



Brussels, 22 July 2016  
(OR. en)

11350/16

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**Interinstitutional File:  
2013/0255 (APP)**

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**LIMITE**

**EPPO 20  
EUROJUST 100  
CATS 56  
FIN 485  
COPEN 241  
GAF 47  
CSC 223**

**NOTE**

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From: Presidency  
To: Delegations

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No. prev. doc.: 9799/16, 15100/15

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Subject: Proposal for a Regulation on the establishment of the European Public Prosecutor's Office  
- Consolidated text: update of the provisional version

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Following the discussions in COPEN on 19-20 July 2016 and having regard to the written comments received, the Presidency has updated the provisional version of its consolidated text of the draft Regulation, as set out in Annex. All modifications in relation to documents 15100/15 and 9799/16 are indicated in underlined or ~~striketrough~~.

The preamble has been added and includes also the content of those footnotes in documents 15100/15 and 9799/16 that announced that recitals would be added.

**Delegations are kindly asked to provide preliminary written comments on the text annexed by noon on Tuesday 26 July.**

After receiving the written comments a final version of the consolidated text will be issued for the COPEN meeting on 8 September 2016.

Draft

## **COUNCIL REGULATION**

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

Whereas:

- (1) The European Union has set itself the objective of establishing an area of freedom, security and justice.
- (2) The possibility of setting up the European Public Prosecutor's Office is foreseen by the Treaty on the Functioning of the European Union (TFEU) in the title concerning the area of freedom, security and justice.
- (3) Both the Union and the Member States have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not sufficiently investigated and prosecuted by the relevant national authorities.
- (4) According to Article 86 TFEU, the European Public Prosecutor's Office should be established from Eurojust. This implies that this Regulation should establish links between them.
- (5) The Treaty provides that the material scope of competence of the European Public Prosecutor's Office is limited to criminal offences affecting the financial interests of the Union. The tasks of the European Public Prosecutor's Office should thus be to investigate, prosecute and bring to judgment the perpetrators of offences against the Union's financial interests which are provided for in Directive 2016/xx/EU. Any extension of this competence to include serious crimes having a cross-border dimension requires a unanimous decision of the European Council.
- (6) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States, does not sufficiently achieve that objective. Since the objectives of this Regulation, namely to enhance the fight against the offences affecting the financial interests of the Union by setting up the European Public Prosecutor's Office, cannot be achieved by the Member States alone, given the fragmentation of national prosecutions in the area of offences committed against the Union's financial interests and can therefore, by reason of the fact that the European Public Prosecutor's Office is to have competence to prosecute such offences, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

- (7) This Regulation provides for a system of shared competence between the European Public Prosecutor's Office and national authorities in combating crimes affecting the financial interests of the Union, based on the principle of priority for the European Public Prosecutor's Office.
- (8) In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve these objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.
- (9) In the light of the principle of sincere cooperation, both European Public Prosecutor's Office and competent national authorities should support and inform each other with the aim to efficiently combat the crimes falling under the competence of the Office.
- (10) This Regulation is without prejudice to Member States' national systems concerning the way in which criminal investigations are organised.
- (11) Since the European Public Prosecutor's Office is to be granted powers of investigation and prosecution, institutional safeguards should be put in place to ensure its independence as well as its accountability towards the Union institutions.
- (12) The European Public Prosecutor's Office should act only in the interest of the Union as a whole and neither seek or take instructions from any person external to the Office.
- (13) Strict accountability is a complement to the independence and the powers granted to the European Public Prosecutor's Office under this Regulation. The European Chief Prosecutor is fully accountable for the performance of his/her duties as the head of the European Public Prosecutor's Office and as such he/she carries an overall institutional accountability for its general activities before the European Parliament, the Council and the Commission. As a result, any of these institutions can apply to the Court of Justice of the European Union, within the meaning of Article 251 TFEU, acting in one single instance, with a view to his/her removal under certain circumstances, including in cases of serious misconduct. The same procedure should apply for the dismissal of European Prosecutors.
- (14) The European Public Prosecutor's Office should issue a public Annual Report on its general activities, which as a minimum should contain statistical data on the work of the Office.
- (15) The organisational structure of the European Public Prosecutor's Office should allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States. The structure should also ensure that all national legal systems and traditions of the participating Member States are represented in the Office and that, as a rule, prosecutors with knowledge of the individual legal systems will handle investigations and prosecutions in the Member States.
- (16) To this end, the European Public Prosecutor's Office should be an indivisible Union body operating as a single office. It should be organised at a central level, consisting of a European Chief Prosecutor, who is the head of the Office as a whole and the head of the College of European Prosecutors, organised in Permanent Chambers, and a decentralised level consisting of European Delegated Prosecutors located in the Member States.

(17) In addition, to ensure consistency in its action and thus an equivalent protection of the Union's financial interests, the organisational structure and the internal decision-making process of the European Public Prosecutor's Office should enable the central office to monitor, direct and supervise all investigations and prosecutions undertaken by European Delegated Prosecutors.

(18) In this Regulation, the terms 'general oversight', 'monitoring and directing' and 'supervision' are used to describe different control activities exercised by the European Public Prosecutor's Office. 'General oversight' should be understood as referring to the general administration of the activities of the Office, in which instructions are only given on issues which have a horizontal importance for the Office; 'Monitoring and directing' should be understood as referring to the powers to monitor and direct individual investigations and prosecutions. 'Supervision' should be understood as referring to a closer and continuous oversight of investigations and prosecutions, including, whenever necessary, intervention and instruction-giving on investigations and prosecution matters.

(19) The College should take decisions on strategic matters, including determining the priorities and investigation and prosecution policy of the Office, as well as on general issues arising from individual cases, for example regarding the application of the Regulation, the correct implementation of the investigation and prosecution policy of the Office or questions of principle or of significant importance for the development of a coherent investigation and prosecution policy of the Office. Decisions of the College on general issues should not affect the duty to investigate and prosecute according to this Regulation and national law. The College should use its best efforts to take decisions by consensus. If such a consensus cannot be reached, decisions should be taken by voting.

(20) Permanent Chambers should supervise investigations and ensure the coherence of the activities of the Office. The composition of Permanent Chambers should be determined in accordance with the internal rules of procedure, which should allow, among other things, for a European Prosecutor to be a member of more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, an even workload for individual European Prosecutors.

(21) Permanent Chambers should be chaired by the European Chief Prosecutor, one of his deputies or a European Prosecutor, in accordance with principles laid down in the internal rules of procedure. As a general rule, Permanent Chambers should be chaired by the Chief or one of his deputies. However, during the administrative establishment of the European Public Prosecutor's Office, or if necessary at a later stage, a European Prosecutor may be appointed as chair of a Permanent Chamber if there are not enough Deputies.

(22) The allocation of cases between the Permanent Chambers should be based on a system of a random distribution as to ensure, to the extent possible, an equal division of workload. Deviations from this principle should be possible to ensure the proper and efficient functioning of the Office on a decision by the European Chief Prosecutor.

(23) The internal rules of procedure of the European Public Prosecutor's Office should set up a system of permanence between the Permanent Chambers in order to guarantee the continuity of the service in cases where the competent Permanent Chamber has yet to be designated.

(24) A European Prosecutor from each Member State should be appointed to the College. The European Prosecutors should supervise, on behalf of the competent Permanent Chamber, the investigations and prosecutions handled by the European Delegated Prosecutors in their Member State of origin. They should act as liaison between the central office and the decentralised level in their Member States, facilitating the functioning of the Office as a single office. The supervising European Prosecutor should also check any instruction's compliance with national law and inform the Permanent Chamber if it does not.

(25) The European Public Prosecutor's Office should be based on a principle of decentralisation whereby, as a rule, the investigations of the European Public Prosecutor's Office should be carried out by European Delegated Prosecutors in the Member States in accordance with this Regulation and national law. European Delegated Prosecutors should carry out their tasks under the supervision of the supervising European Prosecutor and the direction and instruction of the competent Permanent Chamber.

(26) 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.

(27) The European Delegated Prosecutors should be an integral part of the European Public Prosecutor's Office and as such, when investigating and prosecuting offences within the competence of the Office, they should act exclusively on behalf and in the name of the Office on the territory of their respective Member State. This should entail granting them under this Regulation a functionally and legally independent status, which is different from any status under national law.

(28) Notwithstanding their special status under this Regulation, the European Delegated Prosecutors should during their term of office also be active member of the prosecution service of their Member State and should be granted by their Member State the same powers as national prosecutors.

(29) The European Delegated Prosecutors should be bound to follow instructions coming from the central office. Where a European Delegated Prosecutor considers that the instruction would require him/her to undertake any measure that would not be in compliance with national law, he/she should ask for a review of the decision by the European Chief Prosecutor. The European Delegated Prosecutor should execute the instruction if his/her claim of non-compliance with national law is rejected by the European Chief Prosecutor, unless he/she expressly requests to be relieved from the responsibility for handling the case.

(30) The European Delegated Prosecutor handling a case should report any significant developments in a case, such as the performance of investigative or urgent measures or changes to the list of suspected persons, to the supervising European Prosecutor and to the competent Permanent Chamber.

(31) The Permanent Chambers should exercise their decision-making power at specific steps of the proceedings of the Office with a view to ensuring a common investigation and prosecution policy. They should adopt such decisions on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, the Permanent Chamber should be able to adopt a 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.

(32) A Permanent Chamber should be able to delegate its decision-making power to the supervising European Prosecutor in specific cases where an offence is not serious or the proceedings are not complex. When assessing the degree of seriousness of an offence account should be taken of its repercussions at Union level.

(33) A substitution mechanism between European Prosecutors should be provided for in the internal rules of procedure. The substitution mechanism should be used in cases when a European Prosecutor is briefly unable to fulfill his/her duties, for example, due to absence.

(34) In addition, a European Prosecutor should be substituted by one of the European Delegated Prosecutors of the his/her Member State when a European Prosecutor resigns, is dismissed or leaves his/her position for any other reason or in cases, for example, of prolonged illness. The substitution should be limited to a period of up to three months. The possibility to prolong this time period 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, pending replacement or return of the European Prosecutor. The European Delegated Prosecutor substituting the European Prosecutor should, for the time of the substitution, no longer be in charge of investigations and prosecutions handled by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the European Public Prosecutor's Office, which were handled by the European Delegated Prosecutor substituting a European Prosecutor, the Office's rules on reallocation should apply.

(35) The procedure for the appointment of the European Chief Prosecutor and the European Prosecutors should guarantee their independence. Their legitimacy should be drawn from the Union institutions involved in the appointment procedure. The Deputies to the European Chief Prosecutor should be appointed by the College from among its members.

(36) A selection panel should establish a short list of candidates for the position as European Chief Prosecutor is drawn up. The power to establish the panel's operating rules and to appoint its members should be conferred on the Council, based on a proposal from the Commission. Such an implementing power mirrors the specific powers conferred on the Council under Article 86 of the Treaty and reflects the specific nature of the European Public Prosecutor's Office, which will remain firmly embedded in national legal structures while at the same time being a European body. The European Public Prosecutor's Office will be acting in an environment where most other actors will be national, such as Courts, police and other law enforcement authorities, and therefore the Council has a specific interest in being closely involved in the appointment procedure. Conferring these powers on the Council also adequately takes into account the potential sensitive nature of any decision-making powers with direct implications for the national judicial and prosecution structures. The European Parliament and the Council should appoint, by common accord, one of the shortlisted candidates as Chief.

(37) Each Member State should nominate three candidates for the position of European Prosecutor to be selected and appointed by the Council. With a view to ensuring the continuity of the work of the College, there should be a partial replacement of a third of the European Prosecutors every third years. The power to adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period should be conferred on the Council. This implementing power mirrors the power of the Council to select and appoint the European Prosecutors. This is also justified by the specific nature of the European Prosecutors as being linked to their respective Member States while at the same time being Members of the College and more generally, by the specific nature of the European Public Prosecutor's Office following the same logic underlying the implementing power conferred on the Council to establish the panel's operating rules and to appoint its members. 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.

(38) The procedure for the appointment of the European Delegated Prosecutors should ensure that they are an integral part of the European Public Prosecutor's Office, while they remain integrated at an operational level into the national legal systems and prosecution structures. Member States should nominate candidates for the position of European Delegated Prosecutor, to be appointed by the College on a proposal by the Chief.

(39) The Member State that has nominated a European Delegated Prosecutor should ensure that, from the time of his/her appointment, he or she is a prosecutor under national law, if he or she did not have this status already at the time of nomination as European Delegated Prosecutor.

(40) There should be two or more European Delegated Prosecutors in each Member State to ensure the proper handling of the caseload of the Office. The European Chief Prosecutor should approve the number of European Delegated Prosecutors per Member State, and the functional and territorial division of tasks among them, in consultation with each Member State. In such consultations, due account should be taken of the organisation of the national prosecution systems. The notion of functional division of competences between European Delegated Prosecutors could allow for a division of tasks whereby certain European Delegated Prosecutors would handle cases and take certain specific decisions on the initiation of investigations, and other European Delegated Prosecutors would be in charge of dealing with complaints against such decisions.

(41) The total number of European Delegated Prosecutors in a Member State may be modified with the approval of the European Chief Prosecutor, as long as the number of full-time equivalent European Delegated Prosecutors remains the same.

(42) The College should be responsible for disciplinary procedures concerning European Delegated Prosecutors acting in accordance with this Regulation. Since European Delegated Prosecutors remain active members of the public prosecution or the judiciary of the Member States, and may also exercise functions as national prosecutors, national disciplinary provisions may apply for reasons not connected with this Regulation. However, in such cases the European Chief Prosecutor should consent to the dismissal or to any disciplinary action, given his responsibilities for the management of the Office and in order to protect its integrity and independence.

(43) The work of the European Public Prosecutor's Office should in principle be ensured in electronic form. A case management system should be established, owned and managed by the European Public Prosecutor's Office. The information in the case management system should include information received about possible offences falling under the Office's competence, as well as the investigations and prosecution case files, also when those have been closed. The European Public Prosecutor's Office should, when establishing the case management system, ensure that the system allows the European Public Prosecutor's Office to operate as a single office, where the case files administered by European Delegated Prosecutors are available to the central office for the exercise of its decision-making, monitoring, direction and supervision tasks.

(44) National competent authorities should inform the European Public Prosecutor's Office without delay of any conduct that could constitute an offence within the competence of the Office. In cases which fall outside its scope of competence, the European Public Prosecutor's Office should inform the competent national authorities of any facts that it becomes aware of, and which might constitute a criminal offence, for example a false testimony.

(45) Union institutions, bodies, agencies and offices, and national authorities, should provide without delay any information to the European Public Prosecutor's Office about offences which could fall under its competence. The Office may also receive information from other sources, such as private parties. A verification mechanism in the Office shall aim to assess whether, on the basis of the information received, the conditions for material, territorial and personal competence of the European Public Prosecutor's Office are fulfilled.

(46) In order to comply fully with their obligation to inform the European Public Prosecutor's Office where a suspicion of an offence within its competence is identified, the national authorities of the Member States as well as all institutions, bodies, offices and agencies of the Union should follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them. The institutions, bodies, offices and agencies of the Union may make use of OLAF to that effect.

(47) Member States should set up a system that ensures that information is reported to the European Public Prosecutor's Office as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system.

(48) Member States are to report offences which fall within the competence of the European Public Prosecutor's Office and over which it could exercise such competence. Compliance with this reporting obligation is essential for the Office's good functioning and should be interpreted broadly as to ensure that national authorities report cases where the assessment of some criteria is not immediately possible (for example the level of damage or the applicable penalty). The European Public Prosecutor's Office should also be able to request information to the Member States about other offences affecting the Union's financial interests, where necessary to establish links between cases or for the College to exercise its role of ensuring coherence, efficiency and consistency of the Office's investigation and prosecution policy.

(49) The efficient investigation of crimes affecting the financial interests of the Union and the principle of *ne bis in idem* may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union. The notion of inextricably linked offences should be considered in light of the jurisprudence of the Court of Justice of the European Union. Such may be the case, for example, for offences which have been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as offences strictly aimed at ensuring the material or legal means to commit the PIF offence, or to ensure the profit or product thereof. In such cases of inextricably linked offences, 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 primarily on the basis of the offences' gravity, as reflected in the applicable sanctions.

(50) The notion of offences relating to the participation in a criminal organisation should be subject to the definition provided in national law in accordance with Framework Decision 2008/841/JHA, and may cover, for example, the membership in, or the organisation and leadership of such a criminal organisation.

(51) The competence of the European Public Prosecutor's Office regarding offences affecting the financial interests of the Union should take priority over national claims of jurisdiction so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. With regard to these offences the authorities of Member States should refrain from acting, unless urgent measures are required, until the Office has decided whether to conduct an investigation.

(52) In case of disagreement over the questions of exercise of competence, the competent national authorities shall decide on the attribution of competence. The notion of competent national authorities should be understood as any judicial authorities who have competence to decide on the attribution of competence in accordance with national law.

(53) As the European Public Prosecutor's Office should bring prosecutions before national courts, its competence should be defined by reference to the criminal law of the Member States, which criminalises acts or omissions affecting the Union's financial interests and determines the applicable penalties by implementing the relevant Union legislation, in particular [*Directive 2016/xx/EU*], in national legal systems.

(54) The European Public Prosecutor's Office should exercise its territorial competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States.

(55) The investigations and prosecutions of the European Public Prosecutor's Office should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory, either *motu proprio* or on the request of the defence.

(56) In order to ensure legal certainty and zero tolerance towards offences affecting the Union's financial interests, the investigation and prosecution activities of the European Public Prosecutor's Office should be guided by the principle of mandatory prosecution.

(57) In order to best safeguard the rights of the defendant, in principle a suspect or accused person should only face one investigation or prosecution by the European Public Prosecutor's Office. Where an offence has been committed by several persons, the European Public Prosecutor's Office should in principle initiate only one case and conduct investigations in respect of all suspect or accused persons jointly.

(58) Where several European Delegated Prosecutors have opened investigations in respect of the same criminal offence, the Permanent Chamber should in principle merge such investigations. The Permanent Chamber may decide not to merge or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, for example if proceedings against one suspect or accused person can be terminated at an earlier stage, whereas proceedings against other suspect or accused persons still have to be continued, or if splitting the case could shorten the period of pre-trial detention of one of the suspects. Where different Permanent Chambers are in charge of the cases to be merged, the internal rules of procedure should determine the appropriate competence and procedure. In case the Permanent Chamber decides to split a case, its competence for the resulting cases should be maintained.

