



Documentation

The European Public Prosecutor's Office One Year On:
Challenges Ahead

Trier, 23-24 May 2022

322DT07f



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

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B) Statements, Articles and Papers

B.01	European Public Prosecutors Office Regulation. Disputes. Explanations - Sandru, Adrian	Online
B.02	"The complementary roles of the European Public Prosecutor's Office and the European Anti-Fraud Office, Courtney Hague Andrews et al., White&Case, 08 February 2022, retrieved 11 May 2022	Online
B.03	"CCBE statement on defence issues and procedural rights in EPPO proceedings", Council of Bars and Law Societies of Europe, 12 October 2021	Online
B.04	"The European Anti-Fraud Office and the European Public Prosecutor's Office: A Work in Progress", Julia Echanove Gonzalez de Anleo / Nadine Kolloczek, EUCRIM, Issue 3/2021, pp. 187-190	Online
B.05	"EPPO: A challenging, balance-striking exercise in the national and EU judicial environment", Dimitrios Zimianitis, EUCRIM, Issue 1/2021, pp. 65-66	Online
B.06	"The Permanent Chambers at the Heart of the EPPO's Decision-Making", Ingrid Maschl-Clausen, EUCRIM, Issue 1/2021, pp. 55-56	Online
B.07	"Role of the Belgian Investigative Judge in EPPO Cases", Yves Van Den Berge, EUCRIM, Issue 1/2021, pp. 63-64	Online
B.08	"No Case to Answer for the European Public Prosecutor Under the European Convention on Human Rights? Considerations on Convention Liability for Actions of the European Public Prosecutor's Office", Johan Callewaert, 2021(1) 3, Europe of Rights&Liberties / Europe des droits&Libertés, pp. 20-35	Online

B.09	European Commission, Report from the Commission to the European Parliament and the Council, 31st Annual Report on the protection of the European Union's financial interests — Fight against fraud – 2019, COM(2020) 363 final, Brussels, 03 September 2020	Online
B.10	“The EPPO and the Corporate Suspect – Jurisdictional Agnosticism and Legal Uncertainties”, Robin Lööf, EUCRIM, Issue 4/2020, pp. 310 - 314	Online
B.11	„The European Public Prosecutor's Office – the first step to a powerful, cross-border investigation authority?“, Kerstin Wilhelm, Linklaters, Munich, 19 October 2020	Online

C) Useful Links

C.01	https://www.eppo.europa.eu/en	Online
C.02	https://era-comm.eu/training-on-eppo/	Online
C.03	https://eppo-lex.eu/	Online

Speakers' Contributions

Amedeo Barletta

Rights of the suspects and accused persons and legal protection in the investigative phase



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Vice-Chair of the European Criminal Bar Association



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

1

Article 41 - Scope of the rights of the suspects and accused persons

- “1. The activities of the EPPO shall be carried out in **full compliance** with the rights of suspects and accused persons enshrined in the **Charter**, including the right to a fair trial and the rights of defence.
- 2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law, such as:
 - (a) *the right to interpretation and translation, as provided for in Directive 2010/64/EU;*
 - (b) *the right to information and access to the case materials, as provided for in Directive 2012/13/EU;*
 - (c) *the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive 2013/48/EU;*
 - (d) *the right to remain silent and the right to be presumed innocent as provided for in Directive (EU) 2016/343;*
 - (e) *the right to legal aid as provided for in Directive (EU) 2016/1919.*
- 3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons **as well as other persons involved in the proceedings** of the EPPO shall have all the procedural rights available to them under the applicable national law, including the possibility to present evidence, to request the appointment of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence”
- >>> other reference to rights of parties (not just suspects and accused) in art. 5, art. 31(3), art. 45(2)

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Legal protection for suspects and accused persons

- According to the EPPO Regulation accused (and suspects) persons can be both natural and legal persons (art. 2 EPPO Reg. n. 2017/1939)

- When a person acquires the status of suspect or accused?

We have formal situation as substantial situation according to the ECHR case law as to National legislations

*The concept of “charge” has to be understood within the meaning of the Convention. It may thus be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (**Deweert v. Belgium**, §§ 42 and 46; **Eckle v. Germany**, § 73). The Court has also held that a person in police custody who was required to swear an oath before being questioned as a witness was already the subject of a “criminal charge” and had the right to remain silent (**Brusco v. France**, §§ 46-50).*

[Deweert: Application no 6903/75, Sentence of 1980; Eckle: Application no. 8130/78, Sentence of 1983; Brusco: Application no. 1466/07, Sentence of 2010]

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The *three-tier system* of Art. 41 EPPO Regulation

- 1. The EU Charter (legally binding) and the *full compliance*
- 2. The common standard of protection determined by European Union Law (art. 82 TFEU)
- 3. Procedural rights (not linked to substantive law) available under National Law also for other persons involved in the proceedings

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Sources of law for the rights of the accused persons: a multilevel protection

- a) The Regulation itself – Art. 41
- b) European Legislation (ECHR, CFREU, Directives, ECtHR and CJEU case law)
- c) National Law (National Constitution, Criminal procedural law)
- *A multilevel protection in an integrated system*

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The role of EU Charter of Fundamental Rights

- Recital (83)
- This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO. The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.

The Charter is a Constitutional provision with direct effect and capable to determine a Consistent Interpretation

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Art. 47, 48, 50 of the Charter of Fundamental Rights of the EU

- Article 47
- **Right to an effective remedy and to a fair trial**
- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
- Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
- **Article 48**
- **Presumption of innocence and right of defence**
- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
- 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.
- **Article 50**
- **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**
- No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.
- ...but also art. 4, art. 5, art. 7, art. 8, art. 41, art. 47 CFREU

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Procedural safeguards EU Directives: a common minimum standard

- Recital (84)
- Article 82(2) TFEU allows the Union to establish **minimum** rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. Those minimum rules have been gradually set out by the Union legislator in Directives on specific rights.
- Recital (85)
- The rights of defence provided for in the relevant Union law, such as Directives 2010/64/EU (4), 2012/13/EU (5), 2013/48/EU (6), (EU) 2016/343 (7), (EU) 2016/1919 (8), of the European Parliament and of the Council as implemented by national law, should apply to the activities of the EPPO. Any suspect or accused person in respect of whom the EPPO initiates an investigation should benefit from those rights, as well as from the rights provided for in national law to request that experts are appointed or that witnesses are heard, or that evidence on behalf of the defence is otherwise produced by the EPPO.

Do not apply the Melloni rule (Sentence in case C-399/11 of 26.2.2013)

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An open enumeration of EU directives at par. 2

- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU;
- (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU;
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive 2013/48/EU;
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive (EU) 2016/343;
- (e) the right to legal aid as provided for in Directive (EU) 2016/1919.

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ECBA initiative for a new Roadmap on minimum standards of certain procedural safeguards

- ECBA promotes in the Roadmap 2020 seven additional procedural safeguards that shall become part of the EU legislation:
- *Measure A: (Pre-Trial) Detention and European Arrest Warrant;*
- *Measure B: Certain Procedural Rights in Trials;*
- *Measure C: Witnesses' Rights and Confiscatory Bans;*
- *Measure D: Admissibility and Exclusion of Evidence and other Evidentiary Issues;*
- *Measure E: Conflicts of Jurisdiction and ne bis in idem;*
- *Measure F: Remedies and Appeal;*
- *Measure G: Compensation.*

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The function of art. 41 Regulation and National Law (par. 3)

- Art. 41 stress the importance of EU sources of law: Charter, the five enumerated Directives and the Directives that will be adopted on the ground of art. 82 TFEU.
- Nothing in the Regulation can limit procedural rights and safeguards provided by the CFREU and by the Directives
- Neither the application of National Law can determine a lowering of the standard of protection
- National Jurisdictions need to ensure rights provided by EU Law...

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Procedural acts and review of legality

- Recital 88
- [...] When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law, which applies to the extent that a matter is not dealt with by this Regulation. As underlined in the case-law of the Court of Justice, national courts should always refer preliminary questions to the Court of Justice when they entertain doubts about the validity of those acts vis-à-vis Union law.
- However, national courts may not refer to the Court of Justice preliminary questions on the validity of the procedural acts of the EPPO with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them. This is however without prejudice to preliminary references concerning the interpretation of any provision of primary law, including the Treaties and the Charter, or the interpretation and validity of any provision of Union secondary law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of the procedural acts of the EPPO which are intended to produce legal effects vis-à-vis third parties with regard to the principle of proportionality as enshrined in national law.

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The role of the Court of Justice of the EU

- The role of the Court of Justice is crucial. It is responsible for the interpretation of EU Law and for the legal interactions between National Law and European Law
- The CJEU case law has to assure
 - a) primacy and direct effect of EU provisions
 - b) consistent interpretation of Law in law with EU obligations
 - c) full compliance of the Charter of Fundamental Rights, direct effect and consistent interpretation



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Interpretation and translation

- DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings
- **Main issues and open questions:**
 - The assessment of the need for an interpreter
 - Independence and confidentiality
 - The quality of interpretation/translation
 - The determination of what to interpret / translate (huge differences between MS)
- Potential huge differences of treatment of accused person depending on where the proceedings are carried out (possible violations of art. 18 and 21 of TFEU)
- *A unified system of prosecution and possible discriminations based on language*

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The Legal Aid

- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings
- Low intensity harmonization
- No specific provision relating to EPPO proceedings
- **Main issues:**
 - A European prosecution and a national regulated and funded legal aid scheme
 - Potential huge differences of treatment of accused person depending on where the proceedings are carried out (possible violations of art. 18 and 21 of TFEU)
 - The specific contour of this right in cross border context: legal representation in multiple jurisdictions
 - The issue related to specific skills required on EPPO cases
 - Impossibility in many MS to choose own legal counsel

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Communication with the EPPO

- The very absence of structured communication channel with EPPO
- The National approach for EDPs
- The need for a European wide harmonization regarding communication with the prosecuting authority
- And
- The opportunity to provide for a possibility to be heard before Permanent Chambers or to apply to the Permanent Chamber
- **The Communication of EPPO with media**
 - In the first months of activities we saw a certain activism of EPPO on the media
 - Some of the MS have a tradition of communication of the activities of the prosecuting authorities
 - The directive on presumption of innocence (2016/343) states some rules:
 - Article 4
 - *Public references to guilt*
 - *1. Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.*
 - *2. Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down in paragraph 1 of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.*
 - *3. The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.*

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Access to documents and to the file

- The EPPO regulation
 - Art. 45-46 of the Regulation
 - ...and the identity between the National case file and the Central case file (?)
- The case in cross border investigations (the CMS translated)
- *The Directive and main issues:*
 - Restricted access to file in some circumstances (art. 7 Directive)
 - Potential discrimination (possible violations of art. 18 and 21 of TFEU)
 - The variable geometry of the Access to file
 - A different problem:
 - The right to produce documents and evidences for private parties - the problem of defensive investigations allowed by Italian Law (art. 37 (1) Reg.)

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The Choice of Forum

- Vertical questions of competence: National/European prosecution
 - Little consequences with regards with applicable rules to the proceeding
 - The role of National Authority and the question of Preliminary Reference (the Ayuso case)
- Horizontal questions: intervention of different EDPs
 - Huge consequences with regards to applicable law and jurisdiction
- Right to ask reviewing the choice of forum
 - According to recital 87 is always possible to pose the question to the judicial authority if this is possible according to National Law.
 - In case of a possible Horizontal Disagreement, before requesting a proper judicial review, needs to be recognized the possibility for the suspect's lawyer to ask to the Permanent Chamber, according to Art. 26 (5).
 - Art. 26 (5) *"Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:*
 - (a) *reallocate the case to a European Delegated Prosecutor in another Member State;*
 - (b) *merge or split cases and, for each case choose the European Delegated Prosecutor handling it, if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article".*

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Rights of the suspects and accused persons and legal protection in the investigative phase

- THANK YOU FOR YOUR ATTENTION

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Stefano Castellani

Cross-border investigative and other measures of the EPPO : an overview



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

Stefano Castellani & Cécile Soriano
European Delegated Prosecutors
TRIER
23- 24 May 2021



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

1



Participating Member States



Non-participating Member States



Opt-out — opt-in Member States not participating



2

Investigations: how it works

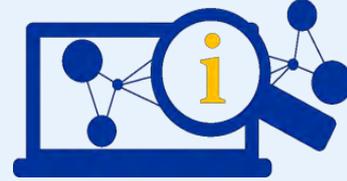
1



Information comes to EPPO

- From private parties: **Report A Crime web form**
- From national authorities

2



Verification and registration in digital **Case Management System** and assigned to a European Delegated Prosecutor.

3



If opened, EDP investigates from start to finish

- Supported by EDPs cross-border investigations
- EPPO financial investigators and case analysts
- Supported by national police, customs, tax services...
- Supervised by a Permanent Chamber in Luxembourg

4



Case is tried before the national court

3

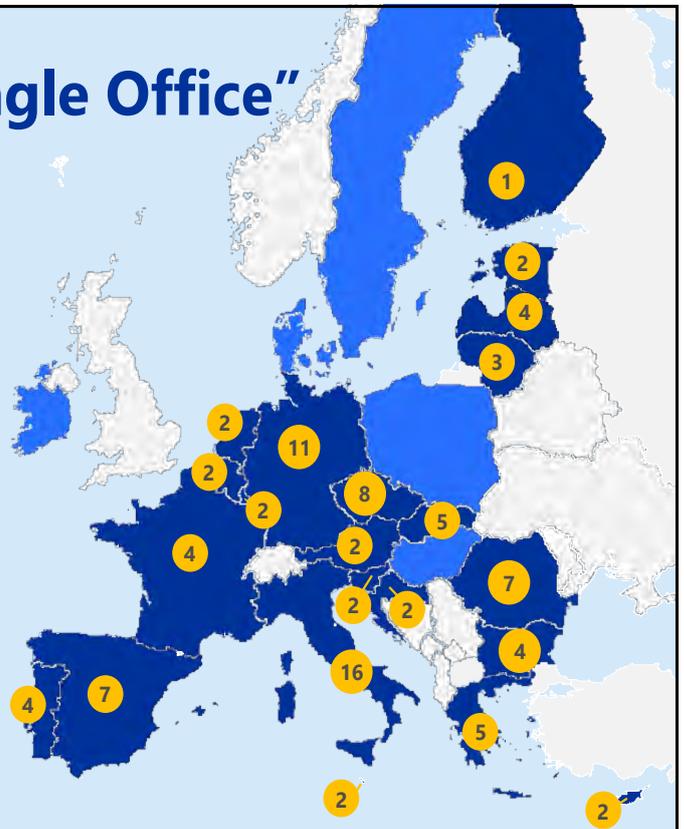
The concept of "Single Office"

Art. 8, par. 1, of Regulation 1939/2021 provides that:

*"the EPPO shall be an indivisible Union body operating as **one single Office** with a decentralized structure."*

The EPPO is an independent **Judicial Authority**, organized at a central level (Central Office) and at a decentralized level.

 = number of the European Delegated Prosecutors



4

The legal bases of cross-border investigations within EPPO

- **Article 4 (3) Treaty on European Union**
- **Articles 13, 30, 31, 32, 99-3 and 104 of EPPO Regulation (EU) 2017/1939 of 12 October 2017**
- **Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order**
- Framework Decision 2002/465/JAI of 13 June 2002 on joint investigation teams
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and its Additional Protocol of 16 October 2001

5

Investigative measures: single Prosecutor's Office vs mutual recognition

- The principle: between participating Member States, the European Delegated Prosecutor handling the case may directly delegate an investigative measure to his colleague in the Member State where the measure is to be carried out, without recourse to mutual recognition instruments (Article 31 EPPO)
- The exception: if the delegated measure does not exist in a purely internal situation but could be used in a cross-border situation, the delegated prosecutors may agree to make use of the applicable mutual assistance instruments (Articles 13, 31.6 EPPO)

6

Investigative measures: single Prosecutor's Office vs mutual recognition

- **Art. 31 – Type of investigative measures**
- Measures listed in Art. 30 : at least 4 years punishment
 - *Searches and seizures*
 - *Production of any object or document, including stored computer data, encrypted, including banking and traffic data*
 - *Freezing of instrumentalities or proceeds of crime*
 - *Interception of electronic communication*
 - *Tracking, tracing and controlled deliveries*
- Measures different from those listed in Article 30 : full assessment of proportionality
 - *If they do not require judicial authorisation and do not produce legal effects vis-à-vis third parties*
 - *can be steered by the EDPs easily and swiftly*

7

Investigative measures: single Prosecutor's Office vs mutual recognition

- **EIO– Type of investigative measures**
 - *The EIO covers all investigative measures (non-JIT) (Article 3 EIO)*
 - *freezing orders for the purpose of confiscation are covered by Regulation (EU) 2018/1805*

8

Investigative measures: single Prosecutor's Office vs mutual recognition

■ Art. 31 – General principles

- Art. 31 provides a new mechanism that replaces the mutual legal assistance and mutual recognition instruments;
- The justification and adoption of assistance measures are governed by the law of the handling European Delegated Prosecutor (Article 31.2 EPPO);
- The assisting EDP can trigger a process of consultation with the handling EDP and the supervisor European Prosecutor in the cases listed in art. 31(5);

9

Investigative measures: single Prosecutor's Office vs mutual recognition

■ EIO General principles

- Issued by an issuing judicial authority in order to have specific investigative measures carried out by an executing authority (Article 1 EIO) – No previous consultation
- Standardised Annex (Article 5 EIO)
- Subject to a necessity and proportionality assessment: grounds for non-recognition or non-execution (Articles 6, 9, 11 EIO)
- Double degree of appeal: Issuing State and executing State (Articles 14 — CJEU 11/11/2021, Case C-852/19)

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Investigative measures: single Prosecutor's Office vs mutual recognition

■ Art. 31 – Judicial authorization - Different scenario

- a) Judicial authorization needed only under the law of the assisting EDP (31.3)
- The assisting EDP "shall obtain the authorisation in accordance of the law of the Member state. If the authorisation is refused, the handling EDP shall withdraw the assignment";

Interpretative issues:

- Which law rules the justification and adoption of the measures? → Art.31(2): law of the handling. Same principle that rules the passive EIO
- Which set of evidence the assisting EDP should provide to the judge? → The assignment of measure received by the handling EDP is sufficient?
- Can the judge of the assisting EDP assess the substantive reasons for undertaking the measure?

