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From: Presidency
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Subject: Proposal for a Regulation on the establishment of the European Public
Prosecutor's Office
- Partial general approach

A. Background

Building on the achievements reported on at the March Council¹, the Netherlands Presidency has continued the work to find agreement on the remaining parts of the Regulation. The Presidency has organised a considerable number of working days in the COPEN Working Party, in the Friends of Presidency setting and JHA Counsellors, and has thereby focused on the provisions on case management system, data protection, simplified prosecution procedures and operational expenditure. The constructive atmosphere at working level has made it possible to advance rapidly on the text of the Articles.

¹ See doc 6667/16.

B. State of Play

The Presidency notes that the Member States, at technical level, have in principle now reached a compromise on the rules on the case management system and data protection, on simplified prosecution procedures and on financial and staff provisions with general provisions. These provisions are presented in three Annexes to this note, and can be described as follows:

- **Annex 1: Rules on case management system and data protection**

The provisions in Annex 1 (corresponding to Articles 20-24 and 37-47 in the original Commission proposal) consist of two related blocks of provisions, one on the case management system and one on data protection. Especially the rules on data protection have been redrafted substantially, in particular with a view to bringing them in line with the so called "Police Directive" 2016/680. The Annexed text is the result of a balanced compromise between the positions of delegations and should now be acceptable to all².

- **Annex 2: Simplified prosecution procedures (transactions)**

The draft provision in Annex 2 (corresponding to Article 29 in the original Commission proposal, 'Transaction') is the result of discussions that have been going on for almost two years in the competent working group. The Presidency welcomes the agreement on a model that will add value for the European Public Prosecutor's Office by ensuring that it can apply (or refuse to apply) a simplified procedure, but which at the same time respects the differences in national legal systems.

- **Annex 3: Financial and staff provisions, general provisions**

The provisions in Annex 3 largely correspond to the text submitted to Council in March this year. A number of modifications in relation to the March text have been made with the view to solving outstanding issues, in particular in Articles 48, 49, 54, 55, 58a and 73.

² It should be noted that a number of new recitals as regards data protection were also discussed and agreed upon in principle during the negotiations at expert level. These recitals will be finalised at a later stage and are not part of this annex.

It should be noted that this Annex also includes Articles Y, YY and YYY at the end of the Annex. These provisions were agreed already in March and deal with the creation of a position of an Administrative Director of the Office. A few new provisions have also been added in the text (Articles 56 and 58). Negotiations during the last month has in particular focused on the issue of operational expenditure (Article 49(5) and 49(5)(a)), which was discussed by Ministers already in March and on which a balanced compromise has now been found.

C. Questions

The Presidency considers that the Articles indicated in the three Annexes are now ready to be submitted to Council for agreement. The Presidency intends to follow similar approach as under the Luxembourg Presidency, with the aim to achieve a result which would allow for the continuation of negotiations on the remaining elements of the draft regulation. Therefore, the provisions will be agreed upon on the understanding that the text will - in particular in order to ensure its coherence - be revisited once all Chapters of the Regulation have been agreed upon (following the maxim that nothing is agreed until everything is agreed) and that such partial general approach is without prejudice to any horizontal questions.

Ministers are therefore invited to:

- **agree to a partial general approach on the Articles indicated in Annexes 1, 2 and 3 to this note;**
- **take note of the global progress made on the proposal and encourage experts to continue negotiations with a view to finalising the text.**

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 national prosecutors³ 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 obtain⁴ 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.

³ 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.

⁴ A recital will clarify that this provision does not create any obligation for the said institutions, bodies, offices and agencies to deliver information to the Office.

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 Prosecutors⁵;
 - 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 Decision 2008/976/JHA⁶.
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 A recital clarifying that this information will include also closed investigations and prosecutions will be added.

⁶ OJ L 348, 24.12.2008, p.130.

5. For the processing of case related 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.

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 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) will 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 Rules of 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 will be granted by the handling European Delegated Prosecutor in accordance with the national law of 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 as a general rule ensure that the content of information in the Case Management System reflects at any time 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. By derogation from the general rule, information in the case file shall not be reflected in the Case Management System, where storing that information is not necessary, in particular where that information cannot be stored digitally. The internal Rules of Procedure shall provide for detailed rules on the application of this derogation.

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 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 Internal Rules of Procedure 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 I

Subject matter and definitions

(...)

Article 2

Definitions

For the purposes of this Regulation:

- (1) '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;
- (2) '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;
- (3) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;

- (4) '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;
- (5) '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;
- (6) '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;
- (7) '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;
- (8) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

(9) '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 Article 3(7)(a) of Directive (EU) 2016/680, 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 processing⁷;

(10) '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;

(11) 'administrative personal data' means all personal data processed by the European Public Prosecutor's Office apart from operational personal data;

(12) 'operational personal data' means all personal data processed by the European Public Prosecutor's Office to meet the purposes laid down in Article 37.

(13) '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;

(14) '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;

⁷ 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.

(15) ‘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;

(16) ‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679⁸ or pursuant to Article 41 of Directive (EU) 2016/680⁹.

(17) ‘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;

⁸ 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 (hereafter: GDPR).