(59) The European Public Prosecutor's Office should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of loyal cooperation, all national authorities and the relevant Union bodies, including Europol, Eurojust and OLAF, should actively support the investigations and prosecutions of the European Public Prosecutor's Office as well as cooperate with it to the fullest extent possible, from the moment a suspected offence is reported to the European Public Prosecutor's Office until it determines whether to prosecute or otherwise dispose of the case.

(60) It is necessary to determine the rules applicable to the conduct of investigations and the gathering of evidence by the European Public Prosecutor's Office.

(61) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the European Public Prosecutor's Office is able to gather evidence throughout the Union by using a minimum set of investigative measures, while bearing in mind the principle of proportionality. These measures should be available with regard to the offences within the mandate of the European Public Prosecutor's Office, at least in cases where they are punishable by a maximum penalty of at least four years of imprisonment, for the purpose of its investigations and prosecutions. Once ordered by the European Public Prosecutor's Office or by the competent judicial authority at its request, they should be carried out in accordance with national law. In addition, the European Public Prosecutor's Office should have access to all relevant data sources, including public and private registers.

(62) In cross-border cases, the European Delegated Prosecutor handling the case should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States. If judicial authorisation was required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation. If an investigation measure is finally refused by the judicial authorities, i.e. when all legal remedies have been exhausted, the European Delegated Prosecutor handling the case should withdraw the request or the order.

(63) In addition to the minimum set of investigation measures listed in this Regulation, European Delegated Prosecutors should be entitled to request or to order any measures which are available to prosecutors under national law in similar national cases. Availability should be ensured in all situations where the indicated investigative measure exists under national law but may be subject to limitations, i.e. only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned.

(64) The possibility foreseen in this Regulation to have recourse to legal instruments on mutual recognition or cross-border cooperation should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.

(65) The provisions relating to pre-trial arrest and cross-border surrender should be without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect or accused person.

(66) The European Public Prosecutor's Office should be entitled to issue or request European Arrest Warrants within its area of competence.

(67) The European Public Prosecutor's Office should be entitled to refer a case to national authorities, where an investigation reveals that the offence under investigation is outside the competence of the Office. In the case of such a referral, national authorities should preserve their full prerogatives under national law to open, continue or to dismiss the investigation.

(68) Article 86 of the Treaty requires the European Public Prosecutor's Office to exercise the functions of the prosecutor, which includes taking decisions on a suspect or accused person's indictment and the choice of jurisdiction. The decision whether to indict the suspect or accused person should be made by the competent Permanent Chamber so that there is a common prosecution policy.

(69) The jurisdiction of trial should be chosen by the competent Permanent Chamber on the basis of a set of criteria laid down in this Regulation. The Permanent Chamber should take its decision on the basis of a report and a draft decision by the European Delegated Prosecutor handling the case, transmitted by the supervising European Prosecutor alongside, if necessary, his/her own assessment. The supervising European Prosecutor should retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in this Regulation.

(70) The evidence presented by the European Public Prosecutor's Office to the trial court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law in another Member State, provided that court considers it to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter of Fundamental Rights of the European Union.

(71) Taking into account the principle of mandatory prosecution, the investigations of the European Public Prosecutor's Office should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution. The grounds for dismissal of a case should be exhaustively laid down in the Regulation.

(72) The national legal systems provide for various types of simplified prosecution procedures, which may or not include involvement of a court, for example in the form of transactions with the suspect or accused person. If such procedures exist, the European Delegated Prosecutor should have the power to apply them under the conditions provided for in national law and in the situations foreseen by the Regulation. These situations should include cases where the final damage of the offence, after possible recovery of an amount corresponding to the damage, is not significant. Considering the interest of coherent and effective prosecution policy of the Office, the competent Permanent Chamber should always be called to give its consent to the use of such procedures. When the simplified procedure has been successfully applied, the case should be finally disposed of.

(73) This Regulation requires the European Public Prosecutor's Office to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by European Public Prosecutor's Office. The activities of the European Public Prosecutor's Office shall thus be exercised in full compliance with these rights and the Regulation shall be applied and interpreted accordingly.

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

(75) Article 82(2) of the Treaty allows the Union to establish minimum rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. These minimum rules have been gradually set out by the Union legislator in Directives on specific rights.

(76) The rights of defence provided for in the relevant Union legislation, such as Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceeding, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, as implemented by national law, should apply to the activities of the European Public Prosecutor's Office. Any suspect or accused person in respect of whom the European Public Prosecutor's Office initiates an investigation should benefit from them.

(77) Article 86(3) of the Treaty allows the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the European Public Prosecutor's Office in the performance of its functions. This competence granted to the Union legislature reflects the specific nature of the tasks and structure of the European Public Prosecutor's Office, which is different from that of all other Union bodies and agencies and requires special rules regarding judicial review.

(78) According to Article 86(2) of the Treaty the European Public Prosecutor's Office exercises its functions of prosecutor before the competent courts of the Member States. Acts undertaken by the European Public Prosecutor's Office in the course of its investigations are closely related to the prosecution which may result therefrom and have effects in the legal order of the Member States. In most cases they will be carried out by national law enforcement authorities acting under the instructions of European Public Prosecutor's Office, sometimes after having obtained the authorisation of a national court. It is therefore appropriate to consider that acts of investigation of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. This should ensure that the investigative acts of the European Public Prosecutor's Office adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons whose rights may be adversely affected by such acts) are subject to judicial review by national courts. Where national law provides for judicial review concerning procedural acts other than those which relate to the investigation or concerning acts which do not produce legal effects vis-à-vis third parties, this Regulation should not be interpreted as replacing or amending such legal provisions. In addition, this Regulation does not affect the powers of the national trial court. Actions before competent national courts for failures of the European Public Prosecutor's Office to act are only possible regarding procedural acts which the Office is under a legal obligation to adopt and which are intended to produce legal effects vis-à-vis third parties.

(79) The legality of procedural acts of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties should be subject to judicial review before national courts. When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law which applies to the extent that a matter is not dealt with by this Regulation. National courts should refer to the Court of Justice preliminary questions when they entertain doubts about the validity of those acts vis-à-vis Union law. However, they may not refer to the Court of Justice preliminary questions on the validity of the acts of investigation of the European Public Prosecutor's Office with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them. This is however without prejudice to preliminary references concerning the interpretation of any provision of primary law, including the Treaty and the Charter of Fundamental Rights of the European Union, or the interpretation and validity of any provision of Union secondary law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of the procedural acts of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties with regard to the principle of proportionality as enshrined in national law.

(80) The provision of this Regulation on judicial review only concerns the actions to which it refers and is wholly without prejudice to the possibility for a Member State, the European Parliament, the Council or the Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU, and to infringement proceedings under Articles 258 and 259 TFEU.

(81) The competence concerning the dismissal of the European Chief Prosecutor and European Prosecutors, including the Deputy European Chief Prosecutors, is attributed to the Court of Justice within the meaning of Article 19(2), first subparagraph, TEU, and Article 251 TFEU, which will decide in one single instance.

(82) Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup> applies to the processing of administrative personal data performed by the European Public Prosecutor's Office.

(83) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Union. As a consequence, Regulation (EC) No 45/2001 will need to be adapted in accordance with Articles 2(3) and 98 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC<sup>2</sup>.

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

<sup>2</sup> OJ L 119, 4.5.2016, p. 1.

(84) In Declaration 21 on the protection of personal data in the fields of judicial co-operation in criminal matters and police co-operation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and the free movement of such data in the fields of judicial co-operation in criminal matters and police co-operation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

(85) Pending the adaptation of Regulation (EC) 45/2001, this Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office. These rules should be reviewed in the context of the adaptation of Regulation (EC) 45/2001. As a result of such a review, the general rules relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office could be those laid down in the adapted Regulation (EC) 45/2001, with the exception of those rules which particularise and complement Regulation (EC) No 45/2001, as adapted, for the processing of personal data by the European Public Prosecutor's Office which would continue to be laid down in this Regulation.

(86) The rules of this Regulation on the protection of personal data should be interpreted and applied in accordance with the interpretation and application of Regulation (EC) 45/2001, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>3</sup>, which will be replaced by Regulation (EU) 2016/679, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>4</sup>, which will be replaced Directive (EU) 2016/860.

(87) Directive (EU) 2016/860 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA applies to the processing of personal data by Member States' competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

(88) The data protection principle of fair processing is a distinct notion from the right to a fair trial as defined in Article 47 of the Charter and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

(89) The data protection provisions of this Regulation are without prejudice to the applicable rules on admissibility of personal data as evidence in criminal court proceedings.

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<sup>3</sup> OJ L 281 , 23.11.1995 p.31.

<sup>4</sup> OJ L 350, 30.12.2008, p. 60.

(90) All Member States are affiliated to the International Criminal Police Organisation (Interpol). To fulfil its mission, Interpol receives, stores and circulates personal data to assist competent authorities in preventing and combating international crime. It is therefore appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where personal data are transferred from the European Public Prosecutor's Office to Interpol, and to countries which have delegated members to Interpol, this Regulation, in particular the provisions on international transfers, should apply. This Regulation should be without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA<sup>5</sup> and Council Decision 2007/533/JHA<sup>6</sup>

(91) When the European Public Prosecutor's Office transfers operational personal data to an authority of a third country or to an international organisation or Interpol by virtue of an international agreement concluded pursuant to Article 218 of the Treaty, the appropriate safeguards adduced with respect to the protection of privacy and fundamental rights and freedoms of individuals should ensure that the data protection provisions of this Regulation are complied with.

(92) The European Data Protection Supervisor should monitor the processing of personal data by the European Public Prosecutor's Office.

(93) In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Regulation as regards operational personal data, as required by Article 8 of the Charter of Fundamental Rights, the European Data Protection Supervisor should have the tasks laid down in this Regulation and effective powers, including investigative, corrective, and advisory powers which constitute necessary means to perform its tasks. However, the powers of the European Data Protection Supervisor should not unduly interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary.

(94) In order to enable the European Public Prosecutor's Office to fulfil its tasks and to take account of developments in information technology and in the light of the state of progress in the information society, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifying the personal data and the categories of data subjects listed in the Annex, which could be processed by the European Public Prosecutor's Office for the purposes of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

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<sup>5</sup> Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

<sup>6</sup> Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

(95) The European Public Prosecutor's Office should work closely with other Union institutions, bodies, offices and agencies in order to facilitate the exercise of its functions under this Regulation and establish, where necessary, formal arrangements on detailed rules relating to exchange of information and cooperation. Cooperation with Europol and OLAF should be of particular importance to avoid duplication and enable the European Public Prosecutor's Office to obtain the relevant information at their disposal as well as to draw on their analysis in specific investigations.

(96) The European Public Prosecutor's Office should be able to obtain any relevant information falling within its competence stored in databases and registers of the institutions, bodies, offices and agencies of the Union.

(97) The European Public Prosecutor's Office and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates. Such cooperation may involve any investigations conducted by the European Public Prosecutor's Office where an exchange of information or coordination of investigative measures in respect of cases handled by Eurojust is considered to be necessary or appropriate. Whenever the European Public Prosecutor's Office is requesting such cooperation of Eurojust, the European Public Prosecutor's Office should liaise with the Eurojust national member of the Member State of the handling European Delegated Prosecutor. The operational cooperation may also involve third countries which have a cooperation agreement with Eurojust.

(98) The European Public Prosecutor's Office and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates, and avoiding duplication. In this regard, OLAF should in principle not open any administrative investigations parallel to an investigation conducted by the European Public Prosecutor's Office into the same facts. This should, however, be without prejudice to the power of OLAF to start an administrative investigation on its own initiative, in close consultation with the European Public Prosecutor's Office.

(99) In all actions in support of European Public Prosecutor's Office, OLAF will act independently from the Commission, in accordance with Regulation (EC, Euratom) No 883/2013.

(100) In cases where it is not conducting an investigation, the European Public Prosecutor's Office should be able to provide relevant information to OLAF, for it to consider appropriate action in accordance with its mandate. In particular, the EPPO could consider informing OLAF in cases where there are no reasonable grounds to believe that an offence within the competence of the Office is being or has been committed, but an administrative investigation by OLAF may be appropriate, or in cases where the European Public Prosecutor's Office dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery. When the European Public Prosecutor's Office provides information, it may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EC, Euratom) No 883/2013.

(101) The European Public Prosecutor's Office should enable the Union institutions, bodies, offices or agencies and other victims to take appropriate measures. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as civil party in the proceedings in accordance with national law. The exchange of information should take place in full respect of the independence of the European Public Prosecutor's Office, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations.

(102) In so far as necessary for the performance of its tasks, the European Public Prosecutor's Office should also be able to establish and maintain cooperative relations with the authorities of third countries and international organisations. For the purpose of this Regulation, international organisations means international organisations and their subordinate bodies governed by public international law or other bodies which are set up by, or on the basis of, an agreement between two or more countries as well as Interpol.

(103) To guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union. The financial, budgetary and staff regime of the European Public Prosecutor's Office should follow the relevant Union standards applicable to bodies referred to in Article 208 of Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council, with due regard, however, to the fact that the competence of the European Public Prosecutor's Office to carry out criminal investigations and prosecutions at Union-level is unique.

(104) The costs of investigation measures of the European Public Prosecutor's Office should in principle be covered by the national authorities carrying them out. Exceptionally high costs for investigation measures such as complex experts' opinions, extensive police operations or surveillance activities over a long period of time could partly be reimbursed by the Office in accordance with this Regulation and the applicable financial rules.

(105) The College should in principle always delegate its powers conferred on the appointing authority by the Staff Regulations and by the Conditions of Employment of Other Servants to conclude Contracts of Employment, to the Administrative Director, unless specific circumstances call for it to exercise this power.

(106) The Administrative Director, as authorising officer, is responsible for the implementation of the budget of the EPPO. When consulting with the Permanent Chamber regarding exceptionally costly investigation measures, the Administrative Director is responsible for deciding on the amount of the grant to be awarded, based on the available financial resources and in accordance with the criteria set out in the internal rules of procedure.

(107) The remuneration of the European Delegated Prosecutors as special advisers, which will be set through a direct agreement, should be based on a specific decision to be taken by the College. This decision should inter alia ensure that the European Delegated Prosecutors, in the specific case that they also exercise functions as national prosecutors in accordance with Article 12(3), will in principle continue to be paid in their capacity as national prosecutors and that the remuneration as special adviser will only relate to the equivalent of the work on behalf of the European Public Prosecutor's Office in the capacity as a European Delegated Prosecutor. Expenses related to their social security coverage should continue to borne by the member States exclusively.

(108) The European Public Prosecutor's Office's proceedings should be transparent in accordance with Article 15(3) TFEU and specific provisions on how the right of public access to documents is ensured, would need to be adopted by the College. Nothing in this Regulation is intended to restrict the right of public access to documents in so far it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter and other relevant provisions.

(109) 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 Ombudsman should respect the requirement of confidentiality of the European Public Prosecutor's Office. In view of ensuring the integrity of the investigations and prosecutions of the Office, documents relating to the operational activity should not be covered by the rules of transparency.

(110) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish [not] [to take part] in the adoption and application of this Regulation.

(111) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

(112) The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003 have determined the seat of the European Public Prosecutor's Office.

# CHAPTER I

## SUBJECT MATTER AND DEFINITIONS

### *Article 1*

#### **Subject matter**

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

### *Article 2*

#### **Definitions<sup>7</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;
- ~~(cd) 'operational personal data' means all [case-related] personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article [37 of the Commissions initial proposal];~~
- ~~(dc) '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>7</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.~~

- (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~~ and the Administrative Director in the day-to-day activities in the performance~~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 have ~~s~~ been allocated to him/her or which he/she has taken over using the right of evocation according to Article 22a;
- (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.
- (h) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (i) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (j) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (k) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

- (l) ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (m) ‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (n) ‘controller’ means the European Public Prosecutor’s Office or another competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (o) ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (p) ‘recipient’ means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. However, Member States’ public authorities other than competent authorities defined in point 7(a) of Article 3(7)(a) of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>8</sup>, which receive personal data in the framework of a particular inquiry of the European Public Prosecutor’s Office shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing<sup>9</sup>;
- (q) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (r) ‘administrative personal data’ means all personal data processed by the European Public Prosecutor’s Office apart from operational personal data;

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<sup>8</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>9</sup> COM, supported by DE and AT suggests deletion of the second phrase of this provision. ES, FR and LT would like to keep it in.

- (s) ‘operational personal data’ means all personal data processed by the European Public Prosecutor’s Office to meet the purposes laid down in Article 37;
- (t) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (u) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (v) ‘data concerning health’ means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (w) ‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679<sup>10</sup> of the European Parliament and of the Council or pursuant to Article 41 of Directive (EU) 2016/680;
- (x) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

## 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 hereby established as a body of the Union.
2. The European Public Prosecutor’s Office shall have legal personality.

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<sup>10</sup> Regulation (EU) 2016/679 of the European Parliament and the of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, OJ L 119, 4.5.2016, p. 1).

3. The European Public Prosecutor's Office shall cooperate with Eurojust and rely on its support in accordance with Article [~~57 of the Commissions initial proposal~~].

#### *Article 4*

##### **Tasks**

The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, the criminal offences affecting the financial interests of the Union [which are provided for in Directive 2015/xx/EU and determined by this Regulation]<sup>44</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 .

#### *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>12</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). Where a matter is governed by national law and this Regulation, the latter shall prevail.

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<sup>44</sup> ~~IE has suggested that this reference should be to Article 17.~~

<sup>12</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 22.

4. The European Public Prosecutor's Office shall conduct its investigations in an impartial manner and seek all relevant evidence<sup>13</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>14</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, the Administrative Director 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 European Public Prosecutor's Office, any Member State or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States and the Union institutions, bodies, offices or agencies shall respect the independence of the European Public Prosecutor's Office and shall not seek to influence it in the exercise of its tasks.
2. The European Public Prosecutor's Office shall be accountable to the European Parliament, the Council and the European Commission for its general activities, and shall issue annual reports in accordance with Article 6a.

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<sup>13</sup> SI wishes that this and other provisions would clarify the role of investigative judges in cases handled by the EPPO.