- Legal remedies?
 - **In the handling MS:**
substantive reasons, Art. 41(1) EPPO Reg; Art. 47 EU Chart on fundamental rights
 - **In the executing MS:**
violation of fundamental rights;
errors in the execution of the measure.

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Investigative measures: single Prosecutor's Office vs mutual recognition

■ Art. 31 – Different scenario

b) Judicial authorization needed only under the law of the handling EDP

- The Handling EDP will obtain the authorisation and submit it to the assisting EDP(s) together with the assignment. (art.31.3)

Interpretative issues:

- Do documents and evidence need to be attached to the assignment or the assignment and the judicial authorisation are sufficient?

- Legal remedies?
 - **In the handling MS:**
substantive reasons, Art. 41(1) EPPO Reg; Art. 47 EU Chart on fundamental rights
 - **In the executing MS:**
violation of fundamental rights;
errors in the execution of the measure.

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Investigative measures: single Prosecutor's Office vs mutual recognition

■ **Art. 31 – Different scenario**

c) Judicial authorization required in both Member states (handling/assisting)

- Article 31(3) does not expressly address these situations;

Interpretative issues

What about recital 72 of EPPO Regulation “*..in any case there should be only one authorisation*”?

- Authorisation issued in both member states?
- The merit can be challenged only in the issuing MS?
- Legal remedies in the assisting MS?

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Investigative measures: single Prosecutor's Office vs mutual recognition

Art. 31 and EIO: practical aspects

- The European Public Prosecutor transmits his or her request for assistance and receives the implementing acts via a secure transmission system ‘CASE MANAGEMENT SYSTEM’
- The request for assistance shall state the time limit for performance
 - Failure to comply with the time limit for performance: intervention by the Permanent Chamber
 - In practice: consultation between European Delegated Prosecutors
- The EIO must be executed within 150 days: no legal consequences (Article 12 EIO)
- EIO and implementing acts are transmitted by any means (Articles 7, 13 EIO)

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Investigative measures: single Prosecutor's Office vs mutual recognition

Costs of execution of Art.31

- Article 31 of the EPPO Regulation creates a new legal framework for EPPO cross-border investigations, different from the traditional judicial cooperation legal instruments;
- Recital 113 states that EPPO has to cover those costs that were "*not previously incurred by Member States during an investigation which are caused only due to the EPPO having assumed responsibilities for investigation and prosecution*".
- Costs of execution have to be borne by EPPO, including costs for translations.

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The legal bases of "coercitive" measures within EPPO

- Article 4 (3) Treaty on European Union
- Articles 13 and 33 of EPPO Regulation (EU) 2017/1939 of 12 October 2017
- Framework Decision 2002/584/JAI of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
- Framework Decision 2009/829/JAI of 29 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

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EWA : MUTUAL RECOGNITION

- **General principle of identity of powers between national prosecutors and European Delegated Prosecutors**
- **Order for arrest or pre-trial detention in accordance with the applicable law in similar domestic proceedings (Articles 13, 33 EPPO)**
- **In line with CJEU's case law: use of Council Framework Decision 2002/584/JAI of 13 June 2002 in compliance with the definition of « judicial authority »**



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SUPERVISION MEASURES : MUTUAL RECOGNITION ?

- **No provision of the Regulation expressly refers to supervision measures**
- **Framework Decision 2009/829/JAI of 29 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention**



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PROCEDURAL RIGHTS

- Standard clause : compliance with EU Charter of fundamental rights (Art. 41.1)
- Minimum level of protection : 5 Directives on procedural rights post Stockholm Program (Art. 41.2)
 - *Directive 2010/64/EU interpretation and translation*
 - *Directive 2012/13/EU information and access to the case materials*
 - *Directive 2013/48/EU access to a lawyer*
 - *Directive 2016/343/EU silence and presumption of innocence*
 - *Directive 2016/1919/EU legal aid*
- All procedural rights available under national law (Art. 41.3)
- Access to case file (Art 45)
- Rule of evidence (Art 37 and recital 80)
- Suspect should only face one EPPO investigation (Recital 67)
- *Way forward : EPPO source of evolution/harmonisation*



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THANK YOU

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With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

The European Public Prosecutor's Office One Year On: Challenges Ahead Challenging EPPO procedural acts



24 May 2022

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Co-funded by the Justice Programme of the European Union (2014-2020). The contents can in no way be taken to reflect the views of the European Commission

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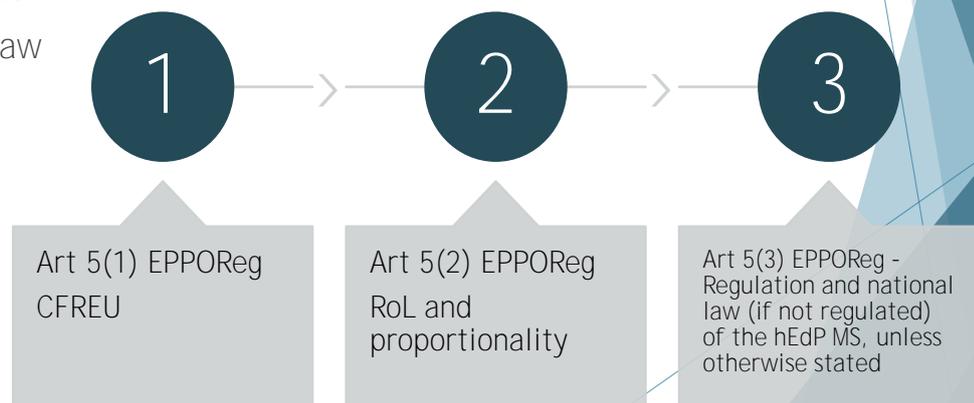
Summary of presentation

- A. Challenging EPPO acts - what is the legal Framework?
- B. The important questions
- C. How to go about finding how to challenge?
- D. Practical Examples (*selected issues only*)
- E. Problems - Future?
- F. Further reading

2

A. Challenging EPPO acts - what is the legal Framework?

- 1) The Regulation --> Secondary Law (e.g. procedural rights directives)
- 2) National Law
- 3) Primary Law



3

A. Challenging EPPO acts - what is the legal Framework? 1) The Regulation

“[national] courts do not have the power to declare acts of the Community institutions invalid” (CJEU 22 October 1987, 314/85, *Foto-Frost*) → not the case for EPPO procedural acts!

Article 263 TFEU ;

The Court of Justice of the European Union [...] shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers. [...]

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

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A. Challenging EPPO acts - what is the legal Framework? 1) The Regulation (2)

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

[...]

Art 86(3) TFEU → “3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

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A. Challenging EPPO acts - what is the legal Framework? 2) The Regulation

Basic rule: Judicial review before national Courts (instead of 263 - annulment before CJEU)

Article 42

Judicial review

1. Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

Substance: EU Law and national Law (rec. 88(2))

Procedure / Consequence: national Law BUT effectiveness / equivalence (rec. 88(2))

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CJEU 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses*

- ▶ 29 [...] as regards the material scope of the second subparagraph of Article 19(1) TEU, that provision relates to ‘the fields covered by Union law’, irrespective of whether the Member States are implementing Union law, within the meaning of Article 51(1) of the Charter.
- ▶ 30 [...] Article 2 TEU, the European Union is founded on values, such as the rule of law [...] mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that Member States share a set of common values on which the European Union is founded, as stated in Article 2 TEU [...]
- ▶ 31 [...] a union based on the rule of law in which individual parties have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act [...]

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CJEU 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses* (2)

- ▶ 32 Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals [...]
- ▶ 33 [...] national courts and tribunals, in collaboration with the Court of Justice, fulfil a duty entrusted to them jointly of ensuring that in the interpretation and application of the Treaties the law is observed [...]

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CJEU 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses*

- ▶ 34 The Member States are therefore obliged, by reason, inter alia, of the principle of sincere cooperation, [...] first subparagraph of Article 4(3) TEU, to ensure, in their respective territories, the application of and respect for EU law [...] In that regard, as provided for by the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective judicial protection for individual parties in the fields covered by EU law. It is, therefore, for the Member States to establish a system of legal remedies and procedures ensuring effective judicial review in those fields [...]

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CJEU 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses*

- ▶ 35 [...] effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the [ECHR] and which is now reaffirmed by Article 47 of the Charter [...]" (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 37, and of 22 December 2010, *DEB*, C-279/09, EU:C:2010:811, paragraphs 29 to 33).
- ▶ 36 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law [...]

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A. Challenging EPPO acts - what is the legal Framework? (3) Secondary Law (procedural rights Directives, etc.)

▶ Article 41 (2) Regulation

- ▶ [2010/64/EU](#): Art 2(5) (need for interp / quality); 3(5) (need for transl / quality); recital 25
- ▶ [2012/13/EU](#): Art 7(1) (access to case files to challenge detention); Art 8(2) (remedies for challenging failure to supply info); recitals 22, 30, 36.
- ▶ [2013/48/EU](#): Art 8(2), (3) (derogations); Art 12 (remedies); recitals 49 and 52
- ▶ [2016/343/EU](#): Art 10 (remedies); recitals 44, 46, 47
- ▶ [2016/1919/EU](#): Art 8 (remedies); recitals 27, 29

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A. Challenging EPPO acts - what is the legal Framework? (4) Primary Law

▶ Treaties

▶ [Charter](#)

- ▶ Art 3(1) Right to physical and mental integrity
- ▶ Art 6 Right to liberty (→ see Art 5 ECHR)
- ▶ Art 7 and 8 Right to privacy family life / protection of personal data (→ see Art 8 ECHR)
- ▶ Art 4 Right not to be subject to torture and inhuman or degrading treatment or punishment (→ see Art 3 ECHR)
- ▶ Art 11 Right to freedom of expression and media (→ see Art 10 ECHR)
- ▶ Art 16 Freedom to conduct business
- ▶ Art 17 Right to property (→ see P1-1 ECHR)
- ▶ Art 47 Right to fair trial and effective remedy (→ see Art 6(1) and 13 ECHR)
- ▶ Art 48 Pol and Rights of defence (→ see Art 6(1), 6(2) and 6(3) ECHR)
- ▶ Art 49 Legality and proportionality of offences and penalties (→ see Art 7 ECHR)
- ▶ Art 50 NBI (→ see P7-4 ECHR)

[...]

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B. The important questions

- 1) What is a procedural act?
- 2) Does it have legal effects vis-à-vis third parties?
- 3) Type of review (internal vs judicial)
- 4) Competent jurisdiction (national / CJEU / ECtHR)
- 5) Moment of Review (during investigation / after)
- 6) Legal Grounds for challenges (national laws hEDP / aEDP; EU Law)
- 7) Consequences?

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B. The important questions (2)

1. What is a procedural act ?

“procedural acts”

→ not explicitly defined in the Regulation, but implicitly defined *a contrario* as decisions taken in the performance by the EPPO of its functions of investigating, prosecuting or bringing to judgment.

See: definition of “**administrative decisions**” Art 42(8) and recital 89 EPPOReg

H.-H. Herrfeld, ‘Article 42: Judicial review’, in H.-H. Herrfeld, D. Brodowski, C. Burchard (eds.), *European Public Prosecutor’s Office: Article-by-Article Commentary* (2021), p. 409.

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B. The important questions

2. Does it have legal effects vis-à-vis third parties?

These are autonomous EU Law concepts

1) Third parties - rec. 87:

- Suspect/Accused
- Victim
- Any person holding an interest adversely affected by EPPO procedural acts
 - see case-law on Art 263 TFEU

2) Legal effects

- No definition in the Regulation
- But explicit examples:
 - Positive: choice of *forum* (rec 87); dismissal of case (art 42)
 - Negative: appointment of experts and the reimbursement of witness costs (rec 87)
- Other examples: *arrest of the suspect; search and seizure; freezing of assets; etc.*
 - see case-law on Art 263 TFEU

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B. The important questions

2. Does it have legal effects vis-à-vis third parties? (2)

Failure to adopt an act?

Also needed to check if the EPPO was legally required to adopt the act.

Examples?

- No decision on opening a case upon a report by victim?
- No reply to request to access to case files?
- Refusal of evidence requested by the defense?
- No dismissal if mandated by Art 39?

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B. The important questions

3. Type of review - “Internal Review”

- ▶ Hierarchical Review by SEP: Recital 30 / Article 12(4).
- ▶ Powers of PC to act - **possible to make representations and ask for PC decision...**
 - ▶ Article 10 (2) and (3)/(4)/(5) - **powers of the PC to “monitor and direct” investigations**
 - ▶ Bring a case to judgment (Article (36(1)(2)(3))
 - ▶ Dismiss a case (Article 39(1)(a) to (g))
 - ▶ Simplified prosecution procedure / final disposal (Article 40)
 - ▶ Refer a case to national authorities (Article 34(1)(2)(3)or(6))
 - ▶ Reopen an investigation (Article 39(2))
 - ▶ Instruction for evocation (Article 10(4)(b) - Art. 27(6))
 - ▶ Allocation (Art. 36(3)) / reallocation (Art. 28(3)) / Allocation to the SEP (Art 28(4))
 - ▶ Instructions in compliance with applicable national law to HEDP, where it is necessary for the efficient handling of the **investigation or prosecution, in the interest of justice, or to ensure the coherent functioning of the EPPO (10(5)) ... also possible for SEP (12(3))**
 - ▶ Merger of cases (Art. 36(4))
- ▶ ECP - referral MS / Article 34(4) - possible to make representations and ask for ECP decision...

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B. The important questions

3. Type of review - Judicial Review (national courts)

- ▶ Article 42 and Recitals 86-89
 - ▶ National Courts
 - ▶ General Rule - for all EPPO Acts / Failure to act if legally required - Art. 42(1) - rec 87
 - ▶ Acts *vis-a-vis* third parties - rec 87
 - ▶ Choice of Forum - 36(3) - rec 87

effectiveness /
equivalence

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B. The important questions

3. Type of review - Judicial Review- CJEU

▶ Article 42 and Recitals 86-89

▶ CJEU

▶ Decisions to dismiss the case (if contested solely on the basis EUL) - Art. 42(3); by whom (263,4 TFEU - victims?)

▶ Compensation for damage caused by EPPO Art. 42(4)

[other: *disputes contracts EPPO; staff matters; data protection; discipline of CEP; EP* - Art. 42(5)-(7)]

▶ Recital 89 / Art. 263(4) TFEU / Art. 42(8)

▶ Preliminary references - Art- 42(2)

▶ ECtHR?

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B. The important questions

3. Type of review - Judicial Review- CJEU (2) - Direct action

▶ Challenging decisions to dismiss the case before the CJEU (Art 42(3) EPPOReg):

Derogation from Art 42(1) → judicial remedy against an EPPO act (PC) to be brought before the CJEU

▶ Only applies if dismissal “contested directly on the basis of Union law” - note: grounds for dismissal are harmonized exhaustively in Art 39:

- ▶ death /winding up
- ▶ insanity
- ▶ amnesty
- ▶ immunity, unless lifted;
- ▶ expiry of the national statutory limitation to prosecute;
- ▶ *Ne bis in idem*
- ▶ lack of relevant evidence.

▶ If national law: art 42(1) → national courts

see rec 89 : EPPOReg no prejudice to the CJEU's jurisdiction actions for annulment brought by privileged applicants, in accordance with Art 263(2) TFEU) - applies to dismissal decisions? And other procedural decisions?
Problem of equality of arms...

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B. The important questions

3. Type of review - Judicial Review- CJEU (3) - Preliminary Ruling

▶ Preliminary references

- ▶ CJEU competence:
 - ▶ Art 19(3)(b) TEU, Art 267 TFEU
 - ▶ Title III of the Rules of Procedure of the Court of Justice.
 - ▶ **CJEU's Recommendations to national courts and tribunals (CJEU's Recommendations)**. Rules of Procedure of the Court of Justice [2012] OJ L 265/1, Title III.
 - ▶ Court of Justice of the European Union, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01)
- ▶ Means of reviewing legality of acts of Union institutions (*Foto Frost*)
- ▶ Subject-matter: interpretation or validity of EU law, not the interpretation of rules of national law or issues of fact

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B. The important questions

3. Type of review - Judicial Review- CJEU (4) - Preliminary Ruling

▶ Preliminary references

- ▶ No right to referral, but a power of national courts, and also duty, in particular courts of last resort
- ▶ Exceptions CJEU, 6 October 1982, CILFIT, 283/81
 - ▶ the question is irrelevant for the resolution of the dispute;
 - ▶ **the provision of EU law in question has already been interpreted by the Court ('acte éclairé');**
 - ▶ the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt ('acte clair').

