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Following Council of 15 June 2015, the document in Annex introduces a few technical changes in the footnotes as included in Annex 1 to document 9372/15. The changes are highlighted in underlined or ~~striketrough~~.

Draft

**COUNCIL REGULATION**

**on the establishment of the European Public Prosecutor's Office**

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**CHAPTER I**

**SUBJECT MATTER AND DEFINITIONS**

*Article 1*

**Subject matter**

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

*Article 2*

**Definitions<sup>1</sup>**

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

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

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<sup>1</sup> This Article will be finalised only when the full text of the Regulation is known. The definitions, as well as the text in general, will need to be adapted to be consistent with the definitions that will finally be included in the PIF-Directive. The issue of uniformity with EU law needs to be examined further. To be aligned with the final definition of the financial interests of the Union in the PIF Directive. IE has noted that this point appears unnecessary.

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

## **CHAPTER II**

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

#### *Article 3*

#### **Establishment**

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

## Article 4

### Tasks

The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, the criminal offences affecting the financial interests of the Union [which are provided for in Directive 2015/xx/EU and determined by this Regulation]<sup>2</sup>. In that respect the European Public Prosecutor's Office shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of<sup>3</sup>.

## Article 5

### Basic principles of the activities

1. The European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.
2. The European Public Prosecutor's Office shall be bound by the principles of rule of law and proportionality in all its activities<sup>4</sup>.
3. The investigations and prosecutions on behalf of the European Public Prosecutor's Office shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 12(1)<sup>5</sup>. Where a matter is governed by national law and this Regulation, the latter shall prevail.

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<sup>2</sup> IE has suggested that this reference should be to Article 17.

<sup>3</sup> The following recital should be considered: *'The functions of prosecutor in competent courts apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal. The functions of the prosecution could e.g. exclude representation in proceedings before the highest courts of a Member States by the highest prosecutorial institutions, such as the Advocate General, particularly if they serve the purpose of administration of justice rather than prosecutorial functions'*.

<sup>4</sup> 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.

<sup>5</sup> IE has noted that this phrase will have to be revisited in the light of developments of Articles 12(1) and 26a.

4. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence<sup>6</sup>, whether inculpatory or exculpatory.
5. The European Public Prosecutor's Office shall open and conduct investigations without undue delay.
6. The competent national authorities shall actively assist and support the investigations and prosecutions of the European Public Prosecutor's Office. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation<sup>78</sup>.

#### *Article 6*

#### **Independence and accountability**

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

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

<sup>7</sup> 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.*'

<sup>8</sup> 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.*'

2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for its general activities, and shall issue annual reports in accordance with Article 6a.

*Article 6a*

**Reporting**

1. Every year the European Public Prosecutor's Office shall draw up and issue a public Annual Report<sup>9</sup> in the official languages of the Union institutions on its general activities. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and the Council, and before national parliaments at their request, to give account of the general activities of the European Public Prosecutor's Office, without prejudice to the Office's obligation of discretion and confidentiality as regards individual cases and personal data. The European Chief Prosecutor may be replaced by one of the Deputies for hearings organised by national parliaments.

**CHAPTER III**

**STATUS, STRUCTURE AND ORGANISATION OF EPPO**

**SECTION 1**

**STATUS AND STRUCTURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

*Article 7*

**Structure of the European Public Prosecutor's Office**

1. The European Public Prosecutor's Office shall be an indivisible Union body operating as one single Office with a decentralised structure.

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<sup>9</sup> 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*'.

2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, his/her deputies and the European Prosecutors.
4. The decentralised level shall consist of European Delegated Prosecutors located in the Member States.
5. The Central Office and the European Delegated Prosecutors shall be assisted by the staff of the European Public Prosecutor's Office in their duties under this Regulation.

*Article 8*

**The College**

1. The College of the European Public Prosecutor's Office shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and be responsible for their preparation.

