

## **P7\_TA(2014)0234**

### **European Public Prosecutor's Office**

#### **European Parliament resolution of 12 March 2014 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534 – 2013/0255(APP))**

*The European Parliament,*

- having regard to the proposal for a Council regulation (COM(2013)0534),
- having regard to the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM(2013)0535),
- having regard to the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363),
- having regard to the Council resolution of 30 November 2009 on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings,
- having regard to its resolution of 23 October 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken<sup>1</sup>,
- having regard to other instruments in the area of criminal justice which have been adopted in codecision by the European Parliament together with the Council, such as Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, the Directive regarding the European Investigation Order in criminal matters, etc,
- having regard to the European Convention on Human Rights,
- having regard to Articles 2, 6 and 7 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union,
- having regard to the Treaty on the Functioning of the European Union, in particular its Articles 86, 218, 263, 265, 267, 268 and 340,
- having regard to the opinion of the European Union Agency for Fundamental Rights,
- having regard to the opinion of the European Social and Economic Committee of 11 December 2013,
- having regard to the opinion of the Committee of the Regions of 30 January 2014,
- having regard to Rule 81(3) of its Rules of Procedure,
- having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on

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<sup>1</sup> Texts adopted, P7\_TA(2013)0444.

- A. whereas the main objectives of establishing the European Public Prosecutor's Office are to contribute to the strengthening of the protection of the Union's financial interests, to enhance the trust of EU businesses and citizens in the Union's institutions, and to ensure a more efficient and effective investigation and prosecution of offences affecting the EU's financial interests, while fully respecting the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union;
- B. whereas the EU has set itself the task of developing an Area of Freedom, Security and Justice, and whereas, pursuant to Article 6 of the Treaty on European Union, it respects human rights and fundamental freedoms; whereas crime is increasingly taking on a cross-border dimension, and in the case of crimes against the Union's financial interest, which generate significant financial damage every year, the EU must provide an effective response, giving added value to the joint efforts of all the Member States, as the protection of the EU budget against fraud can be better achieved at EU level;
- C. whereas the principle of zero tolerance where the EU budget is concerned should be applied in order to address fraud against the financial interests of the European Union in a coherent and efficient manner;
- D. whereas the Member States have primary responsibility for implementing some 80 % of the Union budget, and for the collection of own resources as established in Council Decision 2007/436/EC, Euratom<sup>1</sup>, which is shortly to be replaced by a Council decision on the amended Commission proposal for a Council decision on the system of own resources of the European Union (COM(2011)0739);
- E. whereas it is equally important to ensure that the Union's financial interests are protected both at the level of collection of the EU's resources and at the level of expenditure;
- F. whereas 10 % of enquiries conducted by OLAF concern cases of cross-border organised crime, but those cases account for 40 % of the overall financial impact on the financial interests of the European Union;
- G. whereas the establishment of a European Public Prosecutor's Office (EPPO) is the only act under the criminal justice system for which the ordinary legislative procedure would not be applicable;
- H. whereas the proposal for a regulation on the establishment of the European Public Prosecutor's Office is intrinsically linked to the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law and to the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust), which are subject to the ordinary legislative procedure;
- I. whereas respect for the rule of law must be a guiding principle for all European legislation, especially in matters relating to justice and the protection of fundamental human rights;
- J. whereas 14 national parliamentary chambers from 11 Member States have triggered the 'yellow card' in relation to the Commission proposal and whereas on 27 November 2013

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<sup>1</sup> OJ L 163, 23.6.2007, p. 17.

the Commission decided to maintain the proposal, while nevertheless stating that it would take due account of the reasoned opinions of the national parliamentary chambers during the legislative process;