Consequences of violation?

- ▶ Infringement (258 TFEU...)
- ▶ Extracontractual liability for violation of EU Law (CJEU 30.09.200, C-224/01, *Köbler*)
- ▶ ECHR violation (Art 6)

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B. The important questions

3. Type of review - Judicial Review- CJEU (5) - Preliminary Ruling

► EPPO specifics: Art 42(2) EPPOReg, rec. 88

Lit. (a) 'validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law' (EPPOReg, **CFREU, Directives, ...**).

No matters of validity on the basis of national law (even if a national law implementing the Directive).

Lit. (b) = to Article 267 TFEU

Lit. (c) Art 42(2)(c) interpretation of Arts 22 and 25 EPPOReg "in relation to any conflict of competence between the EPPO and the competent national authorities" → PROBLEM:

Art 25(6) of the EPPO Regulation provides that '[i]n the case of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Art 22(2), or (3) or Art 25(2) or (3), the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation the case.'

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B. The important questions

3. Type of review - Judicial Review- CJEU (6) - Preliminary Ruling

PROBLEM with lit. c):

- if such authority is not a court or tribunal within the meaning of Art 267 TFEU (see rec 62)
- If no judicial review of such measure
 - → not possible to make a request....
 - **Commentary EPPO: "require Member States to ensure that judicial remedies are possible against the decisions of that authority, so that eventually the national court that decides on such judicial remedy may request a preliminary ruling"** → also a mandate of Article 19(1) and 47

Spanish case

Also PT ?

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B. The important questions

3. Type of review - Judicial Review- CJEU (7) - Preliminary Ruling

1) In Portugal the competence on this decision on jurisdiction EPPO vs national has been given to the General Prosecutor:

Article 7 [Law 112/2019](#) Conflicts of jurisdiction

“It shall be incumbent upon the Prosecutor General to decide on the attribution of jurisdiction for the investigation in case of disagreement between the European Public Prosecutor’s Office and the national Public Prosecutor’s Office as to whether the criminal conduct falls within the scope of Article 22 (2) or (3) or Article 25 of the Regulation of the European Public Prosecutor’s Office.”

2) For the purposes of the purely domestic legal concept, our GP could perhaps be considered a judicial authority, but it is definitely not a court.

3) At domestic level the [CCP](#) states:

Article 266 Transmission of the case files

1 - If, during the course of the investigation, it is determined that the competence belongs to a different magistrate or agent of the Public Prosecutor’s Office, the case files will be transferred to the competent magistrate or agent of the Public Prosecutor’s Office.

2 - The acts of investigation carried out before transfer shall only be repeated if they cannot be used.

3 - In case of conflict over jurisdiction, the hierarchical superior who immediately superintends the magistrates or agents in conflict shall decide.

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B. The important questions

3. Type of review - Judicial Review- CJEU (7) - Preliminary Ruling

4) Thus, one could say that in the case the Prosecutor General acts as a “hierarchical superior” and is a judicial authority, but it is a *national PPO*, not *European PPO*.

5) Problem:

a. no judicial review because it invades the autonomy of the PPO in conduction of investigation? (some courts’ position)

b. incidental review only?

- if the competence of the investigative judge is questioned (which depends also on the competence of the prosecutor’s office), or

- if a nullity or other procedural vice is argued, during the preliminary investigation (under specific competence for certain acts, or under the guise of violation of fundamental rights - there is conflicting case law on this point)

--> problem of effectiveness (*practically impossible or excessively difficult*)

c. judicial review on the basis of the residual clause in art. 268(1)(f) CCP / 32(4) or 32(7) CRP for individuals? (*national law*)

d. **judicial review on the basis of Article 19, 1 TEU / 47 CFREU applying “analogous” proceedings (those in which the investigative judge may review acts of the PPO because established by law, e.g. a seizure)? To which court? (1st instance or Supreme Court?)**

→ **Portugal could use a rule similar to the German rule in order to comply with the regulation’s intentions (and likely with Article 19, 1 TFUE...47 CFREU). § 142b GVG**

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B. The important questions

4. Competent jurisdiction
5. Moment of Review
6. Legal grounds for challenges

- ▶ hEdP MS
- ▶ aEdP MS (e.g. *business premises, incident seizure of legal privileged materials; what is the scope?*)
- ▶ Both ? Which grounds?

- ▶ Pre-trial (*art 42 regulates pre-trial...*)
- ▶ After indictment

- ▶ National Law
- ▶ European Law (→ interplay with CJEU)
- ▶ If no national law judicial review but required by the Regulation? Action for annulment requisites in terms of scope?

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B. The important questions

6. Consequences

- 1) Ordering an act that was refused?
- 2) Nullifying an act that was refused?
 - ▶ Repetition?
 - ▶ Exclusion of evidence?
 - ▶ FOPT ?
 - ▶ Derivative “nullities”?
 - ▶ Nullifying the whole investigation?
 - ▶ “Mistrial”?
- 3) No consequences? → problem of inconsistency with Art 19 TEU / 47 CFREU

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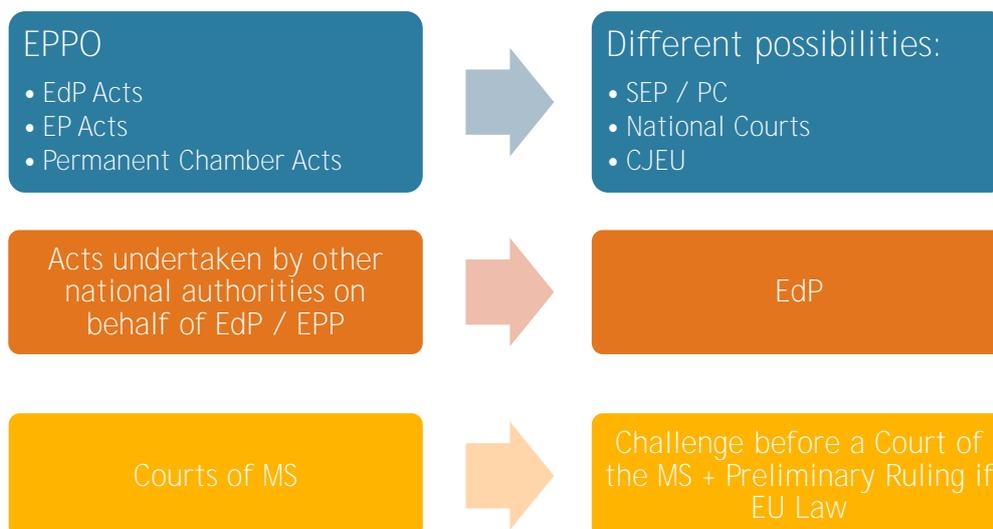
C. How to go about finding how to challenge?

1. Identify the author of the Act
2. Identify the type of act
 - a) Actions vs Omissions
 - b) Effects / no effects vis-à-vis third parties
3. Identify the type of review
 - a) Internal
 - b) Judicial
4. **Identify the “MS” jurisdiction** (*also connected to the timing of review....*)
 - a) hEdP
 - b) aEdP
 - c) both

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C. How to go about finding how to challenge?

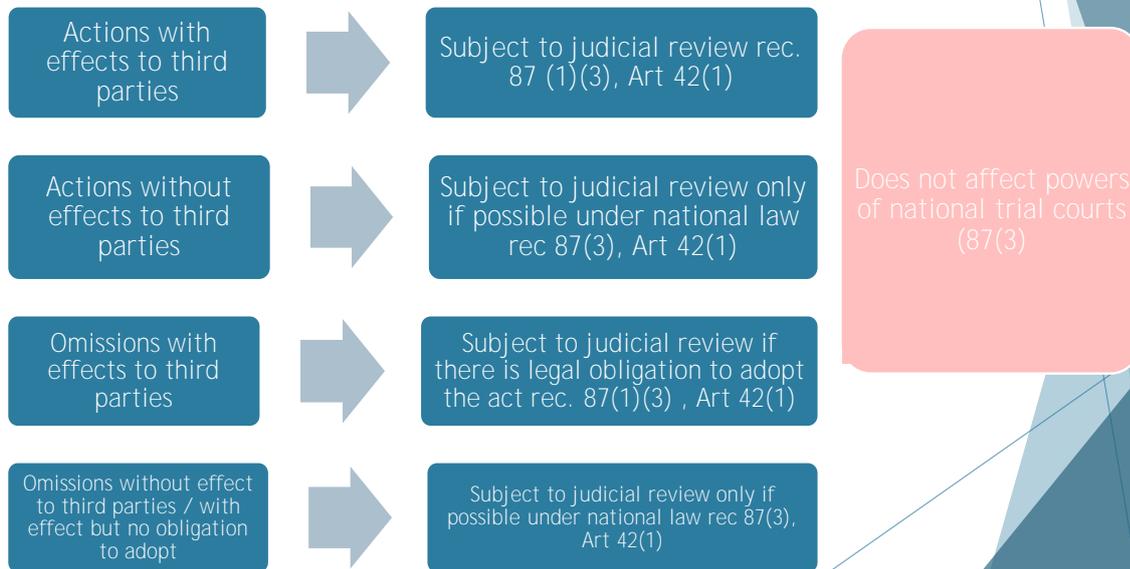
1. Identify the author of the Act



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C. How to go about finding how to challenge?

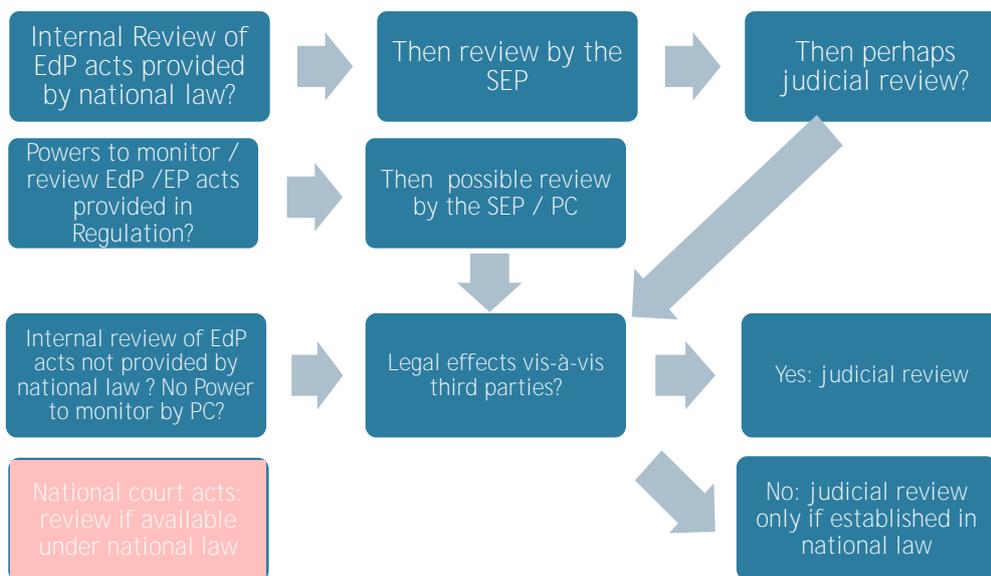
2. Identify the type of the Act



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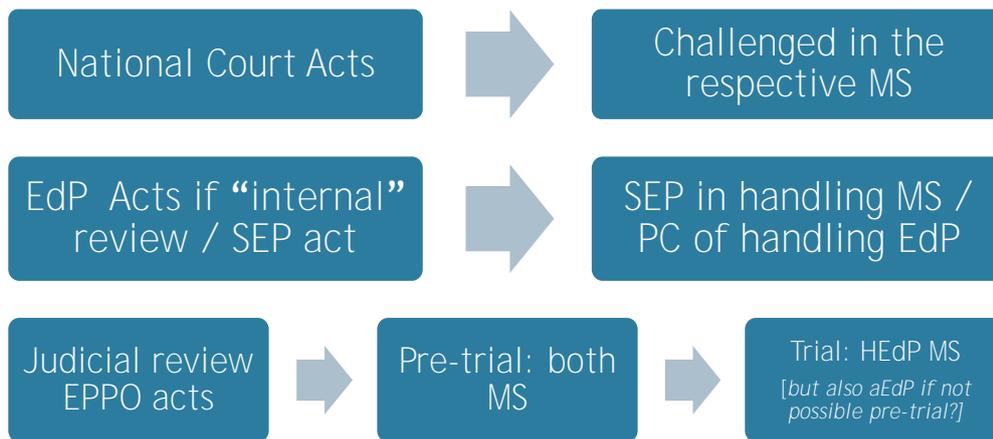
C. How to go about finding how to challenge?

3. Identify the means of review



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C. How to go about finding how to challenge?
4. **Identify the “MS” jurisdiction** (*also connected to the timing of review....*)



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D. Practical Examples

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Case II: the search - domestic context

▶ In MS "A", criminal proceedings have been initiated by the EPPO against suspects who purportedly committed several frauds affecting the EU budget.

▶ The EDP in MS "A" (the '*handling EDP*' = hEDP) decided to search the business premises of a company set up in MS "A" which is also suspected of involvement in the criminal activities, in order to seize relevant documents concerning one of the EU projects on which alleged fraud has been committed.

▶ The search is conducted and during the procedure several documents are seized and the suspect is officially informed that there is a case against him.

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Case II: the search - domestic context (2)

1. Can the defense lawyer challenge the decision of the EdP to deny access to the case files after the search and seizure?
2. In the affirmative, before which authority?

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How can the defence challenge the refusal access to case files?

Art. 41 PROCEDURAL SAFEGUARDS

Scope of the rights of the suspects and accused persons

1. The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence.
2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including **directives concerning the rights of suspects** and accused persons in criminal procedures, as implemented by national law, such as:
[...] (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU; [...]
3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have **all the procedural rights available to them under the applicable national law, including the possibility to present evidence, to request the appointment of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence.**

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How can the defence challenge the refusal access to case files? (2)

45 EPPOReg Case files of the EPPO

1. Where the EPPO 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 and evidence available to the European Delegated Prosecutor that relates to the investigation or prosecution by the EPPO.** Once an investigation has been opened, the information from the register referred to in Article 44(4)(a) shall become part of the case file.
2. The case file shall be managed by the handling European Delegated Prosecutor in accordance with the law of his/her Member State. [...] **Access to the case file by suspects and accused persons as well as other persons involved in the proceedings shall be granted by the handling European Delegated Prosecutor in accordance with the national law of that Prosecutor's Member State.**
3. The case management system of the EPPO shall include all information and evidence from the case file that may be stored electronically, in order to enable the Central Office to carry out its functions in accordance with this Regulation. The handling European Delegated Prosecutor shall ensure that **the content of information in the case management system reflects at all times the case file,** in particular that operational 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."

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How can the defence challenge the refusal access to case files? (3)

Access to case file: **rules in MS vary**, **practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

Directive [2012/13/EU](#): Art 7(1) (access to case files to challenge detention); Art 8(2) (remedies for challenging failure to supply info); recitals 22, 30, 36.

Article 7

Right of access to the materials of the case

1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that **documents** [rec 30 "and, where appropriate, photographs, audio and video recordings] **related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.** [rec 30 at the latest before a competent judicial authority is called to decide upon the lawfulness of the arrest or detention in accordance with Article 5(4) ECHR, and in due time to allow the effective exercise of the right to challenge the lawfulness of the arrest or detention.]

2. Member States shall ensure that **access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.**

3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted **in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court.** Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

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How can the defence challenge the refusal access to case files? (4)

Access to case file: **rules in MS vary**, **practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

Directive [2012/13/EU](#): Art 7(1) (access to case files to challenge detention); Art 8(2) (remedies for challenging failure to supply info); recitals 22, 30, 36.

Article 7

Right of access to the materials of the case

4. By way of derogation from **paragraphs 2 and 3**, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a **serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted.** Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph **is taken by a judicial authority or is at least subject to judicial review.**

5. Access, as referred to in this Article, shall be provided free of charge.

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How can the defence challenge the refusal access to case files? (5)

Access to case file: **rules in MS vary, practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

See ECtHR 13 October 2009, Appl. no. 7377/03, [Dayanan v. Turkey](#)

“[i]n accordance with the generally recognised international norms [...] an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being questioned [...] the **fairness of proceedings requires that an accused be able to obtain the whole range of services specifically associated with legal assistance**. In this regard, counsel has to be able to **secure without restriction the fundamental aspects of that person’s defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning**, support of an accused in distress and checking of the conditions of detention”.

See ECtHR 9 November 2018, Appl. no. 71409/10, [Beuze v Belgium](#), §136

The ECtHR identified other services, the lack of which may undermine the fairness of proceedings: **“refusal or difficulties encountered by a lawyer in seeking access to the criminal case file, at the earliest stages of the criminal proceedings or during the pre-trial investigation”** and **“the non-participation of a lawyer in investigative measures such as identity parades or reconstructions”**.

