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NOTA

van:	het voorzitterschap
aan:	het Comité van permanente vertegenwoordigers/de Raad
Betreft:	Voorstel voor een verordening tot instelling van het Europees Openbaar Ministerie - <i>Oriënterend debat</i>

A. Achtergrond

Het Letse voorzitterschap van de Raad heeft intensief gewerkt aan de afronding van de eerste vijf hoofdstukken van de verordening. Die hoofdstukken hebben betrekking op het merendeel van de voor de werking van het Openbaar Ministerie belangrijke kwesties, waaronder de regels inzake de status, de structuur en de organisatie van het Openbaar Ministerie, alsmede inzake de procedures voor onderzoek, vervolging en procesvoering.

Dertien vergaderingen in de bevoegde werkgroep (Groep samenwerking in strafzaken), één bespreking in het CATS en diverse bijeenkomsten van de JBZ-Raden hebben er plaatsgevonden over het dossier tijdens het Letse voorzitterschap. Het dossier is voorts in maart besproken door de ministers in de Raad. De vergaderingen zijn in een zeer constructieve sfeer verlopen en er is aanzienlijke vooruitgang geboekt. Er zijn echter nog steeds aanzienlijke verschillen tussen de standpunten van de lidstaten. Het voorzitterschap heeft een evenwichtige compromistekst opgesteld van de eerste 16 artikelen (zie bijlage 1).

Bijlage 2 bevat de volledige tekst van de artikelen 17-33, met inbegrip van de voetnoten.

B. Stand van zaken

I. Van de eerste 16 artikelen in bijlage 1 hebben de deskundigen vooral de volgende kwesties besproken:

- *De noodzaak om te zorgen voor een gelijke spreiding van de werklast van de vaste kamers*
- *De bevoegdheden van de vaste kamers tijdens onderzoek en vervolging*
- *De mogelijkheid voor de vaste kamers beslissingsbevoegdheid te delegeren aan de Europees aanklager die toeziet op de zaak*
- *Het stemrecht van de Europees aanklager die toeziet op de zaak in de vaste kamer*
- *De bevoegdheden van Europese aanklagers om instructies te geven aan de gedelegeerd Europees aanklagers*
- *De mechanismen voor vervanging tussen de Europees aanklagers*
- *Een mechanisme van tijdelijke vervanging van de Europees aanklager door een gedelegeerd Europees aanklager*

De huidige tekst van bijlage 1 vertegenwoordigt een evenwichtig compromis tussen de verschillende standpunten van de delegaties in de onderhandelingen en biedt oplossingen voor de meeste van de bezwaren in de werkgroepen.

II. Voor de rest van de artikelen (art. 17-33) gingen de meest intensieve discussies over de volgende punten:

- *De verplichting van de lidstaten om verslag uit te brengen over de criminele gedragingen die mogelijk een strafbaar feit inhouden dat onder de bevoegdheid van het Europees Openbaar Ministerie valt*
- *De modaliteiten van de verslaglegging, met inbegrip van een samenvattend verslag en de inhoud ervan*
- *De bevoegdheid van de vaste kamer om de gedelegeerd Europees aanklager opdracht te geven tot opening van een onderzoek*

- *De toewijzing en de nieuwe toewijzing van een zaak door de vaste kamer*
- *Het evocatierecht en overdracht van procesvoering van de nationale autoriteiten naar het Europees Openbaar Ministerie*
- *De onderzoeksmaatregelen en grensoverschrijdende onderzoeken*
- *Transacties*

De vooruitgang die tijdens het Letse voorzitterschap is geboekt, staat in bijlage 2. Sommige van deze kwesties staan echter nog open, zoals aangegeven in de voetnoten, en zullen verder moeten worden besproken. De artikelen 30-33 zijn nog maar licht aangeroerd en tijdens het Letse voorzitterschap niet gewijzigd.

C. Vragen

Ongeacht het uiteindelijke besluit van de afzonderlijke lidstaten over deelname aan het Europees Openbaar Ministerie, verzoekt het voorzitterschap de ministers om:

1. **in principe in te stemmen met de tekst van de eerste 16 artikelen van de verordening, zoals weergegeven in bijlage 1, met dien verstande dat de bijzonderheden van de tekst opnieuw moeten worden gezien zodra de Raad in beginsel overeenstemming heeft bereikt over de volledige tekst van de verordening.**
2. **de vooruitgang te onderschrijven die gemaakt is voor de artikelen 17-33, en nota te nemen van de huidige tekst van die artikelen, weergegeven in bijlage 2.**

Ontwerp van

VERORDENING VAN DE RAAD

tot instelling van het Europees Openbaar Ministerie

HOOFDSTUK 1

ONDERWERP EN DEFINITIES

Artikel 1

Onderwerp

Bij deze verordening wordt het Europees Openbaar Ministerie ingesteld, en worden de regels betreffende de werking ervan vastgesteld.

Artikel 2

Definities¹

In deze verordening wordt verstaan onder:

- a) "persoon": elke natuurlijke persoon of rechtspersoon;
- b) "financiële belangen van de Unie": alle ontvangsten, uitgaven en activa die worden gedekt door, zijn verworven in het kader van, of zijn verschuldigd aan de begroting van de Unie en de begrotingen van de instellingen, organen en instanties die op grond van de Verdragen zijn opgericht, en de begrotingen die zij beheren en controleren;
- c) "administratieve persoonsgegevens": alle persoonsgegevens die door het Europees Openbaar Ministerie worden verwerkt, met uitzondering van operationele persoonsgegevens;
- d) "operationele persoonsgegevens": alle persoonsgegevens [in verband met het dossier] die door het Europees Openbaar Ministerie worden verwerkt voor de in artikel [37] beschreven doeleinden;

¹ 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.

- e) "personeel van het Europees Openbaar Ministerie": personeel, op centraal niveau, dat aan het college, de vaste kamers, de Europees hoofdaanklager, de Europees aanklagers en de gedelegeerd Europees aanklagers steun verleent in de dagelijkse activiteiten voor de uitvoering van de taken van het Europees Openbaar Ministerie in het kader van deze verordening;
- f) "gedelegeerd Europees aanklager die de zaak behandelt": de gedelegeerd Europees aanklager die verantwoordelijk is voor de onderzoeken en vervolgingen die hij heeft ingeleid, die hem zijn toegewezen of die hij heeft overgenomen met gebruikmaking van het evocatierecht;
- g) "assistent-gedelegeerd Europees aanklager": de gedelegeerd Europees aanklager die gevestigd is in een andere lidstaat dan de lidstaat van de gedelegeerd Europees aanklager die de zaak behandelt, waar een hem toegewezen onderzoek of andere maatregel zal worden uitgevoerd.

HOOFDSTUK II

Instelling, taken en basisbeginselen van het Europees Openbaar Ministerie

Artikel 3

Instelling

1. Het Europees Openbaar Ministerie wordt ingesteld als orgaan van de Unie.
2. Het Europees Openbaar Ministerie heeft rechtspersoonlijkheid.
3. Het Europees Openbaar Ministerie werkt samen met Eurojust en krijgt daarvan overeenkomstig artikel [57] ondersteuning.

Artikel 4

Taken

Het Europees openbaar ministerie is belast met het opsporen, vervolgen en voor het gerecht brengen van daders van en medeplichtigen aan strafbare feiten die de financiële belangen van de Unie schaden [die zijn voorzien bij Richtlijn 2015/xx/EU en die door deze verordening worden bepaald]². Met betrekking daartoe doet het Europees Openbaar Ministerie onderzoeken, stelt het daden van vervolging en treedt het op als openbaar aanklager bij de bevoegde rechtbanken van de lidstaten, totdat de zaak is afgesloten³.

Artikel 5

Basisbeginselen van het optreden

1. In zijn optreden eerbiedigt het Europees Openbaar Ministerie de rechten die in het Handvest van de grondrechten van de Europese Unie zijn verankerd.
2. Het Europees Openbaar Ministerie is in zijn gehele optreden gebonden aan de beginselen rechtsstatelijkheid en evenredigheid⁴.
3. Onderzoeken en vervolgingen namens het Europees Openbaar Ministerie vallen onder deze verordening. Het nationale recht is van toepassing op aangelegenheden die niet bij deze verordening worden geregeld. Tenzij in deze verordening anders is bepaald, is het toepasselijke nationale recht het recht van de lidstaat waarvan de gedelegeerd Europees aanklager de zaak behandelt overeenkomstig artikel 12, lid 1⁵. In zaken die zowel bij nationaal recht als bij deze verordening zijn geregeld, heeft de verordening voorrang.
4. Het Europees Openbaar Ministerie verricht het opsporingsonderzoek op onafhankelijke wijze en vergaart al het ter zake dienende bewijs⁶, ongeacht of het bezwarend of ontlastend is.

² IE has suggested that this reference should be to Article 17.

³ 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'*. AT has suggested to add the following sentence to this recital: *'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'*.

⁴ 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 21.

⁵ This phrase will have to be revisited in the light of developments of Articles 12(1) and 26a.

⁶ SI wishes that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO.

5. Het Europees Openbaar Ministerie stelt onderzoeken in en verricht deze onverwijld.
6. De bevoegde nationale instanties verlenen actief bijstand en ondersteuning bij de door het Europees Openbaar Ministerie ingestelde onderzoeken en vervolgingen. Maatregelen, beleid en procedures op grond van deze verordening worden geleid door het beginsel loyale samenwerking^{7 8}.