<sup>14</sup> The following provision shall be included in the text of the Regulation (e.g. Chapter VIII, Chapter IX or Article 69 of the Commission's initial proposal): *'To the extent that recovery or collection procedures under administrative law are deferred as a result of decisions taken by the European Public Prosecutor's Office or by national prosecution authorities in connection with investigations or prosecutions to protect the financial interests of the European Union, any financial shortfalls that may occur shall not be borne by the national budget of the respective Member State.'*

*Article 6a*

**Reporting**

1. Every year the European Public Prosecutor's Office shall draw up and issue an ~~an~~ public Annual Report in the official languages of the Union institutions on its general activities, and shall make it public. It shall transmit the report to the European Parliament and to national parliaments, as well as to the Council and to the Commission.
2. The European Chief Prosecutor shall appear once a year before the European Parliament and before 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 European Public Prosecutor's Office ~~Office's~~ obligation of discretion and confidentiality as regards individual cases and personal data. The European Chief Prosecutor may be replaced by one of the Deputies for hearings organised by national parliaments.

# CHAPTER III

## STATUS, STRUCTURE AND ORGANISATION OF EPPO

### SECTION 1

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

##### *Article 7*

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

1. The European Public Prosecutor's Office shall be an indivisible Union body operating as one single Office with a decentralised structure.
2. The European Public Prosecutor's Office shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, his/her deputies, ~~and~~ the European Prosecutors and the Administrative Director.
4. The decentralised level shall consist of European Delegated Prosecutors who shall be 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 of the activities of the Office. It shall take decisions on strategic matters, and on general issues arising from individual cases, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the European Public Prosecutor's 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 detailed~~ ~~rules~~ modalities on the exercise by the College of the general oversight of activities and of the 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.
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~~ 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.

#### *Article 9*

#### **The Permanent Chambers<sup>15</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~~. In addition to the chair, t~~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~~.

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<sup>15</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.

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.

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>16</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>17</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) to bring a case to judgment in accordance with Article 30(1), (2) and (3)<sup>18</sup>;
  - b) to dismiss a case in accordance with Article 33(1) (a-f) <sup>19</sup>;
  - c) decide to apply a simplified prosecution procedure and to instruct the European Delegated Prosecutor to act with a view to finally dispose of the case in accordance with Article 34;
  - ~~e) dismiss a case through a transaction in accordance with [Article 34]~~
  - {d) to refer a case to the national authorities in accordance with Article 28a(1) or (2)

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<sup>16</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>17</sup> Article 9(3) and 9 (3a) will be developed further and finalised when other related provisions will be completed.

<sup>18</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>19</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.

- e) to reopen an investigation in accordance with Article 33(2)<sup>20</sup>.
- 3a. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:
- a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 22(1)-(4) where no investigation has been initiated;
  - b) to instruct the European Delegated Prosecutor to evoke a case in accordance with Article 22a(5) where the case has not been evoked ~~in accordance with Article 22a in this Regulation~~;
  - c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 8(2);
  - d) to allocate a case in accordance with Article 22(3);
  - e) to reallocate a case in accordance with Article 22(5) ~~or~~ 23(3);
    - [i) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 23(4).]
4. The competent Permanent Chamber, acting through the European Prosecutor who is supervising an investigation or a prosecution, may in a specific case give instructions in compliance with applicable national law 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 to ensure the coherent functioning of the European Public Prosecutor's Office.
5. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its ~~M~~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>21</sup> on the basis of the draft decision proposed by the handling European Delegated Prosecutor.

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<sup>20</sup> The LU Presidency considered ~~s~~ that points d) and e) need to be inserted in order to establish the coherence with the redrafted Articles 28a and 33.

<sup>21</sup> 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.

All case material shall ~~upon~~ request be accessible to the competent Permanent Chamber ~~with a view to the preparation of the decisions.~~

- 5a. The Permanent Chambers may decide to delegate ~~their~~ decision-making power under paragraph 3 point a) or ~~under point b)~~, and in the latter case only in respect of the rules set out in points a) to e) of Article 33(1) point (a) to (e) 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 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~~ ing a ~~the~~ consistent application within the Office<sup>22</sup>.

The Permanent 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 Permanent Chamber to review its decision if ~~he/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 Permanent 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 ~~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 ~~circumstances~~ referred to in Article 30(2).

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

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

- 5b. The ~~i~~Internal ~~r~~Rules of ~~P~~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.

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<sup>22</sup> BE and LT have a reservation to this paragraph.

6. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 11(1) shall participate in the deliberations of the Permanent Chamber. The European Prosecutor shall have a right to vote, except for the Permanent Chamber's decisions on delegation or withdrawal of delegation in accordance with Article 9(5a), on allocation and reallocation under Articles 22(3), (4) and (5) and Article 22a(5) and on bringing a case to judgment (Art. 30(2)), where more than one Member States has jurisdiction for the case, as well in situations described in Article 26(7)<sup>23</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 ~~I~~internal ~~R~~ules of ~~P~~rocedure, 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 ~~I~~internal ~~R~~ules of ~~p~~rocedure.
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.
3. The European Chief Prosecutor shall represent the European Public Prosecutor's Office vis à vis ~~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.

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<sup>23</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.

Article 11

**The European Prosecutors**<sup>24</sup>

1. The European Prosecutors shall, on behalf of the Permanent Chamber<sup>25</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>26</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 ~~i~~Internal ~~r~~Rules of ~~P~~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 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 function-~~task~~ of a European Prosecutor, except the possibility to conduct an investigation ~~provided for as~~ ~~in~~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 a 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 to ensure the a-coherent functioning of the European Public Prosecutor's Office.

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<sup>24</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>25</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>26</sup> COM and BG oppose the addition of the word '*in their Member State of origin*'. COM proposes to allow, under certain circumstances, a European Prosecutor to request that the supervision of individual cases in his Member State of origin is assigned to a European Prosecutor of another Member State of origin.

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. ~~They 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 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.

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>27</sup> or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant ~~authorities of the Member States's authorities~~, approve the number of the European Delegated Prosecutors, as well as the functional and territorial division of competences between the European Delegated Prosecutors within each Member State.

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<sup>27</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.

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 functionstasks as a European Delegated Prosecutors because of the exercise of such functions as national prosecutors~~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 under~~deriving from~~ this Regulation. The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State or that she/he shall conduct the investigations himself/herself in accordance with Article 23(3) and (4).

## SECTION 2

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

#### *Article 13*<sup>28</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 Member States~~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>28</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 to the Council. The panel shall comprise 12 persons chosen from among former members of the Court of Justice of the European Union 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 . The Council shall establish the panel's operating rules and adopt a decision appointing its members on a proposal from the Commission.
- 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 to ~~3~~ above.

*Article 13a*

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

1. The College <sup>29</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>29</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 of this Article. 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 of a European Prosecutor from among candidates ~~which~~:
  - a) who 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 Member States ~~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, shall select and appoint the European Prosecutors for a non-renewable term of six years. 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 for the appointment of European Prosecutors for and during their first mandate period.
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, or 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~~.

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 that time period if necessary. The mechanisms and detailed rulesmodalities on temporary substitution shall be determined and governed by the ~~internal r~~Rules of ~~P~~procedure.

### *Article 15*

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

1. The College shall, upon aproposal by the European Chief Prosecutor, appoint the European Delegated Prosecutors nominated by the Member States<sup>30</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>31</sup>, which shall be renewable.

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<sup>30</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>31</sup> The appropriate maximum term of office will need to be decided in the context of negotiations on their formal status under EU law.

2. The European Delegated Prosecutors shall, from the time of ~~their~~<sup>his or her</sup> appointment as a European Delegated Prosecutors 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.
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<sup>32</sup>.
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>33</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>34</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, or 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, nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

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<sup>32</sup> PT considers that the Court of Justice should be competent also as regards dismissal of European Delegated Prosecutors.

<sup>33</sup> COM would replace '*inform*' with '*consult*'.

<sup>34</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.

*Article 15a*

**Status of the Administrative Director**

1. The Administrative Director shall be engaged as a temporary agent of the European Public Prosecutor's Office under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.<sup>35</sup>
2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the European Chief Prosecutor, following an open and transparent selection procedure in accordance with the internal rules of procedure of the European Public Prosecutor's Office. For the purpose of concluding the contract of the Administrative Director, the European Public Prosecutor's Office shall be represented by the European Chief Prosecutor.
3. The term of office of the Administrative Director shall be four years. By the end of this period, the College shall undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.
4. The College, acting on a proposal from the European Chief Prosecutor which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for no more than four years.
5. An Administrative Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Administrative Director shall be accountable to the European Chief Prosecutor and the College.
7. Upon a decision of the College on the basis of a two-thirds majority of its members and without prejudice to the applicable rules pertaining to the termination of contract within the Staff Regulations and the Conditions of Employment of Other Servants, the Administrative Director may be removed from the office.

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<sup>35</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385)

*Article 15b*

**Responsibilities of the Administrative Director**

1. For administrative and budgetary purposes, the European Public Prosecutor's Office shall be managed by its Administrative Director.
2. Without prejudice to the powers of the College or the European Chief Prosecutor, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or ~~from~~ any other body.
3. The Administrative Director shall be the legal representative of the European Public Prosecutor's Office for administrative and budgetary purposes. The Administrative Director shall implement the budget of the European Public Prosecutor's Office.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to the European Public Prosecutor's Office , in particular:
  - (a) the day-to-day administration of the European Public Prosecutor's Office and staff management;
  - (b) implementing the decisions adopted by the European Chief Prosecutor or the College;
  - (c) preparing a proposal for the annual and multi-annual programming document and submitting it to the European Chief Prosecutor;
  - (d) implementing the annual and multi-annual programming document and reporting to the College on its implementation;
  - (e) preparing the administrative and budgetary parts of the annual report on the European Public Prosecutor's Office's activities;
  - (f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting to them and to the College [twice a year];

- (g) preparing an internal anti-fraud strategy for the European Public Prosecutor's Office and presenting it to the College for approval;
- (h) preparing a proposal for the draft financial rules applicable to the European Public Prosecutor's Office and submitting it to the European Chief Prosecutor;
- (i) preparing a proposal for the European Public Prosecutor's Office's draft statement of estimates of revenue and expenditure and submitting it to the European Chief Prosecutor;
- (j) providing necessary administrative support to facilitate the operational work of the European Public Prosecutor's Office;
- (k) providing support to the European Chief Prosecutor and the Deputies in the carrying out of their duties.

*Article 15c*

**Provisional administrative arrangements of the European Public Prosecutor's Office**

1. Based on provisional budgetary appropriations allocated in its own budget, the Commission shall be responsible for the establishment and initial administrative operation of the European Public Prosecutor's Office until the latter has the capacity to implement its own budget. For that purpose the Commission may:
  - (a) designate, after consulting with the Council, a Commission official to act as interim Administrative Director and exercise the duties assigned to the Administrative Director, including the powers conferred by the Staff Regulations and the Conditions of Employment of Other Servants of the European Union on the appointing authority regarding administrative staff of the European Public Prosecutor's Office, in respect of any staff positions which need to be filled before the Administrative Director takes up his or her duties in accordance with Article 15a~~Y~~;
  - (b) offer assistance to the European Public Prosecutor's Office, in particular by seconding a limited number of Commission officials necessary to carry out the administrative activities of the Office under the responsibility of the interim Administrative Director.

2. The interim Administrative Director may authorise all payments covered by appropriations entered in the European Public Prosecutor's Office's budget and may conclude contracts, including staff contracts.
3. Once the College takes up its duties in accordance with Article 8(1), the interim Administrative Director shall exercise his or her duties in accordance with Article ~~Y~~15a(6). The interim Administrative Director shall cease to exercise that function when the Administrative Director takes up his/her duties following his/her appointment by the College in accordance with Article 15a.
4. Until the College takes up its duties in accordance with Article 8(1), the Commission shall exercise its functions set out in this Article in consultation with a group of experts<sup>36</sup> composed of representatives of the Member States participating in the establishment of the EPPO.

### SECTION 3

#### INTERNAL RULES OF PROCEDURE

##### *Article 16*<sup>37</sup>

##### **Internal rules of Pprocedure of the European Public Prosecutor's Office**

1. The Office's ~~internal r~~Rules of Pprocedure shall govern the organisation of ~~its~~the work ~~of the Office~~.
2. A proposal for the ~~internal r~~Rules of Pprocedure of the European Public Prosecutor's Office shall be prepared by the European Chief Prosecutor and adopted by the [College]<sup>38</sup> by a two thirds majority without delay once the Office has been set up.
3. ~~MA~~ modifications ~~into~~ the internal rules of procedure may be proposed by any European Prosecutor and shall be adopted by the [College] by a two-thirds majority.

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<sup>36</sup> The composition and character of this group remain to be discussed.

<sup>37</sup> CZ expressed some doubts regarding the binding nature of the Rules of Procedure in relation with national legislation.

<sup>38</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.~~

**CHAPTER IIIA**  
**COMPETENCE AND EXERCISE OF THE COMPETENCE OF THE**  
**EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

**SECTION 1**  
**COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

*Article 17*

**Material competence of the European Public Prosecutor's Office**

1. The European Public Prosecutor's Office shall be competent in respect of the criminal offences affecting the financial interests of the Union which are [provided for in Directive 2015/xx/EU, as implemented by national law]<sup>39</sup>, irrespective of whether the same criminal conduct could be classified, under national law, as another type of offence.
  - 1a. The European Public Prosecutor's Office shall also be competent for offences regarding participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit ~~the any of the~~ offences referred to in paragraph 1<sup>40</sup>.
2. The European Public Prosecutor's Office shall also be competent for any other criminal offence which is inextricably linked to a criminal conduct falling within the scope of paragraph 1 of this Article. The competence with regard to such criminal offences may only be exercised in conformity with Article 20(3).
- ~~3. — [Within ... Member States shall notify the European Public Prosecutor's Office of an extensive list of the national substantive criminal law provisions applicable to the offences defined in Directive 2015/xx/EU.]<sup>41</sup>~~

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<sup>39</sup> The part between brackets needs to be reviewed once the negotiations in the PIF Directive have reached an agreement.

<sup>40</sup> DE has suggested to add some wording to this paragraph.

<sup>41</sup> This paragraph should be further developed and moved to the final provisions of this regulation.

*Article 18*

**Territorial and personal competence of the European Public Prosecutor's Office**

The European Public Prosecutor's Office shall be competent for the offences referred to in Article 17 where such offences: <sup>42</sup>

- a) were committed in whole or in part within the territory of one or several Member States; or
- b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or
- c) were committed outside of the territories referred to in point a) by a person who was subject to the Staff Regulations of Officials or to the Conditions of Employment of Other Servants of the European Communities, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

**SECTION 2**

**EXERCISE OF THE COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE**

*Article 19*

**Reporting, registration and verification of information**

1. The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent in accordance with applicable national law shall report without undue delay to the European Public Prosecutor's Office any criminal conduct in respect of which it could exercise its competence in accordance with Articles 17, Article 20(2) and Article 20(3).
- 1a. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the European Public Prosecutor's Office could exercise its competence in accordance with Articles 17, Article 20(2) and Article 20(3), or where, at any time after the initiation of an investigation, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence ~~in respect of which the European Public Prosecutor's Office could exercise its~~

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<sup>42</sup> This jurisdiction provision should in principle be identical with the corresponding jurisdiction provision in the PIF-Directive.

~~competence over the criminal conduct in accordance with Articles 17, 20(2) and 20(3)~~, this authority shall without undue delay inform the European Public Prosecutor's Office so that the latter can decide whether to exercise its right of evocation in accordance with Article 22a.

- 1b. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects and any other involved persons.
- 1c. The European Public Prosecutor's Office shall also be informed in accordance with paragraphs 1 and 1a of this Article in cases where an assessment of whether the criteria laid down in Article 20(2) and 20(3) are met is not possible, or where an assessment of the instrumental nature of the inextricably linked offence referred to in Article 20(3)(aa) has to be made.
2. Information provided to the European Public Prosecutor's Office shall be registered and verified in accordance with its internal rules of procedure. The verification shall aim to assess whether, on the basis of the information provided in accordance with paragraph 1 and 1a, there are grounds to initiate an investigation or to exercise the right of evocation.
3. Where upon verification the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation in accordance with Article 22, or to exercise its right of evocation in accordance with Article 22a, the reasons shall be noted in the case management system.

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

4. Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the European Public Prosecutor's Office may have been committed, it shall without undue delay inform the competent national authorities.

5. The European Public Prosecutor's Office may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States. The requested information may also concern infringements which caused damage to the Union's financial interests, other than those within the competence of the European Public Prosecutor's Office in accordance with Article 20(2), where it is necessary to establish links with a criminal conduct on which it has exercised its competence. Such information may also be requested in order to enable the College in accordance with Article 8(2) to issue general guidelines on the interpretation of the obligation to inform the European Public Prosecutor's Office of cases falling within the scope of Article 20(2).

#### *Article 20*

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

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

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

3. The European Public Prosecutor's Office shall refrain from exercising its competence in respect of any offence falling within the scope of Article 17 and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter in accordance with Article 28a if :
  - a) the maximum sanction provided for by national law for an offence falling within the scope of Article 17(1) is less severe than the maximum sanction for an inextricably linked offence as referred to in Article 17(2); or
  - aa) the maximum sanction provided for by national law for an offence falling within the scope of Article 17(1) is equal to the maximum sanction for an inextricably linked offence as referred to in Article 17(2) unless the latter offence has been instrumental to commit the offence falling within the scope of Article 17(1) or;
  - b) there is a reason to assume that the damage caused or likely to be caused<sub>2</sub> to the Union's financial interests by an offence as referred to in Article 17 does not exceed the damage caused<sub>2</sub> or likely to be caused to another victim.
4. The European Public Prosecutor's Office shall inform the competent national authorities without undue delay of any decision to exercise or to refrain from exercising its competence.
5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Articles 17(1a), 17(2), 20(2) or 20(3) the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is ~~to~~ ~~shall~~ be competent for the investigation of the case. Member States shall define the national authority which will decide on the attribution of competence.

