the different legal systems and traditions of the Member States as provided in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the trial Court from applying fundamental principles of national law on fairness of the procedure as they apply in common law systems such as in the framework of a trial by jury.*'

Where the law of the Member State of the trial Court requires that the latter examines the admissibility of evidence, it shall ensure it is satisfied that its admission would not be incompatible with Member States obligations to respect the fairness of the procedure, the rights of defence, or other rights as enshrined in the Charter, in accordance with Article 6 TEU.

2. The power of the trial Court to freely assess the evidence presented by the defendant or the prosecutors of the European Public Prosecutor's Office shall not be affected by this Regulation.

Article 32

Disposition of 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 damage⁸².

SECTION 4

RULES ON ALTERNATIVES TO PROSECUTION

Article 33

Dismissal of the case⁸³

1. The Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case in accordance with Article 29(1), 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 grounds⁸⁴:

⁸² A recital will be considered to clarify the relation between this provision and compensation of the EU budget on the basis of administrative recovery.

⁸³ PT considers that this provision does not respect the principle of subsidiarity.

⁸⁴ CZ has emitted a general reservation on the list of grounds.

- a) death of the suspect or accused person or winding up of a suspect or accused legal person;
 - aa) insanity of the suspect or accused person;
 - b) amnesty granted to the suspect or accused person;
 - c) immunity granted to the suspect or accused person, unless it has been lifted;
 - d) expiry of the national statutory limitation to prosecute;
 - e) the case has already been finally disposed of in relation to the acts;
 - f) lack of relevant evidence⁸⁵.
2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which were not known to the European Public Prosecutor's Office at the time of the decision, and which become known thereafter. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.
3. Where the European Public Prosecutor's Office is competent 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 20(5). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 28a (3) to (5).
4. Where a case has been dismissed, the European Public Prosecutor's Office shall officially notify the competent national authorities and shall inform the relevant Union institutions, bodies and agencies, as well as, where appropriate in accordance with national law, suspects or accused persons and the crime victims, thereof⁸⁶. The dismissed cases may also be referred to OLAF or to competent national administrative or judicial authorities for recovery or other administrative follow-up.

[...]

⁸⁵ MT has emitted a reservation on this provision.

⁸⁶ This provision is without prejudice to further information obligations according to national law.

CHAPTER V

PROCEDURAL SAFEGUARDS

Article 35⁸⁷

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 suspects and accused 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 suspects and accused persons 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)⁸⁸ 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 May 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,

⁸⁷ The Commission has emitted a general reservation on this provision.

⁸⁸ AT and DE 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.

Article 36

Judicial review before the Court of Justice of the European Union

- [1. *Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [...] ⁸⁹ 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.] ⁹⁰*

[...]

⁸⁹ The LU Presidency is of the opinion that at least Article 30(2) should be covered.

⁹⁰ The wording of this Article has not yet been the object of any political agreement.