- K. whereas Article 86(1) TFEU requires unanimity within the Council in order to establish an European Public Prosecutor's Office; whereas it seems very unlikely that this unanimity will be reached and it therefore seems more likely that some Member States will establish a European Public Prosecutor's Office by means of enhanced cooperation, which would require the Commission to present a new proposal;
1. Considers the objective of the Commission proposal to represent a further step towards the establishment of a European area of criminal justice and the strengthening of the tools for fighting fraud against the Union's financial interests, thus increasing the taxpayers' confidence in the EU;
  2. Considers that the establishment of a European Public Prosecutor's Office could give a particular added value to the Area of Freedom, Security and Justice, assuming that all Member States participate, since the financial interests of the Union and thus the interests of the European taxpayers must be protected in all Member States;
  3. Calls on the Council to extensively involve Parliament in its legislative work through a constant flow of information and ongoing consultation of Parliament, so as to achieve an outcome which is in line with the changes to the Treaty on the Functioning of the European Union following the Lisbon process and which is essentially welcomed by both parties;
  4. Calls on the European legislator, considering that the consistency of overall EU action in the field of justice is vital for its effectiveness, to deal with this proposal in the light of others that are closely linked to it, such as the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law, the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) and other relevant instruments in the field of criminal justice and procedural rights, in order to be able to ensure that it is fully compatible with all the above and is consistently implemented;
  5. Emphasises that the powers and practice of the European Public Prosecutor's Office must respect the body of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, and the constitutional traditions of the Member States; therefore calls on the Council to take due account of the following recommendations:
    - (i) the European Public Prosecutor's Office should operate in strict observance of the right to a fair trial and thus comply with the principle of the natural court, which requires that the criteria determining which competent court is to exert jurisdiction are clearly established in advance; as the current formulation of Article 27(4) grants the European Public Prosecutor's Office excessive discretion in applying the various jurisdiction criteria, those criteria should be rendered binding and a hierarchy should be created between them in order to ensure foreseeability; in this regard, the rights of the suspect should be taken into account; furthermore, the determination of competence in accordance with those criteria should be subject to judicial review;
    - (ii) the European Public Prosecutor's Office should be given full independence both from

national governments and from EU institutions and should be protected from any political pressure;

- (iii) the scope of the competence of the EPPO should be precisely determined, to enable the criminal acts that fall within that scope to be identified beforehand; Parliament calls for the definitions set out in Article 13 of the Commission proposal, concerning ancillary competence, to be carefully reviewed as in its current drafting they exceed the limits of the scope of Article 86(1) to (3) TFEU; this should be done in such a way as to ensure that the powers of the European Public Prosecutor's Office extend to offences other than those affecting the Union's financial interests only where cumulatively:
  - (a) the particular conduct simultaneously constitutes an offence affecting the Union's financial interests and other offences; and
  - (b) the offences affecting the Union's financial interests are predominant and the other are merely ancillary; and
  - (c) the other offences would be barred from further trying and punishment if they were not prosecuted and brought to judgment together with the offences affecting the Union's financial interests;

In addition, the determination of competence in accordance with those criteria should be subject to judicial review;

- (iv) taking into account the fact that the Directive provided for in Article 12 of the proposal setting out the offences for which the European Public Prosecutor will be competent has not yet been adopted, the text of the proposal should specify that the European Public Prosecutor cannot prosecute offences which are not yet set out in the relevant Member States' law at the time of the offence; in addition, the EPPO should not exercise its competence with regard to offences committed before it becomes fully operative; in this regard, Article 71 of the proposal should be amended accordingly;
- (v) the investigative tools and investigation measures available to the EPPO should be uniform, precisely identified and compatible with the legal systems of the Member States where they are implemented; in addition, the criteria for the use of investigative measures should be spelled out in more detail in order to ensure that 'forum shopping' is excluded;
- (vi) the admissibility of evidence and its assessment in accordance with Article 30 are key elements in the criminal investigation; the relevant rules must therefore be clear and uniform throughout the area covered by the European Public Prosecutor's Office, and should fully comply with procedural safeguards; to ensure such compliance, the conditions for admissibility of evidence should be such as to respect all rights guaranteed by the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, and the European Court of Human Rights case law;
- (vii) the right to an effective judicial remedy should be upheld at all times in respect of the European Public Prosecutor's activity throughout the Union; therefore, decisions taken by the European Public Prosecutor should be subject to judicial review before

the competent court; in this regard, decisions taken by the European Public Prosecutor before or independently from the trial, such as those described in Articles 27, 28 and 29 concerning competence, dismissal of cases or transactions, should be subject to the remedies available before the Union Courts.