Artikel 6

Onafhankelijkheid en verantwoordingsplicht

1. Het Europees Openbaar Ministerie is onafhankelijk. De Europees hoofdaanklager, de plaatsvervangend Europees hoofdaanklagers, de Europees aanklagers, de gedelegeerd Europees aanklagers, en het personeel van het Europees Openbaar Ministerie handelen in het belang van de gehele Unie, als bepaald bij wet, en vragen noch aanvaarden, in de functie die zij krachtens deze verordening uitoefenen, instructies van een externe persoon of een lidstaat, instelling, orgaan of instantie van de Unie. De lidstaten en de instellingen, organen of instanties van de Unie respecteren de onafhankelijkheid van het Europees Openbaar Ministerie en trachten niet het te beïnvloeden bij het vervullen van zijn taken.
2. Het Europees Openbaar Ministerie legt aan het Europees Parlement, de Raad en de Europese Commissie verantwoording over zijn algemeen optreden af, en stelt jaarverslagen op overeenkomstig artikel 6a.

⁷ 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.*'

⁸ The following provision shall be included the text of the Regulation (e.g. Chapter VIII, Chapter IX or Article 69): '*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.*'

Artikel 6a

Verslaglegging

1. Elk jaar stelt het Europees Openbaar Ministerie een openbaar jaarverslag⁹ over zijn algemeen optreden op in de officiële talen van de instellingen van de Unie en het publiceert dat verslag. Het zendt dit verslag toe aan het Europees Parlement en de nationale parlementen, alsook aan de Raad en de Commissie.
2. De Europees hoofdaanklager verschijnt eenmaal per jaar voor het Europees Parlement en de Raad, en voor de nationale parlementen op hun verzoek, om verslag uit te brengen over het algemeen optreden van het Europees Openbaar Ministerie, onverminderd diens zwijg- en geheimhoudingsplicht ten aanzien van individuele gevallen en persoonsgegevens. De Europees hoofdaanklager kan voor hoorzittingen die door de nationale parlementen worden belegd, worden vervangen door een van de plaatsvervangers.

HOOFDSTUK III

STATUS, STRUCTUUR EN ORGANISATIE VAN HET EUROPEES OPENBAAR MINISTERIE

AFDELING 1

STATUS EN STRUCTUUR VAN HET EUROPEES OPENBAAR MINISTERIE

Artikel 7

Structuur van het Europees Openbaar Ministerie

1. Het Europees Openbaar Ministerie is een ondeelbaar orgaan van de Unie en treedt op als één dienst met een gedecentraliseerde structuur.
2. Het Europees Openbaar Ministerie bestaat uit een centraal en een decentraal niveau.

⁹ 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*'.

3. Het centrale niveau is het Centraal Openbaar Ministerie, op de plaats waar de zetel gevestigd is. Het Centraal Openbaar Ministerie bestaat uit het college, de vaste kamers, de Europees hoofdaanklager, diens plaatsvervangers en de Europees aanklagers.
4. Het decentrale niveau wordt gevormd door de gedelegeerd Europees aanklagers in de lidstaten.
5. Het Centraal Openbaar Ministerie en de gedelegeerd Europees aanklagers worden in de uitoefening van hun taken uit hoofde van deze verordening bijgestaan het personeel van het Europees Openbaar Ministerie.

Artikel 8

Het college

1. Het college van het Europees Openbaar Ministerie bestaat uit de Europees hoofdaanklager en één Europees aanklager per lidstaat. De Europees hoofdaanklager zit de vergaderingen van het college voor en is belast met de voorbereiding ervan.

2. Het college komt op gezette tijden bijeen en is verantwoordelijk voor het algemeen toezicht¹⁰ op het optreden van het Europees Openbaar Ministerie. Het neemt besluiten over strategische aangelegenheden, evenals over algemene aangelegenheden die voortvloeien uit individuele gevallen¹¹, met name om het vervolgingsbeleid van het Europees Openbaar Ministerie in de gehele Unie coherentie, efficiëntie en consistentie te verlenen, alsook over besluiten over andere in deze verordening genoemde aangelegenheden. Het college neemt geen operationele besluiten in individuele gevallen. Het reglement van orde voorziet in de modaliteiten van het algemeen toezicht op het optreden en de besluiten over strategische en algemene aangelegenheden van het college in overeenstemming met dit artikel.
3. Op voorstel van de Europees hoofdaanklager en in overeenstemming met het reglement van orde richt het college vaste kamers op.
4. Het college stelt het reglement van orde van het Europees Openbaar Ministerie vast overeenkomstig artikel 16, en bepaalt voorts de verantwoordelijkheden voor de uitoefening van de ambten van de leden van het college en het personeel van het Europees Openbaar Ministerie.

¹⁰ 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. [...] NL, PT, 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.

¹¹ 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.'*

5. Tenzij anders in deze verordening bepaald, neemt het college zijn besluiten bij gewone meerderheid. Elk lid van het college heeft het recht een stemming te laten houden over aangelegenheden waarover het college moet besluiten. Elk lid van het college heeft één stem. De Europees hoofdaanklager heeft bij staking van stemmen in het college een beslissende stem¹².

Artikel 9

De vaste kamers¹³

1. De vaste kamers worden voorgezeten door de Europees hoofdaanklager of een van diens plaatsvervangers, of een Europees aanklager die overeenkomstig het reglement van orde wordt benoemd tot voorzitter¹⁴. De vaste kamer heeft twee bijkomende vaste leden. Het aantal vaste kamers, de samenstelling en de bevoegdheidsverdeling tussen de kamers zijn afgestemd op de functionele behoeften van het Europees Openbaar Ministerie en worden vastgesteld overeenkomstig het reglement van orde¹⁵.

Het aantal vaste kamers en de bevoegdheidsverdeling zorgen voor een gelijke verdeling van de werkbelasting aan de hand van een systeem van toewijzing van zaken op willekeurige basis en voorzien, in uitzonderlijke gevallen, wanneer dit nodig is voor de goede werking van het Europees Openbaar Ministerie, in procedures voor afwijkingen van het beginsel van de willekeurige toewijzing, wanneer de Europees hoofdaanklager daartoe besluit.¹⁶

¹² 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.'*

¹³ SE, supported by CY, CZ, FI, HR, HU, IE, MT, NL, PT and SI, maintains its general opinion that a system where the EDP's are responsible for taking the bulk of the operative decisions would contribute significantly to the effectiveness of the EPPO. The EDP's 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 EDP's 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.

¹⁴ The inclusion of the recital should be considered that 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.

¹⁵ 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, an EP to be a member in more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, even workload of individual EP's.'*

¹⁶ The introduction of the following recital should be considered: *'The allocation of cases should ensure distribution of cases in accordance with established consequence between the Permanent Chambers at the random pace as to ensure, to the extent possible, equal distribution of workload.'*

2. De vaste kamers sturen de onderzoeken en vervolgingen aan die door de gedelegeerd Europees aanklagers worden gevoerd, en monitoren deze, in overeenstemming met de leden 3, 3a en 4 van dit artikel¹⁷. Zij zorgen tevens voor de coördinatie van de onderzoeken en de vervolgingen in grensoverschrijdende zaken en voor de uitvoering van de door het college genomen besluiten, een en ander overeenkomstig artikel 8, lid 2.
- 3.¹⁸ De vaste kamers nemen onderstaande besluiten in overeenstemming met de voorwaarden en procedures in deze verordening, indien nodig na herziening van een door de behandelende gedelegeerd Europees aanklager ingediend ontwerpbesluit [...]
- a) een zaak voor het gerecht brengen in overeenstemming met artikel 27, lid 2¹⁹;
 - b) een zaak toewijzen in overeenstemming met artikel 28, lid 1, punten a) tot en met f)²⁰;
 - c) een zaak seponeren door middel van een schikking in overeenstemming met artikel lid 29.
- 3a. De vaste kamers nemen, indien nodig, onderstaande besluiten in overeenstemming met de voorwaarden en procedures in deze verordening:
- a) de gedelegeerd Europees aanklager opdracht geven een onderzoek in te stellen overeenkomstig de regels in artikel 21, leden 1 tot en met 3, wanneer er geen onderzoek is ingeleid;
 - b) de gedelegeerd Europees aanklager opdracht geven een zaak te evoceren in overeenstemming met artikel 21a, lid 6, indien de zaak nog niet is geëvoceerd;

¹⁷ 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. NL, 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.

¹⁸ AT, CY, CZ, DE, FI, MT and SE believe that 9(3) and 9 (3a) should be finalized only after work on other Articles has been completed. BE, BG, ES, FR, IT, LT, RO and COM have expressed strong reserves as regards the latest wording of Article 9(3)(a) and 9(5).

¹⁹ CZ, NL, 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.

²⁰ 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.

- c) verwijzen naar de strategische aangelegenheden of algemene kwesties van het college die voortkomen uit individuele gevallen, in overeenstemming met artikel 8, lid 2;
 - d) een zaak toewijzen in overeenstemming met artikel 21, lid 2;
 - e) een zaak elders toewijzen in overeenstemming met artikel 21, lid 4 of artikel 23, lid 3a;
 - [i) het besluit van een Europees aanklager om zelf het onderzoek in te stellen in overeenstemming met artikel 23, lid 4, goedkeuren.]
4. De bevoegde vaste kamer kan, via de Europees aanklager die toeziet op²¹ een onderzoek of een vervolging, in specifieke gevallen in overeenstemming met de toepasselijke nationale wetgeving²² instructies geven²³ aan de gedelegeerd Europees aanklager die de zaak behandelt, wanneer zulks nodig is voor een efficiënte aanpak van het onderzoek of de vervolging, of [...] in het belang is van de rechtspraak of een coherent functioneren van het Europees Openbaar Ministerie.

²¹ SI suggest to replacing 'supervising' with 'directing'. The same applies for the subsequent paragraphs of Article 9 and subsequent Articles.