2. The College shall meet regularly and be responsible for the general oversight<sup>10</sup> of the activities of the Office. It shall take decisions on strategic matters, and on general issues arising from individual cases<sup>11</sup>, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the Office throughout the Union, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The Internal rules of procedure shall provide for the modalities of the general oversight of activities and decisions on strategic matters and general issues by the college in accordance with this Article.
3. On a proposal by the European Chief Prosecutor and in accordance with the Internal Rules of Procedure, the College shall set up Permanent Chambers.
4. The College shall adopt Internal Rules of Procedure of the European Public Prosecutor's Office in accordance with Article 16, and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the European Public Prosecutor's Office.

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<sup>10</sup> In this document, the terms '*general oversight*', '*monitoring and directing*' and '*supervision*' are used to describe different control activities. These terms will need more detailed explanations in the recitals, in line with the following:

- ✓ The '*general oversight*' refers to the general administration of the activities of the Office, in which instructions are only given on issues which will have a horizontal importance for the Office;
- ✓ '*monitoring and directing*' refers to certain clear powers to monitor and direct individual investigations and prosecutions when such directions appear to be necessary.
  - ✓ '*supervision*' refers to a closer and rather continuous oversight of investigations and prosecutions, including, whenever necessary, intervene and give instruction on investigations and prosecution matters. PT and SI have noted that this tentative definition of supervision may not be acceptable, as it would imply an infringement of the principle of autonomy of their national prosecutors, as laid down in their national law and constitutions. Therefore SI has suggested to replace '*supervising*' with '*directing*' throughout the text.

<sup>11</sup> 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. Unless stated otherwise in this Regulation, the College shall take decisions by simple majority. Any member of the College shall have the right to initiate voting on matters to be decided by the College. Each Member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College<sup>12</sup>.

*Article 9*

**The Permanent Chambers<sup>13</sup>**

1. The Permanent Chamber shall be chaired by the European Chief Prosecutor or one of the Deputies, or a European Prosecutor appointed as Chair in accordance with the Internal Rules of Procedure<sup>14</sup>. The Permanent Chamber shall have two additional permanent Members. The number of Permanent Chambers, their composition as well as the division of competences between the Chambers shall take due account of the functional needs of the Office and be determined in accordance with the Internal Rules of Procedure<sup>15</sup>.

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<sup>12</sup> 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.'*

<sup>13</sup> SE, supported by CY, CZ, FI, HR, HU, IE, MT, NL, PT and SI, maintains its general opinion that a system where the European Delegated Prosecutors are responsible for taking the bulk of the operative decisions would contribute significantly to the effectiveness of the EPPO. The European Delegated Prosecutors should to the furthest extent possible take the necessary decisions in the cases they are handling. SE still believes that the Regulation should move in that direction. This could be achieved in a number of different ways, preferably by shortening the list of decisions that the Chambers should make in Article 9. Other options, such as enhanced possibilities for the Permanent Chambers to delegate their powers to the European Delegated Prosecutors and/or introduce extensive possibilities to use written or silent procedures, could be considered. FR, on the contrary, believes that such mechanisms would water down the powers of the central level of EPPO.

<sup>14</sup> The inclusion of a recital with the following wording should be considered *'During administrative establishment of the EPPO, or if necessary at the later stage, a European Prosecutor should in principle be appointed as a Chair of the Permanent Chamber if there are not enough Deputies'*.