Article 36 of the proposal should be redrafted to avoid the circumvention of the Treaty provisions on the jurisdiction of the Union's courts and a disproportionate limitation to the right to an effective judicial remedy under Article 47(1) of the Charter of Fundamental Rights;

- (viii) the provisions of Article 28 of the proposal should clearly state that after the dismissal by the European Public Prosecutor of a case relating to minor offences, the national prosecution authorities are not prevented from further investigating and prosecuting the case should they be allowed to under their national laws; and that where a lack of relevant evidence cannot be foreseeably be remedied by further proportionate investigative steps dismissal is mandatory; in addition, the existence of mandatory dismissal grounds should be checked for as soon as possible in the course of the investigation, and dismissal should follow without undue delay upon the finding that one of the mandatory grounds applies;
  - (ix) arbitrary administration of justice has to be avoided under all circumstances; thus, the condition of 'proper administration of justice' as a ground for transaction as set out in Article 29(1) of the proposal should be replaced by more specific criteria; transaction should in particular be excluded as of the time of the indictment, and in any event in cases which can be dismissed under Article 28 of the proposal as well as in serious cases;
  - (x) as the European Public Prosecutor's powers require not just judicial review by the Court of Justice, but also oversight by the European Parliament and national parliaments, relevant provisions need to be included in particular to ensure effective and coherent practices among Member States and compatibility with the rule of law;
6. Calls on the Council, furthermore, stressing the need for the utmost respect for fundamental principles such as that of a fair trial, to which defence safeguards in criminal trials are directly connected, to take account of the following recommendations and act accordingly:
- (i) all the activities of the European Public Prosecutor's Office should ensure a high protection of the rights of defence, particularly considering that the Union could become an area in which the European Public Prosecutor's Office could act, at operating speed, without having to resort to instruments of mutual legal assistance; in this regard, the respect of EU minimum standards in the field of the rights of individuals in criminal procedure in all Member States is a key element for the adequate functioning of the EPPO.

It should be noted in this respect that the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, adopted by the Council on 30 November 2009, has not yet been completed and that the proposal merely refers to the national legal systems for all issues relating to the right to remain silent, the presumption of innocence, the right to legal aid and to investigations for the defence; therefore, to respect the principle of equality of arms, the law applicable to the suspects or accused persons involved in the proceedings of the European Public

Prosecutor's Office should also apply to the procedural safeguards against the latter's investigative or prosecutorial acts, without prejudice to any additional or higher standards of procedural safeguards granted by Union law;

- (ii) after expiry of the relevant transposition period, non-transposition or wrong transposition into national law of one of the procedural rights acts of Union law should never be interpreted against an individual subject to investigation or prosecution, and their application will always be in accordance with the case law of the Court of Justice and the European Court of Human Rights;
  - (iii) compliance with the *ne bis in idem* principle should be ensured;
  - (iv) The prosecution should comply with Article 6 of the Treaty on the European Union, Article 16 of the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and the applicable EU legislation on the protection of personal data; particular attention should be paid to the rights of the data subject where personal data are transferred to third countries or international organisations;
7. Calls on the Council to take into account the following recommendations, to ensure that the structure of the European Public Prosecutor's Office is versatile, streamlined and efficient and is able to achieve maximum results:
- (i) in order to ensure a successful and fair outcome for investigations and their coordination, those who are required to conduct them should have in-depth knowledge of the legal systems of the countries concerned; to that end, the organisational model of the EPPO should ensure at central level the appropriate skills, experience and knowledge of the legal systems of the Member States;
  - (ii) to ensure that decisions are taken promptly and efficiently, the decision-making process should be able to be expanded by the EPPO, with the assistance of national Delegated Prosecutors responsible for specific cases;
  - (iii) to ensure that the EPPO is able to guarantee high standards of independence, efficiency, experience and professionalism, its staff should be as highly qualified as possible and should ensure that the objectives set out in this resolution are achieved; in particular, the staff members in question may come from the judiciary, from the legal profession or from other sectors in which they have acquired the aforementioned experience and professionalism, as well as appropriate knowledge of the legal systems of the Member States; in this regard, the Commission's statements in paragraph 4 of the proposal's Explanatory Memorandum in relation to overall costs should match actual requirements relating to the efficiency and functionality of the EPPO;
  - (iv) a control mechanism should be established and should report annually on the EPPO's activities;
8. Takes note of the idea of basing the European Public Prosecutor's Office on existing structures, a solution expected by the Commission to entail no substantial new costs for the Union or its Member States, as the Office's administrative services are to be handled by Eurojust and its human resources will come from existing entities such as OLAF;