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How can the defence challenge the refusal access to case files? (6)

Access to case file: **rules in MS vary, practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

See ECtHR 20 September 2011, Appl. no. 17252/09, § 21, [Sapan v. Turkey](#)

“[...during police custody] the applicant indeed saw a lawyer on 13 March 2003 for a short period of time, between 10.30 and 10.55 a.m. It is not, however, possible to discern from the documents in the case file whether this meeting took place before or after the applicant made his police statement, or what it involved. What is, however, **clear to the Court is that the applicant’s lawyer had not been allowed to examine the investigation file at that point** (see paragraph 8 above), **which would seriously hamper her ability to provide any sort of meaningful legal advice to the applicant.**”

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How can the defence challenge the refusal access to case files? (7)

Access to case file: **rules in MS vary**, **practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

Directive [2012/13/EU](#): Art 7(1) (access to case files to challenge detention); Art 8(2) (remedies for challenging failure to supply info); recitals 22, 30, 36.

Verification and remedies

[...]

2. Member States shall ensure that suspects or accused persons or their lawyers **have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive**. [rec 36 That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism, or a complaint procedure in which such failure or refusal may be challenged. ??? Vs article 42 and 45 EPPOReg? No specific procedure but there must be judicial review in place]

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How can the defence challenge the refusal access to case files? (8)

Access to case file: **rules in MS vary**, **practice varies even widely** and **judicial review is not available everywhere**, and if available follows different standards

Directive [2012/13/EU](#): Art 7(1) (access to case files to challenge detention); Art 8(2) (remedies for challenging failure to supply info); recitals 22, 30, 36.

There must be a judicial remedy - Art 42(1) EPPOReg, Art 19, 1 TEU, 47 CFREU (and possibly before that an "internal review"). And it must be effective (i.e. not delayed for later stages, and not only part of the case file in one MS, but the whole picture)

It is an act with legal effects vis-à-vis third parties, since it significantly limits the rights of defence (and also of victims or third parties) - e.g. to challenge detention, to challenge seizure of assets, to challenge refusal to gather evidence, to exercise the right to actively participate in the case...

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- ▶ Could the application be addressed to the Supervising EP? Do they have the power to issue a ruling on this matter?
 - ▶ Will depend on national law - 12(4)
 - ▶ *Problem of compliance with article 19 TFEU and Article 47 CFREU if interpreted as precluding judicial review (see recital 30) - CBurchard, Article 12, mn 29.*
 - ▶ BUT Supervising EP may have competence to review the EdP act under Article 12(3), too.
- ▶ What about to the PC? (art 10(5))

5. The competent Permanent Chamber, acting through the European Prosecutor who is supervising the investigation or the prosecution, may in a specific case give instructions in compliance with applicable national law to the handling European Delegated Prosecutor, where it is necessary for the efficient handling of the investigation or prosecution, in the interest of justice, or to ensure the coherent functioning of the EPPO.

How can the defence challenge the refusal access to case files? (2)

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Case III: the search - cross-border context

- ▶ The hEDP in MS "A" now decides to conduct a search in another company set up in MS "B" which is also suspected of involvement in the criminal activities, in order to seize relevant documents concerning one of the EU projects on which alleged fraud has been committed (see Art 30 and 31 EPPOReg).
- ▶ The hEDP requests an EDP in MS "B" (the 'assisting EDP = aEDP') to conduct such a search and seize relevant evidence.
- ▶ The aEDP requested and obtained the judicial authorization from a court in Member State "B". According to the national laws in both MS, a court's authorisation is required for this measure (Art 31(3) EPPOReg).

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Case III (2): the search - cross-border context

1. Is it possible to lodge an application for judicial review asking the search to be declared unlawful, because a production order would have sufficed and because all documents found at his home were seized, irrespective of their relevance to the investigation? (See Art 30(5) EPPOReg) [EU and national law hEdP]
2. In the affirmative, before which authority?
3. And in which Member state?

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Search and seizure of the business premises:

- procedural EPPO act in the hEdP
- legal effects on the accused
- liable to judicial review (art 42 EPPOReg)
- standards + Article 30(5) EPPOReg
 - *“reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation” → “seize relevant documents concerning one of the EU projects on which an alleged fraud has been committed.”*
 - + *“no less intrusive measure available which could achieve the same objective”*

Execution:

- ▶ LOCUS law (Article 32) + formalities FORUM LAW

**How can the
defence
challenge the
cross-border
search and
seizure?**

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- ▶ In which MS?
 - ▶ Judicial Review of EPPO acts may be conducted in both MS (see Article 42(1)).
 - ▶ Court review in aEdP MS against the judicial authorization may be established in national law (*but not EPPO act*)
 - ▶ Problem: what is the applicable legal standard? For example can the compliance with the HEDP law be assessed in any MS? Or does this need to be done in the HEDP MS?
- ▶ Is the investigative judge in MS A competent to rule on such issues **during the investigative stage**? Or are domestic courts only competent to rule on the lawfulness of gathering of evidence once and if an indictment has been brought in that MS?
 - ▶ During the investigative stage, if possible under domestic law. VCR: if no remedy at this stage, there might be a problem of conformity with the Charter and Art 42(1) EPPOReg?
- ▶ Is judicial authorisation *ex ante* also required in hEdP MS (incompatibility of art 31 EPPOreg if interpreted as precluding it where both MS require)?
- ▶ **If the challenge is successful, what happens do the evidence?**

How can the defence challenge the cross-border search and seizure? (3)

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Case IV: defensive investigations

- ▶ The accused X wants to actively make representations to the hEDP and also to ask for the production of evidence to support his case that there is no offence.
- ▶ His lawyer submits an application explaining the relevant facts and asking to 2 witnesses to be interviewed, which testimony is essential to prove those facts, one located in MS "A", the other MS "B" (see Art 41(3) EPPOReg). The defence lawyer further requests to participate in the interview (see Art. 41(1), (2)(c), 3 EPPO Reg; Directive 2013/48/EU).
- ▶ The hEDP accepts to hear the former witness, but not the latter. Equally, the hEDP refuses to let the lawyer of the accused participate in the witness interview and states the lawyer may send his questions in advance in written.

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Case IV: defensive investigations (2)

1. Is it possible to lodge a challenge to the refusal to hear the second witness?
2. In the affirmative, before which authority?
3. And in which Member state?
4. What about the refusal to let the defense lawyer participate in the interview?

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► *Is the EPPO obliged to hear the witnesses in Member State “B” upon request of the defence?*

- *Recital 65 of the EPPO Reg (investigations and prosecutions of the EPPO should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. (see also Article 5(1 and 2))*
- *Obligation to seek all types of evidence, inculpatory as well as exculpatory, either proprio motu or at the request of the defense (see also Article 5(4))*
- *Recital 85 and Art. 41 (3), - any suspect or accused person in respect of whom the EPPO initiates an investigation should benefit from the right that evidence on behalf of the defence is otherwise produced by the EPPO. But regulated in national law.*
- *However, there is no strict obligation to follow any request by the defense. What will be the threshold? Inequality between MS.... problematic....*
- *If refused - what to do? Possible use of judicial review? (problem... refusal... not legally required... unless disputed...) or of Article 12(4) ? Or generally request to PC?*

**Evidence
requested of
presented by
the defence**

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- ▶ Can the defence later on a trial challenge the **admissibility of witnesses' statements later on** at the trial because not subject to cross-examination?
 - ▶ Yes, according to FORUM law and also the Charter (Article 47 and 48 - see ECtHR case law)
 - ▶ See e.g. 4 A.M. v Italy App no 37019/97 (ECtHR, 14 December 1999) paras 26-27
<http://hudoc.echr.coe.int/eng?i=001-58379>
 - ▶ However the question might not be of admissibility but merely of the weight of the evidence.... **Depends on the FORUM Law (and ECtHR... / CFREU)**

Evidence requested of presented by the defence (2)

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Case V: EAW

- ▶ The hEDP in MS "A" issues an EAW for the arrest of the suspect for crimes of VAT Fraud and ML.
- ▶ The person is arrested in MS "C"
- ▶ In MS "A" there is no judicial review before surrender.
- ▶ **Can the EAW be quashed because not in line with CJEU case law?**

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Case V: EAW (2)

Case of VA, Order of the Court of 22nd June 2021, Case C-206/20.

prosecutor's decision ordering the detention of the requested person for a maximum of 72 hours, on which the EAW was based, must be classified as an 'enforceable judicial decision having the same effect' as a national arrest warrant, within the meaning of Article 8(1)(c) of Framework Decision 2002/584.

Nevertheless, the conclusion does not suffice for a finding that the Bulgarian system of criminal procedure under which both the European arrest warrant and the decision on which it was based were issued by the public **prosecutors' office** met the requirements of Framework Decision 2002/584.

Namely compliance with the dual level of protection of the rights which must be enjoyed by the requested person, **as interpreted by the Court's case-law** since judicial review in that connection could take place only after the surrender of the requested person.

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Case V: EAW (3)

Case of VA, Order of the Court of 22nd June 2021, Case C-206/20.

See also CJEU, *Bob-Dogi*, 1 June 2016, C-241/15.

“as is apparent from paragraphs 47 and 48 of the judgment of 10 March 2021, PI (C-648/20 PPU, EU:C:2021:187), the Court held that it is apparent from that case-law that a person who is the subject of a European arrest warrant for the purposes of criminal prosecution must be afforded effective judicial protection before being surrendered to the issuing Member State, at least at one of the two levels of protection required by that case-law. Such protection presupposes, therefore, that judicial review of either the European arrest warrant or the judicial decision on which it is based is possible before that warrant is executed” (p. 49).

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E. Problems of procedural rights in this context

Lack of access to CJEU

- i. Dismissal vs Indictment - equality of arms
- ii. Lack of effective EU remedies - preliminary Ruling is not an appeal
- iii. Horizontal and Vertical conflicts of jurisdiction - *federal issues with no federal remedy*

Lack of national remedies

- i. National legal systems may have no adequate judicial review in place
- ii. There may not be substantive remedies or no adequate substantive remedies

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E. Problems of procedural rights in this context

Lack of uniform remedies at national level

- i. Variance between the multiple national legal systems - unequal treatment of accused and lack of uniform implementation and application of EU Law

Lack of definition of remedies at EU level

- [even if one considers the Regulation obliges to create remedies] Lack of definition of:
1. the standards of review
 2. the mode / intensity of review
 3. the moment of review
 4. the procedure for review
 5. the consequences of a successful challenge

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E. Problems of procedural rights in this context - Future?

Agenda 2020 ECBA – a New Roadmap on Procedural Rights

- ▶ Amsterdam Treaty / Tampere Council 1999 → principle of mutual recognition → Lisbon Treaty Art. 67, 82 TFEU.
- ▶ Mutual recognition requires mutual trust.
- ▶ 2009 Roadmap on procedural safeguards.
- ▶ Mission to achieve mutual trust has not been completed: partial distrust still exists (e.g. Measure F 2009 Roadmap - [Detention Green Paper](#) - no follow up)
- ▶ Need to monitor implementation of Procedural Rights' Directives and Directive (EU) 2016/343.
- ▶ Action should continue to be taken at the EU level in order to strengthen the rights of suspected or accused persons in criminal proceedings and thus the principle of mutual recognition and its underlying mutual trust.
- ▶ ECBA Proposal - "Agenda 2020: A new Roadmap on minimum standards of certain procedural safeguards"

Matt, Holger, 2017 - <https://eucrim.eu/articles/guest-editorial-eucrim-12017/>

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ECBA Agenda 2020

- ▶ Measure A: Pre-Trial-Detention, including the European Arrest Warrant
- ▶ Measure B: Certain Procedural Rights in Trials
- ▶ **Measure C: Witnesses' Rights and Confiscatory Bans**
- ▶ Measure D: Admissibility and Exclusion of Evidence and other Evidentiary Issues
- ▶ Measure E: Conflicts of Jurisdiction and *ne bis in idem*
- ▶ Measure F: Remedies and Appeal
- ▶ Measure G: Compensation

ECBA Agenda 2020 available at: <http://www.ecba.org/content/index.php/124-featured/751-ecba-roadmap-2020> ;
<https://journals.sagepub.com/doi/pdf/10.1177/2032284418788760>

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Measure D of the ECBA Roadmap Agenda 2020 - Procedural rights in the context of evidence-gathering

- ▶ This area has not been regulated, without prejudice to some sparse provisions in the various instruments.
- ▶ For example:
 - ▶ the right of the lawyer to be present at questionings and some evidence gathering acts (Directive 2013/48);
 - ▶ the right to request an FIO (art. 1, no. 3 Directive 2014/41);
 - ▶ European Public Prosecutor's Office - art. 41, no. 3;
 - ▶ Exclusion of evidence / valuation - art. 14, no. 7, Directive 2014/41 and 37 European Public Prosecutor's Office Regulation;
 - ▶ Legal remedies / judicial review (art. 42 EPPO and art. 14 of Directive 2014/41)
- ▶ However, these are very limited and refer in most cases to national law.

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Measure D of the ECBA Roadmap Agenda 2020 Admissibility of Evidence

Problems:

- a) highly **divergent interpretation of the various rights at domestic level**, which creates relevant differences, for example in the role of legal assistance and access to the file at the pre-trial stage, which creates a very disparate situation between MS, calling into question the uniform guarantee of established rights.
- b) particularly serious situation in the area of **cross-border evidence gathering, whether horizontal or in European Public Prosecutor's Office proceedings**, as the accused will **not have a sufficiently consistent and high minimum level of procedural rights at the investigation (or trial) stage**. Even domestic protection and compensation mechanisms lose their effectiveness because of the cross-border combination of legal systems.

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Measure D of the ECBA Roadmap Agenda 2020 Admissibility of Evidence

- c) **legal fragmentation** which makes it very difficult to determine the applicable law and makes the rules of several countries incompatible in the field of measures of gathering evidence, something particularly relevant in the field of special investigative measures, or intrusive measures.
- d) **lack of appropriate remedies**, either procedural or substantive.

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Measure D of the ECBA Roadmap Agenda 2020 - (Pre-Trial) Admissibility of Evidence

What proposals are under discussion?

- a) **monitoring**, and **assessing** the need for additional legislative measures **defining** the role of the lawyer, the rules of access to the file in relation to the different procedures for gathering evidence and exercising means of protection
- b) the **establishment of specific cross-border rights**, including assistance by a lawyer and special provisions guaranteeing the defendant's right to participate actively in the taking of evidence and the possibility of taking evidence.

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Measure D of the ECBA Roadmap Agenda 2020 - (Pre-Trial) Admissibility of Evidence

What proposals are under discussion? (2)

- c) **harmonisation of procedural "guarantees"** regarding the gathering of evidence, in particular intrusive measures.

- d) the establishment of **European law remedies**, access to the CJEU, and sanctions for violations in relation to the taking of evidence.

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F. Further Reading

AAVV, EuCRIM 3/2020 <https://eucrim.eu/issues/2020-03/>

Focus: The Future of EU Criminal Justice – Expert Perspectives

Garamvölgyi /Ligeti /
Ondrejová / von Galen

Admissibility of Evidence in Criminal Proceedings in the EU

- ▶ Legislative option:
 - ▶ Directive which could include:
 - ▶ **"inclusionary rule"**
 - ▶ **"human rights" + "EU rights" rules of exclusion**
 - ▶ Harmonisation of certain types of evidence (e.g. *digital evidence*)
 - ▶ Other aspects of evidence law (e.g. rules on defence rights to gather or request evidence)
- ▶ Non-legislative option:
 - ▶ A fresh academic study on admissibility of evidence

Costa Ramos / Luchtman / Munteanu

Improving Defence Rights

- ▶ Legislative option:
 - ▶ **Cross-border procedures' minimum rules:**
 - ▶ Issuing State (full legality and proportionality review, intrusive measures: ex ante court authorisation degree of suspicion, purpose limitation, remedies ex post, right to request investigation measures)
 - ▶ Executing State (A2F, procedural remedies in relation to execution or transfer; notification of violations to the issuing state);
 - ▶ Trial State (which authority / which law / horizontal preliminary ruling / procedural and substantive remedies)
 - ▶ **Furthering "ABC" Directives (Directive I)** - e.g. A2L in pre-trial stages; A2F; service of documents; right to participate at trial and appeal
 - ▶ EPPO procedural rights (Regulation)
 - ▶ Further rights with specific regulations for cross-border (or only cross-border) (Directive / Regulation)
 - ▶ Remedies
 - ▶ Minimum rules for judicial review (Directive)
 - ▶ Minimum rules for procedural sanctions for breaches of defence rights (Directive)
- ▶ Non-legislative option:
 - ▶ EPPsO procedural rights - guidelines
 - ▶ Guidelines legal assistance in cross-border / supranational constellations
 - ▶ Funding of legal aid for cross-border, cross-jurisdictional
 - ▶ **Handbooks, training, [...]**
 - ▶ Remedies
 - ▶ Green Paper on remedies (procedural and substantive)
 - ▶ Focused on certain rights (information on rights, *nemo tenetur*, access to a lawyer, privacy in criminal investigations)
 - ▶ Development of case law

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F. Further Reading

C-276/01, Steffensen, Judgment of 10.04.2003

<https://curia.europa.eu/juris/document/document.jsf?docid=48205&mode=lst&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=4766578>

- §§60-80

C-310/16, Dzivev et al, Judgment of 17.01.2019

<https://curia.europa.eu/juris/document/document.jsf?jsessionId=0D40A3BD579F68C579EB6EB18C0D6437?text=&docid=209925&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=11582645>

▶ §§23-41

C-746/18 - Prokuratuur (Conditions **d'accès** aux données relatives aux communications électroniques), Judgment of 02.03.2021

<https://curia.europa.eu/juris/liste.jsf?language=en&num=c-746/18>

▶ §§42-45

C-511/18 - La Quadrature du Net and Others, Judgment of 06.10.2020

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=232084&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=659722>

▶ §§223-228

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Thank you !
Obrigada!