<sup>15</sup> A recital with the following wording should be introduced: *'The composition of Permanent Chamber should be determined in accordance with the Internal Rules of Procedure, which may allow, among other things, a European Prosecutor to be a member in more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, even workload of individual European Prosecutors.'*

These shall ensure an equal distribution of workload on the basis of a system of random allocation of cases and shall, in exceptional cases, provide for procedures allowing, where necessary for the proper functioning of the Office, for deviations from the principle of random allocation upon decision by the European Chief Prosecutor.<sup>16</sup>

2. The Permanent Chambers shall monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3, 3a and 4 in this Article<sup>17</sup>. They shall also ensure the coordination of investigations and prosecutions in cross-border cases and the implementation of decisions taken by the College in accordance with Article 8(2).
- 3.<sup>18</sup> The Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out by this Regulation, where applicable after reviewing a draft decision proposed by the handling European Delegated Prosecutor:
  - a) bring a case to judgment in accordance with Article 27(2)<sup>19</sup>;
  - b) dismiss a case in accordance with Article 28(1) (a-f)<sup>20</sup>;
  - c) dismiss a case through a transaction in accordance with Article 29.

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<sup>16</sup> The introduction of the following recital should be considered: *'The allocation of cases should ensure distribution of cases between the Permanent Chambers in accordance with pre-established criteria and by random as to ensure, to the extent possible, an equal distribution of workload'*.

<sup>17</sup> COM advocates a solution where one of the Members of a Permanent Chamber - regardless of his or her nationality - will be selected to be Rapporteur of the case in order to ensure the neutrality of the Rapporteur. PT and SI would exclude that the Permanent Chamber shall have the right to intervene in individual cases, except in cases of inactivity or manifest delays. PT and SI have suggested that the notion of monitoring should be explained as follows in a recital: *'The monitoring role of the Permanent Chamber refers to a general oversight, in which as a general rule instructions may be given against inactivity or manifest delays in pending criminal proceedings.'* AT, RO, DE, IT, LT, BG, ~~ES~~, FR and COM oppose this recital.

<sup>18</sup> Article 9(3) and 9 (3a) will be developed further and finalised when other related provisions will be completed. .

<sup>19</sup> CZ and PT objects to the competence of the Permanent Chamber to decide whether to bring the case to judgment. In the opinion of CZ, this should be decided by the European Delegated Prosecutors.

<sup>20</sup> 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.

- 3a. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:
- a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 21(1)-(3) where no investigation has been initiated;
  - b) to instruct the European Delegated Prosecutor to evoke a case in accordance with Article 21a(6) where the case has not been evoked;
  - c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 8(2);
  - d) to allocate a case in accordance with Article 21(2);
  - e) to reallocate a case in accordance with Article 21(4) and 23(3a);
  - [i) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(4).]
4. The competent Permanent Chamber, acting through the European Prosecutor who is supervising an investigation or a prosecution, may in a specific case give instructions<sup>21</sup> in compliance with applicable national law<sup>22</sup> to the European Delegated Prosecutor handling the case, whenever necessary for the efficient handling of the investigation or prosecution, or in the interest of justice, or a coherent functioning of the European Public Prosecutor's Office.

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<sup>21</sup> The following recital will be considered: *'The European Delegated Prosecutors should be bound to follow instructions coming from the Central Office. Where he or she considers that the instruction would require him/her to undertake any measure that would not be in compliance with national law, the European Delegated Prosecutor shall ask for a review of the decision and should ultimately be given the possibility to refrain from following the instruction and to request that he/she is relieved from the responsibility for handling the case. IT and RO oppose the wording of the recital above.*

<sup>22</sup> A recital indicating that the supervising European Prosecutor has an active duty to check the instruction's compliance with his/her national law and inform the Permanent Chamber if it does not should be introduced.

5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its Members. Each Member shall have one vote. The Chair shall have a casting vote in the event of a tie vote. The decisions shall be taken in deliberation in meetings of the Chambers where applicable<sup>23</sup> on the basis of the draft decision proposed by the handling European Delegated Prosecutor.