⁹ 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 (hereafter: PD).

CHAPTER VI¹⁰

Data protection

Article X

Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully and fairly ('lawfulness and fairness')¹¹;
- (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').

¹⁰ The Commission has emitted a reservation on Chapter VI.

¹¹ A recital with the following text will be introduced: "(...) *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)(...)*" AT has stated that it would like a clarification on when the EPPO is authorised to process the data.

(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, such personal data is used in full respect of the applicable national procedural law on the investigative measures taken in accordance with Article 25. The applicable national law is the law of the Member State where the data was obtained.¹²

Article XX

Administrative personal data

1. Regulation (EC) No 45/2001 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.

¹² COM, BE, ES and IT have emitted scrutiny reservations on this provision. CY, DE and FR have emitted positive scrutiny reservations.

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 only the categories of personal data, and the categories of persons, listed in the Annex, 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.

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 37k¹³.

*Article 37a*¹⁴

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. At the latest, such a review shall be carried out every three years after the personal data were first processed. If personal data are stored for a period exceeding five years, the European Data Protection Supervisor shall be informed of that fact.

2. Operational personal data processed by the European Public Prosecutor's Office shall not be stored beyond five years after an acquitting 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.

¹³ COM and IT have emitted a scrutiny reservation on this provision. FR has a positive scrutiny reservation.

¹⁴ CZ has a scrutiny reservation on this provision.

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 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, 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 conditions¹⁵

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 of Directive (EU) 2016/680.

Article 37ccc¹⁶

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.

¹⁵ See Article 9 PD. BE and FR have suggested that the provision should be better aligned with the PD.

¹⁶ 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.

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.

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 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 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 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 37g¹⁷

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;
- (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.

¹⁷ BE has issued a scrutiny reservation on this and following provisions. SE has suggested that a recital such as recital 42 in PD could be added. CZ also has issues with aspects of this provision.

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 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 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 him or her whether or not personal data concerning 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.¹⁸

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.

¹⁸ 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 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 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 paragraph 3 b).

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 seeking a judicial remedy in the Court of Justice of the European Union against the European Public Prosecutor's Office's decision.¹⁹

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 that the recipients shall rectify or erase the personal data or restrict processing of the personal data under their responsibility.

Article 37k²⁰

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

1. In the cases referred to in Article 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.

¹⁹ This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).

²⁰ BE, ES and FR argued for the idea to introduce a provision regarding a specific regime for judicial data.

3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall 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 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.²¹

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.

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.

²¹ This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).

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 371(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, unless required to do so by Union or 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 persons²².

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.

²² FR and LU would like to make a distinction for different categories of persons in the last phrase.

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, 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 3 years, unless they are required for on-going control.²³
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.

²³ CZ has emitted a scrutiny reservation on this provision.

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 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 (3).
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, he or she shall act independently and may not receive any instructions.

1a. The Data Protection Officer shall be selected on the basis of his or her professional qualities and, in particular, his or her expert knowledge of data protection law and practice and 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 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 shall be eligible for reappointment up to a maximum total term of eight years. 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 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 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. 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 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 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, Regulation (EC) No 45/2001 and the relevant data protection provisions in the rules of procedure of the EPPO; this includes monitoring compliance with this Regulation, with other Union or 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 inform and advise 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 Member State data protection provisions;
- xb) to provide 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 act 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 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, he or she shall inform the European Chief Prosecutor, requiring 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 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 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 appropriate safeguards in accordance with Article 43c, derogation for specific situations apply pursuant to Article 43d of this Regulation²⁴; and

²⁴ 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 a 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 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 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.²⁵

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, information about the receiving competent authority, the justification for the transfer and the personal data transferred.

Article 43e²⁶

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 EPPO, in individual and specific cases, may 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);

²⁵ DE has entered a scrutiny reservation on point 1(d).

²⁶ BE, LX 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 44c²⁷

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, he/she shall fulfil the duties set out in paragraph 2, shall exercise the powers granted in paragraph 3 and shall cooperate with the national supervisory authorities in accordance with Article 45.

²⁷ 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)²⁸;
- (d) refer the matter to the European Public Prosecutor's Office ;

²⁸ COM has emitted a reservation on this provision.

(e) order the European Public Prosecutor's Office to 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 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 tasks²⁹.

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.

²⁹ 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 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 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 Union³⁰.

[...]

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 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 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 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 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.

³⁰ To be reviewed in the light of Article 36.

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.

6. A delegated act adopted pursuant to paragraph 1a of Article 37 shall enter into force only if no objection has been expressed either by the European Parliament or 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 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 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 the Council.

SECTION 4
RULES ON SIMPLIFIED PROCEDURES

[...]

Article 34
Simplified prosecution procedures³¹

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 suspect³², the handling European Delegated Prosecutor may propose, in accordance with Articles 9(3) and 29(1), 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 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,

³¹ The Commission has a reservation on this provision.

³² A recital with the following wording will be introduced: '*The national legal systems provide for various types of simplified prosecution procedures, which may also include involvement of a Court, for example in the form of transactions with the suspect. If such procedures exist, the European Delegated Prosecutor should have the right to apply them under the conditions provided for in national law and 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.*'

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.