²² A recital indicating that the supervising EP 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.

²³ RO, with support from IT and BE, has suggested that a recital with the following wording (or similar) should be considered: *'The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. They will however have the right to ask for a review by the Permanent Chamber of an instructions, if it is not compliant with the Regulation or the applicable national law'*. SI would like to add the following words in the body of the text *'An EP or the EDP may refuse instructions given by the Permanent Chamber if they are in conflict with this Regulation, applicable national law or because of the diverging written reasoned legal opinion of the EP or the EDP'*. DE, supported by AT, CZ and NL, is in addition to the RO recital proposing the following text: *'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. Being active members of the public prosecution service or the judiciary of the Member States, the European Delegated Prosecutors should not be obliged to follow, under any circumstances, instructions where this would be conflicting with national disciplinary provisions.'*

- [5. De vaste kamer neemt met gewone meerderheid besluiten. De kamer gaat over tot stemming op verzoek van een van de leden. Elk lid heeft één stem. In geval van staking van stemmen heeft de voorzitter de beslissende stem. De besluiten worden in overleg genomen tijdens vergaderingen van de kamers op basis van een beknopt verslag aan de kamer, opgesteld door de bevoegde Europees aanklager, en in beginsel²⁴ op basis van het door de behandelende gedelegeerde Europees aanklager.

Alle stukken van een dossier zijn op verzoek toegankelijk voor de bevoegde vaste kamer met het oog op de voorbereiding van de besluiten.²⁵

Onder voorbehoud van voorafgaande goedkeuring door de Europees hoofdaanklager kan de vaste kamer in een bepaald geval haar beslissingsbevoegdheid uit hoofde van lid 3, onder a) en b), delegeren aan de Europees aanklager die op de zaak toeziet in overeenstemming met artikel 11, lid 1, wanneer het strafbare feit:

- a) de financiële belangen van de Unie schaadt of dreigt te schaden voor een bedrag van minder dan 50 000 euro;
- b) geen gevolgen heeft op het niveau van de Europese Unie, en
- c) niet is begaan door ambtenaren of andere personeelsleden van de Europese Unie, of leden van de instellingen.

Een dergelijke delegatie wordt ingetrokken zodra een van de leden van de vaste kamer daarom verzoekt.

De toezichthoudende Europees aanklager meldt de kamer alle informatie of elke situatie die volgens hem waarschijnlijk een nieuwe beoordeling vereist van de mogelijkheid om de delegatie te handhaven.

Met het oog op een coherente toepassing van het delegatiebeginsel brengt de vaste kamer jaarlijks verslag uit aan het college over het gebruik van de delegatie. Het college kan, indien nodig, richtsnoeren uitvaardigen ter waarborging van de samenhang van het vervolgingsbeleid van het Openbaar Ministerie.

²⁴ The following recital should be considered: *‘The Permanent Chambers in adopting the decisions in accordance with Article 9 (3a) and (3b) should base them following the draft decision proposed by the handling EDP. However, in exceptional cases, the Chamber should be able to adopt decision without a draft decision.’*

²⁵ A recital with the following wording should be considered: *‘The work of the EPPO should in principle be ensured in electronic form’.*

Het reglement van orde staat de kamers toe besluiten te nemen via een schriftelijke procedure die uitgebreid in het reglement van orde moet worden beschreven.

Alle besluiten en instructies bedoeld in de leden 3, 3a en 4 worden schriftelijk vastgelegd en gaan deel uitmaken van het dossier.]

6. [Behalve de vaste leden neemt de Europees aanklager die overeenkomstig artikel 11, lid 1, toezicht houdt op een onderzoek of een vervolging, deel aan het overleg in de vaste kamer. De [...] Europees aanklager die toezicht houdt op de zaak, heeft stemrecht, behalve voor de besluiten van de vaste kamer over de toewijzing en nieuwe toewijzing krachtens artikel 21, leden 3 en 4, en artikel 21a, lid 5 [...] en over het voor het gerecht brengen van zaken (artikel 27, lid 2) waarvoor meer lidstaten rechtsmacht hebben, en in de in artikel 26a, lid 8, beschreven gevallen²⁶.

Een vaste kamer kan ook, op verzoek van een Europees aanklager of een gedelegeerd Europees aanklager of op eigen initiatief, andere Europees aanklagers of gedelegeerd Europees aanklagers die bij een zaak betrokken zijn, uitnodigen haar vergaderingen bij te wonen, zonder stemrecht.]

7. De voorzitters van de vaste kamers houden, overeenkomstig het reglement van orde, het college op de hoogte van de overeenkomstig dit artikel genomen besluiten, zodat het college zijn rol kan vervullen in overeenstemming met artikel 8, lid 2.

Artikel 10

De Europees hoofdaanklager en de plaatsvervangers

1. Het Europees Openbaar Ministerie staat onder leiding van de Europees hoofdaanklager. De Europees hoofdaanklager organiseert het werk van het Europees Openbaar Ministerie, stuurt het optreden ervan aan en neemt besluiten overeenkomstig deze verordening en het reglement van orde.
2. Er worden [twee] plaatsvervangers benoemd om de Europees hoofdaanklager bij te staan bij het verrichten van zijn taken en hem te vervangen indien hij afwezig of verhinderd is.

²⁶ COM and AT, BE, BG, DE, ES, FR, IT, LT, RO have 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, supported by FI, would like to have voting right in all cases for EDP.

3. De Europees hoofdaanklager vertegenwoordigt het Europees Openbaar Ministerie tegenover de instellingen van de Unie en van de lidstaten, en tegenover derden. De Europees hoofdaanklager kan zijn taken met betrekking tot vertegenwoordiging aan een van zijn plaatsvervangers of een Europees aanklager delegeren.

Artikel 11

De Europees aanklagers²⁷

1. De Europees aanklagers houden, namens de vaste kamer²⁸ en met inachtneming van de instructies die de kamer heeft gegeven in overeenstemming met artikel 9, lid 3, lid 3a en lid 4, toezicht op de onderzoeken en vervolgingen waarvoor de gedelegeerd Europees aanklagers die de zaak behandelen in hun lidstaat van herkomst, verantwoordelijk zijn²⁹. De Europees aanklagers dienen samenvattingen in van de zaken onder hun toezicht en, indien van toepassing, voorstellen voor besluiten die moeten worden genomen door deze kamer, op basis van ontwerpbesluiten die zijn opgesteld door de gedelegeerd Europees aanklagers.

In het reglement van orde wordt, onverminderd artikel 14, lid 7, voorzien in een mechanisme voor vervanging tussen Europees aanklagers ingeval de toezichthoudende Europees aanklager tijdelijk³⁰ afwezig is of om andere redenen niet beschikbaar is voor het vervullen van de functies van de Europees aanklagers. De plaatsvervangend Europees aanklager mag alle taken van een Europees aanklager vervullen, maar mag geen onderzoek verrichten als bedoeld in artikel 23, lid 4.
2. De toezichthoudende Europees aanklagers mogen, in overeenstemming met de toepasselijke nationale wetgeving en de instructies van de bevoegde vaste kamer, in bepaalde gevallen instructies geven aan de gedelegeerd Europees aanklager die de zaak behandelt, wanneer zulks nodig is voor een efficiënte aanpak van het onderzoek of de vervolging en in het belang is van de rechtspraak en een coherent functioneren van het Europees Openbaar Ministerie.

²⁷ CY, FI, 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.

²⁸ PT and SI are opposed to the idea that the EPs shall supervise investigations and prosecutions on behalf of the Permanent Chamber.

²⁹ COM and BG oppose the addition of the word '*in their Member State of origin*'. [...]

³⁰ 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. De Europees aanklagers fungeren als contactpersoon en informatiekanaal tussen de vaste kamers en de gedelegeerd Europees aanklagers in hun respectieve lidstaten van herkomst en houden toezicht op de uitvoering van de taken van het Europees Openbaar Ministerie in hun lidstaat, in nauw overleg met de gedelegeerd Europees aanklagers. De Europees aanklagers zorgen er overeenkomstig deze verordening en het reglement van orde voor dat alle relevante informatie van het Centraal Openbaar Ministerie wordt verstrekt aan de gedelegeerd Europees aanklagers en vice versa.

Artikel 12

De gedelegeerd Europees aanklagers

1. De gedelegeerd Europees aanklagers treden namens het Europees Openbaar Ministerie in hun respectieve lidstaten op³¹ en hebben dezelfde bevoegdheden als nationale aanklagers met betrekking tot onderzoeken, vervolgingen en het voor de rechter brengen van zaken, naast en behoudens de bijzondere bevoegdheden en status die zij hebben onder de in deze verordening vervatte voorwaarden.

De gedelegeerd Europees aanklagers zijn verantwoordelijk voor de onderzoeken en vervolgingen die zij hebben ingesteld, die hun zijn toegewezen of die zij met gebruikmaking van hun evocatierecht hebben overgenomen. De gedelegeerd Europees aanklagers moeten de leiding en instructies volgen van de vaste kamer die is belast met een zaak, alsmede de instructies van de toezichthoudende Europees aanklager.

³¹ 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.

De gedelegeerd Europees aanklagers zijn ook verantwoordelijk voor het voor het gerecht brengen van een zaak en hebben in het bijzonder de bevoegdheid om een requisitoir te houden, deel te nemen aan de bewijsvoering en de beschikbare rechtsmiddelen in te stellen in overeenstemming met het nationale recht.