Check out www.ecba.org

22 May 2022

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With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

"The European Public Prosecutor's Office One Year On: Challenges Ahead"

One year of EPPO: Perspectives from the Commission

Fabio Giuffrida
DG Justice and Consumers, European Commission

24 May 2022

1



COM role ('internal' & 'external')

- Budget
- Reporting - cooperation under EPPO-COM Agreement
- Monitor 'implementation' of the Regulation (infringements? Revision?)
- Monitor implementation of the PIF Directive
- External representation of the Union (see CH issue)
- NPMS?

2



EPPO in the context of EU law

- Conditionality (rule of law) Regulation
- EPPO is a component to be taken into account in all initiatives somehow related to its competence (Europol, Interpol, AMLA, transfer of proceedings, etc.)
- Extension of competences – terrorism?
Environmental crime?

3



Thank you very much for your
attention!

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4

Till Gut

The European Public Prosecutor's Office

One Year On: Challenges Ahead



Cooperation **with EPPO's partners:**
Institutions, non-participating Member States,
third countries, international organisations

Till Gut

Trier, 23 May 2022



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

1

EPPO: Cooperation with partners



Regulation (EU) 2017/1939 (“EPPO Regulation”)

CHAPTER X

PROVISIONS ON THE RELATIONS OF THE EPPO WITH ITS PARTNERS

Art. 99: Common provisions

Art. 100: Relations with Eurojust

Art. 101: Relations with OLAF

Art. 102: Relations with Europol

Art. 103: Relations with other institutions, bodies, offices and agencies of the Union

Art. 104: Relations with third countries and international organisations

Art. 105: Relations with non-participating Member States

2

EPPO: Cooperation with partners

Article 99 EPPO Regulation

- (3): cooperative relations with
 - institutions, bodies, offices or agencies of the Union;
 - authorities of non-participating Member States;
 - authorities of third countries and international organisations;
- (2): EPPO may directly exchange all information - unless otherwise provided for in Regulation (e.g. see Articles 80 to 84 on data protection)
- (3): working arrangements,
 - only of a technical and/or operational nature, no basis for exchange of personal data, nor legally binding effects on the Union or its Member States
 - <https://www.eppo.europa.eu/en/documents> (document category: „Working arrangements“)

Cooperation with Eurojust, OLAF, Europol

Eurojust: Article 100 EPPO Regulation / Article 50 of Eurojust Regulation (2018/1727)

- Working Arrangement between EPPO and Eurojust, February 2021
- e.g., sharing information, support in cooperation with non-participating Member States

OLAF: Article 101 EPPO Regulation / in particular new Articles 12c to 12g of OLAF Regulation (2020/2223)

- Working Arrangement between EPPO and Europol, July 2021
- reporting of cases within EPPO competence
- **support or complement the EPPO's activity, administrative investigations**

Europol: Article 102 EPPO Regulation / in particular new Article 20a of Europol Regulation (doc. PE -CONS 8/22, 11.05.2022)

- Working Arrangement between EPPO and Europol, January 2021
- **new Europol Regulation: “hit/no hit system”, reporting of cases within EPPO competence**

Relations with other institutions, bodies, offices and agencies of the Union

- Article 24 EPPO Regulation:
 - institutions, bodies, offices and agencies of the Union shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence
- Article 103 EPPO Regulation:
 - (1): cooperative relationship with the Commission; agreement setting out the modalities;
 - but without prejudice to the proper conduct and confidentiality of its investigations
 - Working Arrangement between the European Commission and EPPO, June 2021
- Cooperation with other institutions, bodies, offices and agencies of the Union:
 - Working Arrangement between the EPPO and EIB Group (European Investment Bank and the European Investment Fund), December 2021
 - Working Arrangement between European Court of Auditors and the EPPO, September 2021

Relations with third countries and international organisations

- Article 104 EPPO Regulation:
 - (3): international agreements on cooperation between Union and third countries?
 - EPPO notified under EU-UK Trade and Cooperation Agreement (OJ L 444, 31.12.2020, p. 1486)
 - See also agreements on mutual legal assistance of EU with USA (OJ L 181, 19.07.2003, p. 34) and with Japan (OJ L 39, 12.02.2010, p. 20)
 - (4): If no such specific (new) legal instrument: recourse to multilateral international agreements?
 - or (5): recourse to powers of a national prosecutor **from handling EDP's Member State to** request legal assistance from authorities of third countries (treaty-based, non-treaty based)
 - but will treaty parties/Member States recognise/notify EPPO as a competent authority?
 - e.g., Swiss declarations (27.01.2022) on 1959 Council of Europe MLA Convention + protocols

Cooperation with non-participating Member States

- Article 105 EPPO Regulation:

(3): **legal instrument** on cooperation between EPPO and non-participating Member State?

- Working Arrangement between EPPO and the Office of the Prosecutor General of Hungary, April 2021
- no specific legal instruments yet with Denmark, Ireland, Poland or Sweden

If no such specific (new) legal instrument: Member States shall notify the EPPO as a competent authority for the purpose of Union acts on judicial cooperation

but:

- only **participating Member States** under such an obligation to designate EPPO and thus equate EPPO with their own judicial authorities
- Will non-participating Member States recognize EPPO fully?

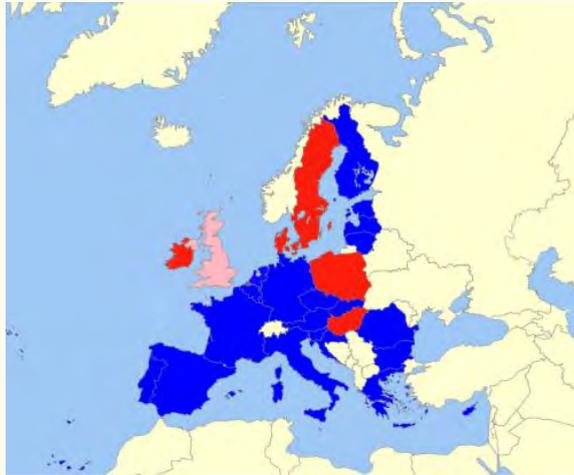
Thank you for your attention

Hans-Holger Herrnfeld



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

Prospects of EPPO – A first analysis of the EPPO Regulation



Europäische Rechtsakademie, Trier, 23 – 24 May 2022

Dr. Hans-Holger Herrnfeld



Co-funded by the Justice Programme of the European Union 2014-2020

1

Overview

- In spite of some concerns: the EPPO Regulation has proven to be workable in practice
- Enhanced cooperation on the establishment of the EPPO
- Some issues for a possible amendment of the EPPO Regulation
 - Appointment of European Prosecutors
 - Legal status of European Delegated Prosecutors
 - Internal decisions making competences and processes
 - EPPO competence and rules on limitations to the exercising of competences
 - Cross-border investigations
 - Procedural rights
 - Judicial review
 - CMS and EPPO case file
 - Data protection rules
 - Scattered legal environment – single legal are – application of national law

2

Article 16 - Appointment of European Prosecutors

❖ Current situation

- Non-renewable term of office of 6 years, which may be extended for a maximum of 3 years at the end of that period (Ar. 16(3) EPPO Reg.)
- The Council is competent to select and appoint the EPs (Art. 16(2) EPPO Reg.)
- Every 3 years there shall be a partial replacement of 1/3 of the EPs (Art. 16(4))
- In line with Art. 16(4), the Council adopted transitional rules for the first period and appointed 1/3 of the EPs for a non-renewable 3-year period

❖ Issues

- Unfortunate fact that 1/3 of the first EPs will only be able to serve for 3 years
- When and how to decide about a possible extension for a maximum of 3 years at the end of the six-year period?
- How to keep the rhythm: in the future always nine years instead of six?
- How to deal with situations where a EP leaves his/her position early?

3

Legal status of European Delegated Prosecutors (I)

Art. 13 (1)

The European Delegated Prosecutors shall act on behalf of the EPPO **in their respective Member States** and shall have the **same powers as national prosecutors** in respect of investigations, prosecutions and bringing cases to judgment, **in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.**

Art. 13 (3)

The European Delegated Prosecutors **may also exercise functions as national prosecutors**, to the extent that this does not prevent them from fulfilling their obligations under this Regulation.

Art. 17(2)

The European Delegated Prosecutors shall, from the time of their appointment as European Delegated Prosecutors until dismissal, be active members of the public prosecution service or judiciary of the respective Member States which nominated them.

4

Legal status of European Delegated Prosecutors (II)

Art. 96(6)

(1) European Delegated Prosecutors shall be engaged as **Special Advisors** in accordance with Articles 5, 123 and 124 of the Conditions of Employment. (2) The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy that may adversely affect their career or status in the national prosecution system. (3) 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 shall ensure that they are fully integrated into their national prosecution services. (4) It shall be ensured that adequate arrangements are in place so that the European Delegated Prosecutors' **rights relating to social security, pension and insurance coverage under the national scheme are maintained**. (5) It shall also be ensured that the **total remuneration** of a European Delegated Prosecutor is not lower than what it would be if that prosecutor would only have remained a national prosecutor. (6) The **general working conditions and work environment** of the European Delegated Prosecutors shall fall under the responsibility of the competent national judicial authorities.

5

Legal status of European Delegated Prosecutors (III)

Issues:

- Maintain status as 'special advisors'?
- Temporary agent as alternative?
- Social security schemes – EPPO or national?
- Resources and equipment?
- Dedicated investigators to support EDPs?

6

Internal decision-making competences

❖ Current situation

- The EDPs conduct investigations and prosecutions on behalf of the EPPO in their respective Member States (Art. 13(1) EPPO Reg.)
- They act under the supervision of 'their' European Prosecutor (Art. 12(1) EPPO and the competent Chamber (Art. 10(2) EPPO Reg.)
- When an EDP considers the investigation to be completed he/she shall report to the Chamber via the supervising European Prosecutor
- The competent Chamber is empowered to take the final decisions on bringing the case to judgment, on the dismissal of the case, on applying simplified prosecution procedures or on the referral of the case to national authorities (Art. 10(3) EPPO Reg.)
- The Chamber may delegate certain final decisions to the supervising European Prosecutor (Art. 10(7) EPPO Reg.)

❖ Possible amendment of these rules

- Simplification and extension of the delegation possibilities (Art. 10(7))
- Introduce no-objection procedures so that final decisions are taken by the handling EDP provided that EP and competent Chamber don't object to the intended course of action

7

Article 22 and 23 – competences of the EPPO

Issues:

- ❖ Art. 22(1) PIF Directive as implemented by national law
 - Correct implementation of PIF Directive in all MSs?
 - List of competences in each MS (what are the offences to be considered as implementing the PIF Directive?); Art. 117 notifications
 - VAT competence – threshold – calculation of damage – question of definition in the PIF Directive – obligation to criminalize vs competence of the EPPO
 - No extension of competence based on gold plating
- ❖ Art. 23(1) – 'committed in whole or in part within the territory of one or several Member States' – location of criminal activity or (also) the results of the criminal activity?

8

Exercising of competence – Article 25 (I)

Principle: The EPPO has a priority competence (and MS shall refrain from exercising their own) in situations where the criminal offence ('set of facts') is primarily a PIF offence ('preponderant'). The EPPO is to refrain from exercising its competence:

(a) In case of inextricably linked non-PIF offences

- if the maximum sanction for the PIF offence does not exceed that of the non-PIF offence ('is equal to or less'),
- unless the non-PIF offence has been instrumental to commit the PIF offence ('deemed to be ancillary in nature ... merely instrumental' – recital 56)

(b) In all cases of PIF offences concerning non-VAT revenue, if there is reason to assume that the damage to the financial interests of the Union does not exceed the damage caused, or likely to be caused to another victim.

These rules were considered necessary in order to ensure that Regulations stays within the limits of Article 86(1) TFEU ('In order to combat crimes affecting the financial interests of the Union...').

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Exercising of competence – Article 25 (II)

Exceptions to the principle:

- The rule of Article 25(3)(b) does not apply to PIF offences concerning VAT revenue as well as PIF offences concerning expenditures
- And in case of non-VAT revenue, the EPPO may exercise competence in spite of the rule set out in Art. 25(3)(b), 'if it appears that the EPPO is better placed to investigate or prosecute' and provided that the competent national authority gives its consent (cf Art. 25(4))

Issues:

- Difficult wording of the provision
- Art. 25(3) worded so that both paragraphs apply independently – thus the EPPO shall refrain from exercising its competence if either of the two scenarios apply (non-preponderance prevails)
- Art. 25(3)(a) applies even in case of same sanction level between PIF offence and inextricably linked non-PIF offence
- What does 'instrumental' mean? (recital 56?)

10

Shared competence and transfer of proceedings

The EPPO **shall refer** the case to national authorities, if

- No criminal offence in accordance with Articles 22 and 23 (Art. 34(1))
- Conditions for exercise of EPPO competence (Articles 25(2) and (3) are not met (Art. 34(2))

The College **may refer** a case to the national authorities (Art. 34(3))

- if the damage to the EU is less than 100.000€ and where in accordance with the guidelines set by the College the seriousness of the offence or the complexity of the case does not require an investigation at EU level

In case of **paragraphs (2) and (3)**: if the national authority does not accept to take over the case, the EPPO '**shall remain competent**' (Art. 34(5))

In spite of the wording used here, the EPPO Regulation thus differentiates between competence and exercise of competence

11

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Article 31 – Cross-border investigations (I)

❖ Principle I: 'single office' – no need for recognition

- Handling EDP decides on the adoption and assignment of the measure
- Any measures available to handling EDP in accordance with Art. 30
- Justification and adoption in accordance with law of handling EDP MS
- Assisting EDP shall undertake the measure without any need for a previous formal recognition – no grounds for refusal – only possible to raise 'concerns'

❖ Principle II: 'single judicial authorization' – no need for recognition

- National law applies to need for court order or judicial authorization
- If necessary only in the handling EDP MS, the handling EDP shall obtain it
- If necessary under the law of the assisting EDP MS – or the law of both MSs – the assisting EDP shall obtain it 'in accordance with the law of that MS'

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Article 31 – Cross-border investigations (II)

❖ Issues

- Several uncertainties in the interpretation of the provisions
- Relationship between para 2 (justification and adoption) and para 3(1) (authorization in accordance with the law of that Member State)
- In situations of para 3(1): what does the judge/court need to verify?
- Potential difficulties for judge/court in situations of para 3(1) to take a decision merely on the basis of the information from the EPPO case file (language!)
- In situations of para 3(1): what if handling EDP did obtain authorization in own Member State in spite of the fact that judicial authorization is (also) required in assisting EDP Member State?
- Competence for subsequent judicial review of measures assigned and executed in accordance with Article 32? (handling EDP MS and/or assisting EDP MS?)

❖ Possible solution

- Judicial authorization always in Member State of handling EDP
- Limited 'grounds for refusal' (less than in EIO Directive)
- Judicial review (grounds, justification/substantive reasons) in handling EDP MS

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Grounds for dismissal – exhaustive list – national law?

Recital 81

Taking into account the legality principle, the investigations of the EPPO should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution, or where no simplified prosecution procedure has been applied. The grounds for dismissal of a case are exhaustively laid down in this Regulation.

Art. 39(2)

A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which were not known to the EPPO at the time of the decision and which become known after the decision.

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Procedural Rights

- ❖ Current situation – Article 41 largely refers to national law
- ❖ Issues
 - Differences between Member States (different concepts, but also different levels of certain rights?)
 - No rules specifically addressing the particular situation of suspects in EPPO proceedings
 - Possible solutions? Overall harmonization or specific additional provisions in an amended EPPO regulation?
 - Example legal aid – access to a lawyer
 - Communication between lawyer and EPPO central office
 - Access to case file / CMS

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Article 42 – Judicial Review

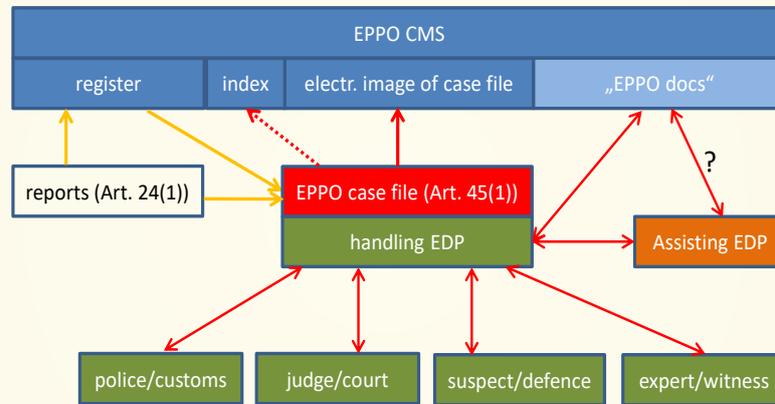
(1) **Procedural acts** of the EPPO that are **intended to produce legal effects vis-à-vis third parties shall be subject to review** by the competent national courts in **accordance with the requirements and procedures laid down by national law**. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which **it was legally required to adopt** under this Regulation.