*Article 21*

[...] <sup>43</sup>

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<sup>43</sup> ~~The substantial content of the former Article 21, which was included in doc 9372/15 but later deleted, can now be found in Article 22.~~

## CHAPTER IV

### RULES OF PROCEDURE ON INVESTIGATIONS, INVESTIGATION MEASURES, PROSECUTION AND ALTERNATIVES TO PROSECUTION

#### SECTION 1

#### RULES ON INVESTIGATIONS

##### *Article 22*

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

1. Where, in accordance with the applicable national law, there are reasonable grounds to ~~form~~ ~~the view~~ believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence~~in the case~~ shall, without prejudice to the rules set out in Article 20(2) and (3), initiate an investigation and note this in the case management system.
2. Where upon verification in accordance with Article 19(2), the European Public Prosecutor's Office decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 19(1) or 19(1a).
3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in~~of~~ paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.
4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the Office have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the ~~above mentioned~~ principle set out in the previous sentences is duly justified, taking into account the following criteria, in order of priority:
  - a) the place where the suspect or accused person has his/her habitual residence;
  - b) the nationality of the suspect or accused person;
  - c) the place where the main financial damage has occurred.

5. Until a decision to prosecute in accordance with Article 30 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

(a) reallocate a case to a European Delegated Prosecutor in another Member State;

(b) merge or split cases and, for ~~in~~ each case choose the European Delegated Prosecutor handling ~~it~~the case;

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

6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case it shall take due account of the current state of the investigations.

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

#### *Article 22a*

#### **Right of evocation**

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

- 1a. During theseis time frames<sub>s</sub> the national authorities shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation.  
The national authorities shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
2. If the European Public Prosecutor's Office becomes aware, through means other than those information referred to in Article 19(1a), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 19(1a), the European Public Prosecutor's Office shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time fram<sub>s</sub>e set out in paragraph 1 of this Article.
3. The European Public Prosecutor's Office shall, where appropriate, consult the competent authorities of the Member State concerned before deciding on whether to exercise its right of evocation.
4. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the European Public Prosecutor's Office and refrain from carrying out further acts of investigation in respect of the same offence.
5. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence falling withi~~n~~nder the scope of Articles 17 and 18. Where a European Delegated Prosecutor, who has received the information in accordance with Article 19(1a), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 9(3a).

6. Where the European Public Prosecutor's Office has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. The competent national authorities shall, at any time in the course of the proceedings, inform the Office of any new facts which could give the Office reasons to reconsider its previous decision.

The European Public Prosecutor's Office may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been ~~submitted to and~~ received by a court. The decision shall be taken within the timeframe set out in paragraph 1 ~~of this Article~~.

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

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

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

### Conducting the investigation

1. The European Delegated Prosecutor handling ~~at~~ the case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. These authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report through the case management system to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the ~~i~~Internal ~~r~~Rules of ~~P~~Procedure.
2. At any time during the investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures in accordance with national law necessary to ensure effective investigations even where not specifically acting under an instruction given by the European Delegated Prosecutor handling the case. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures taken.
3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate ~~at~~ the case to another European Delegated Prosecutor in the same Member State when the European Delegated Prosecutor handling the case
  - (a) cannot perform the investigation or prosecution;<sup>5</sup> or
  - (b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.
4. In exceptional cases, and after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation himself/herself, either by undertaking the investigation measures and other measures on his/her own or by instructing the competent authorities in his/her Member State, if this appears indispensable in the interest of the efficiency of the investigation or prosecution by reason~~on the grounds~~ of one or more of the following criteria:
  - (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;

- (b) when the investigation concerns officials or other servants of the European Union or members of the Institutions;
- (c) in case of failure of the reallocation mechanism ~~provided for~~foreseen in paragraph 3.

In such exceptional ~~circumstances~~ases Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she shall have all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

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

~~5. Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union legislation. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.~~

#### Article 24

#### **Lifting privileges or immunities**

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

**SECTION 2**  
**RULES ON INVESTIGATION MEASURES AND OTHER MEASURES**

*Article 25*

**Investigation measures and other measures**

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
  - (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
  - (b) obtain the production of any relevant object or document either in original or in some other specified form;
  - ~~(cbb)~~ obtain the production of stored computer data, encrypted or decrypted, either in original or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to Article 15(1), second sentence, of ~~the~~ Directive 2002/58/EC of the European Parliament and of the Council<sup>44</sup> ~~of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;~~
  - ~~(de)~~ freeze instrumentalities or proceeds of crime, including ~~freezing of assets~~, which are expected to be subject to confiscation by the trial Court and where there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation.
  - ~~(ed)~~ intercept electronic communications to and from the suspected or accused person, on any electronic communication connection that the suspected or accused person is using<sup>45</sup>;

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<sup>44</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

<sup>45</sup> MT wishes to see this point deleted.

- 1a. Without prejudice to Article 24, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the latter are explicitly foreseen for specific categories of persons or professionals legally bound by an obligation of confidentiality.
- 1b. The investigation measures set out in paragraph 1(~~bb~~) and (~~ed~~) of this Article may be subject to further conditions provided for in~~foreseen~~ by the applicable national law. In particular, Member States may limit the application of paragraph 1(~~ed~~) of this Article to specific serious offences, as listed in Annex X . This Annex shall be updated in accordance with the procedure provided in Article Z.
2. The European Delegated Prosecutors shall, in addition to the measures referred to in paragraph 1, be entitled to request or to order any other measures in their Member State which are available to prosecutors under national law in similar national cases.
3. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 2 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and modalities for taking the measures shall be governed by the applicable national law.

#### *Article 26*

#### **Cross-border investigations**<sup>46</sup>

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where that measure needs to be carried out.

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<sup>46</sup> AT has emitted a declaration in relation to this provision (DS 1547/15).

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

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

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

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.
5. Where the assisting European Delegated Prosecutor considers that:
  - (a) the assignment is incomplete or contains a manifest relevant error;
  - (b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
  - (c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
  - (d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his or her Member State;

he or she shall inform his supervising European Prosecutor and consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.

- 5a. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.
6. If the European Delegated Prosecutors cannot resolve the matter within seven<sup>7</sup> working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
7. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide, in accordance with applicable national law as well as this Regulation, without undue delay whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

*Article 27*

**Enforcement of assigned measures**

The assigned measures shall be carried out in accordance with this Regulation and the law of the Member State of the assisting European Delegated Prosecutor. Formalities and procedures expressly indicated by the handling European Delegated Prosecutor shall be complied with unless such formalities and procedures are contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor.

*Article 28*

**Pre-trial arrest and cross-border surrender**

1. The European Delegated Prosecutor handling the case may order or request the arrest or pre-trial detention of the suspected or accused person in accordance with the national law applicable in similar domestic cases.

2. Where ~~it is necessary to~~ the arrest and surrender of a person who is not present in the Member State in which the European Delegated Prosecutor handling the case is located ~~is necessary~~, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant<sup>47</sup> in accordance with Council Framework Decision 2002/584/JHA<sup>48</sup> ~~on the European Arrest Warrant and the surrender procedures between Member States.~~

**SECTION 3**<sup>49</sup>  
**RULES ON PROSECUTION**

*Article 28a*

**Referrals and transfers of proceedings to the national authorities**

1. Where an investigation conducted by the European Public Prosecutor's Office reveals that the facts subject to investigation do not constitute a criminal offence for which it ~~is~~ has a competence in accordance with Articles 17 and 18, the competent Permanent Chamber shall decide to refer the case without undue delay to the competent national authorities.
2. Where an investigation conducted by the European Public Prosecutor's Office reveals that the specific conditions for the exercise of its competence set out in Article 20(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without undue delay and before initiating prosecution ~~at~~ before national courts.
- 2a. Where, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Article 8(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities.

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<sup>47</sup> ~~NL has suggested that it should be indicated in a recital that the EPPO will only be entitled to issue or request Arrest Warrants within its area of competence.~~

<sup>48</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

<sup>49</sup> PT and SI have emitted reservations on several provisions in sections 3 and 4, with reference to constitutional concerns.

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

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

- 2b. The Permanent Chamber shall communicate any decisions to refer a case to national authorities on the basis of paragraph 2a to the European Chief Prosecutor. On reception of this information, the European Chief Prosecutor may, within three days, request the Permanent Chamber to review its decision if he/she considers that the interest to ensure the coherence of the referral policy of the Office so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of his/her Deputies shall exercise the right to request the said review.
- 2c. Where the competent national authorities do not accept to take over the case in accordance with paragraph 2 and 2a within a timeframe of maximum 30 days, the European Public Prosecutor's Office shall remain competent to prosecute or dismiss the case, ~~in accordance with~~ in accordance with the rules laid down in this Regulation.
3. Where the European Public Prosecutor's Office considers a dismissal in accordance with Article 33(3), and if the national authority so requires, the Permanent Chamber shall refer the case without delay to that authority ~~the latter~~.
4. If, following a referral in accordance with paragraphs (1), (2) or (2a) of this Article and Article 20(3), the national authority decides to open an investigation, the European Public Prosecutor's Office shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.
5. If a file is transferred in accordance with paragraph (1), (2) or (2a) of this Article and Article 20(3), the European Public Prosecutor's Office shall inform the relevant Union institutions, bodies and agencies, as well as, where appropriate ~~under~~ in accordance with national law, suspects or accused persons and the crime victims of the transfer, thereof. ~~The cases that are dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery or other administrative follow-up.~~

## *Article 29*

### **Termination of the investigation**

1. When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national cCourt or to consider a referral of the case, ~~a dismissal or a simplified prosecution procedure transaction~~ in accordance with Article 28a, 33 or [34]. The supervising European Prosecutor shall forward those documents to the competent Permanent Chamber accompanied, if he/she considers it necessary, by his/her own assessment. When the Permanent Chamber, in accordance with Article 9(3), takes the decision as proposed by the European Delegated Prosecutor, he/she shall pursue the matter accordingly.
2. If the Permanent Chamber, based on the reports received, considers that it will not ~~to~~ take the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake its own review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.
3. Where applicable, the report of the European Delegated Prosecutor shall also provide sufficient reasoning for bringing the case to judgment either at a cCourt of the Member State where he/she is located, or, in accordance with Article 22(4) at a Ccourt of a different Member State which has jurisdiction over the case.

## *Article 30*

### **Prosecution before national Courts**

1. When the competent Permanent Chamber takes a decision to prosecute following the procedures set out in Article 29, the European Delegated Prosecutor shall bring the case to judgment at a competent Ccourt of his/her Member State.

2. Where more than one Member State has jurisdiction over the case, the Permanent Chamber shall in principle decide to bring the case to prosecution in the Member State of the European Delegated Prosecutor handling the case. The Permanent Chamber may, taking into account the report provided in accordance with Article 29(1), decide to bring the case to prosecution in a different Member State, if there are sufficiently justified grounds to do so, taking into account the criteria set out in Article 22(4) and 22(5), and instruct a European Delegated Prosecutor of that Member State accordingly.
3. Before deciding to bring a case to judgment, the competent Permanent Chamber may, on the proposal of the European Delegated Prosecutor handling the case, decide to join several cases, where investigations have been conducted by different European Delegated Prosecutors against the same person(s) with a view to prosecution of these cases at the cCourt of one Member State which, in accordance with its law, has jurisdiction for each of these cases.
4. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national cCourt within that Member State shall be determined on the basis of national law.
5. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies and agencies of the decision to prosecute.
6. Where, following a judgment of the Court, the prosecution has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Permanent Chamber and await its instructions. Should this be impossible within the deadline set by national law, the European Delegated Prosecutor shall be entitled to lodge the appeal without prior instructions of the Permanent Chamber, and shall subsequently submit the report to the Permanent Chamber without delay. The Permanent Chamber shall then instruct the European Delegated Prosecutor to either maintain or withdraw the appeal. The same procedure set out in this paragraph shall apply also when, in the course of the Court proceedings and in accordance with applicable national law, the European Delegated Prosecutor handling the case would take an action position which would lead to the dismissal of the case.

*Article 31*

**Evidence**

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

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

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

*Article 32*

**Disposition of confiscated assets**

Where, in accordance with the requirements and procedures laid down by national law including the national law ~~transposing~~implementing Directive 2014/42/EU of the European Parliament ~~an~~ and of the Council<sup>50</sup> of 3 April 2014 ~~on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union~~, the competent national cCourt has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the European Public Prosecutor's Office, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for ~~their~~ damage that they have incurred.

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<sup>50</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

**SECTION 4**  
**RULES ON ALTERNATIVES TO PROSECUTION**

*Article 33*

**Dismissal of the case<sup>51</sup>**

1. The Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case in accordance with Article 29(1), decide to dismiss the case against a person where prosecution has become impossible, pursuant to the law of the Member State of the European Delegated Prosecutor handling the case, on account of any of the following grounds<sup>52</sup>:
  - a) death of the suspect or accused person or winding up of a suspect or accused legal person;
  - aa) insanity of the suspect or accused person;
  - b) amnesty granted to the suspect or accused person;
  - c) immunity granted to the suspect or accused person, unless it has been lifted;
  - d) expiry of the national statutory limitation to prosecute;
  - e) the case has already been finally disposed of in relation to the acts;
  - f) lack of relevant evidence<sup>53</sup>.
2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which were not known to the European Public Prosecutor's Office at the time of the decision, and which become known ~~thereafter~~wards. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.
3. Where the European Public Prosecutor's Office is competent in accordance with Article 17(2), it shall dismiss a case only after consultation with the national authorities of the Member State referred to in Article 20(5). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 28a (3) to (5).

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<sup>51</sup> PT considers that this provision does not respect the principle of subsidiarity.

<sup>52</sup> CZ has emitted a general reservation on the list of grounds.

<sup>53</sup> MT has emitted a reservation on this provision.

4. Where a case has been dismissed, the European Public Prosecutor's Office shall officially notify the competent national authorities and shall inform the relevant Union institutions, bodies and agencies, as well as, where appropriate ~~under in accordance with~~ national law, suspects or accused persons and the crime victims, ~~thereof~~ such dismissal<sup>54</sup>. The dismissed cases may also be referred to OLAF or to competent national administrative or judicial authorities for recovery or other administrative follow-up.

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<sup>54</sup> This provision is without prejudice to further information obligations according to national law.

**SECTION 54**  
**RULES ON SIMPLIFIED PROCEDURES**

[...]

*Article 34*  
**Simplified prosecution procedures<sup>55</sup>**

1. If the applicable national law provides for a simplified prosecution procedure aiming at the final disposal of a case on the basis of terms agreed with the suspect, the handling European Delegated Prosecutor may ~~propose~~, in accordance with Articles 9(3) and 29(1), propose to apply this procedure in accordance with the conditions provided for in national law to the competent Permanent Chamber.
  
2. The Permanent Chamber shall decide on the proposal of the ~~handling~~ European Delegated Prosecutor handling the case taking into account the following grounds:
  - (a) the seriousness of the offence, based on in particular the damage caused to the financial interests of the Union,
  - (b) the willingness of the suspected offender to repair the damage caused by the illegal conduct,
  - (c) the use of the procedure would be in accordance with the general objectives and basic principles of the European Public Prosecutor's Office as set out in this Regulation,

The College shall adopt Guidelines on the application of these grounds.

3. If the Permanent Chamber agrees with the proposal, the handling European Delegated Prosecutor shall apply the simplified prosecution procedure in accordance with the conditions provided for in national law and register it in the case management system. When the simplified prosecution procedure has been finalised following the fulfillment of the terms agreed with the suspect, the Permanent Chamber will instruct the European Delegated Prosecutor to act with a view to finally dispose of the case.

[...]

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<sup>55</sup> The Commission and PT have reservations on this provision.

# CHAPTER V

## PROCEDURAL SAFEGUARDS

*Article 35<sup>56</sup>*

### Scope of the rights of the suspects and accused persons

1. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defence.
2. Any suspect and accused person in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, such as:
  - (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council<sup>57</sup>~~of 20 October 2010 on the right to translation and interpretation in criminal proceedings,~~
  - (b)<sup>58</sup> the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council<sup>59</sup>~~of 22 May 2012 on the right to information in criminal proceedings,~~

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<sup>56</sup> The Commission has emitted a general reservation on this provision.

<sup>57</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to translation and interpretation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>58</sup> ~~AT and DE raised a general question on the right to access to information and access to the case material by the suspects and accused persons. The Presidency considers that this matter should be addressed in the section concerning processing of information (Articles 20 to 24 of the Commission's initial proposal).~~

<sup>59</sup> Directive 2012/13 of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council<sup>60</sup> ~~of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,~~
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council<sup>61</sup> ~~to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,~~
- (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council<sup>62</sup> ~~on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant.~~
3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

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<sup>60</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

<sup>61</sup> Directive 2016/./EU of the European Parliament and of the Council of ... to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings (OJ ...)

<sup>62</sup> Directive 2016/./EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant (OJ ...)

**Judicial review<sup>63</sup> before the Court of Justice of the European Union<sup>64</sup>**

1. Procedural acts<sup>65</sup> of the European Public Prosecutor's Office which are intended to produce legal effects vis-à-vis third parties or a failures of the European Public Prosecutor's Office to adopt a-procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation<sup>66</sup>, shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law.

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<sup>63</sup> IT has entered a general reservation on this Article, as explained mainly in WK 459/2016. DE and IT have presented an alternative wording of this Article, as presented in WK 470/2016. A few delegations have raised questions regarding the use of the term 'procedural acts' in this document.

<sup>64</sup> This version of Article 26 was tentatively presented by the NL Presidency in document 10818/16 and has still not been the subject of a discussion at expert level.

<sup>65</sup> Recital: This provision seeks to ensure that the i-procedural acts (including investigation measures) of the European Public Prosecutor's Office adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons such as public bodies whose rights may be adversely affected by such acts) are subject to judicial review by national courts. Where national law provides for judicial review concerning procedural acts which do not produce legal effects vis-à-vis third parties, this Regulation should not be interpreted as replacing or amending such legal provisions. This provision does not affect the powers of the national trial court.

<sup>66</sup> Recital: Judicial action for failure of the European Public Prosecutor's Office to act is contingent on the Office being under a legal obligation to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties.

2. The Court of Justice of the European Union shall have jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings concerning:

- a) the validity of the acts of the European Public Prosecutor's Office referred to in paragraph 1, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law<sup>67</sup>;
- b) the interpretation or the validity of provisions of Union law, including this Regulation, which are relevant for the judicial review by the competent national courts of the acts of the European Public Prosecutor's Office referred to in paragraph 1;
- c) [the interpretation of Articles 17(1a), 17(2), 20(2) or 20(3) in relation to any conflict of competence between the European Public Prosecutor's Office and the competent national authorities<sup>68</sup>.]