9. Expresses doubts about the cost-efficiency argument put forward in the proposal, as the European Public Prosecutor's Office needs to set up specialist departments, one for each Member State, which will have to have profound knowledge of the national legal framework in order to carry out effective investigations and prosecutions; calls for an analysis to be carried out in order to assess the costs to the EU budget of setting up the EPPO and any spillover into the Member States' budgets; calls for such an analysis to be carried out in order to assess the benefits as well;
10. Is worried that the proposal is based on an assumption that the administrative services provided by Eurojust will have no financial or staff impact on this decentralised agency; considers, therefore, that the financial statement is misleading; draws attention, in this connection, to its request that the Commission present an updated financial statement taking account of potential amendments by the legislator before the conclusion of the legislative process;
11. Recommends that, in accordance with the provisions laid down in Article 86(1) TFEU, whereby the Council may establish an EPPO 'from Eurojust', the Commission should envisage a mere transfer of financial resources from OLAF to the EPPO and that the EPPO should take advantage of the expertise and added value provided by Eurojust's staff members;
12. Stresses that no clear indication has been given as to whether the European Public Prosecutor's Office, as a newly set-up body, is subject to the staff reductions planned for all Union institutions and bodies; makes it clear that it would not support such an approach;
13. Calls on the Council to clarify the competence of each existing body in charge of protecting the Union's financial interests; points out that it is of the utmost importance that the relationship between the EPPO and other existing bodies, such as Eurojust and OLAF, be further defined and clearly demarcated; stresses that the EPPO should take advantage of OLAF's long-term expertise in conducting investigations, at both national and Union level, in areas pertaining to the protection of the Union's financial interests, including corruption; stresses, in particular, that the Council should clarify the complementarity of OLAF and EPPO action when it comes to 'internal' and 'external' investigations; emphasises that the Commission's current proposal clarifies neither its relationship with the EPPO nor how internal investigations within the EU institutions are to be performed;
14. Considers that further analysis of the concurrent functioning of OLAF, Eurojust and the EPPO should be carried out in order to limit the risk of conflicting competences; invites the Council to clarify the respective competences of these bodies, to identify both potential shared competences and inefficiencies, and to suggest remedies where appropriate;
15. Requires, given that several Member States will probably opt out of the EPPO proposal, an analysis to clarify which OLAF units and which members of its staff, are to be transferred to the EPPO, and which are to remain with OLAF; requires that OLAF retain the necessary resources to carry out any anti-fraud activity that does not fall within the EPPO's mandate;
16. Points out that OLAF will remain competent for those Member States which do not participate in the EPPO, and that they should be afforded an equivalent level of procedural safeguards;
17. Calls on the Commission, therefore, to include, among the changes to the OLAF Regulation

resulting from the establishment of the EPPO, sufficient procedural safeguards, including the possibility of a judicial review of investigative measures taken by OLAF;