2. In elke lidstaat zijn er twee³² of meer gedelegeerd Europees aanklagers. De Europees hoofdaanklager hecht, na raadpleging van de desbetreffende autoriteiten van de lidstaat en het bereiken van een akkoord met hen, zijn goedkeuring³³ aan het aantal gedelegeerd Europees aanklagers, alsook aan de functionele³⁴ en territoriale verdeling van bevoegdheden tussen de gedelegeerd Europees aanklagers in elke lidstaat.
3. De gedelegeerd Europees aanklagers kunnen als nationaal aanklager optreden, mits dit hen niet belet te voldoen aan de verplichtingen die krachtens deze verordening op hen rusten. Zij stellen de toezichthoudende Europees aanklager in kennis van de hun aldus opgedragen taken. Indien een gedelegeerd Europees aanklager vanwege dergelijke andere toezeggingen op enig moment niet in staat is zijn taken te vervullen, laat hij dat weten aan de toezichthoudende Europees aanklager, die in overleg treedt met de bevoegde nationale vervolgingsinstanties, teneinde te bepalen of voorrang moet worden gegeven aan hun uit deze verordening voortvloeiende functies. De Europees aanklager mag de vaste kamer voorstellen de zaak elders toe te wijzen overeenkomstig artikel 23, lid 3a en lid 4.

³² 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 EDP positions to be financed by the EU budget. The text in paragraph 2, and in particular *'the number of EDP's*, may need to be reviewed again in the context of the provisions of the formal status of the EDPs ('special advisors') and the financial provisions.

³³ The inclusion of 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 EDP and the functional and territorial division of competences between the EDP in each Member State, due account should be taken of the organisation of the national prosecution system.'*

³⁴ The following recital will be included in the text: *'The notion of functional division of competences between EDP's should allow for such a division of tasks, whereby certain EDP's could be in charge of dealing with cases and taking certain specific decisions on initiation of investigations and other EDP's could be in charge of dealing with complaints against such decisions.'*

AFDELING 2

BENOEMING EN ONTSLAG VAN DE LEDEN VAN HET EUROPEES OPENBAAR MINISTERIE

Artikel 13³⁵

Benoeming en ontslag van de Europees hoofdaanklager

1. Het Europees Parlement en de Raad benoemen de Europees hoofdaanklager in onderlinge overeenstemming voor een ambtstermijn van zeven jaar, die niet kan worden verlengd. De Raad besluit bij gewone meerderheid van stemmen.
2. De Europees hoofdaanklager wordt geselecteerd uit kandidaten
 - a) die actief lid zijn van het openbaar ministerie of van de rechterlijke macht van de lidstaten, of actief Europees aanklager zijn;
 - b) wier onafhankelijkheid boven alle twijfel verheven is;
 - c) die beschikken over de kwalificaties om in hun land in de hoogste vervolgende of rechterlijke functies te kunnen worden benoemd, en over de ter zake dienende praktische ervaring met nationale rechtsstelsels, financiële onderzoeken en met internationale justitiële samenwerking in strafzaken, of als Europees aanklager hebben gewerkt, en
 - d) die over voldoende bestuurservaring en -kwalificaties beschikken voor de functie.

³⁵ CY, PT, MT, HU, ES, HR and PL, opposed by AT, BE, DE, IT and RO, would prefer that the Chief Prosecutor is chosen from among the Members of the College.

3. Om kandidaten te selecteren wordt een openbare sollicitatieoproep in het Publicatieblad van de Europese Unie geplaatst, waarna een selectiepanel een shortlist van geschikte kandidaten opstelt en aan het Europees Parlement en de Raad voorlegt. Het panel zal bestaan uit 12 personen, gekozen uit voormalige leden van het Hof van Justitie en van de Rekenkamer, voormalige nationale leden van Eurojust, leden van de hoogste nationale rechtscolleges, hoge aanklagers en personen die bekend staan als kundige rechtsgeleerden, van wie er één wordt voorgedragen door het Europees Parlement³⁶. De Raad stelt de werkwijze van het panel vast, alsmede, op voorstel van de Commissie, een besluit tot benoeming van de leden van het panel³⁷.
- 3a. Indien een Europees aanklager wordt benoemd tot Europees hoofdaanklager, wordt zijn functie van Europees aanklager onverwijld ingevuld in overeenstemming met de procedure bedoeld in artikel 14, lid 1 en lid 2.
4. Het Hof van Justitie van de Europese Unie kan de Europees hoofdaanklager op verzoek van het Europees Parlement, de Raad of de Commissie ontslaan indien het van oordeel is dat hij zijn taken niet meer kan vervullen of ernstig wangedrag heeft vertoond.
5. Indien de Europees hoofdaanklager aftreedt, wordt ontslagen of om een andere reden zijn functie neerlegt, wordt de functie onmiddellijk ingevuld overeenkomstig de in de leden 1 tot en met 3 beschreven procedure.

³⁶ 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.'*

³⁷ A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

Benoeming en ontslag van de plaatsvervangend Europees hoofdaanklagers

1. Het college³⁸ benoemt [twee] Europees aanklagers als plaatsvervangend Europees hoofdaanklager voor een hernieuwbare ambtstermijn van drie jaar, die echter niet langer zal zijn dan hun mandaat als Europees aanklager. Het selectieproces verloopt volgens het reglement van orde. De plaatsvervangend Europees hoofdaanklagers behouden hun status van Europees aanklager.
2. De regels en voorwaarden voor de uitoefening van de functie van plaatsvervangend Europees hoofdaanklager komen in het reglement van orde. Indien een Europees aanklager niet meer in staat is zijn taken uit te oefenen als plaatsvervangend Europees hoofdaanklager mag het college, in overeenstemming met het reglement van orde, besluiten dat hij niet meer zal werken als gedelegeerd Europees hoofdaanklager en zal worden ontslagen.
3. Indien een plaatsvervangend Europees hoofdaanklager aftreedt, wordt ontslagen of om een andere reden zijn functie van plaatsvervanger neerlegt, wordt de functie onmiddellijk ingevuld overeenkomstig de in lid 1 beschreven procedure. Onverminderd het bepaalde in artikel 14, blijft hij Europees aanklager.

Artikel 14³⁹[....]

Benoeming en ontslag van de Europees aanklagers

1. Elke lidstaat draagt drie kandidaten voor het ambt van Europees aanklager voor, gekozen uit kandidaten:
 - a) die actief lid zijn van het openbaar ministerie of van de rechterlijke macht van de lidstaten;
 - b) wier onafhankelijkheid boven alle twijfel verheven is, en
 - c) die beschikken over de kwalificaties om in hun land in een hoge vervolgende of rechterlijke functie te kunnen worden benoemd, en over de ter zake dienende praktische ervaring met nationale rechtsstelsels, financiële onderzoeken en met internationale justitiële samenwerking in strafzaken.

³⁸ COM maintains that the Deputies, like the European Chief Prosecutor, should be appointed by the Council and the EP.

³⁹ [...]

2. Na het gemotiveerd advies van het in artikel 13, lid 3 bedoelde selectiepanel te hebben ontvangen, selecteert en benoemt de Raad één van de kandidaten als Europees aanklager van de lidstaat in kwestie. Indien het selectiepanel van oordeel is dat een kandidaat niet aan de gestelde voorwaarden voldoet om de taken van een Europees aanklager uit te voeren, is dat oordeel bindend voor de Raad.
3. De Europees aanklagers worden door de Raad met gewone meerderheid van stemmen geselecteerd en benoemd voor een niet-hernieuwbare termijn van zes jaar. De Raad kan wel besluiten het mandaat, na die zes jaar, met maximaal drie jaar te verlengen.
4. Om de drie jaar wordt een derde van de Europees aanklagers vervangen. De Raad stelt, met gewone meerderheid van stemmen, overgangsmaatregelen⁴⁰ vast voor de benoeming van de Europees aanklagers voor en gedurende hun eerste ambtstermijn⁴¹.
5. Het Hof van Justitie van de Europese Unie kan een Europees aanklager op verzoek van het Europees Parlement, de Raad of de Commissie ontslaan indien het van oordeel is dat hij niet langer voldoet aan de voorwaarden om zijn taken te vervullen of ernstig wangedrag heeft vertoond.
6. Indien een Europees aanklager aftreedt, wordt ontslagen of om een andere reden zijn functie neerlegt, wordt de functie onmiddellijk ingevuld overeenkomstig de in de leden 1 en 2 beschreven procedure. Indien de Europees aanklager werkt als plaatsvervangend Europees hoofdaanklager, wordt hij automatisch ook in laatstgenoemde functie ontslagen.

⁴⁰ A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

⁴¹ 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'*.

7. Het college wijst, op voordracht van elke Europees aanklager, onder de gedelegeerd Europees aanklagers van dezelfde lidstaat een persoon aan die in de plaats zal treden van de Europees aanklager die niet in staat is zijn ambt uit te oefenen of die zijn functie heeft neergelegd, in overeenstemming met de leden 5 en 6⁴².

Wanneer het college erkent dat er behoefte bestaat aan vervanging, treedt de aangewezen persoon op als interim Europees aanklager in afwachting van vervanging of terugkeer van de Europees aanklager, en wel gedurende een periode van maximaal 3 maanden. Het college kan desgevraagd de termijn zo nodig verlengen⁴³. De mechanismen en modaliteiten van tijdelijke vervanging worden bepaald en geregeld in het reglement van orde⁴⁴.

Artikel 15

Benoeming en ontslag van de gedelegeerd Europees aanklagers

1. Het college benoemt, op voorstel van de Europees hoofdaanklager, de gedelegeerd Europees aanklagers die door de lidstaten zijn voorgedragen⁴⁵. Het college kan de voorgedragen persoon afwijzen indien hij niet aan de in lid 2 bedoelde criteria voldoet. De gedelegeerd Europees aanklagers worden benoemd voor een verlengbare termijn van vijf jaar⁴⁶.