3. By way of exception to paragraph 1, only the following acts of the European Public Prosecutor's Office shall be subject to review before the Court of the Justice in accordance with Article 263 TFEU, where such proceedings are instituted by any natural or legal person referred to in the fourth paragraph of Article 263 TFEU<sup>69</sup>:

- a) decisions of the European Public Prosecutor's Office to dismiss a case, in so far as they are contested directly on the basis of Union law (~~Article 33~~);

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<sup>67</sup> Recital: The legality of acts of the European Public Prosecutor's Office may be contested before national courts in accordance with paragraph 1. When national courts review the legality of such acts, they may do so in respect of Union law, including this Regulation, and of national law which applies to the extent that a matter is not dealt with by this Regulation. National courts may review compliance with both and should refer to the Court of Justice preliminary questions when they entertain doubts about the validity of those acts vis-à-vis Union law. However, they may not refer questions on the validity of the procedural acts of the European Public Prosecutor's Office with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them; this is however without prejudice to preliminary rulings concerning the interpretation or validity of provisions of Union law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of such acts with regard to the principle of proportionality enshrined in national law.

<sup>68</sup> N.B. This presupposes that, pursuant to Article 20(5), a national court or tribunal within the meaning of Article 267 TFEU should be designated at national level to decide on conflicts of competence between the EPPO and national prosecution services. In order to achieve this, Article 20(5) and recital 64, as presented in document 15100/15, would need to be modified to make that clear. FI and SE want point c) deleted.

<sup>69</sup> ~~DE, FR, IT, LU, HU, PL, SI~~ have suggested that the list of measures below should be extended also to other decisions.

- b) decisions of the European Public Prosecutor's Office to limit the data subjects' rights of access (Article 37(i));
- c) decisions of the European Public Prosecutor's Office concerning the right of public access to documents (Article 65)<sup>70</sup>.

This provision is without prejudice to the possibility for a Member State, the European Parliament, the Council or the Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU.

- 4. The Court of Justice of the European Union shall have jurisdiction in accordance with Article 268 of the Treaty in any dispute relating to compensation for damage caused by the European Public Prosecutor's Office (Article 69).
- 5. The Court of Justice of the European Union shall have jurisdiction in accordance with Article 272 of the Treaty in any dispute concerning arbitration clauses contained in contracts concluded by the European Public Prosecutor's Office (Article 69).
- 6. The Court of Justice of the European Union shall have jurisdiction in accordance with Article 270 of the Treaty in any dispute concerning staff-related matters (Article 54) and the dismissal of the European Chief Prosecutor (Article 13) or European Prosecutors (Article 14)<sup>71</sup>.

~~1. — Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [...] shall be subject to review before the Court of Justice of the European Union in accordance with Article 263 of the Treaty.~~

~~2. — Without prejudice to Article 267 of the Treaty, the courts of Member States shall be competent to review other procedural decisions taken by the European Public Prosecutor's Office in the performance of its functions, in accordance with the requirements and procedures laid down by national law.~~

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<sup>70</sup> AT and FL, LV and SE would prefer to see point c) in this provision deleted.

<sup>71</sup> PT has requested that dismissals of European Delegated Prosecutors should be added to this provision, which would require a modification also of Article 15 in the draft Regulation.

**CHAPTER Va**  
**PROCESSING OF INFORMATION**

**SECTION 2**  
**~~PROCESSING OF INFORMATION~~**

*Article 36a*

**Access to information by the European Public Prosecutor's Office**

European Delegated Prosecutors shall, under the same conditions as those that apply to national prosecutors<sup>72</sup> under national law in similar cases, be able to obtain any relevant information stored in national criminal investigation and law enforcement databases, as well as other relevant registers of public authorities.

The European Public Prosecutor's Office shall also be able to obtain any relevant information falling within its competence stored in databases and registers of the institutions, bodies, offices and agencies of the Union.

*Article 36b*

**Case management system**

1. The European Public Prosecutor's Office shall establish a case management system, which shall be held and managed in accordance with the rules established in this Regulation and in the Internal Rules of Procedure.

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<sup>72</sup> It has been suggested that the term judicial authorities should be used instead of prosecutors here. Reference is in this context made to footnote 8 in doc 15100/15, according to which the role of investigative judges in cases handled by the EPPO will be clarified.

2. The purpose of the case management system shall be to:
  - (a) support the management of investigations and prosecutions conducted by the European Public Prosecutor's Office, in particular by managing internal information workflows and by supporting investigative work in cross-border cases;
  - (b) ensure secure access to information on investigations and prosecutions at the central office and by the European Delegated Prosecutors;
  - (c) allow for the cross-referencing of information and the extraction of data for operational analysis and statistical purposes;
  - (d) facilitate the monitoring of lawfulness and compliance with the provisions of this Regulation concerning the processing of personal data.
3. The case management system may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA<sup>73</sup>.
4. The case management system shall contain:
  - (a) a register of information obtained by the European Public Prosecutor's Office in accordance with Article 19, including on any decisions in relation to that information,
  - (b) an index of all case files,
  - (c) all information from the case files stored electronically in the case management system in accordance with Article 36c (3).

The index may not contain any personal data other than identification data needed to identify cases or establish cross-links between different case files.

5. For the processing of ~~case-related~~ operational personal data, the European Public Prosecutor's Office may only establish automated data files other than case files in accordance with this Regulation and the Internal Rules of Procedure. Details on such other automated data files shall be notified to the European Data Protection Supervisor.

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<sup>73</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p.130).

*Article 36c*

**Case files of the European Public Prosecutor's Office**

1. Where the European Public Prosecutor's Office decides to open an investigation or exercise its right of evocation in accordance with this Regulation, the ~~handling~~ European Delegated Prosecutor handling the case shall open a case file.

The case file shall contain all the information available to the European Delegated Prosecutor, including evidence, related to an investigation or prosecution by the European Public Prosecutor's Office.

Once an investigation has been opened, the respective information from the register referred to in Article 36b(4)(a) ~~wi~~shall become part of the case file.

2. The case file will be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State.

The internal ~~R~~rules of ~~P~~procedure may include rules on the organisation and management of the case files to the extent necessary to ensure the functioning of the European Public Prosecutor's Office as a single office. Access to the case file by suspects and accused persons as well as other persons involved in the proceedings ~~wi~~shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor's~~his/her~~ Member State.

3. The case management system of the European Public Prosecutor's Office shall include all information, including evidence, from the case file that may be stored electronically, in order to enable the central office to carry out its functions in accordance with this Regulation. The handling European Delegated Prosecutor shall ensure that the content of information in the case management system reflects at ~~all~~any ~~times~~ the case file, in particular that the personal data contained in the case management system is erased or rectified whenever such data has been erased or rectified in the corresponding case file.

*Article 36d*

**Access to the case management system**

The European Chief Prosecutor, the Deputy Chief Prosecutors, other European Prosecutors and the European Delegated Prosecutors shall have direct access to the register and to the index.

The supervising European Prosecutor as well as the competent Permanent Chamber shall, when exercising their competences in accordance with Articles 9 and 11, have direct access to information stored electronically in the case management system. The supervising European Prosecutor shall also have direct access to the case file. The competent Permanent Chamber shall have access to the case file at its request.

Other European Delegated Prosecutors may request access to information stored electronically in the case management system as well as any case file. The handling European Delegated Prosecutor will decide on granting such access by other European Delegated Prosecutors in accordance with applicable national law. If the access is not granted, the matter may be referred to the competent Permanent Chamber. The competent Permanent Chamber shall, to the extent necessary, hear the European Delegated Prosecutors concerned and then decide in accordance with applicable national law as well as this Regulation.

The ~~I~~nternal ~~R~~ules of ~~P~~rocedure shall determine further rules regarding the right to access, and the procedure to establish the level of access to the case management system by the European Chief Prosecutor, the Deputy Chief Prosecutors, other European Prosecutors, the European Delegated Prosecutors and the staff of the Office, to the extent required for the performance of their duties.

## CHAPTER VI<sup>74</sup>

### Data protection

#### *Article X*

#### **Principles relating to processing of personal data**

1. Personal data shall be:
  - (a) processed lawfully and fairly ('lawfulness and fairness');
  - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes provided that the European Public Prosecutor's Office provides appropriate safeguards for the rights and freedoms of data subjects ('purpose limitation');
  - (c) adequate, relevant, and not excessive in relation to the purposes for which they are processed ('data minimisation');
  - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
  - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes provided that the European Public Prosecutor's Office provides appropriate safeguards for the rights and freedoms of data subjects, in particular by the implementation of the appropriate technical and organisational measures required by this Regulation ('storage limitation');

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<sup>74</sup> The Commission has emitted a reservation on Chapter VI.

- (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
- 1a. The European Public Prosecutor's Office shall be responsible for, and be able to demonstrate compliance with paragraph 1 ('accountability') when processing personal data wholly or partly by automated means and when processing other than by automated means personal data which form part of a filing system or are intended to form part of a filing system.
2. Processing by the European Public Prosecutor's Office for any of the purposes set out in Article 37 of this Regulation other than that for which the personal data are collected shall be permitted in so far as:
- (a) the European Public Prosecutor's Office is authorised to process such personal data for such a purpose in accordance with this Regulation; and
  - (b) processing is necessary and proportionate to that other purpose in accordance with Union law; and
  - (c) where relevant, the use of personal data is not prohibited by the applicable national procedural law on the investigative measures taken in accordance with Article 25. The applicable national procedural law is the law of the Member State where the data was obtained.<sup>75</sup>

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<sup>75</sup> COM has emitted a reservation on this Article. AT has suggested that the following recital should be added: '*Whether national law establishes such prohibitions should be interpreted in a broad sense, e.g. e contrario.*'

*Article XX*

**Administrative personal data**

1. Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>76</sup> applies to all administrative personal data processed by the European Public Prosecutor's Office.
2. The European Public Prosecutor's Office shall determine the time-limits for the storage of administrative personal data in the data protection provisions of its internal rules of procedure.

*Article 37*

**Processing of operational personal data**

1. The European Public Prosecutor's Office shall process personal data by automated means or in structured manual files in accordance with this Regulation, and only for the following purposes:
  - a) criminal investigations and prosecutions undertaken in accordance with this Regulation;  
or
  - b) information exchange with the competent authorities of Member States and other Union institutions, bodies, offices and agencies in accordance with this Regulation; or
  - c) co-operation with third countries and international organisations in accordance with this Regulation.
- 1a. Categories of personal data, and the categories of data subjects whose personal data may be processed in the index as referred to in Article 36b (4)(b) by the European Public Prosecutor's Office for each purpose referred to in paragraph 1 are listed in the Annex.
- 1b. The Commission shall be empowered to adopt delegated acts in accordance with Article [a] to modify the personal data and the categories of data subjects listed in the Annex, to take account of developments in information technology and in the light of the state of progress in the information society.

Where imperative grounds of urgency so require, the procedure provided for in [Article b] shall apply to delegated acts adopted pursuant to this paragraph.

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<sup>76</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

2. The European Public Prosecutor's Office may temporarily process personal data for the purpose of determining whether such data are relevant to its tasks and for the purposes referred to in paragraph 1. The College, acting on a proposal from the European Chief Prosecutor and after consulting the European Data Protection Supervisor, shall further specify the conditions relating to the processing of such personal data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data.
3. The European Public Prosecutor's Office shall process operational personal data in such a way that it can be established which authority provided the data or where the data has been retrieved from.
4. When applying Articles 37f to 37k in this Regulation, the European Public Prosecutor's Office shall, where relevant, act in compliance with national procedural law on the obligation to provide information to the data subject and the possibilities to omit, restrict or delay such information. Where appropriate, the handling European Delegated Prosecutor shall consult other European Delegated Prosecutors concerned by the case before taking a decision in respect of Articles 37f to 37k<sup>77</sup>.

*Article 37a*<sup>78</sup>

**Time limits for the storage of operational personal data**

1. The European Public Prosecutor's Office shall review periodically the need for the storage of the personal data processed. The European Public Prosecutor's Office shall review periodically the need for the storage of the personal data processed. At the latest, such a review shall be carried out not later than three years after the personal data were first processed and then every three years. If personal data are stored for a period exceeding five years, the European Data Protection Supervisor shall be informed of that fact.

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<sup>77</sup> COM has emitted a scrutiny reservation on this provision.

<sup>78</sup> CZ has a scrutiny reservation on this provision.

2. Operational personal data processed by the European Public Prosecutor's Office shall not be stored beyond five years after an acquitting decision in respect of the case has become final; in case the accused was found guilty the time limits shall be extended until the penalty that has been imposed, is enforced or can no longer be enforced under the law of the sentencing MS.
3. Before one of the deadlines referred to in paragraph 2 expires, the European Public Prosecutor's Office shall review the need for the continued storage of the personal data where and as long this is necessary to perform its tasks. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of personal data, those data shall be deleted automatically.

*Article 37b*

**Distinction between different categories of data subject**

The European Public Prosecutor's Office shall, where applicable and as far as possible, make a clear distinction between personal data of different categories of data subjects, such as:

- (a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) victims of a criminal offence or persons with regard to whom certain facts give rise to reasons for believing that they ~~he or she~~ could be the victim of a criminal offence; and
- (d) other parties to a criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, persons who can provide information on criminal offences, or contacts or associates of one of the persons referred to in points (a) and (b).

*Article 37c*

**Distinction between personal data and verification of quality of personal data**

1. The European Public Prosecutor's Office shall distinguish, as far as possible, personal data based on facts from personal data based on personal assessments.
2. The European Public Prosecutor's Office shall take all reasonable steps to ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the European Public Prosecutor's Office shall, as far as practicable, verify the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of personal data, the European Public Prosecutor's Office shall add necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of personal data, and the extent to which they are up to date shall be added.
3. If it emerges that incorrect personal data have been transmitted or personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the personal data shall be rectified or erased or processing shall be restricted in accordance with Article 37j.

*Article 37cc*

**Specific processing conditions<sup>79</sup>**

1. When required by this Regulation, the European Public Prosecutor's Office shall provide for specific conditions for processing and shall inform the recipient of such personal data of those conditions and the requirement to comply with them.
2. The European Public Prosecutor's Office shall comply with specific processing conditions for processing provided by a national authority in accordance with ~~paragraphs 3 and 4 of~~ Article 9 (3) and (4) of Directive (EU) 2016/680.

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<sup>79</sup> See Article 9 PD.

*Article 37cc*<sup>80</sup>

**Transmission of personal data to Union institutions, bodies, offices and agencies**

1. Subject to any further restrictions pursuant to this Regulation, in particular Article 37cc, the European Public Prosecutor's Office shall only transmit operational personal data to another Union institution, body, office or agency if the data are necessary for the legitimate performance of tasks covered by the competence of the other Union institution, body, office or agency.
2. Where the data are transmitted following a request from the other Union institution, body, office or agency, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

The European Public Prosecutor's Office shall be required to verify the competence of the other Union institution, body, office or agency and to make a provisional evaluation of the necessity for the transmission of the data. If doubts arise as to this necessity, the European Public Prosecutor's Office shall seek further information from the recipient.

The other Union institution, body, office or agency shall ensure that the necessity for the transmission of the data can be subsequently verified.

3. The other Union institution, body, office or agency shall process the personal data only for the purposes for which they were transmitted.

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<sup>80</sup> ~~This provision needs further reflection, also in the light of the provision on cooperation with external partners (Article 59).~~ HU has suggested that a proportionality criterion should be added throughout this provision.

*Article 37d*

**Processing of special categories of personal data**

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for the European Public Prosecutor's Office investigations, subject to appropriate safeguards for the rights and freedoms of the data subject and only if they supplement other personal data already processed by the European Public Prosecutor's Office.
2. The Data Protection Officer shall be informed immediately of recourse to this Article.

*Article 37e*

**Automated individual decision-making, including profiling**

The data subject shall have the right not to be subject to a decision of the European Public Prosecutor's Office based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

*Article 37f*

**Communication and ~~detailed arrangements~~ modalities for exercising the rights of the data subject**

1. The European Public Prosecutor's Office shall take reasonable steps to provide any information referred to in Article 37g. It shall ~~and~~ makes any communication with regard to Articles 37e, 37h to 37k and 38f relating to processing to the data subject in a concise, intelligible and easily accessible form, using clear and plain language. The information shall be provided by any appropriate means, including by electronic means. As a general rule, the controller shall provide the information in the same form as the request.
2. The European Public Prosecutor's Office shall facilitate the exercise of the rights of the data subject under Articles 37g-to 37k.

3. The European Public Prosecutor's Office shall inform the data subject in writing about the follow up to that subject's ~~his or her~~ request without undue delay, and in any case at the latest after three months after receipt of the request by the data subject.
4. The European Public Prosecutor's Office shall provide for the information provided under Article 37g and any communication made or action taken pursuant to Articles 37e, 37h to 37k and 38f to be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the European Public Prosecutor's Office may either:
  - (a) charge a reasonable fee, taking into account the administrative costs of providing the information or communication, or taking the action requested; or
  - (b) refuse to act on the request.

The European Public Prosecutor's Office shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

5. Where the European Public Prosecutor's Office has reasonable doubts concerning the identity of the natural person making a request referred to in Article 37h or 37j, the European Public Prosecutor's Office may request the provision of additional information necessary to confirm the identity of the data subject.

*Article 37g<sup>81</sup>*

**Information to be made available or given to the data subject**

1. The European Public Prosecutor's Office shall make available to the data subject at least the following information:
  - (a) the identity and the contact details of the European Public Prosecutor's Office;
  - (b) the contact details of the data protection officer;

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<sup>81</sup> ~~CZ and SE have~~ suggested that a recital such as recital 42 in PD could be added. ~~CZ also has issues with aspects of this provision.~~

- (c) the purposes of the processing for which the personal data are intended;
- (d) the right to lodge a complaint with the European Data Protection Supervisor and its contact details;
- (e) the existence of the right to request from the European Public Prosecutor's Office access to and rectification or erasure of personal data and restriction of processing of the personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, the European Public Prosecutor's Office shall give to the data subject, in specific cases, the following further information to enable the exercise of his or her rights:

- (a) the legal basis for the processing;
- (b) the period for which the personal data will be stored, or, where that is not possible, the criteria used to determine that period;
- (c) where applicable, the categories of recipients of the personal data, including in third countries or international organisations;
- (d) where necessary, further information, in particular where the personal data are collected without the knowledge of the data subject.