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 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.³³ 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.³⁴

- 5a.³⁵ Where an exceptionally costly³⁶ 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

³³ 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.

³⁴ The Commission has entered a reservation as regards translation, cf. Article 63(2).

³⁵ The Commission, MT, PT, AT, BG and DE. have emitted a reservation on this provision.

³⁶ The following recital will be added: '*Such exceptionally high costs may, for example, be complex experts' opinions, or extensive police operations or surveillance activities over a long period of time..*'.

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 without delay.

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 include a draft establishment plan, to the Commission by 31 March.
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 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, the Council and 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/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 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 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 year at the latest. The Administrative Director shall also send this 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.
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. They shall be adopted by the College after consultation with the Commission. The financial rules shall not depart from 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.

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 stipulated 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 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 may³⁷ 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 in the previous sentence shall not concern the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors 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 Advisors³⁸ in accordance with Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union.³⁹ The competent national authorities shall facilitate the exercise of the functions of

³⁷ It will be clarified in a recital that the College should in principle always delegate these powers, unless specific circumstances call for it to exercise this power itself.

³⁸ 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.

³⁹ 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.

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. 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. It shall also be ensured that the total remuneration of a European Delegated Prosecutor shall not be lower than what it would be if he or she would have remained 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.

- 5a. The European Prosecutors and the European Delegated Prosecutors may not receive in the exercise of its 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.

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 organisations⁴⁰.
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, 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 entities referred to in paragraph 1. Those working arrangements shall be of a technical and/or operational nature, and should 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 for the Union or its Member States.

⁴⁰ 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 mandates⁴¹ and the development of operational, administrative and management links between them as defined below⁴².
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.

⁴¹ A recital shall be added which is provisionally worded as follows: 'The EPPO 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 EPPO where an exchange of information or coordination of investigative measures in respect of cases handled by Eurojust is considered to be necessary/appropriate. Whenever the EPPO is requesting such cooperation of Eurojust, the EPPO should liaise with the Eurojust national member of the Member State whose EDP is handling the case. The operational cooperation may also involve third countries which have a cooperation agreement with Eurojust.'

⁴² 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.

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, Eurojust⁴³ will only inform that third country of the match found with the consent of the European Public Prosecutor's Office.

[...]

[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 Office⁴⁴:

- 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.]⁴⁵

⁴³ Obligations of Eurojust will be addressed in the context of the Eurojust Regulation.

⁴⁴ 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'.

⁴⁵ The content of the list is to be determined later.

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 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.⁴⁶
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:⁴⁷
 - (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.

⁴⁶ 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.

⁴⁷ 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.

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.⁴⁸
[...]
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, 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 modalities of their cooperation.

⁴⁸ This provision would be accompanied by the following recital: '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 EPPO dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery'. The recital should also clarify that EPPO, when providing the information, 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.

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.

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 financial interests of the Union. To this end, they shall conclude an agreement setting out the 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.⁴⁹

[...]

⁴⁹ Recital: *'The European Public Prosecutor's Office should enable the Union institutions, bodies, offices or agencies and other victims to take appropriate measures. Union institutions, bodies, offices or agencies should be able to take any action necessary to protect the interests of the Union. 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.'*

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 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 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. Regulation No 1 shall apply to the acts 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 Office⁵⁰.
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 modalities of translation for the purpose of investigations in accordance with applicable national law⁵¹.

⁵⁰ FR has emitted a reservation as regards this provision.

⁵¹ 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

Confidentiality⁵²

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 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.

⁵² 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 Office⁵³.
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 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.

⁵³ 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. The following recital will also be added "*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*". 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'.

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, 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 investigations by the European Anti-Fraud Office (OLAF) 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 2185/9612 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 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.

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 in order to ensure an equivalent level of protection for such information.

Article 68

Administrative inquiries

The administrative⁵⁴ 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.

⁵⁴ 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 duties.
5. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages 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.
7. The personal liability of its staff towards the European Public Prosecutor's Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

[...]

Administrative rules and programme documents

[The College/European Chief Prosecutor shall:

- [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;
- 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 on the handling of transactions made in accordance with Article 33 and the modalities to calculate the amounts of the fine to be paid;]
- e) adopt rules on the modalities of giving feedback to persons or entities which have provided information to the European Public Prosecutor's Office as foreseen in...;
- 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.]

⁵⁵ The list below will be completed later; some of the points may be addressed in the Internal Rules of Procedure.

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 2015/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 74

Review clause

1. No later than [*five years after the start of application of this Regulation*], and every 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 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 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 force⁵⁶.

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]⁵⁷ 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.

⁵⁶ The date when the reporting obligation following Article 20 should start to apply will be discussed further.

⁵⁷ The number of years indicated here will be discussed at a later stage.

Article Y

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.
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 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.

Article YY

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.

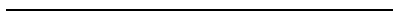
Article YYY

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 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(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 [X].
 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 experts⁵⁸ composed of representatives of the Member States participating in the establishment of the EPPO.



⁵⁸ The composition and character of this group remain to be discussed.