⁴² The following accompanying recital will be considered: '*The EDP substituting the EP 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 an EDP or as national prosecutor. With regard to proceedings of the EPPO, which were led by the EDP substituting an EP, Article 23(3)(a) should apply*'.

⁴³ A footnote 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*'.

⁴⁴ The following recital should be introduced in this sense: '*Substitution of an EP by one of the EDPs 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 an EP shall be substituted by another EP 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.*'

⁴⁵ COM maintains that EDPs should be appointed by the College based on a list with a sufficient number of candidates from each MS allowing for a choice.

⁴⁶ AT and DE have noted that the appropriate maximum term of office will need to be decided in the context of negotiations on their formal status under EU law.

2. De gedelegeerd Europees aanklager zijn, vanaf hun benoeming tot gedelegeerd Europees aanklager tot hun ontslag, actief lid van het openbaar ministerie of van de rechterlijke macht van de lidstaten die hen hebben voorgedragen. Hun onafhankelijkheid is boven iedere twijfel verheven en zij beschikken over de nodige kwalificaties en de ter zake dienende praktische ervaring met het rechtstelsel van hun land.⁴⁷
3. Het college ontslaat een gedelegeerd Europees aanklager indien het van oordeel is dat hij niet meer aan de in lid 2 bepaalde vereisten voldoet of niet in staat is zijn taken uit te oefenen, of dat hij ernstig wangedrag heeft vertoond.
4. Als een lidstaat besluit een tot gedelegeerd Europees aanklager benoemde nationale aanklager te ontslaan of tuchtrechtelijk tegen hem op te treden om redenen die geen verband houden met diens verantwoordelijkheden uit hoofde van deze verordening, brengt hij de Europees hoofdaanklager daarvan op de hoogte⁴⁸ alvorens tot ontslag over te gaan. Een lidstaat kan een gedelegeerd Europees aanklager niet zonder de instemming van de Europees hoofdaanklager ontslaan noch tuchtrechtelijk tegen hem optreden om redenen die verband houden met zijn verantwoordelijkheden uit hoofde van deze verordening⁴⁹. Indien de Europees hoofdaanklager er niet mee instemt, kan de betrokken lidstaat het college verzoeken de kwestie opnieuw te bezien.
5. Indien een gedelegeerd Europees aanklager aftreedt, het Europees Openbaar Ministerie geen beroep meer hoeft te doen op zijn diensten, hij wordt ontslagen of om een andere reden zijn functie neerlegt, doet de betrokken lidstaat hiervan onverwijld mededeling aan de Europees hoofdaanklager en wijst hij, zo nodig, onmiddellijk een andere aanklager aan die overeenkomstig lid 1 moet worden benoemd tot de nieuwe gedelegeerd Europees aanklager⁵⁰.

⁴⁷ With regard to the first phrase of the paragraph, the Presidency considers that it will be sufficient to clarify in a recital that the Member States shall appoint a European Delegated Prosecutor as a Prosecutor under national law if at the time of his or her appointment as a European Delegated Prosecutor, he or she did not have this status already.

⁴⁸ COM would replace '*inform*' with '*consult*'.

⁴⁹ CY and FR have noted that a differentiation between the respective roles of an EDP and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them as regards their activities as national prosecutors. The provision may need to be examined again, in conjunction with the whole Regulation.

⁵⁰ A recital should clarify that the number of EDP's 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.

AFDELING 3

REGLEMENT VAN ORDE

Artikel 16 ⁵¹

Reglement van orde van het Europees Openbaar Ministerie

1. Het reglement van orde regelt de organisatie van de werkzaamheden van het Europees Openbaar Ministerie.
2. Een voorstel voor het reglement van orde van het Europees Openbaar Ministerie wordt opgesteld door de Europees hoofdaanklager, en door [het college]⁵² met een tweederde meerderheid goedgekeurd zodra het Europees Openbaar Ministerie is ingesteld.
3. Iedere Europees aanklager kan wijzigingen in het reglement van orde voorstellen, die dan met een tweederde meerderheid door [het college] moeten worden vastgesteld.

⁵¹ CZ has suggested that a written opinion regarding the binding nature of the Rules of Procedure in relation with national legislation should be requested from the legal service. The Presidency believes that oral opinions emitted by the legal service were sufficient.

⁵² 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.

SECTION 4**COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE***Article 17¹***Criminal offences within the competence of the European Public Prosecutor's Office**

The European Public Prosecutor's Office shall have competence in respect of the criminal offences affecting the financial interests of the Union, which are provided for in Directive 2015/xx/EU². The European Public Prosecutor's Office shall exercise this competence on the basis of the applicable national law implementing this Directive³.

¹ PL is of the opinion that the question in art. 17 is linked to the negotiations on the scope of PIF directive. This includes the sensitive issue of VAT fraud. Therefore this provision should be finalized only after the scope of PIF directive has been clarified and confirmed.

² The competence of the EPPO as determined by this Article raises complex legal issues that will need to be considered further. One of the open issues in this Article is whether a dynamic reference (the standard solution ensuring legal certainty) or a static reference to the substantive law should be chosen. Some delegations would prefer to see the offences defined in this Regulation directly.

³ COM and CZ have a reservation on this wording and proposes to go back to the previous text ('[...] *which are provided for in Directive 2015/xx/EU, as implemented in national law*'). This is considered necessary because the national law implementing the PIF Directive will not and cannot govern the exercise of EPPO's competence. DE has proposed an alternative Article 17, which would be linked to modifications in other provisions as well (DS 1245/15). The proposal of DE has the support, fully or in part, from a number of delegations. Other delegations have suggested that the applicable national law should be made available in an Annex to the Regulation or a dedicated website.

Ancillary competence

1. Where an offence constituting a criminal offence referred to in Article 17 is based on a set of facts which are identical or inextricably linked to a set of facts constituting, in whole or in part under the law of the Member State concerned, a criminal offence other than those referred to in Article 17, the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the condition that the offence referred to in Article 17 is preponderant. Where the offence referred to in Article 17 is not preponderant, the Member State that is competent for the other offence shall also be competent for the offence referred to in Article 17⁵.
2. When assessing whether two set of facts are inextricably linked within the meaning of paragraph 1, account shall be taken as to whether one of the relevant offences has been instrumental in committing the other offence or to whether one offence has been committed with a view to ensuring impunity⁶.
3. An offence in accordance with Article 17 shall be considered to be preponderant:
 - a) if the damage caused or likely to be caused to the Union exceeds the damage caused or likely to be caused by the same act to the Member State or a third party, or⁷,
 - b) in case the same act, under the law of the Member State, constitutes a different type of offence: if the sanction that may be imposed in respect of the offence in accordance with Article 17 is⁸ more severe than the sanction that may be imposed in respect of the other type of offence.

⁴ Many delegations continue to question whether the legal basis in Article 86 TFEU covers this Article.

⁵ The need for this provision has been questioned by some. Others have noted that it must be seen in the light of the right of evocation as foreseen in Article 21a.

⁶ A few delegations have suggested that this provision should rather be a recital. Others have suggested that the text should be given more detail.

⁷ Many delegations have pointed out that it would be difficult to measure and compare the financial damage, or that it would at least be difficult to know what the damage is at an early stage of investigation. The assessment of the damage may also change during an investigation. It has been suggested that this rule should be seen as a hierarchical order of criteria. An explanatory recital could be considered to address these concerns.

⁸ COM, CZ and some delegations would add the words '*equal or*' here.

4. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority should exercise its competence pursuant to paragraph 1. Where appropriate to facilitate this choice, Eurojust may be associated in accordance with Article [57].
5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the exercise of competence pursuant to this Article, the national authorities⁹ competent to decide on the attribution of competences concerning prosecution at national level¹⁰ shall decide who shall exercise the ancillary competence.

Article 19¹¹

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

1. The European Public Prosecutor's Office shall have has priority¹² competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence^{13 14}
 - a) was committed in whole or in part within the territory of one or several Member States, or
 - b) was committed by a national of a Member State, or
 - c) when committed outside of these territories referred to in point a) of this Article by a person who was subject to the Staff Regulations or Conditions of Employment of Other Servants, at the time of the offence, provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory.

⁹ A recital explaining that the notion of national authorities in this provision refers to judicial authorities or other authorities how have competence to decide on the attribution of competence in accordance with national law.

¹⁰ IT [...]some delegations and COM would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review).

¹¹ COM has a reservation on the lack of proper safeguards for the EPPO's priority competence: Member States should refrain from starting investigations –with the exception of taking urgent measures- until the EPPO has decided not to exercise its competence.

¹² FI, MT, NL and PL would delete the word '*priority*' here.

¹³ This jurisdiction provision should at term be in principle identical with the corresponding jurisdiction provision in the PIF-Directive. Some delegations would introduce a reference to "participating Member States" in this and other provisions.

¹⁴ One delegation has requested that non-serious offences for which intent is presumed according to national law should not be covered by the competence of the Office.

2. The European Public Prosecutor's Office shall exercise its competence by initiating an investigation in accordance with Article 21 unless the Office has become aware that national authorities have already opened an investigation in respect of the same offence. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise an own competence in respect of the same offence. If the national authorities have already started a criminal investigation in respect of the same offence, the European Public Prosecutor's Office may take over the investigation initiated by the national authority by exercising its right of evocation in accordance with Article 21a.