All case material shall at request be accessible to the competent Permanent Chamber in view of the preparation of the decisions.<sup>24</sup>

- 5a. The Permanent Chambers may decide to delegate its decision-making power under paragraph 3 point a) or under point b) only in respect of points a) to e) of Article 28(1) to the European Prosecutor supervising the case in accordance with Article 11(1) in cases where such delegations can be duly justified with reference to the degree of seriousness of the offence<sup>25</sup> or the complexity of the proceedings in the individual case, with regard to an offence which caused or is likely to cause damage to the financial interests of the Union of less than EUR 100.000. The Internal Rules of Procedure shall set guidelines with a view to ensure the consistent application within the Office<sup>26</sup>.

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<sup>23</sup> The following recital should be considered: *'The Permanent Chambers in adopting the decisions in accordance with Article 9(3) should do so on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, the Chamber should be able to adopt decision without a draft decision of the handling European Delegated Prosecutor. In such cases, the European Prosecutor supervising the case may present such a draft decision.'* CZ and SI would replace the word 'may' with 'should' in the last phrase. CZ would wish to delete the term '*where applicable*' used in paragraph 5 (and accordingly also in paragraph 3) or at least clearly specify that in those exceptional cases, where the Permanent Chambers adopt a decision without a draft decision of the handling European Delegated Prosecutor, they should base these decisions on a draft proposal presented by the European Prosecutor supervising the case.

<sup>24</sup> A recital with the following wording should be considered: *'The work of the EPPO should in principle be ensured in electronic form'*.

<sup>25</sup> The following recital should be considered: *'When assessing the degree of seriousness of an offence account should in particular be taken to the repercussions at Union level'*.

<sup>26</sup> BE and LT have a reservation to this paragraph.

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

The supervising European Prosecutor shall report to the Permanent Chamber about the final disposal/conclusion of the case as well as any information or circumstance he/she deems likely to necessitate a new assessment of the opportunity to maintain the delegation, in particular in cases referred to in Article 27(2).

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

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

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

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

6. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 11(1) shall participate in the deliberations of the Permanent Chamber. The European Prosecutor shall have a right to vote, except for the Permanent Chamber's decisions on delegation or withdrawal of delegation in accordance with Article 9(5a), on allocation and reallocation under Articles 21(3) and (4), Article 21a(5) and on bringing a case to judgment (Art. 27(2)), where more than one Member States has jurisdiction for the case, as well in situations described in Article 26a(8)<sup>27</sup>.

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

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

#### *Article 10*

#### **The European Chief Prosecutor and the Deputies**

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

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<sup>27</sup> COM has voiced concern as regards the voting-right for the supervising European Prosecutor; in their view the voting rights in the chamber should be limited to 'neutral' members and it would not be appropriate to give a voting right only to one of potentially several European Prosecutors who are concerned by the case. MT would like to have voting right in all cases for the European Delegated Prosecutors.

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

*Article 11*

**The European Prosecutors**<sup>28</sup>

1. The European Prosecutors shall, on behalf of the Permanent Chamber<sup>29</sup> and in compliance with any instructions it has given in accordance with Article 9(3), 9(3a) and 9(4), supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible<sup>30</sup>. The European Prosecutors shall present summaries of the cases under his or her supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.

The Internal Rules of Procedure shall, without prejudice to Article 14(7), provide for a mechanism of substitution between European Prosecutors in case the supervising European Prosecutor is temporarily<sup>31</sup> absent from his/her duties or for other reasons not available to carry out the functions of the European Prosecutors. The substitute European Prosecutor may fulfill any task of a European Prosecutor, except the possibility to conduct an investigation as foreseen under Article 23(4).

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

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<sup>28</sup> CY and MT would keep the old version of paragraph 3, under which the European Prosecutors could be allowed to fulfil other tasks than those of European Prosecutors.

<sup>29</sup> PT and SI are opposed to the idea that the European Prosecutors shall supervise investigations and prosecutions on behalf of the Permanent Chamber.

<sup>30</sup> COM and BG oppose the addition of the word '*in their Member State of origin*'.