18. Considers that the obligations imposed on national authorities to inform the EPPO of any conduct which might constitute an offence within its competence should be aligned with, and not exceed, those in place at Member State level, and should respect the independence of those authorities;
19. Calls for the creation of a special set of rules at Union level to ensure harmonised protection for whistleblowers;
20. Calls on the Council to improve further the efficiency and effectiveness of the respective courts of justice in the Member States, which are indispensable for the success of the EPPO project;
21. Welcomes the idea of embedding the EPPO in existing decentralised structures through the participation of national delegated prosecutors as ‘special advisers’; is aware of the need to elaborate further on the delegated prosecutors’ independence vis-à-vis the national judiciary, and on transparent procedures for selecting them in order to avoid any suggestion of favouritism on the part of the EPPO;
22. Considers that appropriate training in EU criminal law for European Delegated Prosecutors and their staff should be provided in a uniform and effective way;
23. Reminds the Council and Commission that it is of the utmost importance that the European Parliament, co-legislator in substantive and procedural criminal matters, remains closely involved in the process of establishment of the European Public Prosecutor’s Office and that its position is duly taken into account at all stages of the procedure; to that end, intends to maintain frequent contacts with the Commission and Council with a view to successful collaboration; is fully aware of the complexity of the task and of the need for a reasonable timeframe within which to fulfil it, and undertakes to express its views, where necessary in further interim reports, on future developments regarding the EPPO;
24. Calls on the Council to take the time necessary for a thorough evaluation of the Commission proposal, and not to finalise its negotiations in a rush; stresses that a premature transition to the enhanced cooperation procedure should be avoided;
25. Instructs its President to call for continued scrutiny of the proposal with the Council;
26. Points out to the Council that the political guidelines stated above are supplemented by the technical annex to this Resolution;
27. Instructs its President to forward this resolution to the Council and the Commission.



## ANNEX TO THE RESOLUTION

### Recital 22

#### Modification 1

##### *Proposal for a Regulation*

(22) Offences against the Union's financial interests are often closely connected to other offences. ***In the interest of procedural efficiency and*** to avoid a possible breach of the principle *ne bis in idem*, the competence of European Public Prosecutor's Office should also cover offences which are not technically defined under national law as offences affecting the Union's financial interests where their constituent facts are identical and ***inextricably*** linked with those of the offences affecting the financial interests of the Union. In such mixed cases, where the offence affecting the Union's financial interests is ***preponderant***, the competence of the European Public Prosecutor's Office should be exercised after consultation with the competent authorities of the Member State concerned. ***Preponderance*** should be established on the basis of criteria such as the offences' financial impact for the Union, for national budgets, the number of victims or other circumstances related to the offences' gravity, or the applicable penalties.

##### *Amendment*

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### Recital 46

#### Modification 3

##### *Proposal for a Regulation*

(46) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office ***but only with regard to its administrative tasks so as not to jeopardise in any manner the requirement of confidentiality in its operational work.*** ***In the same manner***, administrative inquiries conducted by the European

##### *Amendment*

(46) The general rules of transparency applicable to Union agencies should also apply to the European Public Prosecutor's Office; administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office.

Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office.

## Article 13

### Modification 2

#### *Proposal for a Regulation*

1. Where the offences referred to in Article 12 are ***inextricably*** linked with criminal offences other than those referred to in Article 12 ***and their joint investigation and prosecution are in the interest of a good administration of justice*** the European Public Prosecutor's Office shall also be competent for those other criminal offences, ***under the conditions*** that the offences referred to in Article 12 are ***preponderant*** and the other criminal offences are ***based on identical facts***.

If those conditions are not met, the Member State that is competent for the other offences shall also be competent for the offences referred to in Article 12.

2. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority has competence pursuant to paragraph 1. Where appropriate to facilitate the determination of such competence Eurojust may be associated in accordance with

#### *Amendment*

1. Where the offences referred to in Article 12 are linked with criminal offences other than those referred to in Article 12 the European Public Prosecutor's Office shall also be competent for those other criminal offences ***provided that the following cumulative conditions are met:***

- ***one particular set of facts simultaneously constitutes both offences affecting the Union's financial interests and other offence(s); and***
- ***the offence(s) affecting the Union's financial interest is/are predominant and the other(s) is/are merely ancillary; and***
- ***the further prosecution and punishment of the other offence(s) would no longer be possible if they were not prosecuted and brought to judgment together with the offence(s) affecting the Union's financial interests.***

If those conditions are not met, the Member State that is competent for the other offences shall also be competent for the offences referred to in Article 12.

2. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority has competence pursuant to paragraph 1. Where appropriate to facilitate the determination of such competence Eurojust may be associated in accordance with

#### Article 57.

3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over competence pursuant to in paragraph 1, the national judicial authority competent to decide on the attribution of competences concerning prosecution at national level shall decide on ancillary competence.
4. The determination of competence pursuant to this Article shall not be subject to review.

#### Article 57.

3. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over competence pursuant to in paragraph 1, the national judicial authority competent to decide on the attribution of competences concerning prosecution at national level shall decide on ancillary competence.
4. The determination of competence pursuant to this Article *may* be subject to review ***by the trial court as determined pursuant to Article 27(4) of the proposal, of its own motion.***

### Article 27

#### Modification 4

##### *Proposal for a Regulation*

1. The European Public Prosecutor and the European Delegated Prosecutors shall have the same powers as national public prosecutors in respect of prosecution and bringing a case to judgement, in particular the power to present trial pleas, participate in evidence taking and exercise the available remedies.
2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with a draft indictment and the list of evidence to the European Public Prosecutor for review. Where he/she does not instruct to dismiss the case pursuant to Article 28, the European Public 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. The European Public Prosecutor may also bring the case to the competent national court himself/herself.
3. The indictment submitted to the

##### *Amendment*

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2. When the competent European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a summary of the case with a draft indictment and the list of evidence to the European Public Prosecutor for review. Where he/she does not instruct to dismiss the case pursuant to Article 28 ***or where, upon his/her instruction to offer a transaction under Article 29, such offer was not accepted,*** the European Public 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. The European Public Prosecutor may also bring the case to the competent national court himself/herself.
3. The indictment submitted to the

competent national court shall list the evidence to be adduced in trial.

4. ***The European Public Prosecutor shall choose, in close consultation with the European Delegated Prosecutor submitting the case and bearing in mind the proper administration of justice, the jurisdiction of trial and determine the competent national court taking into account the following criteria:***

- a) the place where the offence, or in case of several offences, the majority of the offences was committed;
- b) the place where the accused person has his/her habitual residence;
- c) the place where the evidence is located;
- d) the place where the direct victims have their habitual residence.

5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the European Public Prosecutor shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

competent national court shall list the evidence to be adduced in trial.

4. The competent national court ***shall be determined on the basis of*** the following criteria, ***in order of priority:***

- a) the place where the offence, or in case of several offences, the majority of the offences was committed;
- b) the place where the accused person has his/her habitual residence;
- c) the place where the evidence is located;
- d) the place where the direct victims have their habitual residence.

5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the European Public Prosecutor shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

## Article 28

### Modification 5

#### *Proposal for a Regulation*

1. The European Public Prosecutor shall dismiss the case where prosecution has become impossible on account of any of the following grounds:

- a) death of the suspected person;
- b) the conduct subject to investigation does not amount to a criminal offence;
- c) amnesty or immunity granted to the suspect;
- d) expiry of the national statutory limitation to prosecute;
- e) the suspected person has already been finally acquitted or convicted of the same

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- d) expiry of the national statutory limitation to prosecute;
- e) the suspected 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.

2. The European Public Prosecutor may dismiss the case ***on any of the following grounds:***

***a)*** the offence is a minor offence according to national law implementing Directive 2013/XX/EU on the fight against fraud to the Union's financial interests by means of criminal law;

***b)*** ***lack of relevant evidence.***

3. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.

4. Where the investigation was initiated on the basis of information provided by the injured party, the European Public Prosecutor's Office shall inform that party thereof.

facts within the Union or the case has been dealt with in accordance with Article 29;

***f)*** ***following a full, comprehensive and proportionate investigation by the European Public Prosecutor's Office, there is a lack of relevant evidence.***

2. The European Public Prosecutor may dismiss the case ***if*** the offence is a minor offence according to national law implementing Directive 2013/XX/EU on the fight against fraud to the Union's financial interests by means of criminal law;

3. The European Public Prosecutor's Office may refer cases dismissed by it to OLAF or to the competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.