CHAPTER IV

RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1

REPORTING AND BASIC RULES ON INVESTIGATIONS

*Article 20*¹⁵

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 inform without delay the European Public Prosecutor's Office of any criminal conduct which might constitute an offence within its competence.¹⁶ Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office. The report shall include, as a minimum, a short description of the conduct, including an assessment of the damages caused or likely to be caused, and available information about victims and suspects. The report may be presented in the form of automatically generated information.

¹⁵ FR proposes to include the following additional paragraph: *'The College may, in consultation with national authorities, upon proposal by the European delegated prosecutors, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences, in particular customs infringements violating Union customs legislation. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutor's Office deems to be best dealt with by national authorities under domestic law.'* The provision should be joined with the following recital *'The European Public Prosecutor's Office, on decision by the College, upon proposal by the European delegated prosecutors, should be entitled to determine specific modalities of information or discharge the national authorities from their obligation to report regarding certain types of offences, including where the conduct caused or is likely to cause damage to the Union's financial interest of more than EUR 20 000. Recourse to such possibility could be envisaged in particular in cases of offences of minor nature in order to ensure an even exercise of competence by the European Public Prosecutor's Office, taking into account possible discrepancies in Member States' criminal law.'*

BE, ES and COM would oppose a threshold of EUR 20 000.

SI, BE has proposed that the information obligation could be linked to a review clause.

¹⁶ A recital stating the following should be considered: *'Member States should set up a system which will ensure that information is reported to EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralized system.'*

The College may, in consultation with national authorities, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutor's Office deems to be best dealt with by national authorities.

2. Where the criminal conduct caused or is likely to cause damage to the Union's financial interest of less than EUR [20 000]¹⁷, and neither has repercussions at Union level¹⁸ which require an investigation to be conducted by the Office nor which does not involve a criminal offence has been committed by officials and other servants of the European Union or members of the institutions, the information obligation may be fulfilled through a summary report every six months¹⁹. [...] The content of the summary report may be limited to the number of criminal proceedings initiated, a number of cases where an investigation has not been initiated, the number of proceedings dismissed, the number resulting in a conviction, the number resulting in an acquittal and the number of ongoing proceedings. The report may be presented in the form of automatically generated information.

Based on such summary reports, the College [...] shall be entitled to request national authorities to report without delay offences matching a specific [...] pattern [...] likely to cause damage to the Union's financial interest of less than EUR 20 000 when committed in circumstances deemed to have repercussions at Union level.

¹⁷ PL and SE, supported by AT, BE, CY, CZ, EE, ES FI, FR, HR, HU, IT, LT, NL, SI, have a reservation on the reporting obligation as regard offences causing or likely to cause damages of less than EUR 10 000 (DS 1249/15 and DS 1274/15). IT, RO, ES, CZ, LT, DE, HR, BE, BG and COM would prefer the 10 000 threshold.

¹⁸ A definition of repercussion at Union level will be added in a recital. FR, supported by EE, ES, HR, IT and LT, proposes the following wording: '*A particular case should be considered as having repercussions at Union level inter alia where a given fraud has a transnational nature and scale, where such fraud involves a criminal organisation, or where, given the nature of the case, the European Public Prosecutor's Office would be best placed to investigate, in view of the seriousness of the damage caused to the Union's financial interests or the Union Institutions' credit and Union citizen' confidence.*' The exact wording of this recital is under discussion. BE has suggested that the College could elaborate guidelines on the meaning of the notion of repercussions.

¹⁹ COM reservation: reports should be more frequent (every 3 months as in previous versions).

3. Information provided to the European Public Prosecutor's Office shall be registered and verified by the European Public Prosecutor's Office in accordance with the Internal Rules of Procedure. The verification shall aim to assess whether, on the basis of the information provided in accordance with Article 21(1), there are grounds to initiate an investigation ²⁰.
4. Where, upon verification, the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in Case Management system. It shall inform the national authority, the Union institution, body, office or agency, and, if requested where necessary, crime victims and other persons who provided the information, thereof. Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the Office may have been committed, it shall without undue delay inform the competent national authorities.
5. The European Public Prosecutor's Office may collect or request²¹ any information that is relevant for the functions of the Office ²².

²⁰ CZ proposes the following wording: '*Verification shall aim to assess whether the information shows that the conditions set by Articles 17 and 18 determine the competence of the Office*'. The Presidency, supported by ES, would prefer to include this text in a recital.

²¹ DE has a reservation on the words 'may request', arguing that the text could be interpreted that the recipient of the request is required – under any circumstance – to provide the requested information.

²² 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 its competence will be considered. The recital will also clarify that Member States may provide any information to the Office.

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

1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case shall²³, without prejudice to the rules in Article 19(2) and 21(a)(3), initiate an investigation and note this in the Case Management System²⁴.
2. The Permanent Chamber which receives the information shall instruct the European Delegated Prosecutor to initiate the investigation²⁵, in accordance with the criteria referred in paragraph 3, where no investigation has been initiated by a European Delegated Prosecutor.
3. A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the Office have been committed, the Member State where the bulk of the offences has been committed. A Permanent Chamber may only instruct a European Delegated Prosecutor of a different Member States to initiate an investigation where that Member State has jurisdiction for the case and where a deviation from the above mentioned principles is duly justified, taking into account the following criteria, in order of priority²⁶:
 - 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 occurred²⁷.

²³ FR and NL would prefer the word "may" here.

²⁴ It is the understanding of the Presidency that the notification in the Case Management System will cover the necessary information from the European Delegated Prosecutors to the Central Office.

²⁵ The following recital should be introduced in this context: '*An investigation should be systematically initiated where there are reasonable grounds to believe that an offence falling within the EPPO's competence is being or has been committed. Such an obligation should not preclude subsequent decisions of the EPPO not to prosecute, by dismissing the case or proposing a transaction.*'

²⁶ HU has emitted a reservation on this paragraph.

²⁷ HU and SK would like to add additional criteria, in particular the location of the evidence. PL prefers to follow the model of bases of jurisdiction contained in other EU criminal law instruments, where "habitual residence" is absent or - at most - optional – hence no reason to put it in the first place in order of priority. See e.g. Directive 2001/93 and Directive 2013/40.

4. Until a decision to prosecute in accordance with Article 27 is taken, the competent Permanent Chamber in a case concerning the jurisdiction of more than one Member State may, 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;
 - b) merge or split²⁸ cases and in each case choose the EDP handling the case;
- if such decisions are in the interest of the efficiency of investigations and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph 3 in this Article.
5. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case it shall take due account of the current state of the investigations.

²⁸ 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 had 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. In case the Permanent Chamber decides to split a case its competence for the cases should be maintained'. COM considers that splitting a case is against the spirit of EPPO, being one single office.*

Right of evocation and transfer of proceedings to the European Public Prosecutor's Office

1. When a judicial or law enforcement authority³⁰ of a Member State exercises competence in respect of a criminal offence where the European Public Prosecutor's Office could be competent and have a right of evocation in accordance with this Regulation, it shall without delay inform the European Public Prosecutor's Office so that the latter may decide whether to exercise the Office's right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible but no later than 5 days after having received all relevant information from the national authority, unless the European Chief Prosecutor³¹ in a specific case takes a reasoned decision to prolong the time frame of 5 days with a maximum prolongation of 5 days. During this timeperiod the national authority shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation, but shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
2. If the European Public Prosecutor's Office becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence, after being duly informed under paragraph 1, within the time periods of the previous paragraph.
- 2a. The European Public Prosecutor's Office³² shall, where appropriate, consult competent authorities of the Member State concerned before deciding whether to exercise its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor's Office in accordance with Article 23.

²⁹ CZ would like to include new para on the right to delegate a case from EPPO to the competent national authorities, if EPPO finds out that it is not competent any more (for example for the reason of the damage which showed up to be lower than previously estimated and is below the threshold of the EPPO competence). COM reservation on this article: the EPPO should enjoy priority competence, and Member States should refrain from starting investigations – with the exception of taking urgent measures - until the EPPO has decided not to exercise its competence.

³⁰ MT, FI, SE would prefer to refer to 'competent authorities' here.

³¹ FI has a reservation as regards the level of European Chief Prosecutor here.

³² CZ, NL, SK would prefer to refer to the European Delegated Prosecutor here.

3. Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR [20 000]³³ the European Public Prosecutor's Office shall refrain from exercising its right of evocation, unless
- a) a case has repercussions at Union level which require an investigation to be conducted by the Office, or
 - b) a case has been opened following suspicions that an offence has been committed by officials and other servants of the European Union, or members of the Institutions ³⁴.
- The Office shall, where appropriate ³⁵, consult the competent national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are fulfilled.
4. In case of an ancillary competence in accordance with Article 18, the European Public Prosecutor's Office may exercise its right of evocation in accordance with the conditions set out in that Article³⁶.
5. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose competent authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18, or in cases referred to in Article 9 (3)(a) and (b)³⁷ upon instruction by a Permanent Chamber. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 and 4 of this Article considers not to exercise the right of evocation, he/she shall inform the European Prosecutor of his/her Member State[...]with a view to enabling the Permanent Chamber to exercise the Office's right in accordance with Article 9(3)(b). Article 21(2), (3) and (4) shall apply when the right of evocation is exercised.
6. Where the Office has refrained from exercising its right of evocation, it shall inform the competent national authority without undue delay. The competent judicial or law enforcement 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.

³³ See footnote 17 above.

³⁴ A few delegations have questioned whether these cases always need to be handled by the Office. DE would like to include a recital to address this issue. Many delegations would like to see a definition or explanation of the concept of '*repercussions at Union level*' included in the text.

³⁵ CZ, NL, SK wish to delete the words '*where appropriate*'. RO would oppose such a deletion.