(2) The Court of Justice shall have jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings concerning:

- (a) the **validity of procedural acts of the EPPO, in so far as such a question of validity is raised** before any court or tribunal of a Member State directly on the basis of Union law;
- (b) the interpretation or the validity of provisions of Union law, including this Regulation;
- (c) the **interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence** between the EPPO and the competent national authorities.”

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EPPO CMS and EPPO case file



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Data Protection

- ❖ Current situation
 - Art. 47 to 98 EPPO Reg. contain comprehensive rules on the protection of operational personal data (all data processed for the purposes of Art. 49 EPPO Reg.)
 - Regulation (EU) 2018/1725 applies to the protection of administrative personal data (see Art. 48 EPPO Reg.; Regulation (EC) No 45/2001 referred therein has been replaced by Regulation (EU) 2018/1725)
- ❖ Mandate for review of situation
 - Art. 118 EPPO Reg. : in the context of adaptation of Regulation (EC) No 45/2001 the COM shall review the provisions of Art. 47 to 98 EPPO Reg
 - Art. 98 Regulation (EU) 2018/1725: COM shall review and may submit legislative proposals in particular with a view to applying Chapter IX of Regulation (EU) 2018/1725 (which currently does not apply to EPPO and Europol)
- ❖ Possible further course of action
 - Amend EPPO Regulation and make Chapter IX (and Art. 3) applicable also to the EPPO, save for 'specific data protection rules' to remain in Chapter VIII of the EPPO Reg.
 - Amend Chapter IX of Regulation (EU) 2018/1725 where appropriate

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Single legal area– application of national law

Art. 5(3):

The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply **to the extent that a matter is not regulated by this Regulation**. Unless otherwise specified in this Regulation, the applicable national law shall be the law **of the Member State whose European Delegated Prosecutor is handling the case** in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.

Issues:

- Too many specific references to national law?
- Effects of such references – Art. 26(1), 28(1), 30, 31 – 10(5) and 12(3)
- Importance of criteria for choice of forum (Art. 26(4), 36(3)) and possibility for legal remedies
- New rules for the EPPO or harmonisation of criminal procedural law (procedural rights, admissibility of evidence)?

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Thank you for your attention

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Babek Oshidari

The European Public Prosecutor's
Office One Year On:
Challenges Ahead
Trier, 23-24 May 2022

Termination of investigations and prosecution before national courts, rules on dismissal and transfer of proceedings

Hon.-Prof. Babek Oshidari
Judge at the Austrian Supreme Court



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

1

Content

Termination of proceedings

- Transfer of proceedings
- Prosecution before national courts
- Dismissal of the case
- Simplified prosecution procedure

2

Termination of proceedings

- When investigation is considered to be completed
- Article 35 is a general provision laying down the internal decision-making process
- 4 possible decisions
 1. Referral and transfer of proceedings to the national authorities (Article 34)
 2. Prosecution before national Courts (Article 36)
 3. Dismissal of the case (Article 39)
 4. Simplified prosecution procedure (Article 40)

3

Referral and transfer of proceedings

Article 34

- Referral or transfer to the competent national authority
- No EPPD competence under Articles 22 and 23 (34/1)
 - E.g. no PIF-crime but national crime („gold-plating“)
- Conditions for exercise of competences under Article 25(2),(3) are not met (34/2)
 - Minor cases
 - National law enforcement interests prevail (damage, sanctions)
- Damage less than 100.000 EUR (34/3)
 - Annex 4 of the Colleges-decision 029/2021 (amended 007/2022)
- Decision of the national authorities to take over the case if referral is based on Article 34(2) or (3)
- Consultation mechanism with national authorities before dismissal of an inextricably-linked offence (Article 34 (6) and 39 (3)).

4

Prosecution before national Courts

- Article 36
- Decisions to bring a case to a national trial court
 - Indictments under national law
 - Case should „in principle“ be brought to prosecution in the MS of the handling EP
 - Judicial review by national courts
- Choice of forum
 - Under the criteria set out in Article 26(4) and (5)
 - Judicial review by national courts (upon request or motu proprio)
 - CJEU *Foto Frost* ECLI:EU:C:1987:452 – exclusive jurisdiction to declare an act of a Union’s authority void

5

Rules on dismissal of a case

- Article 39(1)(a-g)
- Principle of mandatory prosecution
- Grounds for dismissal “exhaustively” laid down in the Regulation (rec 81),
 - a) death of the suspect
 - b) insanity of the suspect
 - c) Amnesty granted
 - d) Immunity
 - e) time-limit expired
 - f) Ne bis in idem
 - g) lack of relevant evidence

6

Rules on dismissal of a case

Recital 81

„Taking into account the legality principle, the investigations of the EPPO should [as a rule](#) lead to prosecution in the competent national courts in cases where there is sufficient evidence and [no legal ground bars prosecution](#), or where no simplified prosecution procedure has been applied. The grounds for dismissal of a case are [exhaustively laid down](#) in this Regulation.”

Recital 66

“In order to ensure legal certainty and to effectively combat offences affecting the Union’s financial interests, the investigation and prosecution activities of the EPPO should be guided by the [legality principle](#), whereby the EPPO [applies strictly the rules laid down in this Regulation](#) relating in particular to competence and its exercise, the initiation of investigations, the termination of investigations, the referral of a case, the [dismissal of the case](#) and simplified prosecution procedures.”

7

Rules on dismissal of a case

➤ Other grounds for dismissal?

- E.g. Prosecution would violate fair trial principle (incitement by an agent provocateur), suspect is a child
- Analogy to Article 39?
 - Recital 81
 - “exhaustive” catalogue
- National law?
 - If existing and not excluded by national implementation law
 - Article 5(3) – applicable because matter is not regulated by the Regulation
 - Insofar national law is not based on opportunity (Rec 81, rationale of Article 39)
- (wide) interpretation of the Regulation?
 - Autonomous interpretation
 - Eg: incitement = lack of relevant evidence (ECHR *Furcht/Germany*: “all evidence obtained as a result of police incitement must be excluded”)
 - Child = insane person? (Germany/Austria: “Schuldunfähigkeit” = “incapacity of guilt”)

8

Rules on dismissal on a case

Judicial review

- CJEU, Article 42(3)
 - Limited to decisions of the Chamber based on Article 39(1), not (Articles 34 or 40)
 - Nullity action, Article 263(4) TFEU
 - Dismissal decisions if contested „directly on the basis of Union law“
- CJEU or national courts?
 - Where grounds for dismissal require interpretation of national law
 - E.g. expiry of the national statutory limitation to prosecute (Article 39(1)(e))
 - Alternative forums, dependent on the content of the application?

9

Reopening investigations

- Art 39(2)
- Decision of the Permanent chamber
- New facts (or evidence)
 - EPPO was unaware of at the time of the decision
- Judicial review
 - National courts (Article 42 (1))
 - Applicable national provision?
 - CJEU *Foto Frost*
 - CJEU (Article 263 TFEU directly applicable primary law?)
 - Decision associated with a MS?

10

Simplified prosecution procedure

Article 40

- According to applicable national law
- Aim at the final disposal of the case on the basis of an agreement with the suspect
- Specific criteria (Article 40 (2)[1])
 - a) Seriousness of the offence/damage caused (100.000 EUR?)
 - b) Suspect is willing to repair damage
 - c) General objectives and basic principles of the EPPO
- Guidelines
- Interaction between EDP and the PC
- Consultation with national authorities
 - Article 3 (2)(a) and (b) PIF-Case (offence related to Union's expenditure)
 - Damage to the Union does not exceed damage to another victim
- E.g. Diversion or even national crown-witness provisions
- Judicial review according to national law

Lorenzo Salazar



Admissibility of evidence presented by the EPPO or the defendant

Lorenzo Salazar

Deputy Prosecutor General to the Court of Appeal of Naples



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).

Outlook

- No news, good news...?
- There were dreams... (the COMM proposal)
- Admissibility of evidence in the Regulation

There is lack of *evidence*
around...

eucrim 2020 / **3**
THE EUROPEAN CRIMINAL LAW ASSOCIATIONS' FORUM



Focus: The Future of EU Criminal Justice – Expert Perspectives
Dossier particulier: L'avenir de la justice pénale européenne – La perspective des experts
Schwerpunktthema: Die Zukunft der Europäischen Strafjustiz – Expertenmeinungen

Admissibility of Evidence in Criminal Proceedings in the EU
Kathrin Eggen, Judith Garmisch, Armin Heidegger, and Margareta von Euler

Addressing the Problems of Jurisdictional Conflicts in Criminal Matters within the EU
Mireia Guals i Pons

Application Problems Relating to "No bis in idem" as Guaranteed under Art. 50 CFR, Art. 54 CISA and Art. 4 Prot. Dec. T. ECHR
Rahmet Nazari

Continental Framework for EU Criminal Justice Cooperation
Jörg Simon, Axel von Dreier, François Follort, and Jörg Rosenkötter

The Need for and Possible Content of EU Pre-trial Detention Rules
Eunice Baker, Travis Harkin, Edmond M'Elwaine, and Nina Pivlich

Respecting Defence Rights
Václav Čížek, Rocco, Michiel Laethem, and Giovanni Mantovani

Strengthening the Fight against Economic and Financial Crime within the EU
Eugénie Piffard, Najima Moutiq, and Phobos Constant

the laws of national criminal procedure only. The resistance of the Member States is certainly the main reason why the Commission has not yet made use of the competence provided for in Art. 82(2) TFEU.¹⁶ The recent negotiations on the Regulation on the European Public Prosecutor's Office (EPPO) unequivocally demonstrated how far Member States are ready to go when it comes to the approximation of criminal procedure. Member States clearly refused to agree on rules for the gathering and admissibility of evidence in EPPO investigations.¹⁷ For a future proposal based on Art. 82(2) TFEU, the Commission has to convince not only the Member States, but it must ensure that any proposal on this matter is compliant with the principles of subsidiarity (Art. 5(3) TEU) and proportionality (Art. 5(4) TEU). The Proposal for

There were dreams...

The 2013 COMM proposal

SECTION 5 ADMISSIBILITY OF EVIDENCE

Article 30 Admissibility of evidence

1. Evidence presented by the European Public Prosecutor's Office to the trial court, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, shall be admitted in the trial without any validation or similar legal process even if the national law of the Member State where the court is located provides for different rules on the collection or presentation of such evidence.
2. Once the evidence is admitted, the competence of national courts to assess freely the evidence presented by the European Public Prosecutor's Office at trial shall not be affected.

A single legal area... 

SECTION 3 INVESTIGATION MEASURES

Article 25 The European Public Prosecutor's Office's authority to investigate

1. For the purpose of investigations and prosecutions conducted by the European Public Prosecutor's Office, the territory of the Union's Member States shall be considered **a single legal area** in which the European Public Prosecutor's Office may exercise its competence.
2. Where the European Public Prosecutor's Office decides to exercise its competence over an offence which was partly or wholly committed outside the territory of the Member States by one of their nationals, by Union staff members or by members of the Institutions, it shall seek assistance to obtain the cooperation of the third country concerned pursuant to the instruments and procedures referred to in Article 59.

Admissibility of evidence in Courts (final text of the regulation) 🙄

Article 37

Evidence

1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.
2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.

Even the preamble does not seem to
provide more clarity...

- (80) The evidence presented by the EPPO in court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State, provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter. This Regulation respects the fundamental rights and observes the principles recognised by Article 6 TEU and in the Charter, in particular Title VI thereof, by international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by Member States' constitutions in their respective fields of application. In line with those principles, and in respecting the different legal systems and traditions of the Member States as provided for in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the courts from applying the fundamental principles of national law on fairness of the procedure that they apply in their national systems, including in common law systems.

One year of activities but still
no (available) case law... 🙈

Should we look somewhere
else around...? 🤔

Internal rules of procedure of the EPPO...?

Internal rules of procedure of the EPPO...?

- Art. 44 **Reporting** on the investigation: The **progress report** shall contain an indicative investigative work plan as well as any **significant developments of the investigation**, including at least:
... c) the gathering of important **evidence**;

Internal rules of procedure of the EPPO...

- Art. 44 Reporting on the investigation: The progress report shall contain an indicative investigative work plan as well as any significant developments of the investigation, including at least: ... c) the gathering of important evidence;
- Art. 56 **Termination** of the investigation: 1. When the handling EDP considers the investigation to be completed, he/she shall provide a **report** containing, inter alia: a) a summary of the facts that were the object of the investigation, as resulting from the existing **evidence**;

Internal rules of procedure of the EPPO...

- Art. 44 Reporting on the investigation: The progress report shall contain an indicative investigative work plan as well as any significant developments of the investigation, including at least: ... c) the gathering of important evidence;
- Art. 56 Termination of the investigation: 1. When the handling EDP considers the investigation to be completed, he/she shall provide a report containing, inter alia: a) a summary of the facts that were the object of the investigation, as resulting from the existing evidence;
- **The admissibility of evidence in itself seems not to be taken into any account...**

Art. 5 of the Regulation...?

Basic principles of the activities

Art. 5 (preamble)

- (65) The investigations and prosecutions of the EPPO should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory, either *motu proprio* or at the request of the defence.

Art. 5.4

283/20

EN

Official Journal of the European Union

31.10.20

4. The EPPO shall conduct its investigations in an impartial manner and shall seek all relevant evidence whether inculpatory or exculpatory.

Art. 41.3

Scope of the rights of the suspects and accused persons

- 3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have all the procedural rights available to them under the applicable national law, including the possibility **to present evidence**, to request the appointment of experts or expert examination and hearing of witnesses, **and to request the EPPO to obtain such measures on behalf of the defence**.

A “minimum set” of investigation measures for the EPPO (preamble)

- (70) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the EPPO be able to gather evidence by using **at least** a minimum set of investigation measures, while respecting the principle of proportionality. Those measures should be available with regard to the offences that are within the mandate of the EPPO, at least where they are punishable by a maximum penalty of at least 4 years of imprisonment, for the purpose of its investigations and prosecutions, but may be subject to limitations in accordance with national law.

SECTION 2

Rules on investigation measures and other measures

Article 30

Investigation measures and other measures

36

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
- (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
 - (b) obtain the production of any relevant object or document either in its original form or in some other specified form;
 - (c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council (1);

Art. 30 - MS to ensure that the EDP's are entitled to order or request the following investigation measures:

- A. Search any premises...
- B. Obtain the production of any relevant object..
- C. Obtain the production of stored computer data...
- D. Freeze instrumentalities or proceeds of crime, including assets...
- E. Intercept electronic communications...
- F. Track and trace an object by technical means...

Which “minimum set” of investigation measures is (also) available for the defendants...? 🤔

Another challenge for the admissibility of the evidence: **Cross-boarder investigations**

Art. 31

Article 31

Cross-border investigations

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

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.

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

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

Art. 31

- ...where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment
- Preamble 72: ...Where judicial authorisation is required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation...



COLLEGE DECISION 006/2022

ANNEX

GUIDELINES of the College of the EPPO on the application of Article 31 of the EPPO Regulation

PRELIMINARY REMARKS AND DISCLAIMER

According to its mandate pursuant to Article 9(2) of the EPPO Regulation, the College adopts these Guidelines taking into account general issues arising from individual cases during the practical application of Article 31.

The main aim of these Guidelines is to ensure an internal uniform practice within the European Public Prosecutor's Office ('EPPO') in the framework of Article 31 of the EPPO Regulation, which created a new mechanism for the EPPO cross-border investigations.

These Guidelines express the position of the College on the interpretation of certain unclear provisions of Article 31 and are without prejudice to the judicial independence of the courts

GUIDELINES of the College on the application of Article 31

7. ... The competent court of the Member State of the assisting EDP should not require more supporting evidence or documents, and not assess the "justification" and the "substantive reasons" for undertaking the measure.

GUIDELINES of the College on the application of Article 31

7. ...The competent court of the Member State of the assisting EDP should not require more supporting evidence or documents, and not assess the "justification" and the "substantive reasons" for undertaking the measure.

8. Where both the law of the Member State of the handling EDP and the law of the Member State of the assisting EDP require judicial authorisation, the systematic interpretation of the EPPO Regulation would lead to the conclusion that "in any case there should be only one authorisation", as stated in recital 72...

GUIDELINES of the College on the application of Article 31

8. ... However, having only one judicial authorisation would create a serious legal gap because competent judicial authorities would not be in a position to assess the substantive reasons of the measure. Moreover, Article 31 (3) does not expressly address situations where both the law of the Member State of the handling EDP and the law of the Member State of the assisting EDP require judicial authorisation.

GUIDELINES of the College on the application of Article 31

9. The gap in respect of legal remedies would represent a serious concern. The EPPO Regulation does not contain specific provisions on legal remedies in the framework of Article 31. However, Article 42(1) of the Regulation fully applies in respect of procedural acts issued or decisions adopted in this context that produce legal effects vis-a-vis third parties. More importantly, Article 47 of the EU Charter of Fundamental Rights applies, and legal remedies must be granted in respect of the substantive reasons of the measure in the Member State of the handling EDP.