3. The European Public Prosecutor's Office may delay, restrict or omit the provision of the information to the data subject pursuant to paragraph 2 to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

- (c) protect public security of the Member States;
- (d) protect national security of the Member States;
- (e) protect the rights and freedoms of others.

*Article 37h*

**Right of access by the data subject**

The data subject shall have the right to obtain from the European Public Prosecutor's Office confirmation as to whether or not personal data concerning that subject ~~him or her~~ are being processed, and, where that is the case, access to the personal data and the following information:

- (a) the purposes of and legal basis for the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipients to whom the personal data have been disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the European Public Prosecutor's Office rectification or erasure of personal data or restriction of processing of personal data concerning the data subject;
- (f) the right to lodge a complaint with the European Data Protection Supervisor and the contact details of the European Data Protection Supervisor;
- (g) communication of the personal data undergoing processing and of any available information as to their origin.

*Article 37i*

**Limitations to the right of access**

1. The European Public Prosecutor's Office may restrict, wholly or partly, the data subject's right of access to the extent that, and for as long as, such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned, in order to:
  - (a) avoid obstructing official or legal inquiries, investigations or procedures;
  - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect public security of the Member States;
  - (d) protect national security of the Member States;
  - (e) protect the rights and freedoms of others.

2. Where the provision of such information would undermine the purpose of the limitation provided for in paragraph 1, the European Public Prosecutor's Office shall only notify the data subject concerned that it has carried out the checks, without giving any information which might reveal to that subject ~~him or her~~ whether or not personal data concerning that subject ~~him or her~~ are processed by the European Public Prosecutor's Office.

The European Public Prosecutor's Office shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or seeking a judicial remedy in the Court of Justice of the European Union against the European Public Prosecutor's Office's decision.<sup>82</sup>

3. The European Public Prosecutor's Office shall document the factual or legal reasons on which the decision is based. That information shall be made available to the European Data Protection Supervisor on request.

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<sup>82</sup> ~~This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).~~

*Article 37j*

**Right to rectification or erasure of personal data and restriction of processing**

1. The data subject shall have the right to obtain from the European Public Prosecutor's Office without undue delay the rectification of inaccurate personal data relating to that subject~~him or her~~. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.
2. The European Public Prosecutor's Office shall erase personal data without undue delay and the data subject shall have the right to obtain from the European Public Prosecutor's Office the erasure of personal data concerning that subject ~~him or her~~ without undue delay where processing infringes Articles X, 37 or 37d, or where personal data must be erased in order to comply with a legal obligation to which the European Public Prosecutor's Office is subject.
3. Instead of erasure, the European Public Prosecutor's Office shall restrict processing where:
  - (a) the accuracy of the personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or
  - (b) the personal data must be maintained for the purposes of evidence.

Where processing is restricted pursuant to point (a) of the first subparagraph, the European Public Prosecutor's Office shall inform the data subject before lifting the restriction of processing.

- 3a. Where processing has been restricted under paragraph 3, such personal data shall, with the exception of storage, only be processed for the protection of the rights of the data subject or another natural or legal person who is a party of the proceedings of the European Public Prosecutor's Office, or for the purposes laid down in point b) of paragraph 3b~~).~~

4. The European Public Prosecutor's Office shall inform the data subject in writing of any refusal of rectification or erasure of personal data or restriction of processing and of the reasons for the refusal. The European Public Prosecutor's Office may restrict, wholly or partly, the obligation to provide such information to the extent that such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned in order to:
- (a) avoid obstructing official or legal inquiries, investigations or procedures;
  - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect public security of the Member States;
  - (d) protect national security of the Member States;
  - (e) protect the rights and freedoms of others.

The European Public Prosecutor's Office shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy from ~~in~~ the Court of Justice of the European Union against the European Public Prosecutor's Office's decision.<sup>83</sup>

5. The European Public Prosecutor's Office shall communicate the rectification of inaccurate personal data to the competent authority from which the inaccurate personal data originate.
6. The European Public Prosecutor's Office shall, where personal data has been rectified or erased or processing has been restricted pursuant to paragraphs 1, 2 and 3, notify the recipients and inform them that they have to ~~recipients shall~~ rectify or erase the personal data or restrict processing of the personal data under their responsibility.

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<sup>83</sup> ~~This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).~~

*Article 37k<sup>84</sup>*

**Exercise of rights by the data subject and verification by the European Data Protection Supervisor**

1. In the cases referred to in Articles 37g(3), ~~Article 37i(2)~~ and ~~Article 37j(4)~~, the rights of the data subject may also be exercised through the European Data Protection Supervisor.
2. The European Public Prosecutor's Office shall inform the data subject of the possibility of exercising his or her rights through the European Data Protection Supervisor pursuant to paragraph 1.
3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall ~~at least~~ inform the data subject at least that all necessary verifications or a review by it have taken place. The European Data Protection Supervisor shall also inform the data subject of that subject's ~~his or her~~ right to seek a judicial remedy in the Court of Justice of the European Union against the European Data Protection Supervisor's decision.<sup>85</sup>

*Article 37l*

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

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the European Public Prosecutor's Office shall implement appropriate technical and organisational measures to ensure, and to be able, to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.
2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the European Public Prosecutor's Office.

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<sup>84</sup> ~~BE, ES and FR argued for the idea to introduce a provision regarding a specific regime for judicial data.~~

<sup>85</sup> ~~This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).~~

*Article 37l(a)*  
**Joint controllers**

1. Where the European Public Prosecutor's Office together with one or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall, in a transparent manner, determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect, of and against each, of the controllers.

*Article 37l(b)*  
**Processor**

1. Where processing is to be carried out on behalf of the European Public Prosecutor's Office, the European Public Prosecutor's Office shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

2. The processor shall not engage another processor without prior specific or general written authorisation of the European Public Prosecutor's Office. In the case of general written authorisation, the processor shall inform the European Public Prosecutor's Office of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the European Public Prosecutor's Office and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the European Public Prosecutor's Office. That contract or other legal act shall stipulate, in particular, that the processor:
  - (a) acts only on instructions from the controller;
  - (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - (c) assists the controller by any appropriate means to ensure compliance with the provisions on the data subject's rights;
  - (d) at the choice of the European Public Prosecutor's Office, deletes or returns all the personal data to the European Public Prosecutor's Office after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
  - (e) makes available to the European Public Prosecutor's Office all information necessary to demonstrate compliance with the obligations laid down in this Article;
  - (f) complies with the conditions referred to in paragraphs 2 and 3 for engaging another processor.

4. The contract or the other legal act referred to in paragraphs 3 shall be in writing, including in electronic form.
5. If a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

*Article 37l(c)*

**Processing under the authority of the controller or processor**

The processor and any person acting under the authority of the European Public Prosecutor's Office or of the processor, who has access to personal data, shall not process those data except on instructions from the European Public Prosecutor's Office, or unless required to do so by Union or national ~~Member State~~ law.

*Article 37m*

**Data protection by design and by default**

1. The European Public Prosecutor's Office shall, taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing, as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing, in order to meet the requirements of this Regulation and protect the rights of the data subjects.
2. The European Public Prosecutor's Office shall implement appropriate technical and organisational measures ensuring that, by default, only personal data which are adequate, relevant and not excessive in relation to the purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

*Article 37n*

**Records of categories of processing activities**

1. The European Public Prosecutor's Office shall maintain a record of all categories of processing activities under its responsibility. That record shall contain all of the following information:
  - (a) its contact details and the name and the contact details of the data protection officer;
  - (b) the purposes of the processing;
  - (c) a description of the categories of data subjects and of the categories of personal data;
  - (d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
  - (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation;
  - (f) where possible, the envisaged time limits for erasure of the different categories of data;
  - (g) where possible, a general description of the technical and organisational security measures referred to in Article 38d.
2. The records referred to in paragraph 1 shall be in writing, including in electronic form.
3. The European Public Prosecutor's Office shall make the record available to the European Data Protection Supervisor on request.

*Article 37o*

**Logging in respect of automated processing**

1. The European Public Prosecutor's Office shall keep logs for any of the following processing operations in automated processing systems: collection, alteration, consultation, disclosure including transfers, combination and erasure of operational personal data used for operational purposes. The logs of consultation and disclosure shall make it possible to establish the justification for, and the date and time of, such operations, the identification of the person who consulted or disclosed personal data, and, as far as possible, the identity of the recipients of such personal data.
2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the personal data, and for criminal proceedings. Such logs shall be deleted after ~~three~~ years, unless they are required for on-going control.
3. The European Public Prosecutor's Office shall make the logs available to the European Data Protection Supervisor on request.

*Article 37p*

**Cooperation with the European Data Protection Supervisor**

The European Public Prosecutor's Office shall cooperate, on request, with the European Data Protection Supervisor in the performance of its tasks.

*Article 38b*

**Data protection impact assessment**

1. Where a type of processing, in particular, using new technologies, and taking into account the nature, scope, context and purposes of the processing is likely to result in a high risk to the rights and freedoms of natural persons, The European Public Prosecutor's Office shall carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of personal data.

2. The assessment referred to in paragraph 1 shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address those risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of the data subjects and other persons concerned.

*Article 38c*

**Prior consultation of the European Data Protection Supervisor**

1. The European Public Prosecutor's Office shall consult the European Data Protection Supervisor prior to processing which will form part of a new filing system to be created, where:
  - (a) a data protection impact assessment as provided for in Article 38b indicates that the processing would result in a high risk in the absence of measures taken by the European Public Prosecutor's Office to mitigate the risk; or
  - (b) the type of processing, in particular, where using new technologies, mechanisms or procedures, involves a high risk to the rights and freedoms of data subjects.
2. The European Data Protection Supervisor may establish a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.
3. The European Public Prosecutor's Office shall provide the European Data Protection Supervisor with the data protection impact assessment pursuant to Article 38b and, on request, with any other information to allow the European Data Protection Supervisor to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

4. Where the European Data Protection Supervisor is of the opinion that the intended processing referred to in paragraph 1 of this Article would infringe this Regulation, in particular where the European Public Prosecutor's Office has insufficiently identified or mitigated the risk, the European Data Protection Supervisor shall provide, within a period of up to six weeks of receipt of the request for consultation, written advice to the European Public Prosecutor's Office according to its powers in accordance with Article 44c. That period may be extended by a month, taking into account the complexity of the intended processing. The European Data Protection Supervisor shall inform the European Public Prosecutor's Office of any such extension within one month of receipt of the request for consultation, together with the reasons for the delay.

*Article 38d*

**Security of processing of operational personal data**

1. The European Public Prosecutor's Office shall, taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of the processing as well as risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in particular as regards the processing of special categories of operational personal data referred to in Article 37d.
2. In respect of automated processing, the European Public Prosecutor's Office shall, following an evaluation of the risks, implement measures designed to:
  - a) deny unauthorised persons access to data processing equipment used for processing (equipment access control);
  - b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
  - c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control) ;
  - d) prevent the use of automated processing systems by unauthorised persons using data communication equipment (user control);
  - e) ensure that persons authorised to use an automated processing system have access only to the personal data covered by their access authorisation (data access control);

- f) ensure that it is possible to verify and establish the bodies to which personal data have been or may be transmitted or made available using data communication (communication control);
- g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems, and when and by whom the data were input (input control);
- h) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
- i) ensure that installed systems may, in the case of interruption, be restored (recovery);
- j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored personal data cannot be corrupted by means of a malfunctioning of the system (integrity).

#### Article 38e

#### **Notification of a personal data breach to the European Data Protection Supervisor**

1. In the case of a personal data breach, the European Public Prosecutor's Office shall notify without undue delay and, where feasible, not later than 72 hours after having become aware of it, the personal data breach to the European Data Protection Supervisor, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the European Data Protection Supervisor is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The notification referred to in paragraph 1 shall at least:
  - (a) describe the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
  - (b) communicate the name and contact details of the data protection officer;
  - (c) describe the likely consequences of the personal data breach;
  - (d) describe the measures taken or proposed to be taken by the European Public Prosecutor's Office to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

3. Where, and in so far as, it is not possible to provide the information referred to in paragraph 2 at the same time, the information may be provided in phases without undue further delay.
4. The European Public Prosecutor's Office shall document any personal data breaches referred to in paragraph 1, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the European Data Protection Supervisor to verify compliance with this Article.
5. Where the personal data breach involves personal data that have been transmitted by or to another controller, the European Public Prosecutor's Office shall communicate the information referred to in paragraph 3 to that controller without undue delay.

#### Article 38f

##### **Communication of a personal data breach to the data subject**

1. Where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the European Public Prosecutor's Office shall communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe, in clear and plain language the nature of the personal data breach and shall contain at least the information and the recommendations provided for in points (b), (c) and (d) of Article 38e (~~23~~).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
  - (a) the European Public Prosecutor's Office has implemented appropriate technological and organisational protection measures, and that those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;

- (b) the European Public Prosecutor's Office has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
  - (c) it would involve a disproportionate effort. In such a case, there shall instead be a public communication or a similar measure whereby the data subjects are informed in an equally effective manner.
4. If the European Public Prosecutor's Office has not already communicated the personal data breach to the data subject, the European Data Protection Supervisor, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so, or may decide that any of the conditions referred to in paragraph 3 are met.
5. The communication to the data subject referred to in paragraph 1 of this Article may be delayed, restricted or omitted subject to the conditions and on the grounds referred to in Article 37i(3).

#### *Article 40*

#### **Authorised access to personal data within the European Public Prosecutor's Office**

Only the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors and authorised staff assisting them may, for the purpose of achieving their tasks and within the limits provided for in this Regulation, have access to operational personal data processed by the European Public Prosecutor's Office.

#### *Article 41*

#### **Designation of the Data Protection Officer**

1. The College shall designate a Data Protection Officer, on the basis of a proposal from the European Chief Prosecutor. The Data Protection Officer shall be a member of staff specifically appointed for this purpose. In the performance of his or her duties, the Data Protection Officer ~~he or she~~ shall act independently and may not receive any instructions.

- 1a. The Data Protection Officer shall be selected on the basis of the Officer's ~~his or her~~ professional qualities and, in particular, ~~his or her~~ expert knowledge of data protection law and practice, and the ability to fulfil the tasks referred to in this Regulation, in particular those referred to in Article 41b.
- 1b. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between the Officer's ~~his or her~~ duty as Data Protection Officer and any other official duties, in particular in relation to the application ~~of the provisions~~ of this Regulation.
- 1c. The Data Protection Officer shall be appointed for a term of four years. ~~He or she~~ and shall be eligible for reappointment up to a maximum total term of eight years. The Officer ~~He or she~~ may be dismissed from the post of Data Protection Officer by the College only with the agreement of the European Data Protection Supervisor, if the Officer ~~he or she~~ no longer fulfils the conditions required for the performance of his or her duties.
- 1d. The European Public Prosecutor's Office shall publish the contact details of the data protection officer and communicate them to the European Data Protection Supervisor.

#### *Article 41a*

#### **Position of the data protection officer**

1. The European Public Prosecutor's Office shall ensure that the Data Protection Officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.
2. The European Public Prosecutor's Office shall support the data protection officer in performing the tasks referred to in Article 41b by providing resources necessary to carry out those tasks and by providing access to personal data and processing operations, and to maintain his or her expert knowledge.
3. The European Public Prosecutor's Office shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. The Officer ~~He or she~~ shall not be dismissed or penalised by the College for performing his or her tasks. The data protection officer shall directly report to the European Chief Prosecutor.

4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation and under Regulation (EC) No 45/2001.
5. The College shall adopt implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer and the Officer's ~~his or her~~ dismissal, tasks, duties and powers and safeguards for independence of the Data Protection Officer.
6. The European Public Prosecutor's Office shall provide the Data Protection Officer with the staff and resources necessary for him or her to carry out his or her duties.
7. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 64.

#### *Article 41b*

#### **Tasks of the data protection officer**

1. The Data Protection Officer shall in particular have the following tasks, regarding the processing of personal data:
  - x) ensuring, in an independent manner the European Public Prosecutor's Office's compliance with the data protection provisions of this Regulation, of Regulation (EC) No 45/2001 and of the relevant data protection provisions in the internal rules of procedure ~~of the EPPO~~; this includes monitoring compliance with this Regulation, with other Union or national ~~Member State~~ data protection provisions and with the policies of the European Public Prosecutor's Office in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
  - xa) ~~to~~ informing and advising the European Public Prosecutor's Office and the staff who carry out processing of their obligations pursuant to this Regulation and to other Union or national ~~Member State~~ data protection provisions;

- xb) ~~to providing~~ advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 38b;
  - k) ensuring that a record of the transfer and receipt of personal data is kept in accordance with the provisions to be laid down in the internal rules of procedure of the European Public Prosecutor's Office;
  - l) cooperating with the staff of the European Public Prosecutor's Office responsible for procedures, training and advice on data processing;
  - bb) cooperating with the European Data Protection Supervisor;
  - bbb) ensuring that data subjects are informed of their rights under this Regulation;
  - bbbb) ~~to acting~~ as the contact point for the European Data Protection Supervisor; on issues relating to processing, including the prior consultation referred to in Article 38c, and to consult, where appropriate, with regard to any other matter.
  - c) preparing an annual report and communicate that report to the European Chief Prosecutor and to the European Data Protection Supervisor.
- 2a. The Data Protection Officer shall carry out the functions provided for in ~~foreseen by~~ Regulation (EC) No 45/2001 with regard to administrative personal data.
3. The Data Protection Officer and the staff members of the European Public Prosecutor's Office assisting the Data Protection Officer in the performance of ~~his or her~~ duties shall have access to the personal data processed by the European Public Prosecutor's Office and to its premises to the extent necessary for the performance of their tasks.
4. If the Data Protection Officer considers that the provisions of Regulation (EC) No 45/2001 related to the processing of administrative personal data or the provisions of this Regulation related to the processing of operational personal data have not been complied with, the Officer~~he or she~~ shall inform the European Chief Prosecutor, requesting him or her to resolve the non-compliance within a specified time. If the European Chief Prosecutor does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the European Data Protection Supervisor.