³⁶ CY, FI, MT, NL and SI have emitted general reservations as regards Article 18 in the Regulation.

³⁷ DE has a reservation as regards the words '*or in cases referred to in Article 9(3)(a) and (b).*'

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 time frame set out in paragraph 1 of this Article .

Article 23

Conducting the investigation

1. The European Delegated Prosecutor handling the case may, in accordance with national law, either undertake the investigation and other measures ³⁸ on his/her own or instruct the competent authorities in the Member State where he/she is located. These authorities shall, in accordance with national law, ensure that all instructions from the European Public Prosecutor's Office ³⁹, coming through the European Delegated Prosecutor handling the case⁴⁰, are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report ⁴¹ through the competent European Prosecutor to the Permanent Chamber on significant developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure.
2. In cross-border cases, where measures need to be executed in another Member State, the European Delegated Prosecutor handling the case shall act in cooperation with the European Delegated Prosecutor where the measure needs to be carried out in accordance with Article 26a.
3. At any time during investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the European Delegated Prosecutor handling the case. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.

³⁸ DE would like to see the words '*and other measures*' deleted.

³⁹ NL would like to replace "*European Public Prosecutor's Office*" with "*European Delegated Prosecutors*" in this paragraph.

⁴⁰ COM and DE wishes to delete the reference to the European Delegated Prosecutor here.

⁴¹ CZ wishes to see a recital explaining the exact meaning of the notion of report, such as how these reports should look like, how they should be prepared and who will translate them. It is presumable that EDP's could take advantage of automated systems (see Article 20(2)) and that they will not be in charge of translation of the reports; it will be up to the central level to ensure necessary translations.

- 3a.⁴² The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State when the European Delegated Prosecutor handling the case
- a) cannot perform the investigation or prosecution, or
 - b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.
4. The supervising European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take a reasoned decision to conduct the investigation himself/herself⁴³, 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 on Union level⁴⁴;
 - b) when the investigation concerns Members of the institutions of the European Union;
 - c) when the European Delegated Prosecutor handling the case in the Member State cannot perform the investigation or prosecution⁴⁵.

When a European Prosecutor conducts the investigation himself/herself, he/she shall have all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without delay of any decision taken under this paragraph.

⁴² CZ and HU would like to explicitly clarify the consequences when the instructions given are "wrong".

⁴³ CY, IE, NL opposes this provision. CY, MT have noted that the provision is, as such, difficult to conciliate with common law systems. FI, HR, SI have asked for it to be clarified that a European Prosecutor who conducts the investigation himself or herself shall be appointed to be national prosecutor.

⁴⁴ BE, SI considers this criterion to be too broad.

⁴⁵ PT has noted that an explanatory recital is necessary for this point. Such a recital could have the following wording '*This condition entails that the EDP or the national authorities in charge of the investigation under his/her instructions are unable or unavailable to undertake certain measures or finalise the investigation within the time-frame set*'.

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.⁴⁶

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 Delegated Prosecutor handling the case⁴⁷ shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.
2. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under the law of the European Union, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Delegated Prosecutor handling the case shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

⁴⁶ CZ would add another provision here, to deal with evidence-related issues. CZ proposes the following paragraph: *'For using the information obtained within the investigation and prosecution conducted by the European Public Prosecutor's Office as evidence for the purpose of the criminal proceedings by the competent national authorities, it is not necessary to have the consent of the European Public Prosecutor's Office'*.

⁴⁷ BE, BG, IT, RO and COM have suggested that this request should rather be made by European Chief Prosecutor, or following instructions from the European Chief Prosecutor or a Permanent Chamber.

SECTION 2

INVESTIGATION AND OTHER MEASURES

Article 25

The European Public Prosecutor's Office's authority to investigate

The European Delegated Prosecutor handling the case shall be entitled to order or request the same types of measures in his/her Member State which are available to investigators/prosecutors according to national law in similar national cases. In addition to the conditions set out in national law, such measures may only be ordered 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.⁴⁸

Article 26

Investigation and other measures⁴⁹

Member States shall, in addition to the measures indicated in Article 25, ensure, at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, and in accordance with the conditions and procedural requirements foreseen in national law and in Article 25 in this Regulation for the application of these measures, that the following measures are also available⁵⁰ under their laws to the European Public Prosecutor's Office:

- a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

⁴⁸ DE, IT and COM would reintroduce the old paragraph 2 (see doc 7070/15), and FI, FR, LT the old paragraph 3, in this Article. COM opposes that the EDPs deal with the lifting of immunities under EU law.

⁴⁹ The inclusion of following recital should be considered '*Taking into account the status of European Delegated Prosecutors in their respective Member States, they should be able to use investigative or other measures available to the national prosecutors, to the extent these measures would be lawfully available to national prosecutors in a concrete situation.*'

DE, SI, NL, SE has a reservation on the Article. SE sees three options for changing Article 26: (1) deletion of the whole article, (2) inclusion of a clear cut reference to national law without the provisions of "shall ensure", "in addition", "also". Thus it would be more or less an information and not really adding to the Regulation, but that is also our intention, or (3) keep the first paragraph but delete the last two points d) and e). Point d) is not really fully available in our legal system as the text is currently proposed. Point e) is of course available but demands a different/higher threshold than foreseen in the current wording of article 26.

- b) obtain the production of any relevant object or document, or of stored computer data, including traffic data and banking account data, encrypted or decrypted, either in original or in some other specified form;
- c) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court and there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation⁵¹;
- d) freeze future financial transactions, by ordering any financial or credit institution to refrain from carrying out any financial transaction involving any specified account or accounts held or controlled by the suspected or accused person⁵²;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using⁵³.

*Article 26a*⁵⁴

Cross-border investigations

1. The European Delegated Prosecutors shall assist and regularly consult each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter shall assign the measure to a European Delegated Prosecutor⁵⁵ located in the Member State where that measure needs to be carried out.

⁵¹ DE would like c) to be deleted.

⁵² DE, PL would like d) to be deleted, COM and FR oppose the deletion.

⁵³ MT would like to delete e), based on the reluctance of national authorities to use it.

⁵⁴ There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations. AT, DE have proposed an alternative content and structure of the Article, and have received support from a number of delegations for this (DS 1237/15). FI, with support of AT, CZ, DE, MT, PL, SE has suggested an additional Article to be added to the AT/DE proposal (DS 1238/15). Some delegations have also suggested that the EDP's should be able to apply the instruments of mutual recognition. SE has noted a reservation on the whole text of the Article.

⁵⁵ A separate provision ensuring clarity as regards the right European Delegated Prosecutor to contact will be added to the Regulation.

2. The European Delegated Prosecutor handling the case may assign any measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the European Delegated Prosecutor handling the case⁵⁶.

The enforcement of such measures, including conditions, modalities and procedures for taking such measures, shall be governed by the law of the Member State of the assisting European Delegated Prosecutor.

3. The assignment shall set out, in particular, a description of the measures(s) needed, and where necessary any specific formalities that have to be complied with, where available and relevant for the handling of the case, the evidence to be obtained, the description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The assignment may call for the measure to be undertaken within a given time.
4. Where the law of the Member State of the assisting European Delegated Prosecutor requires judicial authorisation for a particular measure, it shall be obtained by him/her. 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.⁵⁷

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

⁵⁶ A recital with the following wording will be considered: *'The EDP handling the case should assess the specific need for certain evidence gathering measures, taking into account, from a procedural perspective, the prerequisites set in the law of his MS for ordering the evidence gathering measure or for asking the judicial authorisation, in full respect of the division of judicial powers.'*

⁵⁷ Many delegations have criticised this paragraph on different grounds. The following recital maybe considered to accompany the paragraph: *'The purpose of the rules on judicial authorisation of measures in cross-border cases should ensure that the duplication of the procedure of judicial authorisation can be avoided. In principle judicial authorisation should be ensured in all the cases if the law of the handling or assisting Member States provides for such authorisation. In order to ensure efficient investigation, the authorisation of the assisting Member State should be given priority. Authorisation of the handling Member State should only be sought, if the law of the assisting Member State does not require the authorisation, but the law of the handling Member State does'.*

In principle, the remedies against decisions regarding such judicial authorisation shall be governed by the law of the Member State in which the decision is taken. The place in the Regulation of the provision saying this remains to be determined.

5. The assisting European Delegated Prosecutor shall undertake the assigned notified measure, or instruct the competent national authority to do so. The assisting European Delegated Prosecutor shall thereby comply with the formalities and procedures expressly indicated by the European Delegated Prosecutor handling the case, provided that such formalities and procedures are not contrary to fundamental principles of law ⁵⁸.
6. Where the assisting European Delegated Prosecutor considers that:
- a) the assignment is incomplete or contains a manifest relevant error,
 - b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons,
 - c) an alternative measure would achieve the same results as the measure assigned, or
 - d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his or her Member State⁵⁹,
- he or she shall consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.
7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay whether and by when the measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor ⁶⁰.

⁵⁸ Some delegations have questioned the need for the last 14 words of this Article.

⁵⁹ Some delegations have suggested that it should explicitly be stated that also national law implementing Article 26 a) to e) is covered by this provision.

⁶⁰ A number of delegations have noted that the link between this provision and Article 9(6) may need to be clarified.

Article 26b

Pre-trial arrest and cross-border surrender

1. The European Delegated Prosecutors may order or request from the competent judicial authority the arrest or pre-trial detention of the suspected or accused person in accordance with national law.
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, for the purpose of conducting a criminal prosecution, issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

SECTION 3 ⁶¹

TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION

Article 27 ⁶²

Prosecution before national courts

1. When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable, a draft indictment to the competent European Prosecutor and Permanent Chamber for review. Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations. ⁶³

⁶¹ DE proposes a new Article X, as well as a redrafting of Articles 27 and 28 (DS 1266/15).