<sup>31</sup> The inclusion of a recital may be considered '*The substitution mechanism should be used in principle in cases when European Prosecutor briefly unable to fulfil his/her duties, for example, due to vacation or illness.*'

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

#### *Article 12*

### **The European Delegated Prosecutors**

1. The European Delegated Prosecutors shall act on behalf of the European Public Prosecutor's Office in their respective Member States<sup>32</sup> and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them and under the conditions provided for in this Regulation.

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

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<sup>32</sup> The following recital should be considered: *'The European Delegated Prosecutors shall be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the Office competence, they shall act exclusively on behalf and in the name of that Office on the territory of their respective Member State. This shall entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law, including national prosecutors. Notwithstanding their status under this Regulation, the European Delegated Prosecutors shall during their term of office also be active member of the prosecution service of their Member State and shall be granted by their Member State the same powers as national prosecutors.'*

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



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

2. There shall be two<sup>33</sup> or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant Member State's authorities, approve<sup>34</sup> the number of the European Delegated Prosecutors, as well as the functional<sup>35</sup> and territorial division of competences between the European Delegated Prosecutors in each Member State.
3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the supervising European Prosecutor of such functions. In the event that a European Delegated Prosecutor at any given moment is unable to fulfil his/her tasks as European Delegated Prosecutors because of such other commitments, he/she shall notify the supervising European Prosecutor, who shall consult with the competent national prosecution authorities in order to determine whether priority should be given to their functions deriving from this Regulation. The European Prosecutor may propose to the Permanent Chamber to reallocate the case in accordance with Article 23(3a) and 4.

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<sup>33</sup> This provision should be without prejudice to future discussions, in the context of the administrative provisions in the second half of the Regulation, about the number of full-time equivalent European Delegated Prosecutors positions to be financed by the EU budget. The text in paragraph 2, and in particular '*the number of European Delegated Prosecutors*', may need to be reviewed again in the context of the provisions of the formal status of the European Delegated Prosecutors ('special advisors') and the financial provisions.

<sup>34</sup> The following recital will be included in the text: '*When the European Chief Prosecutor is consulting with relevant Member State on the number of the European Delegated Prosecutors and the functional and territorial division of competences between the European Delegated Prosecutors in each Member State, due account should be taken of the organisation of the national prosecution system.*

<sup>35</sup> The following recital will be included in the text: '*The notion of functional division of competences between European Delegated Prosecutors should allow for such a division of tasks, whereby certain European Delegated Prosecutors could be in charge of dealing with cases and taking certain specific decisions on initiation of investigations and other European Delegated Prosecutors could be in charge of dealing with complaints against such decisions.*'

## SECTION 2

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

*Article 13*<sup>36</sup>

#### **Appointment and dismissal of the European Chief Prosecutor**

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a term of seven years, which shall not be renewable. The Council shall act by simple majority.
2. The European Chief Prosecutor shall be selected from among candidates
  - a) who are active members of the public prosecution service or judiciary of the Member States, or active European Prosecutors;
  - b) whose independence is beyond doubt;
  - c) who possess the qualifications required for appointment, in their respective countries, to the highest prosecutorial or judicial offices and have relevant practical experience of national legal systems, financial investigations and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
  - d) who have sufficient managerial experience and qualifications for the position.

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<sup>36</sup> CY, PT, MT, HU, ~~ES~~, HR and PL would prefer that the European Chief Prosecutor is chosen from among the Members of the College.

3. The selection shall be based on an open call for candidates, to be published in the Official Journal of the European Union, following which a Selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and the Council. The panel shall comprise 12 persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence, one of whom shall be proposed by the European Parliament<sup>37</sup>. The Council shall establish the panel's operating rules and adopt a decision appointing its members on a proposal from the Commission<sup>38</sup>.
- 3a. If a European Prosecutor is appointed to be the European Chief Prosecutor, his or her position of European Prosecutor shall immediately be filled in accordance with the procedure set out in Article 14(1) and (2).
4. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss the European Chief Prosecutor if it finds that he or she is no longer able to perform his or her duties, or that he or she is guilty of serious misconduct.
5. If the European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 – 3 above.