*Article 43a*

**General principles for transfers of personal data**

1. The European Public Prosecutor's Office may transfer personal data to a third country or international organisation, subject to compliance with the other provisions of this Regulation, in particular Article 37cc, only where the conditions laid down in the Articles 43a to 43d are met, namely:
  - (a) the transfer is necessary for the performance of the tasks of the European Public Prosecutor's Office;
  - (b) the personal data are transferred to a controller in a third country or international organisation that is an authority competent for the purpose of Article 59 (relations with third countries and international organisations);
  - (c) where the personal data to be transferred in accordance with this Article have been transmitted or made available by a Member State to the European Public Prosecutor's Office, the latter shall obtain ~~the~~ prior authorisation ~~to~~for the transfer by the relevant competent authority of that Member State in compliance with its national law, unless that Member State has granted this authorisation to such transfer in general terms or subject to specific conditions;
  - (d) the Commission has decided pursuant to Article 43b ~~of this Regulation~~ that the third country or international organisation in question ensures an adequate level of protection, or in the absence of such an adequacy decision ~~pursuant to Article 43b~~, where appropriate safeguards are adduced or exist pursuant to Article 43c ~~of this Regulation~~, or both in absence of an adequacy decision ~~pursuant to Article 43b~~ and of such appropriate safeguards ~~in accordance with Article 43e~~, derogation for specific situations apply pursuant to Article 43d ~~of this Regulation~~<sup>86</sup>; and

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<sup>86</sup> DE has emitted a scrutiny reservation on this provision.

- (e) in the case of an onward transfer to another third country or international organisation by a third country or international organisation, the European Public Prosecutor's Office shall require the third country or international organisation to seek its prior authorisation for that onward transfer, which the European Public Prosecutor's Office may provide only after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the personal data was originally transferred and the level of personal data protection in the third country or an international organisation to which personal data are onward transferred.
2. The European Public Prosecutor's Office may transfer personal data without ~~the~~ prior authorisation by a Member State in accordance with point (c) of paragraph 1 only if the transfer of the personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State and the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.
- 2a. The transfer of personal data received from the European Public Prosecutor's Office to a third country or an international organisation by a Member State, or ~~an~~ Union institution, body, office or agency shall be prohibited. This shall not apply in cases where the European Public Prosecutor's Office has authorised such transfer, after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the personal data was originally transmitted and the level of personal data protection in the third country or an international organisation to which personal data are transferred. This obligation to obtain prior authorisation from the European Public Prosecutor's Office shall not apply to cases that have been referred to competent national authorities in accordance with Article 28a.
3. Articles 43a to 43d shall be applied in order to ensure that the level of protection of natural persons ensured by this Regulation and Union law is not undermined.

*Article 43b*

**Transfers on the basis of an adequacy decision**

The European Public Prosecutor's Office may transfer personal data to a third country or an international organisation where the Commission has decided in accordance with Article 36 of the Directive (EU) 2016/680 that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection.

*Article 43c*

**Transfers subject to appropriate safeguards**

1. In the absence of an adequacy decision ~~referred to in Article 43b~~, the European Public Prosecutor's Office may transfer personal data to a third country or an international organisation where:
  - (a) appropriate safeguards with regard to the protection of personal data are provided for in a legally binding instrument; or
  - (b) the European Public Prosecutor's Office has assessed all the circumstances surrounding the transfer of personal data and concludes that appropriate safeguards exist with regard to the protection of personal data.
2. The European Public Prosecutor's Office shall inform the European Data Protection Supervisor about categories of transfers under point (b) of paragraph 1.
3. When a transfer is based on point (b) of paragraph 1, such a transfer shall be documented and the documentation ~~shall~~ must be made available to the European Data Protection Supervisor on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

*Article 43d*  
**Derogations for specific situations**

1. In the absence of an adequacy decision referred to in Article 43b, or of appropriate safeguards pursuant to Article 43c, the European Public Prosecutor's Office may transfer personal data to a third country or an international organisation only on the condition that the transfer is necessary:
  - (a) in order to protect the vital interests of the data subject or another person;
  - (b) to safeguard the legitimate interests of the data subject;
  - (c) for the prevention of an immediate and serious threat to public security of a Member State or a third country; or
  - (d) in individual cases for the performance of the tasks of the European Public Prosecutor's Office, unless the European Public Prosecutor's Office determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer.<sup>87</sup>
  
2. Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation shall be made available to the European Data Protection Supervisor on request, including the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the personal data transferred.

*Article 43e<sup>88</sup>*

**Transfers of personal data to recipients established in third countries**

1. By way of derogation from point (b) of Article 43a(1) and without prejudice to any international agreement referred to in paragraph 2 of this Article, the European Public Prosecutor's Office EPPÖ, in individual and specific cases, ~~may~~ shall transfer personal data directly to recipients established in third countries only if the other provisions of this Chapter are complied with and all of the following conditions are fulfilled :
  - (a) the transfer is strictly necessary for the performance of its tasks as provided for by this Regulation for the purposes set out in Article 37(1);

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<sup>87</sup> DE has entered a scrutiny reservation on point 1(d).

<sup>88</sup> ~~BE~~, LU and PT have entered a reservation on this provision.

- (b) the EPPO determines that no fundamental rights and freedoms of the data subject concerned override the public interest necessitating the transfer in the case at hand;
- (c) the EPPO considers that the transfer to an authority that is competent for the purposes referred to in Article 37(1) in the third country is ineffective or inappropriate, in particular because the transfer cannot be achieved in good time;
- (d) the authority that is competent for the purposes referred to in Article 37(1) in the third country is informed without undue delay, unless this is ineffective or inappropriate;
- (e) the EPPO informs the recipient of the specified purpose or purposes for which the personal data are only to be processed by the latter provided that such processing is necessary.

[2 An international agreement referred to in paragraph 1 shall be any bilateral or multilateral international agreement in force between the ~~European~~ Union and third countries in the field of judicial cooperation in criminal matters and police cooperation.]

3. Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation must be made available to the European Data Protection Supervisor on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

*Article 44c<sup>89</sup>*

**Supervision by the European Data Protection Supervisor**

1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by the European Public Prosecutor's Office, and for advising the European Public Prosecutor's Office and data subjects on all matters concerning the processing of operational personal data. To this end, the Supervisor ~~he/she~~ shall fulfil the duties set out in paragraph 2 of this Article, shall exercise the powers granted in paragraph 3 of this Article and shall cooperate with the national supervisory authorities in accordance with Article 45.

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<sup>89</sup> ~~BE~~, ES, PT and SI have entered a scrutiny reservation on this provision.

2. The European Data Protection Supervisor shall have the following duties under this Regulation:
- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
  - (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
  - (c) monitor and ensure the application of the provisions of this Regulation relating to the protection of natural persons with regard to the processing of operational personal data by the European Public Prosecutor's Office ;
  - (d) advise the European Public Prosecutor's Office, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of operational personal data, in particular before it draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of operational personal data.
3. The European Data Protection Supervisor may under this Regulation:
- (a) give advice to data subjects in the exercise of their rights;
  - (b) refer the matter to the European Public Prosecutor's Office in the event of an alleged breach of the provisions governing the processing of operational personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
  - (c) consult the European Public Prosecutor's Office when requests to exercise certain rights in relation to operational personal data have been refused in breach of Articles 37 e) to 37 k)<sup>90</sup>;

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<sup>90</sup> COM has emitted a reservation on this provision.

- (d) refer the matter to the European Public Prosecutor's Office ;
  - (e) order the European Public Prosecutor's Office to ~~rectify, restrict or erase~~ carry out the rectification, restriction or erasure of operational personal data which have been processed by the European Public Prosecutor's Office in breach of the provisions governing the processing of operational personal data and the notification of such actions to third parties to whom such data have been disclosed, provided that this does not interfere with investigations and prosecutions led by the European Public Prosecutor's Office;
  - (f) refer the matter to the Court of Justice of the European Union under the conditions set out ~~provided for~~ in the Treaty;
  - (g) intervene in actions brought before the Court of Justice of the European Union.
4. The European Data Protection Supervisor shall have access to the personal data processed by the European Public Prosecutor's Office and to its premises to the extent necessary for the performance of its tasks<sup>91</sup>.
5. The European Data Protection Supervisor shall draw up an annual report on the supervisory activities on the European Public Prosecutor's Office.

*Article 44d*

**Professional secrecy of the European Data Protection Supervisor**

The European Data Protection Supervisor and ~~his or her~~ staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of ~~their~~ official duties.

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<sup>91</sup> ES and PT have a reservation on this paragraph.

#### *Article 45*

### **Cooperation between the European Data Protection Supervisor and national data protection supervisory authorities**

1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of ~~the~~ Member States or finds potentially unlawful transfers using the communication channels of the European Public Prosecutor's Office, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.
2. In cases referred to under paragraph 1, the European Data Protection Supervisor and the national supervisory authorities competent for data protection supervision may, each acting within the scope of their respective competences, exchange relevant information, and assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems, and promote awareness of data protection rights, as necessary.
3. The European Data Protection Board established by Regulation (EU) 2016 /679 shall also carry out the tasks laid down in Article 51 of Directive (EU) 2016/680 with regard to matters covered by this Regulation, in particular those referred to in paragraphs 1 and 2 of this Article.

#### *Article 46*

### **Right to lodge a complaint with the European Data Protection Supervisor**

1. Every data subject shall have the right to lodge a complaint with the European Data Protection Supervisor, if the data subject considers that the processing by the European Public Prosecutor's Office of operational personal data relating to the data subject ~~him or her~~ ~~infringes provisions of~~ this Regulation.

2. The European Data Protection Supervisor shall inform the data subject of the progress and the outcome of the complaint, including of the possibility of a judicial remedy pursuant to Article 46a.

*Article 46a*

**Right to judicial review against the European Data Protection Supervisor**

Actions against decisions of the European Data Protection Supervisor shall be brought before the Court of Justice of the European Union<sup>92</sup>.

[...]

*Article a*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in ~~paragraph 1b~~ of Article 37 (1b) shall be conferred on the Commission for an indeterminate period of time from the *(date of entry into force of the basic legislative act)*.
3. The delegation of powers referred to in ~~paragraph 1b~~ of Article 37 (1b) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>92</sup> ~~To be reviewed in the light of Article 36.~~

6. A delegated act adopted pursuant to ~~paragraph 1b~~ of Article 37 (1b) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [2 months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and to the Council have both informed the Commission that they will not object. That period shall be extended by [2 months] at the initiative of the European Parliament or of the Council.

*Article b*

**Urgency procedure**

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article a (5). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

**CHAPTER VII**  
**FINANCIAL AND STAFF PROVISIONS**

**SECTION 1**

**FINANCIAL PROVISIONS**

*Article 48*

**Financial actors**

1. The European Chief Prosecutor shall be responsible for preparing decisions on the establishment of the budget and submitting them to the College for adoption.
2. The Administrative Director shall be responsible as authorising officer for the implementation of the budget of the European Public Prosecutor's Office ~~as authorising officer~~.

*Article 49*

**Budget**

1. The European Chief Prosecutor shall prepare estimates of all the revenue and expenditure of the European Public Prosecutor's Office for each financial year, corresponding to the calendar year, on the basis of a proposal drawn up by the Administrative Director. These estimates shall be shown in the budget of the European Public Prosecutor's Office.
2. The budget of the European Public Prosecutor's Office shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the revenue of the European Public Prosecutor's Office shall comprise:
  - (a) a contribution from the Union entered in the general budget of the Union;
  - (b) charges for publications and any service provided by the European Public Prosecutor's Office.
4. The expenditure of the European Public Prosecutor's Office shall include the remuneration of the European Chief Prosecutor, European Prosecutors, European Delegated Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, administrative and infrastructure expenses, and operational expenditure.

5. Where European Delegated Prosecutors act within the framework of the tasks of the European Public Prosecutor's Office, the relevant expenditure incurred by the European Delegated Prosecutors in the course of these activities shall be regarded as operational expenditure of the European Public Prosecutor's Office.

Operational expenditure of the European Public Prosecutor's Office's shall in principle not include costs related to investigation measures carried out by competent national authorities or costs of legal aid.<sup>93</sup> However, it shall - within the budget of the Office - include certain costs related to its investigation and prosecution activities as set out in paragraph 5a.

Operational expenditure will also include the setting up of a case management system, training, missions and translations necessary for the internal functioning of the European Public Prosecutor's Office, such as translations for the Permanent Chamber.<sup>94</sup>

- 5a.<sup>95</sup> Where an exceptionally costly investigation measure is carried out on behalf of the Office, the European Delegated Prosecutors may, at the reasoned request of the competent national authorities or on their own initiative, consult the Permanent Chamber on whether the cost of the investigation measure could partly be met by the European Public Prosecutor's Office. Such consultations shall not delay the investigation.

The Permanent Chamber may then, upon consultation with the Administrative Director and based on the proportionality of the measure carried out in the specific circumstances and the extra-ordinary nature of the cost it entails decide to accept or refuse the request, in accordance with the rules on the assessment of these criteria to be set out in the Internal Rules of Procedure. The Administrative Director shall then decide on the amount of the grant to be awarded based on the available financial resources. The Administrative Director shall inform the handling European Delegated Prosecutor of the decision on the amount without delay.

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<sup>93</sup> For the Commission, the costs related to the secretariat of EDP's should be also excluded from EPPO's operational expenditure. However, several Member States are of the view that these costs may need to be covered from the EPPO's budget.

<sup>94</sup> The Commission has entered a reservation as regards translation, cf. Article 63(2).

<sup>95</sup> The Commission, CZ, MT, PL, PT, RO, AT, BG and DE have emitted reservations on this provision.

*Article 50*

**Establishment of the budget**

1. Each year the European Chief Prosecutor shall prepare a provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office for the following financial year on the basis of a proposal drawn up by the Administrative Director. The European Chief Prosecutor shall send the provisional draft estimate to the College for adoption.
2. The provisional draft estimate of the revenue and expenditure of the European Public Prosecutor's Office shall be sent to the Commission no later than 31 January each year. The European Public Prosecutor's Office shall send a final draft estimate, ~~which shall~~ including a draft establishment plan, to the Commission by 31 March each year.
3. The Commission shall send the statement of estimates to the European Parliament and the Council (the budgetary authority) together with the draft general budget of the Union.
4. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
5. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the European Public Prosecutor's Office.
6. The budgetary authority shall adopt the establishment plan of the European Public Prosecutor's Office.
7. The College shall adopt the budget of the European Public Prosecutor's Office on a proposal from the European Chief Prosecutor. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted in accordance with the same procedure as for the adoption of the initial budget.
8. For any building project likely to have significant implications for the budget of the European Public Prosecutor's Office, Article 88 of Commission Delegated Regulation (EU) No 1271/2013 shall apply.

*Article 51*

**Implementation of the budget**

1. The Administrative Director acting as the authorising officer of the European Public Prosecutor's Office, shall implement its budget under his or her own responsibility and within the limits authorised in the budget.
2. Each year the Administrative Director shall send to the budgetary authority all information relevant to the findings of any evaluation procedures.

*Article 52*

**Presentation of accounts and discharge**

1. [...]
2. By 1 March following each financial year, the accounting officer of the European Public Prosecutor's Office shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.
3. The European Public Prosecutor's Office shall send the report on the budgetary and financial management to the European Parliament, to the Council and to the Court of Auditors, by 31 March of the following financial year.
4. By 31 March following each financial year, the Commission's Accounting Officer shall send the provisional accounts of the European Public Prosecutor's Office, consolidated with the Commission's accounts, to the Court of Auditors.
5. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the European Public Prosecutor's Office.
6. On receipt of the Court of Auditors' observations on the provisional accounts of the European Public Prosecutor's Office pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the European Public Prosecutor's Office shall draw up its final accounts under his or her own responsibility and submit these to the College for an opinion.

7. The accounting officer of the European Public Prosecutor's Office shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and to the Court of Auditors together with the opinion of the College.
8. The final accounts of the European Public Prosecutor's Office shall be published in the Official Journal of the European Union by 15 November of the year following each ~~the~~ ~~respective~~ financial year.
9. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September ~~of the~~ following each financial year at the latest. The Administrative Director shall also send theis reply to the Commission.
10. The Administrative Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question as laid down in Article 109(3) of Commission Delegated Regulation (EU) no 1271/2013<sup>96</sup>.
11. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

*Article 53*

**Financial rules**

The European Chief Prosecutor shall draw up the draft financial rules applicable to the European Public Prosecutor's Office on the basis of a proposal from the Administrative Director. Those rulesey shall be adopted by the College after consultation with the Commission. The financial rules shall not depart from those contained in Commission Delegated Regulation (EU) No 1271/2013 ~~of 30 September 2013~~ unless such departure is specifically required for the operation of the European Public Prosecutor's Office and the Commission has given its prior consent.

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<sup>96</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

## SECTION 2

### STAFF PROVISIONS

#### *Article 54*

##### **General provisions**

1. The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations and those Conditions of Employment of Other Servants shall apply to the European Chief Prosecutor and the European Prosecutors, the European Delegated Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, unless otherwise ~~provided for~~<sup>stipulated</sup> in this Regulation.

The European Chief Prosecutor and the European Prosecutors shall be engaged as temporary agents of the European Public Prosecutor's Office under Article 2(a) of the Conditions of Employment of ~~Other Servants of the European Union~~.

- 1a. The staff of the European Public Prosecutor's Office shall be recruited according to the the rules and regulations applicable to officials and other servants of the European Union.
2. The powers conferred on the appointing authority by the Staff Regulations and by the Conditions of Employment of Other Servants to conclude contracts of employment shall be exercised by the College. The College may delegate these powers to the Administrative Director with respect to the staff of the European Public Prosecutor's Office. Delegation of powers referred to in ~~this paragraphe previous sentence~~ shall not concern the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors ~~or and~~ the Administrative Director.