⁶² It has been suggested that a new Article with an enumeration of the decisions that the Office can take to terminate an investigation are indicated should be introduced before this provision. CZ would prefer the wording included in doc 14710/14.

⁶³ The phrase '*If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative*' has been deleted following recent discussions in Council, during which a majority of delegations have spoken out against decision-making through silent procedure.

2. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case, the Member State in which the prosecution shall be brought. The Permanent Chamber shall in principle bring the prosecution in the Member State of the European Delegated Prosecutor handling the case. The Chamber may determine another Member State, which has jurisdiction in the case, if there are sufficiently justified grounds related to the criteria for determining the European Delegated Prosecutor handling the case in Article 21 (2) and (3) ⁶⁴.
3. The competent national court is determined on the basis of national law.
4. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

Article 28

Dismissal of the case⁶⁵

1. The competent Permanent Chamber shall, on proposal from the European Delegated Prosecutor handling the case⁶⁶, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds⁶⁷:
 - a) death of the suspect or accused person;
 - b) amnesty granted in the state which has jurisdiction in the case;
 - c) immunity granted to the suspect, unless it has been lifted;
 - d) expiry of the national statutory limitation⁶⁸ to prosecute;
 - e) the suspect or accused person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29;
 - f) lack of relevant evidence.

⁶⁴ Many have called for specific rules on judicial review of the decision on jurisdiction of trial.

⁶⁵ CZ has concerns as regards cases when an accused person insists on prosecution. CZ has also noted further concerns regarding this Article linked to the handling of investigation in practice in CZ.

⁶⁶ It may be necessary to clarify that the law of the EDP handling the case will apply here.

⁶⁷ Delegations have made a number of suggestions as regards the grounds. A criterion regarding permanently deranged persons has been called for, and a link to the prescription rules has also been asked for.

⁶⁸ SK raised the question under which national law this should be assessed in cross-border cases.

2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which become known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.
3. Where a case has been dismissed, the Central Office shall officially notify the competent national authorities and shall inform the relevant Union institutions, bodies and agencies, as well as suspects or accused and the injured party, thereof.⁶⁹ The cases dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.
4. Where an investigation initiated by the European Public Prosecutor's Office reveals that the conduct subject to investigation may constitute a criminal offence, which is not within its competence, the European Public Prosecutor's Office shall refer the case without delay to the competent national authorities.

⁶⁹ A number of delegations have requested that a more detailed rule on *ne bis in idem* should be inserted in this Article, in particular in relation to point e).

Transactions

1. After obtaining the approval of the competent Permanent Chamber, the European Delegated Prosecutor handling the case may propose⁷¹, to the suspect to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction), if the following cumulative criteria are satisfied:
 - aa) the offence has not been committed in circumstances that may be considered to be particularly serious, for example since the level of guilt of the suspect can not be considered to be particularly severe;
 - a) the damages caused in total, to the Union's financial interests as well as to other victims, does not exceed 50 000⁷² euros;
 - b) it would serve the purpose of proper administration of justice and the general criminal law objectives;
 - c) the damage has been compensated to all victims;
 - d) the suspect has neither been the subject of a transaction under this Regulation nor been convicted of offences affecting the Union's financial interests before.
2. The suspect shall have the right to receive legal advice on the advisability of accepting or refusing the proposal for the transaction as well as on its legal consequences, in accordance with national law.

⁷⁰ Some delegations would prefer if this Article is deleted from the Regulation, of that the provision give Member States the possibility to apply alternative mechanisms instead. CZ, DE, SI are of the opinion that a thorough revision of this Article is necessary. AT has submitted an alternative drafting proposal for the Article (DS 1310/15). [...]

⁷¹ BE, FI, HU, MT, NL, PT and SE would keep a reference to national law here.

⁷² FR and NL believe the threshold to be too low.

3. The European Public Prosecutor's Office shall ensure that the amount of the fine is proportionate to the damage caused and to the suspect's financial means. The amount of the fine shall be calculated in accordance with the method of calculation defined by the rules referred to in Article 72 (e)⁷³.
- 3a. When a judicial authorisation of a transaction is required under the law of the Member State of the European Delegated Prosecutor handling the case, the said European Delegated Prosecutor shall seek such authorisation before communicating the final transaction proposal to the suspect.
- 3b. Where the European Public Prosecutor's Office exercises a competence in accordance with Article 18 (1), the decision to offer a transaction shall be taken only with the consent of the competent national authorities of the Member State concerned. Where the competent authorities deny giving their consent, the European Public Prosecutor's Office may refer the case to the judicial authorities of the Member State for further investigation or prosecution [in accordance with Article 28a (2)].
4. The transaction proposal shall set out the alleged facts, the identity of the suspect, the alleged offence, the compensation of the damage caused and the commitment of the European Public Prosecutor's Office to dismiss the case if the suspect agrees with this proposal and pays the fine to the Union budget, as well as the time-limit within which the suspect has to pay the fine, which shall not exceed 4 months. Where the suspect agrees to such proposal, he/she shall pay within the set time-limit following receipt of the proposal of the European Public Prosecutor's Office. The European Public Prosecutor's Office can upon the request of the suspect extend the period for the payment by another [15/30/45] days, where this is justified.
5. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction. Where the fine is paid by the suspect within the time-limit set out in paragraph 4, the European Delegated Prosecutor handling the case shall finally dismiss the case and notify the competent national authorities and shall inform the relevant Union institutions, bodies, agencies and injured parties thereof. The transaction shall be noted in the Case Management System of the European Public Prosecutor's Office.

⁷³ RO has requested that a more precise method for calculation should be included already in this Article.

6. If the proposed fine is not paid within the time set out in paragraph 4 the European Delegated Prosecutor handling the case shall continue the prosecution of the case.
7. The European Public Prosecutor's Office or the competent national authorities may not prosecute the suspect for the same facts which constituted the offence being the subject of the final dismissal through a transaction[...]

SECTION 4

ADMISSIBILITY OF EVIDENCE

Article 30

Admissibility of evidence ⁷⁴

1. Evidence presented by the prosecutors of the European Public Prosecutor's Office to the trial court, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence or other rights as enshrined in the Charter of Fundamental Rights of the European Union, shall [not be subject to/be admitted in the trial without] any validation or similar legal process even if the national law of the Member State where the court is located provides for different rules on the collection or presentation of such evidence.
2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the prosecutors of the European Public Prosecutor's Office at trial shall not be affected.

⁷⁴ Many delegations have noted that this provision can only be finalised when the final wording of Article 27 will be there. Some delegations have called for a more explicit and detailed rule, in particular as regards illegally collected evidence. A few delegations have asked for a reference to national constitutions to be added. The text of this Article may need to be reassessed as a result of the outcome of discussions on Article 26a.

SECTION 5

CONFISCATION

Article 31

Disposition of the confiscated assets⁷⁵

Where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42, 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, Member States shall ensure that the monetary value of such property or proceeds shall ultimately be transferred to the Union's budget, to the extent necessary to compensate the prejudice caused to the Union and to administrative measures such as the recovery of any amounts lost as a result of irregularities or negligence. This transfer shall not prejudice the rights of other victims subject to their legitimate claims.

CHAPTER IV

PROCEDURAL SAFEGUARDS

*Article 32*⁷⁶

Scope of the rights of the suspects and accused persons as well as other persons involved

1. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspected persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defense.

⁷⁵ Some delegations have questioned whether there is a legal basis for this provision. Others have suggested that national law should apply in this area. Some delegations have requested that clarifying and detailed provisions on, for example, how money should be collected must be added, how claims should be made, how the monetary value shall be decided etc. It has also been requested that it must be ensured that the EU will not receive the same money twice, first through recovery and then from confiscated proceeds.

⁷⁶ Many delegations have underlined that provisions on access to the file for in particular suspected persons must be included in the Regulation. Some delegations would prefer to delete the list of instruments in this provision, and move it to the recitals. Some have also noted that precisions as regards applicable law are needed.

2. Any suspect and accused persons as well as other persons who are a party in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, such as:
 - (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council,
 - (b) 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,
 - (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,
 - (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,
 - (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant,
3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

CHAPTER V

JUDICIAL REVIEW

Article 33

Judicial review⁷⁷

OPTION 1:

When adopting procedural measures in the performance of its functions, the European Public Prosecutor's Office shall be considered as a national authority for the purpose of judicial review.

OPTION 2:

1. Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [18(6)⁷⁸, 27(4)] [and] shall be subject to review of their legality before the Court of Justice of the European Union in accordance with Article 263 of the Treaty⁷⁹.
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 law⁸⁰.

⁷⁷ A relative majority of delegations prefer option 2, but most delegations still believe that the options need to be modified slightly or clarified.

⁷⁸ Article 18(6) on ancillary competence should be redrafted as a consequence of this provision.

⁷⁹ A Recital should set out the criteria taken into account to limit the competence of the ECJ on actions for annulment to those specific cases, in the light of the objectives and principles referred to in the CLS legal opinion (doc. 13302/1/14 REV1) .

⁸⁰ A Recital should be added to explain that the principles of equivalence and effectiveness as interpreted by the case law of the Court of Justice should be respected. Another recital should clarify that this provision is without prejudice to Article 267 of the Treaty, in particular preliminary rulings on the interpretation of Union law, on the validity of this Regulation and of procedural decisions taken by the European Public Prosecutor's Office. Finally another Recital should also clarify the issue of judicial review of procedural decisions taken by the European Public Prosecutor's Office which are governed by national law.