#### *Article 13a*

#### **Appointment and dismissal of the Deputy European Chief Prosecutors**

1. The College<sup>39</sup> shall appoint [two] European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of three years, which shall however not exceed their mandate period as European Prosecutors. The selection process shall be regulated by the Internal Rules of procedure. The Deputy European Chief Prosecutors shall retain their status of European Prosecutors.

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<sup>37</sup> 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.*'

<sup>38</sup> A Recital will be added to duly justify the conferral of implementing powers on the Council, in accordance with Article 291(2) TFEU.

<sup>39</sup> COM maintains that the Deputies, like the European Chief Prosecutor, should be appointed by the Council and the EP.

2. The rules and conditions for the exercise of the function of Deputy European Chief Prosecutor shall be set out in the Internal Rules of Procedure. If a European Prosecutor is no longer able to perform his or her duties as Deputy European Chief Prosecutor, the College may in accordance with the Internal Rules of Procedure decide that he or she shall not serve as Deputy European Chief Prosecutor and be dismissed from this position.
3. If a Deputy European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position as a Deputy for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraph 1. Subject to the rules in Article 14, he or she shall remain European Prosecutor.

*Article 14*

**Appointment and dismissal of the European Prosecutors**

1. Each Member State shall nominate three candidates for the position as European Prosecutor from among candidates which:
  - a) are active members of the public prosecution service or judiciary of the Member States;
  - b) whose independence is beyond doubt, and
  - c) who possess the qualifications required for appointment, in their respective countries, to high prosecutorial or judicial office and have relevant practical experience of national legal systems, of financial investigations and of international judicial cooperation in criminal matters.
2. The Council shall, after having received the reasoned opinion of a Selection Panel referred to in Article 13(3), select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the Selection Panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.

3. The European Prosecutors shall be selected and appointed for a non-renewable term of six years by the Council, acting by simple majority. The Council may decide to extend the mandate for a maximum of three more years at the end of the six-years period.
4. Every three years there shall be a partial replacement of a third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules<sup>40</sup> for the appointment of European Prosecutors for and during their first mandate period<sup>41</sup>.
5. The Court of Justice of the European Union may, on application by the European Parliament, the Council or the Commission, dismiss a European Prosecutor if it finds that he or she is no longer able to perform his or her duties or that he or she is guilty of serious misconduct.
6. If a European Prosecutor resigns, if he/she is dismissed or leaves his/her position for any other reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1 and 2 above. If the European Prosecutor serves as Deputy European Chief Prosecutor, he or she shall automatically be dismissed also from the latter position.
7. The College shall, upon nomination of every European Prosecutor, designate among the European Delegated Prosecutors of the same Member State a person to substitute the European Prosecutor who is unable to carry out his/her functions or who left his/her position according to paragraphs 5 and 6 above<sup>42</sup>.

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

<sup>41</sup> 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'*.

<sup>42</sup> The following accompanying recital will be considered: *'The European Delegated Prosecutor substituting the European Prosecutor in accordance with Article 14(7) should for the time of the substitution not be in charge of the investigation led by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the EPPO, which were led by the European Delegated Prosecutor substituting a European Prosecutor, Article 23(3a) should apply'*.

Where the College acknowledges the need for substitution, the designated person shall act as an interim European Prosecutor pending replacement or return of the European Prosecutor for a time period that shall not exceed 3 months. The College may upon request prolong the time period if necessary<sup>43</sup>. The mechanisms and modalities of temporary substitution shall be determined and governed by the Internal Rules of Procedure<sup>44</sup>.