GUIDELINES of the College on the application of Article 31

20. As the EPPO Regulation does not contain any provisions in respect of recourse to legal remedies in application of Article 31, this is a matter subject to pure legal interpretation in accordance with the basic principles of the EU Law. The only possible interpretation in line with the EU Charter of Fundamental Rights and Article 31 paragraphs 2 and 3 of the EPPO Regulation is that the judicial authorisation and its substantive reasons can always be subject to legal remedies in the Member State of the *handling* EDP.

GUIDELINES of the College on the application of Article 31

22. This principle applies also to cases where a judicial authorisation for the measure is required under the law of the Member State of the *assisting* EDP. In these situations recital 72 (one only judicial authorisation) cannot be applicable, because in clear violation of Article 47 of the EU Charter and of Article 42(1) of the EPPO Regulation.

The present picture

- Evidence to be gathered trans border shall be in principle subject to all legal remedies of the handling and of the assisting EDP
- Nevertheless, this evidence will have no better guarantees to be admitted by the trial court than a EIO

Other issues...

First experiences...

- 
- 
-   . . .

Admissibility & Translations

- No matter if translations are related to:
 - transborder proceedings
 - purely national proceedings
- The problem of **admissibility** is still there and will depend very much (not to say exclusively) on **national rules**

A body of specialized investigators?

- At national level



- At the central level...

Admissibility of Evidence in Criminal Proceedings in the EU

Katalin Ligeti, Balázs Garamvölgyi, Anna Ondrejová, and Margarete von Galen*

With the increase in volume and importance of cross-border investigations in the EU, ensuring the admissibility of evidence gathered in another Member State at trial is crucial – both for efficient law enforcement and for the protection of fundamental rights. At present, the rules on the collection, use, and admissibility of evidence are left to the laws of national criminal procedure of the Member States. These differ extensively as to the collection, use, admissibility, and nullity of evidence and thereby act as an obstacle to the use of cross-border evidence. In order to overcome the present difficulties, this article argues in favour of a new legislative proposal based on Art. 82(2) subsection 2 TFEU laying down common rules for the admissibility and exclusion of evidence in criminal proceedings. The article starts with a short description of the problem and a summary of the current legal framework before turning to the analysis of the legal basis for EU action and the policy options available to the EU legislator.

Conclusions (a sort of...)

- **The admissibility of evidence presented by the EPPO and/or the defendant is among the less regulated matters in the text of the regulation**

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- The admissibility of evidence presented by the EPPO and/or the defendant is among the less regulated matters in the text of the regulation
- **Would a legislative proposal based on art. 82.2 TFEU - aimed to lay down common rules for the admissibility and the exclusion of evidence in criminal proceedings inside the EU - improve the present situation?**

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- The admissibility of evidence presented by the EPPO and/or the defendant is among the less regulated matters in the text of the regulation
- Would a legislative proposal based on art. 82.2 TFEU - aimed to lay down common rules for the admissibility and the exclusion of evidence in criminal proceedings inside the EU - improve the present situation?
- **Should this proposal be of a general nature (bottom-up )?**

Conclusions (a sort of...)

- The admissibility of evidence presented by the EPPO and/or the defendant is among the less regulated matters in the text of the regulation
- Would a legislative proposal based on art. 82.2 TFEU - aimed to lay down common rules for the admissibility and the exclusion of evidence in criminal proceedings inside the EU - improve the present situation?
- Should this proposal be of a general nature (bottom-up )?
- **Or would it be better/easier to focus on the EPPO proceedings only (top-down )?**

Conclusions (a sort of...)

- The admissibility of evidence presented by the EPPO and/or the defendant is among the less regulated matters in the text of the regulation
- Would a legislative proposal based on art. 82.2 TFEU - aimed to lay down common rules for the admissibility and the exclusion of evidence in criminal proceedings inside the EU - improve the present situation?
- Should this proposal be of a general nature (bottom-up )?
- Or would it be better/easier to focus on the EPPO proceedings only (top-down )?
- **Si c'était à refaire...** 

Grazie ! 

lorenzo.salazar@giustizia.it

Ursula Schmudermayer

Kristel Siitam-Nyiri



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).



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Challenges arising from the EPPO's competences

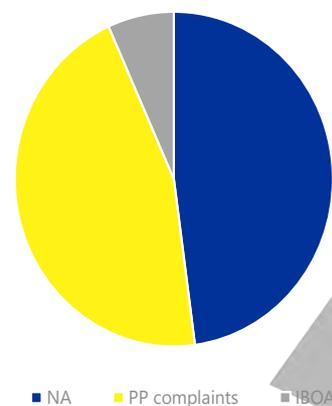
Kristel Siitam-Nyiri
European Prosecutor
23.05.2022 Trier

1



1. The practise of reporting

- Art 24: IBOAs and national authorities have the obligation to report to the EPPO crimes which could fall under the EPPO's competence
- 2021 June – December:
 - 1352 crime reports from national authorities
 - 190 crime reports from IBOAs:
 - OLAF (171), ECA (1), EIB (17), ECB (1)
 - 1282 complaints from private parties:
 - 525 were duplicates
 - 70 were assessed as falling under the EPPOs competence
 - Highest number of complaints from BG (104), RO (88), ES (75), DE (68), CR (59)
 - 43 private party complaints from non-participating MS (mainly HU); 55 complaints from 3rd countries



2

1.1 The practise of reporting – lessons learned

- Reporting channels are different in MS (centralised vs decentralised; police / prosecutors / judges / controlling agencies; only ECR vs full case file etc)
- Evocation cases still incoming (NB! short deadlines)
- Awareness raising and training still needed!

3

2. Practical issues regarding the EPPO's material competences

- Art 22(1): The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, **as implemented by national law /.../**
- VAT offences:
 - Total damage of at least 10 million EUR
 - Connected with the territory of 2 or more MS
- Non-VAT revenue fraud
- Inextricably linked offences

4

3. Exercise of competence under Art 25(3)

3. The EPPO shall **refrain from exercising its competence** in respect of any offence falling within the scope of Article 22 and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter in accordance with Article 34 if:

(a) the **maximum sanction** provided for by national law for an offence falling within the scope of Article 22(1) is equal to or less severe than the maximum sanction for an inextricably linked offence as referred to in Article 22(3) **unless the latter offence has been instrumental** to commit the offence falling within the scope of Article 22(1); or

(b) there is a reason to assume that the **damage** caused or likely to be caused, to the Union's financial interests by an offence as referred to in Article 22 does not exceed the damage caused, or likely to be caused to another victim.

Point (b) of the first subparagraph of this paragraph **shall not apply to offences referred to in Article 3(2)(a), (b) and (d) of Directive (EU) 2017/1371** as implemented by national law.

4. The EPPO may, with the consent of the competent national authorities, exercise its competence for offences referred to in Article 22 in cases which would otherwise be excluded due to application of paragraph 3(b) of this Article if it appears that the EPPO is better placed to investigate or prosecute.

5

Thank you!

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6

Cecile Soriano

Sebastian Trautmann

Yves Van Den Berge



With financial support from the European Commission's Justice Programme 2014-2020 (Directorate-General Justice).



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Protecting EU taxpayers' money from criminals

The EPPO One Year On: Challenges Ahead

A first feedback on Operations

Trier, 23 May 2022

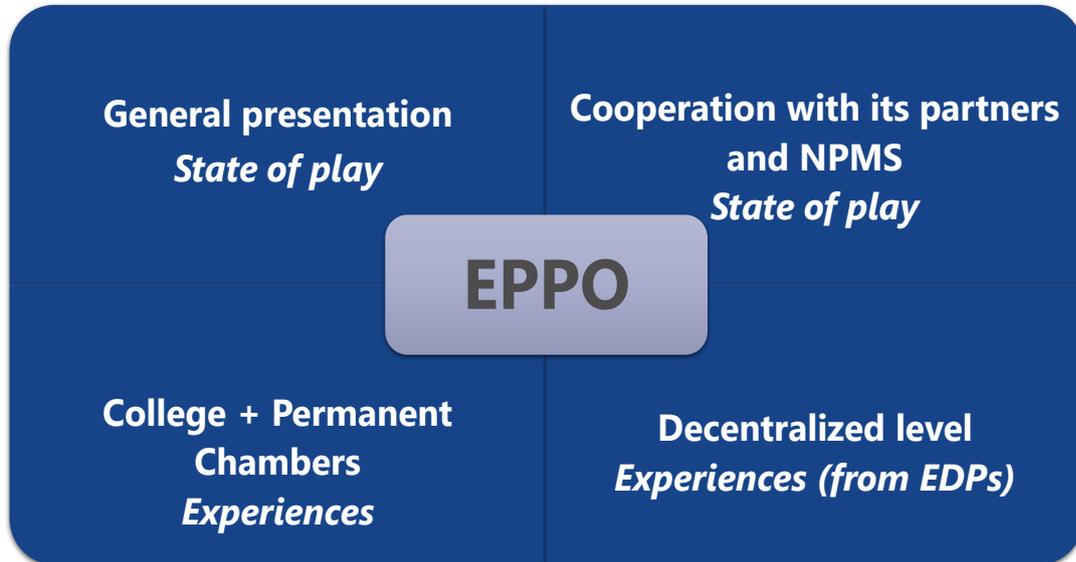
Yves VAN DEN BERGE

1



1

Overview of the presentation



3



General Presentation

State of play - operations and figures

4

Our mandate

- The independent prosecution office of the EU
- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the EPPO
- Responsible for investigating, prosecuting, and bringing to judgment crimes affecting the EU's financial interests committed after 20 November 2017
- Operational since the 1st of June 2021



5

The crimes we investigate

PIF Directive (2017/1371)

Cross-border VAT fraud involving total damages above EUR 10 million

Other types of fraud affecting EU's financial interests (e.g. customs fraud)

Corruption that (likely) harms the financial interests of the EU

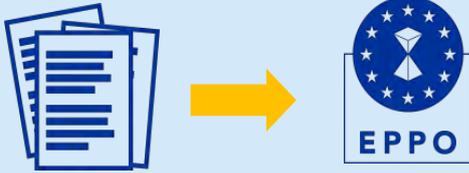
Misappropriation of EU funds or assets by a public official

Money laundering & Organised Crime, and other offences **inextricably linked**

6

Investigations: how it works

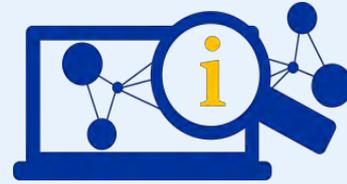
1



Information comes to EPPO

- From private parties: **Report A Crime web form**
- From national authorities + IBOAs: **Eur. Crime Report**

2



Verification and registration in digital **Case Management System** and assigned to a European Delegated Prosecutor.

3



If opened, EDP investigates from start to finish

- Supported by EPPO financial investigators and case analysts
- Supported by national police, customs, tax services...
- Supervised by a Permanent Chamber in Luxembourg

4



Case is tried before the national courts

7

Investigations: how it works

- **Opening** an investigation (initiation or evocation) – principle of **legality**
- **Investigation measures:**
 - Available under national criminal procedural law
 - Common set of investigative measures
 - Active support of national authorities
- **Procedural rights:**
 - EU Charter of fundamental rights
 - National procedural law / EU procedural rights Directives
- **Cross-border investigations (article 31 EPPO Reg.)**
 - In participating Member States – single office
 - Elsewhere –judicial cooperation instruments



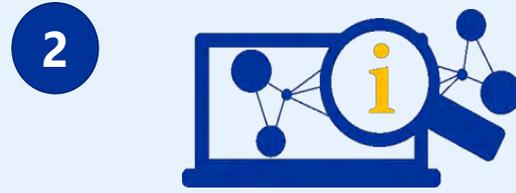
8

Cross-border investigation: how it works



1 The EDP identifies the necessity to execute an investigative measure in a different MS

- Informs competent **European Prosecutor** in Luxembourg.
- Electronic transmission of the execution request.



2 The assisting **European Prosecutor** of the MS where the measure needs to be executed, **allocates** the measure to an assisting EDP.



3 The **Assisting EDP** executes the requested measure (290)

- Execution following national rules of the assisting EDP.
- Direct execution or execution via a National Authority.



4 The requesting EDP receives the "results" of the requested measure

- Direct communication between the EDP's Offices.
- Constant communication on the results of the measures.
- Results directly usable as evidence in front of a Court.

9

DATA VALID ON 31 DECEMBER 2021

Operational activity



Source:
EPPO annual report 2021

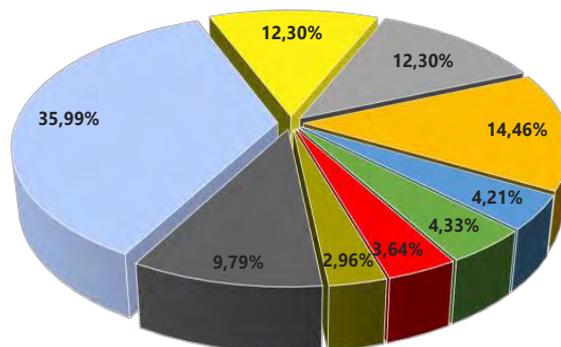
10

Type of Offenses investigated



Source:
EPPO annual report 2021

11



- Non-procurement expenditure fraud
- Procurement expenditure fraud
- VAT revenue fraud
- Non-VAT revenue fraud
- Corruption
- Misappropriation
- Money laundering
- Participation in PIF-focused CO
- Inextricably linked offences

12



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Cooperation with the partners and non-participating MS *State of play*

13



Partners



Europol

- Working arrangement
- Exchange of information
- Hit/No Hit mechanism



EU Anti-Fraud Office (OLAF)

- Working arrangement
- Avoid duplication
- Maximise recovery of damages
- Support



Eurojust

- Working arrangement
- Judicial cooperation requests
- Non-participating Member States and third countries

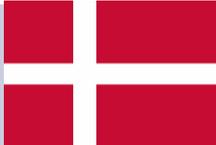


National authorities (non-exhaustive)

- Prosecutor generals
- (Specialised) Prosecution offices
- Police
- Customs

14

Non-participating MS

Hungary	Poland	Ireland	Denmark	Sweden
17 cases in 2021	23	2	2	4
				

15



College and Permanent Chambers *Experiences*

16

The College

- Chaired by European Chief Prosecutor
- 1 European Prosecutor per participating EU member state
- Take inter alia decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO.
- 170 decisions in 21 months



17

Permanent Chambers

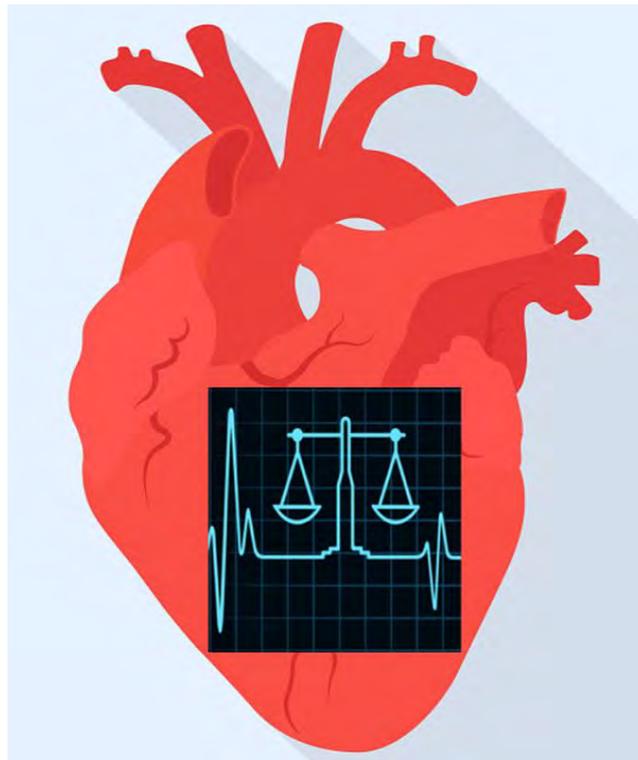
- Novelty for a prosecution office
- Ensure independence
- Monitor and direct the investigations and prosecutions
- 15 Chambers: 3 European Prosecutors + legal support
- Cases are allocated randomly, automatic and alternating



18



The **15 Permanent Chambers** are the **operational machine room of the Central Office**, at the **heart of the EPPO**.



The **Permanent Chambers** play a **significant role** in the **investigation and prosecution** procedure.

- PCs decide on the **exercise of the EPPO competence**, and
- PCs take the **all main decisions** throughout the whole criminal proceedings



Decentralized level
Experiences (from EDPs)

Decentralised level

 = Active number of EDPs (April 2022)



Source: <https://www.eppo.europa.eu>



THANK YOU

Yves VAN DEN BERGE

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Background documentation

INTERNAL RULES OF PROCEDURE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

The College of the European Public Prosecutor's Office (EPPO),

Having regard the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), hereinafter referred to as the "EPPO Regulation", and in particular Article 21 thereof,

Taking into account the proposal drawn up by the European Chief Prosecutor;

Whereas:

According to Article 21(1) of the EPPO Regulation, the organisation of the work of the EPPO shall be governed by its internal rules of procedure.

According to Article 21(2) of the EPPO Regulation, once the EPPO has been set up, the European Chief Prosecutor shall without delay prepare a proposal for the internal rules of procedure of the EPPO, to be adopted by the College by a two-thirds majority.

The European Chief Prosecutor submitted to the College a proposal for the internal rules of procedure of the EPPO.