3. The College shall adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations. The College shall also adopt staff resource programming as part of the programming document.
4. The Protocol on the Privileges and Immunities of the European Union shall apply to the European Public Prosecutor's Office and its staff.
5. European Delegated Prosecutors shall be engaged as Special Advisors<sup>97</sup> in accordance with Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union.<sup>98</sup> The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy which may adversely affect their career and status in the national prosecution system. In particular, the competent national authorities shall provide the European Delegated Prosecutors with the resources and equipment necessary to exercise their functions under this Regulation, and ensure that they are fully integrated into their national prosecution services. ~~The competent national authorities~~ It shall be ensured that adequate arrangements are in place so that the European Delegated Prosecutors' rights related to social security, pension and insurance coverage under the national scheme are maintained. ~~They shall also ensure~~ It shall also be ensured that the total remuneration of a European Delegated Prosecutor is not ~~shall not~~ be lower than what it would be if that prosecutor ~~he or she~~ would have remained a national prosecutors only. The general working conditions and work environment of the European Delegated Prosecutors will fall under the responsibility of the competent national judicial authorities.

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<sup>97</sup> A number of Member States (AT, DE, HU, PL, SE) maintain a scrutiny reservation with respect to the practical implications of the status of Special Advisors and the conditions regarding this status. It will be clarified in the recitals that the remuneration of the European Delegated Prosecutors as special advisers, which will be set through a direct agreement, will be based on a specific decision to be taken by the College. This decision should inter alia ensure that the European Delegated Prosecutors will, in the specific case that they also exercise functions as national prosecutors in accordance with Article 12(3), will in principle continue to be paid in their capacity as national prosecutors and that the remuneration as special adviser will only relate to the equivalent of the work on behalf of the EPPO in the capacity as a European Delegated Prosecutor.

<sup>98</sup> The issue of how to address issues of professional insufficiency of European Delegated Prosecutors will be revisited in the context of Article 15 and the general review of the text.

- 5a. The European Prosecutors and the European Delegated Prosecutors ~~shall~~ ~~may~~ not receive in the exercise of ~~its~~ their investigation and prosecutions powers, any orders, guidelines or instructions other than those expressly provided for in this Regulation, as referred to in Article 6.

*Article 55*

**Seconded national experts and other staff**

1. The European Public Prosecutor's Office may make use, in addition to its own staff, of seconded national experts or other persons put at its disposal but not employed by it. The seconded national experts shall be subject to the authority of the European Chief Prosecutor in the exercise of tasks related to the functions of the European Public Prosecutor's Office.
2. The College shall adopt a decision laying down rules on the secondment of national experts to the European Public Prosecutor's Office or other persons put at its disposal but not employed by it.

## CHAPTER VIII

### PROVISIONS ON THE RELATIONS OF THE EUROPEAN PUBLIC

#### PROSECUTOR'S OFFICE WITH ITS PARTNERS

##### SECTION 1

##### COMMON PROVISIONS

###### *Article 56*

###### **Common provisions**

1. In so far as necessary for the performance of its tasks, the European Public Prosecutor's Office may establish and maintain cooperative relations with Union institutions, bodies, offices or agencies in accordance with their respective objectives, and with the authorities of third countries and international organisations<sup>99</sup>.
2. In so far as relevant to the performance of its tasks, the European Public Prosecutor's Office may, in accordance with Article 67 directly exchange all information, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.
- 2a. For the purposes set out in paragraphs 1 and 2, the European Public Prosecutor's Office may conclude working arrangements with the entities referred to in paragraph 1. Those working arrangements shall be of a technical and/or operational nature, and ~~shall~~ in particular aim at facilitating the cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data, nor have legally binding effects ~~on~~ for the Union or its Member States.

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<sup>99</sup> It should be clarified in a recital that Interpol would be covered by the notion of international organisation for the purpose of this Regulation. This could also be clarified in Article 2 in the Regulation under definitions (similar to what has been done in the Eurojust Regulation).

### Relations with Eurojust

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with Eurojust based on mutual cooperation within their respective mandates and the development of operational, administrative and management links between them as defined below<sup>100</sup>.
2. In operational matters, the European Public Prosecutor's Office may associate Eurojust with its activities concerning cross-border cases, including by:
  - a) sharing information, including personal data, on its investigations in accordance with the relevant provisions in this Regulation;
  - b) inviting Eurojust or its competent national member(s) to provide support in the transmission of its decisions or requests for mutual legal assistance to, and execution in, States members of Eurojust but not taking part in the establishment of the European Public Prosecutor's Office or third countries.
3. The European Public Prosecutor's Office shall have indirect access on the basis of a hit/no-hit system to information in Eurojust's case management system. Whenever a match is found between data entered into the case management system by the European Public Prosecutor's Office and data held by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust. In cases where the data was provided by a third country, Eurojust<sup>101</sup> will only inform that third country of the match found with the consent of the European Public Prosecutor's Office.

[...]

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<sup>100</sup> Paragraph 1 to be reviewed after finalisation of paragraphs 3-5 in this Article, including on the possibility of concluding agreements between EPPO and Eurojust.

<sup>101</sup> Obligations of Eurojust will be addressed in the context of the Eurojust Regulation.

- [5. The European Public Prosecutor's Office may/shall rely on the support and resources of the administration of Eurojust. The details of this arrangement shall be regulated by an Agreement. Eurojust may/shall provide [any of] the following services to the European Public Prosecutor's Office<sup>102</sup>:
- a) technical support in the preparation of the annual budget, the programming document containing the annual and multi-annual programming, and the management plan;
  - b) technical support in staff recruitment and career-management;
  - c) security services;
  - d) Information Technology services;
  - e) financial management, accounting and audit services;
  - f) any other services of common interest.]<sup>103</sup>

*Article 57a*  
**Relations with OLAF**

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange. The relationship shall aim in particular at ensuring the use of all available means for the protection of the Union's financial interests through the complementarity and support of OLAF to the Office.
2. Without prejudice to the ~~possible~~ actions set out in paragraph 3, where the European Public Prosecutor's Office conducts a criminal investigation in accordance with this Regulation, OLAF shall not open any parallel administrative investigation into the same facts.<sup>104</sup>
3. In the course of an investigation by the European Public Prosecutor's Office, the Office may request OLAF, in accordance with its mandate, to support or complement its activity in particular by:<sup>105</sup>

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<sup>102</sup> The details of this arrangement shall be regulated by an Agreement. FR, supported by DE and LU, has suggested that Eurojust shall provide 'services of common interest' to EPPO, and that the provision shall provide that 'The details of this arrangement shall be regulated by an Agreement'.

<sup>103</sup> The content of the list is to be determined later.

<sup>104</sup> Clarify in a recital that this is without prejudice to the power of OLAF to start an investigation on its own initiative, in close consultation with the EPPO. COM mentioned that this will also need to be addressed in OLAF regulation.

- (a) providing information, analyses (including forensic analyses), expertise and operational support;
  - (b) facilitating coordination of specific actions of the competent national administrative authorities and EU bodies;
  - (c) conducting administrative investigations.
4. The European Public Prosecutor's Office may, with a view to enabling OLAF to consider appropriate administrative action in accordance with its mandate, provide relevant information to OLAF on cases where it has decided not to conduct an investigation or has dismissed a case.
- [...]
5. The European Public Prosecutor's Office shall have indirect access on the basis of a hit/no hit system, to information in OLAF's case management system. Whenever a match is found between data entered into the case management system by the European Public Prosecutor's Office and data held by OLAF, ~~it shall~~ the fact that there is a match will be communicated to both OLAF and the European Public Prosecutor's Office.
- [...]

#### *Article 58*

#### **Relations with Europol**

1. The European Public Prosecutor's Office shall establish and maintain a close relationship with Europol. To this end, they shall conclude a working arrangement setting out the ~~detailed arrangements for~~ modalities of their cooperation.
2. Where necessary for the purpose of its investigations, the European Public Prosecutor's Office shall be able to obtain, at its request, any relevant information held by Europol, concerning an offence within its competence, and may also ask Europol to provide analytical support to a specific investigation conducted by the European Public Prosecutor's Office.

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<sup>105</sup> Clarify in a recital that in all actions in support of EPPO, OLAF acts independently from the Commission, in accordance with Regulation (EC, Euratom) No 883/2013.

*Article 58a*

**Relations with other Union institutions, bodies, offices and agencies**

1. The European Public Prosecutor's Office shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting the financial interests of the Union. To this end, they shall conclude an agreement setting out the ~~detailed arrangements~~ modalities for their cooperation.
2. Without prejudice to the proper conduct and confidentiality of its investigations, the European Public Prosecutor's Office shall without delay, provide the Union institution, body, office or agency and other victims concerned sufficient information in order to allow it to take appropriate measures, in particular:
  - a) administrative measures, such as precautionary measures to protect the financial interests of the Union. The Office may recommend specific measures to the Union institution, body, office or agency;
  - b) intervene as civil party in the proceedings;
  - c) for the purpose of administrative recovery of sums due to the Union budget or disciplinary action.

[...]

## CHAPTER IX

### GENERAL PROVISIONS

#### *Article 62*

##### **Legal status and operating conditions**

1. In each of the Member States the European Public Prosecutor's Office shall have legal capacity accorded to legal persons under ~~their~~national laws.
2. The necessary arrangements concerning the accommodation provided for the European Public Prosecutor's Office and the facilities made available by the host Member State together with the specific rules applicable in that Member State to the Members of the College, the Administrative Director and the staff of the European Public Prosecutor's Office, and members of their families, shall be laid down in a Headquarters Agreement to be concluded between the European Public Prosecutor's Office and the host Member State no later than 2 years after the entry into force of this Regulation.

#### *Article 63*

##### **Language arrangements**

1. Council Regulation No 1/58<sup>106</sup> shall apply to the acts referred to ~~provided~~ in Articles 16 and 72.
  - 1a. The College shall decide by a two-thirds majority of its members on the internal language arrangements of the European Public Prosecutor's Office<sup>107</sup>.
2. The translation services required for the administrative functioning of the European Public Prosecutor's Office at the central level shall be provided by the Translation Centre of the bodies of the European Union, unless the urgency of the matter requires another solution. European Delegated Prosecutors shall decide on the ~~detailed arrangements~~ modalities of translation for the purpose of investigations in accordance with applicable national law<sup>108</sup>.

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<sup>106</sup> EEC Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

<sup>107</sup> FR has emitted a reservation as regards this provision.

<sup>108</sup> COM and LU have emitted a reservation as regards this provision. LU has suggested to delete the phrase "unless the urgency of the matter requires another solution".

*Article 64*

**Confidentiality**<sup>109</sup>

1. The members of the College, the Administrative Director and the staff of the European Public Prosecutor's Office, seconded national experts and other persons put at the disposal of the Office but not employed by it, and European Delegated Prosecutors shall be bound by an obligation of confidentiality in accordance with Union legislation with respect to any information held by the European Public Prosecutor's Office.
2. Any other person participating or assisting in carrying out the functions of the European Public Prosecutor's Office at national level shall be bound by an obligation of confidentiality as provided for under applicable national law.
3. The obligation of confidentiality shall also apply to the persons referred to in paragraphs 1 and 2 and after leaving office or employment and after the termination of the activities of the persons referred to in paragraphs 1 and 2.
4. The obligation of confidentiality shall, in accordance with applicable national or Union law, apply to all information received by the European Public Prosecutor's Office, unless that information has already lawfully been made public.
5. Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union law. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.

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<sup>109</sup> COM has emitted a reservation on this provision; if the current wording of Article 64(2) remains, it asks for the inclusions of an Article 64a (professional secrecy).

*Article 65*

**Transparency**

1. Regulation (EC) No 1049/2001 shall apply to documents which relate to the administrative tasks of the European Public Prosecutor's Office<sup>110</sup>.
2. The European Chief Prosecutor shall, within six months of the date of its establishment, prepare the detailed rules for applying this provision for adoption by the College.
3. Decisions taken by the European Public Prosecutor's Office under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the European Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

*Article 66*

**OLAF and the European Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 883/2013 of the European Parliament and of the Council<sup>111</sup>, within six months from the date of application of this Regulation, the European Public Prosecutor's Office shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal

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<sup>110</sup> The relevant recital will be strengthened in order to fully justify this provision and interpret it in such a way that in principle, documents which relate to the EPPO's operational tasks should not be disclosed; this Recital should also specify that the EPPO's proceedings are transparent in accordance with Article 15(3) TFEU and that specific provisions on how the right of public access to documents is ensured, will need to be adopted by the College. COM, DE, FI and SE have entered a reservation to the said limitation of the scope of the provision. DE has suggested the following wording of the paragraph: *'Regulation (EC) No 1049/2001 shall apply to documents other than case files kept in accordance with Article [23] as well as electronic images thereof'*.

<sup>111</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

investigations by the European Anti-Fraud Office (OLAF)<sup>112</sup> and adopt the appropriate provisions applicable to the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office, seconded national experts and other persons put at the disposal of the Office but not employed by it, and European Delegated Prosecutors ~~and other staff~~ using the template set out in the Annex to that Agreement.

2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Union funds from the European Public Prosecutor's Office
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96<sup>113</sup> ~~42~~ with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by the European Public Prosecutor's Office.
4. Without prejudice to paragraphs ~~1, 2 and~~ to 3, working arrangements with Union bodies, authorities of third countries and international organisations, contracts of the European Public Prosecutor's Office shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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<sup>112</sup> Interinstitutional agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) (OJ L 136, p. 15)

<sup>113</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

*Article 67*

**Rules on the protection of sensitive non-classified and classified information**

1. The European Public Prosecutor's Office shall establish internal rules on the protection of sensitive non-classified information, including the creation and processing of such information at the European Public Prosecutor's Office.
2. The European Public Prosecutor's Office shall establish internal rules on the protection of the ~~European Union~~ classified information which shall be consistent with Council Decision 2013/488/EU<sup>114</sup> in order to ensure an equivalent level of protection for such information.

*Article 68*

**Administrative inquiries**

The administrative<sup>115</sup> 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.

*Article 69*

**General regime of liability**

1. The contractual liability of the European Public Prosecutor's Office shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the European Public Prosecutor's Office.

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<sup>114</sup> Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

<sup>115</sup> SE and FI wish to delete the word administrative.

3. In the case of non-contractual liability, the European Public Prosecutor's Office shall, in accordance with the general principles common to the laws of the Member States and independently of any liability under Article [47], make good any damage caused by the European Public Prosecutor's Office or its staff in the performance of their duties in so far as it may be imputed to them.
4. Paragraph 3 shall also apply to damage caused through the fault of a European Delegated Prosecutor in the performance of his or her duties.
5. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages as referred to in paragraph 3.
6. The national courts of the Member States competent to deal with disputes involving the contractual liability of the European Public Prosecutor's Office as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001<sup>116</sup>.
7. The personal liability of its staff towards the European Public Prosecutor's Office shall be governed by the applicable provisions laid down in the Staff Regulations or Conditions of Employment ~~applicable to them~~.

[...]

~~Article 72~~<sup>117</sup>

### **Administrative Guidelines, implementing rules and programme documents**

[The ~~College~~/European Chief Prosecutor shall adopt in particular:

- (a) ~~adopt~~ each year the programming document containing annual and multi-annual programming of the European Public Prosecutor's Office;
- b) ~~adopt~~ an anti-fraud strategy, which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented;

<sup>116</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

<sup>117</sup> The list below will be completed later; some of the points may be addressed in the internal rules of procedure.

c) ~~adopt~~ rules on the conditions of employment, performance criteria, professional insufficiency, rights and obligations of the European Delegated Prosecutors, including rules on the prevention and management of conflicts of interest;

~~{d) adopt rules/guidelines on the application of the grounds for handling of simplified prosecution procedure/transactions referred to in made in accordance with Article 334 and the modalities to calculate the amounts of the fine to be paid;}~~

e) ~~adopt rules/guidelines on the detailed arrangements modalities of giving feedback to persons or entities which have provided information to the European Public Prosecutor's Office as foreseen in...;~~

~~(ee) guidelines on the interpretation of the reporting obligation concerning offences referred to in Article 20(5);~~

~~(ef) guidelines on the exercise of the right of evocation and referrals to national authorities as set out in Articles 22a and 28a;~~

(f) ~~adopt~~ detailed rules concerning the application of Regulation (EC) No 1049/2001 in its activities;

(g) implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.]

### *Article 73*

#### **Notifications**

Each Member State shall designate the authorities which are competent for the purposes of implementing this Regulation. Information on the designated authorities, as well as on any subsequent change, shall be notified simultaneously to the European Chief Prosecutor, the Council and the Commission. Member States shall also notify the European Public Prosecutor's Office of an extensive list of the national substantive criminal law provisions applicable to the offences defined in [Directive 2016/xx/EU] and other relevant national legislation. The European Public Prosecutor's Office shall ensure that the information received through these lists are made public.

### Article 73a

#### **Review of the rules relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office**

In the context of the adaptation of Regulation (EC) 45/2001 in accordance with Articles 2(3) and Article 98 of Regulation (EU) 2016/679, the Commission shall review the provisions relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office laid down in this Regulation. The Commission shall, if appropriate, submit a legislative proposal with a view to amending or repealing those provisions.

### Article 74

#### **Review clause**

1. No later than [*five years after the start of application of this Regulation*], and every five~~5~~ years thereafter, the Commission shall commission an evaluation and submit an evaluation report of the implementation and impact of this Regulation, as well as the effectiveness and efficiency of the European Public Prosecutor's Office and its working practices. The Commission shall forward the evaluation report together with its conclusions to the European Parliament and to the Council and to national Parliaments ~~and the Council~~. The findings of the evaluation shall be made public.
2. The Commission shall submit legislative proposals to the European Parliament and the Council if it concludes that it is necessary to have additional or more detailed rules on the setting up of the European Public Prosecutor's Office, its functions or the procedure applicable to its activities ~~are necessary~~.

### Article 75

#### **Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. The European Public Prosecutor's Office shall exercise its competence with regard to any offence within its competence committed after the date on which this Regulation has entered into force<sup>118</sup>.

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<sup>118</sup> The date when the reporting obligation following Article 20 should start to apply will be discussed further.

The European Public Prosecutor's Office shall assume the investigative and prosecutorial tasks conferred on it by this Regulation on a date to be determined by a decision of the Commission on a proposal of the European Chief Prosecutor once the European Public Prosecutor's Office is set up. The decision of the Commission shall be published in the Official Journal of the European Union.

The date to be set by the Commission shall not be earlier than [X]<sup>119</sup> years after the entry into force of this Regulation and not earlier than the day of implementation of the Directive on the fight against fraud to the Union's financial interests.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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<sup>119</sup> The number of years indicated here will be discussed at a later stage.