*Article 15*

**Appointment and dismissal of the European Delegated Prosecutors**

1. The College shall, upon proposal by the European Chief Prosecutor, appoint the European Delegated Prosecutors nominated by the Member States<sup>45</sup>. The College may reject the nominated person if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a term of [five] years<sup>46</sup>, which shall be renewable.
2. The European Delegated Prosecutors shall, from the time of his or her appointment as a European Delegated Prosecutor until dismissal, be active members of the public prosecution service or the judiciary of the Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system.<sup>47</sup>

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<sup>43</sup> A recital with the following wording will be added: *'Recourse to such possibility should be left to the discretion of the College, where deemed necessary, taking into account the workload of the office and the duration of the absence, as well as in the cases referred to in paragraph 6 until the European prosecutor's position is filled in accordance with the procedure set out in paragraphs 1 and 2 above.'*

<sup>44</sup> The following recital should be introduced in this sense: *'Substitution of a European Prosecutor by one of the European Delegated Prosecutors of the respective Member States may take place in cases referred to in Article 14 (6) or in cases, for example, of prolonged illness, whereas a European Prosecutor shall be substituted by another European Prosecutor according to the Internal Rules of Procedure (Article 11(1)), if he or she is e.g. not available due to vacation, a business trip etc.'*

<sup>45</sup> COM maintains that European Delegated Prosecutors should be appointed by the College based on a list with a sufficient number of candidates from each Member State, allowing for a choice.

<sup>46</sup> The appropriate maximum term of office will need to be decided in the context of negotiations on their formal status under EU law.

<sup>47</sup> The following recital should be considered: *'The Member State that has nominated a European Delegated Prosecutor should ensure that he or she is a prosecutor under national law, if he or she did not have this status already at the time of his or her appointment as European Delegated Prosecutor'*.

3. The College shall dismiss a European Delegated Prosecutor if it finds that he or she no longer fulfils the requirements set out in paragraph 2 or is not able to perform his or her duties, or that he or she is guilty of serious misconduct.
4. If a Member State decides to dismiss or take disciplinary action against a national prosecutor who has been appointed as European Delegated Prosecutor for reasons not connected with his/her responsibilities under this Regulation, it shall inform<sup>48</sup> the European Chief Prosecutor before taking such action. A Member State may not dismiss or take disciplinary action against a European Delegated Prosecutor for reasons connected with his/her responsibilities under this Regulation<sup>49</sup> without the consent of the European Chief Prosecutor. If the European Chief Prosecutor does not consent, the Member State concerned may request the College to review the matter.
5. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the Office, if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the European Chief Prosecutor and, where necessary<sup>50</sup>, nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

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<sup>48</sup> COM would replace '*inform*' with '*consult*'.

<sup>49</sup> CY have noted that a differentiation between the respective roles of a European Delegated Prosecutor and of a national prosecutor may need to be spelled out in this context. A number of delegations have also underlined their view that the European Delegated Prosecutors will remain in the national prosecution structure and that national rules on disciplinary actions and other matters should apply to them as regards their activities as national prosecutors. The provision may need to be examined again, in conjunction with the whole Regulation. The following recital should be considered: '*Being active members of the public prosecution service or the judiciary of the Member States, national disciplinary provision should apply accordingly.*'

<sup>50</sup> A recital should clarify that the number of European Delegated Prosecutors may not be modified without account taken to the rule in Article 12(2) on the approval of the European Chief Prosecutor of the number of the European Delegated Prosecutors.

**SECTION 3**  
**INTERNAL RULES OF PROCEDURE**

*Article 16*<sup>51</sup>

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

1. The Internal Rules of Procedure shall govern the organisation of the work of the Office.
  2. A proposal for the Internal Rules of Procedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the [College]<sup>52</sup> by two thirds majority without delay once the Office has been set up.
  3. A modifications in the Internal Rules of Procedure may be proposed by any European Prosecutor and shall be adopted by the [College] by two thirds majority.
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<sup>51</sup> CZ expressed some doubts regarding the binding nature of the Rules of Procedure in relation with national legislation.

<sup>52</sup> 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.