4. Where the investigation was initiated on the basis of information provided by the injured party, the European Public Prosecutor's Office shall inform that party thereof.

## Article 29

### Modification 6

#### *Proposal for a Regulation*

1. Where the case ***is not*** dismissed ***and it would serve the purpose of proper administration of justice,*** the European Public Prosecutor's Office may, after the damage has been compensated, propose to the suspected person to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction). If the suspected person agrees, he/she shall pay the lump sum fine to the Union.

#### *Amendment*

1. Where the case ***cannot be*** dismissed ***under Article 28 and where an imprisonment penalty would be disproportionate even if the conduct were fully proven at trial,*** the European Public Prosecutor's Office may, after the damage has been compensated, propose to the suspected person to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction). If the suspected

2. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction.

3. Where the transaction is accepted and paid by the suspected person, the European Public Prosecutor shall finally dismiss the case and officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies thereof.

**4. The dismissal referred to in paragraph 3 shall not be subject to judicial review.**

person agrees, he/she shall pay the lump sum fine to the Union.

2. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction.

3. Where the transaction is accepted and paid by the suspected person, the European Public Prosecutor shall finally dismiss the case and officially notify the competent national law enforcement and judicial authorities and shall inform the relevant Union institutions, bodies, agencies thereof.

## Article 30

### Modification 7

#### *Proposal for a Regulation*

#### *Amendment*

1. Evidence presented by 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 as enshrined in **Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, shall 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 European Public Prosecutor's Office at trial shall not be affected.

1. Evidence presented by the European Public Prosecutor's Office to the trial court **shall be admitted** where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence as enshrined in the Charter of Fundamental Rights of the European Union **and Member States' obligations under Article 6 TEU.**

2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the European Public Prosecutor's Office at trial shall not be affected.

## Article 33

### Modification 8

#### *Proposal for a Regulation*

1. The suspect and accused person involved in the proceedings of the European Public Prosecutor's Office shall have, ***in accordance with national law***, the right to remain silent when questioned, in relation to the facts that he/she is suspected of having committed, and shall be informed that he/she is not obliged to incriminate himself/herself.
2. The suspect and accused person shall be presumed innocent until proven guilty ***according to national law***.

#### *Amendment*

1. The suspect and accused person involved in the proceedings of the European Public Prosecutor's Office shall have the right to remain silent when questioned, in relation to the facts that he/she is suspected of having committed, and shall be informed that he/she is not obliged to incriminate himself/herself.
2. The suspect and accused person shall be presumed innocent until proven guilty.

## Article 34

### Modification 9

#### *Proposal for a Regulation*

Any person suspected or accused of an offence within the scope of the competence of the European Public Prosecutor's Office shall have, ***in accordance with national law***, the right to be given legal assistance free or partially free of charge by national authorities if he/she has insufficient means to pay for it.

#### *Amendment*

Any person suspected or accused of an offence within the scope of the competence of the European Public Prosecutor's Office shall have the right to be given legal assistance free or partially free of charge by national authorities if he/she has insufficient means to pay for it.

## Article 36

### Modification 10

#### *Proposal for a Regulation*

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.

#### *Amendment*

***For the purposes of judicial review***, the European Public Prosecutor's Office shall be considered to be a national authority ***in respect of all procedural measures which it adopts in the course of its prosecution function before the competent trial court***. ***For all other acts or omissions of the European Public Prosecutor's Office, it shall be regarded as a Union body.***

***2. Where provisions of national law are rendered applicable by this Regulation, such provisions shall not be considered as provisions of Union law for the purpose of Article 267 of the Treaty.***

**Article 68**

Modification 11

*Proposal for a Regulation*

*Amendment*

***The administrative activities of the European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.***

The European Public Prosecutor's Office shall be subject to the inquiries of the European Ombudsman ***in relation to instances of maladministration*** in accordance with Article 228 of the Treaty.