The College examined the proposal drawn up by the European Chief Prosecutor in its meetings of 29 September 2020, 30 September 2020, 5 October 2020 and 12 October 2020.

HAS ADOPTED THESE INTERNAL RULES OF PROCEDURE:

Title I: GENERAL PROVISIONS

Article 1: Scope

1. In accordance with Article 21(1) of the Regulation¹, the present internal rules of procedure govern the organisation of the work of the European Public Prosecutor's Office (hereinafter "the EPPO").

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1–71 (hereinafter "Regulation").

2. These internal rules complement the provisions of the Regulation. They shall be binding upon the Central Office, the staff of the EPPO and the European Delegated Prosecutors. The EPPO shall ensure that, where relevant, non-EPPO staff working under its direction, provided by the Member States to allow the EPPO to exercise its functions under the Regulation, follow these internal rules.

Article 2: Language arrangements

1. The working language for the operational and administrative activities shall be used in all internal acts, decisions and documents produced by the EPPO, in all formal communication within the Central Office, between the Central Office and the European Delegated Prosecutors and between European Delegated Prosecutors located in different Member States.

2. The communications, acts or decisions of the EPPO addressed to institutions, bodies, offices or agencies of the European Union shall be drafted in the working language for the operational and administrative activities. French shall be used along with English in the relations with the Court of Justice of the European Union.

3. Communication with persons involved in criminal proceedings, such as suspected or accused persons, victims and witnesses, or with other third parties, shall be made in the language required in accordance with the applicable national rules of criminal procedural law and, where applicable, in accordance with the relevant EU or international legal instruments for judicial cooperation in criminal matters. When necessary, the communication shall be accompanied by a translation in a language understood by the addressee.

4. European Delegated Prosecutors shall ensure that acts of the criminal investigations which they handle and which are essential to allow the Central Office to carry out its tasks under the Regulation, are made available in the working language of the EPPO, where appropriate in a summary form, and are included in the progress report referred to in Article 44.

Article 3: Translation modalities

1. For case-related and urgent administrative translations required for the functioning of the EPPO in accordance with Article 2, the EPPO shall seek appropriate solutions aimed at ensuring that high quality and speedy translations are delivered within a secure environment.
2. For non-urgent administrative translations, the Translation Centre for the Bodies of the EU shall be used.
3. Translation modalities shall comply with data protection requirements and the EPPO's obligation to ensuring the latter.

Title II: ORGANISATIONAL MATTERS

Chapter 1: The College

Article 4 : Chairing

1. The European Chief Prosecutor shall chair the meetings of the College.
2. Where appropriate, the European Chief Prosecutor shall designate one of the Deputy European Chief Prosecutors to chair a College meeting in his/her absence.
3. In the absence of the European Chief Prosecutor and the two Deputies, the most senior in age European Prosecutor shall chair the College meeting.

Article 5: Exercise of general oversight

1. For the purpose of Article 9(2) of the Regulation, the College may at any time request information on the activities of the EPPO, in addition to the information to be provided in accordance with the Regulation.
2. Information on general issues arising from individual cases shall be provided to the College anonymised and only to the extent required for the purpose of Article 9(2) of the Regulation.

Article 6: Strategic and policy decisions

The College shall determine the priorities and the investigation and prosecution policy of the EPPO upon a proposal by the European Chief Prosecutor.

Article 7: Meetings

1. In accordance with Article 9(2) of the Regulation, the College shall hold ordinary meetings at least once every month, unless the College decides otherwise. The European Chief Prosecutor may call an extraordinary meeting at any time.

2. At the request of at least seven College members, the European Chief Prosecutor shall call an extraordinary meeting no later than 10 days after their request.

3. The European Chief Prosecutor shall call the meetings of the College and determine the day and time of the meetings.

4. The meetings of the College shall take place at the premises of the EPPO. Whenever the circumstances so require, the European Chief Prosecutor may convene meetings of the College by videoconference. If the physical presence of one or more members of the College to meetings convened at the premises of the EPPO is not possible, the chair may authorise their attendance to take place remotely.

5. The European Chief Prosecutor shall prepare the provisional agenda for each meeting. Any member of the College and the Administrative Director may suggest to the European Chief Prosecutor points to be included in the provisional agenda. The agenda shall include the points requested by at least 7 members of the College and the issues proposed by a Permanent Chamber, in accordance with Article 21. The provisional agenda shall be sent by the Secretary of the College, together with any supporting documents, to all College members at least one week before the meeting. Relevant supporting documents shall also be provided to non-members of the College invited to attend for specific points. When an extraordinary meeting is called, the provisional agenda and supporting documents may be sent at a shorter notice.

6. At the beginning of each meeting, the College shall approve the agenda. Urgent matters, not appearing on the provisional agenda, may be proposed for discussion and voting by the chair of the meeting or any member of the College and included in the agenda provided that the College does not object.
7. As regards attendance by non-members of the College:
 - a) the Administrative Director shall attend meetings of the College when budgetary, staff and other administrative matters are discussed and may be invited by the European Chief Prosecutor to attend meetings of the College in which strategic and policy matters are discussed.
 - b) other staff members and any other person whose opinion may be of interest, may attend meetings upon invitation made by the European Chief Prosecutor or at the initiative of any member of the College.

Article 8: Quorum and voting

1. For the purpose of Article 9(5) of the Regulation, the quorum for the College to take decisions is two-thirds of the College members. In the absence of a quorum, the Chair may decide to continue the meeting without taking any formal decision. The relevant agenda items may be considered at the next College meeting or by written or silent procedure.
2. Exceptionally, if remote participation is not possible, a European Prosecutor who cannot attend a College meeting may give a proxy vote to another European Prosecutor to vote on his/her behalf. Proxy votes cannot be taken into account for establishing the quorum in accordance with paragraph 1.
3. A European Prosecutor using a vote by proxy shall communicate to the Secretary of the College in writing the identity of the proxy holder, the items of the agenda for which the proxy is valid and any possible restrictions placed on the proxy vote. The proxy vote is only valid for the item(s) of the agenda for which it has been given.

4. The chair shall call for a vote on a point of the agenda if he/she deems that the matter has been sufficiently considered.
5. The votes shall be taken by a show of hands, electronically or by a recorded vote, if the voting by a show of hands is challenged. The decisions adopted by the College shall not record the breakdown of votes.
6. Decisions to be taken by simple majority in accordance with the Regulation, will be considered adopted when the highest number of votes cast for any issue or item exceeds the second-highest number.

Article 9: Written procedure for the adoption of College decisions

1. In case of urgency, when a decision cannot be postponed and is required before the College can be convened, the European Chief Prosecutor may call for a written procedure.
2. The European Chief Prosecutor shall give the members of the College at least three working days for replies from the date the draft decision was sent electronically. In exceptional cases, the European Chief Prosecutor may decide on a shorter duration, but not shorter than a full working day.
3. A proposal for a decision to be taken by written procedure shall not be subject to amendments, and it shall be approved or rejected in its entirety. In case no reply has been received within the set period, the respective member of the College is deemed to have abstained from voting.
4. A decision is adopted when at least two-thirds of the members of the College have replied in writing and the required voting majority has been obtained.
5. In cases where the required quorum or voting majority are not reached, the European Chief Prosecutor may relaunch the written procedure or bring the matter to the next meeting of the College.

6. The European Chief Prosecutor shall establish that the written procedure has been completed. A notification to that effect shall be sent to the members of the College formalising the result of the decision.

Article 10: Silent procedure for the adoption of College decisions

1. The European Chief Prosecutor may call for a silent procedure for decisions to be taken by simple majority in accordance with the Regulation and considered of a less substantial nature.
2. The European Chief Prosecutor shall give the members of the College at least three working days for replies from the date the draft decision was sent electronically. In exceptional cases, the European Chief Prosecutor may decide on a shorter duration, but not shorter than a full working day.
3. A proposal for a decision to be taken by silent procedure shall not be subject to amendments, and it shall be approved or rejected in its entirety. In case no reply has been received within the set period, the respective member of the College is deemed to have voted in favour.
4. The European Chief Prosecutor shall establish that the silent procedure has been completed. A notification to that effect shall be sent to the members of the College formalising the result of the decision.
5. If one or more members of the College object to the silent procedure, the matter under consideration will be deemed not approved.

Article 11: Procedure for the adoption of guidelines

1. For the purpose of the adoption by the College of the guidelines referred to in Articles 10 (7), 24 (10), 27 (8), 34 (3), 40 (2) of the Regulation the following rules shall apply.

2. Proposals for adoption or modification of the guidelines may be submitted to the College by the European Chief Prosecutor or a group of at least 7 European Prosecutors and be communicated to all members of the College at least 15 days before the meeting of the College in which the respective point has been included in the agenda.
3. By derogation from Article 8(1), the quorum for the College to take decisions under this Article is four fifths of the College members.
4. Articles 9 and 10 shall not apply to decisions under this Article.
5. Decisions taken in accordance with this Article shall be published on the website of the EPPO.

Article 12: In camera and confidentiality

Without prejudice to Article 7(4), the meetings of the College shall be held in camera and the discussions shall be confidential.

Article 13: Secretary of the College

1. The European Chief Prosecutor shall designate a person from among the staff of the EPPO to serve as Secretary of the College.
2. The Secretary of the College shall work under the authority of the European Chief Prosecutor and assist him/her in the preparations of the College meetings.

Article 14: Minutes of the meetings

1. Within two working days after each meeting and after approval by the chair, the Secretary of the College shall distribute the list of decisions adopted by the College.

2. Without prejudice to paragraph 1, the Secretary of the College shall prepare the minutes of each meeting of the College.
3. The minutes of the meetings of the College shall contain, at least, the names of persons attending, a summary of the debates and the decisions adopted, without recording the breakdown of votes.
4. The draft minutes shall be sent by the European Chief Prosecutor to the College members for approval at a subsequent College meeting. Once adopted, the minutes shall be signed by the European Chief Prosecutor and the Secretary of the College and attached to a record.

Chapter 2: The Permanent Chambers

Article 15: Decision on the Permanent Chambers

1. The number of the Permanent Chambers, as well as the division of competences between the Permanent Chambers and the allocation of cases, shall be determined by a decision on the creation of the Permanent Chambers and the allocation of cases (hereinafter the "decision on the Permanent Chambers") adopted by the College on a proposal by the European Chief Prosecutor.
2. The European Chief Prosecutor's proposal shall be accompanied by an explanatory note.
3. The Decision on the Permanent Chambers shall establish the procedural arrangements for the meetings of the Permanent Chambers.
4. The decision on the Permanent Chambers shall be published in the Official Journal and on the website of the EPPO.

Article 16: Composition

1. The composition of each Permanent Chamber shall be determined by a decision (hereinafter the “decision on the composition of the Permanent Chambers”) of the College, upon a proposal of the European Chief Prosecutor.
2. Each European Prosecutor shall be a permanent member of at least one Permanent Chamber.
3. The assignment of a European Prosecutor as a permanent member of more than one Permanent Chamber shall be duly justified taking into account the workload of that European Prosecutor.
4. The decision on the composition of the Permanent Chambers shall take into account the current and expected workload of the European Prosecutors and the need to ensure the efficient functioning of the EPPO.

Article 17: Designation of the Chairs

1. The European Chief Prosecutor or a Deputy European Chief Prosecutor shall chair the Permanent Chambers of which they are permanent members.
2. Outside the case contemplated in paragraph 1, the Chair shall be designated by the decision on the composition of the Chamber.

Article 18: Temporary replacement of a Chair

1. If it becomes necessary to replace a Chair of a Permanent Chamber on account of his/her temporary inability to discharge his/her duties, the European Chief Prosecutor shall determine, in consultation with the Deputy European Chief Prosecutors, appropriate arrangements in derogation to the decision on the composition of the Permanent Chambers. The arrangements shall take into account the need to ensure continuity in the operations of the Permanent Chambers.

2. The duration of these temporary arrangements shall be determined by the European Chief Prosecutor and shall not exceed three months.
3. These measures shall be communicated to the College and enter into force immediately.

Article 19: Allocation of cases

1. The decision on the Permanent Chambers shall establish a system for the allocation of cases to the Permanent Chambers. The system shall be based on a random, automatic and alternating allocation of cases to Permanent Chambers according to the order of registration of each new case and shall ensure an even distribution of workload among the Permanent Chambers.
2. The system set out in paragraph 1 shall be designed in such way as to exclude the possibility of allocating a case to a Permanent Chamber of which the supervising European Prosecutor is a permanent member.
3. The decision on the Permanent Chambers may further contain rules to ensure the efficient functioning of the EPPO and an equal distribution of workload between the Permanent Chambers, allowing the European Chief Prosecutor to exceptionally take measures if the workload of one Permanent Chamber significantly exceeds that of the others. These measures may include, inter alia, the temporary suspension of the attribution of new cases to a Permanent Chamber for a determined period of time. The European Chief Prosecutor shall inform the College of any such measure taken.
4. By derogation from the principle of random and automatic allocation and for the purpose of ensuring the efficient functioning of the EPPO, the decision on the Permanent Chambers may provide that certain categories of cases, based in particular on the type of offence under investigation or the circumstances of the offence, are assigned to a specific Permanent Chamber.

Article 20: Competence over a specific case and reallocation

1. Once a case has been allocated to a Permanent Chamber, it shall remain competent to monitor and direct the investigations and prosecutions related to that case, until the matter has been finally disposed of. This is without prejudice to the application of the rules on reallocation of cases between Permanent Chambers in accordance with Article 51.
2. The European Chief Prosecutor may, after consultation of the Permanent Chamber to which a case had been assigned, reallocate the case to a different Permanent Chamber:
 - a) when there are links between individual cases assigned to different Permanent Chambers, or when the subject matter is repetitive;
 - b) if decisions are required as a matter of urgency, including decisions under Article 27 of the Regulation.
3. The European Chief Prosecutor may also reallocate a case to a Permanent Chamber identified in accordance with Article 19(4), after the consultation of the Permanent Chamber to which it had been initially allocated, if such case should have been initially allocated to the specialised Permanent Chamber in application of the Decision on the Permanent Chambers, or if the need for reallocation emerges in the course of the criminal proceedings.
4. The European Chief Prosecutor shall inform the College of any measure taken in accordance with paragraph 2, stating the reasons for the reallocation.

Article 21: Information to the College

1. The Chair of each Permanent Chamber shall inform the College in writing, for the purposes of Article 5 and with the modalities described in that Article, about issues arising from the work of the Chamber that may be of relevance for the work of the EPPO as a whole, or in relation to the coherence, efficiency and consistency of the prosecution policy of the EPPO.
2. Each Permanent Chamber, acting through its chair, may submit to the College a written proposal for discussion of specific issues related to the implementation of the

prosecution policy of the EPPO or other relevant guidelines concerning specific issues arising from the work of the Permanent Chamber.

Article 22: Reporting obligations

1. Every year the Chair of each Permanent Chamber, after the consultation of the permanent members, shall submit a written report to the College on the activities of the Permanent Chamber. A template of such report, as well as the deadline for submission, shall be established by the European Chief Prosecutor.
2. The report provided for in paragraph 1 shall contain at least information on the following:
 - a) workload of the Permanent Chamber, including the number of incoming cases, the number and type of decisions taken, and the time necessary to decide on the cases;
 - b) reasons for dismissal of cases in accordance with Article 39(1)(g) of the Regulation;
 - c) decisions taken to apply a simplified prosecution procedure in accordance with Article 40 of the Regulation;
 - d) decisions taken in accordance with Articles 27(8), 34(2) and 34(3) of the Regulation;
 - e) application of the written procedure in accordance with Article 24;
 - f) any other matter related to the activities of the Permanent Chamber, which is considered to have a horizontal impact on the operational activities of the EPPO.

Article 23: Organisation of the meetings

1. Meetings of the Permanent Chambers shall be held in accordance with an agenda, indicating specifically the cases to be treated, the decision to be taken and the issues to be discussed in relation to each case.
2. The Chair of the Permanent Chamber shall set the agenda. Additional items shall be added to the agenda upon request of a permanent member. The Chair shall circulate the agenda to the members of the Permanent Chamber and to the supervising European

Prosecutor in charge of each case included on the agenda. The agenda shall be communicated to the European Chief Prosecutor.

3. The Chair of the Permanent Chamber may invite the persons indicated in Article 10(9), second subparagraph, of the Regulation, or any relevant member of the staff of the EPPO, to submit comments in writing within a specified deadline.

4. A Permanent Chamber may deliberate on an item in the agenda only if the permanent members and the relevant supervising European Prosecutor attend the meeting, either in person or with the modalities set out in paragraph 7.

5. By derogation from paragraph 4, if a permanent member cannot attend the meeting, in person or with the modalities set out in paragraph 7, a decision on an item in the agenda may be taken if those present reach consensus.

6. The Chair of the Permanent Chamber shall inform the European Chief Prosecutor about decisions taken in accordance with paragraph 5, stating the reasons for which the procedure has been applied.

7. The meetings of the Permanent Chamber shall take place at the premises of the EPPO. Whenever the circumstances so required, the Chair may convene meetings of the Permanent Chamber by videoconference. If the physical presence of one or more members of the Permanent Chamber, or of any other person invited to attend a meeting is not possible, the Chair may authorise their attendance to take place remotely.

8. The Chair may designate a member of the Permanent Chamber or the supervising European Prosecutor to report on an item included on the agenda of the meeting.

9. Minutes of each meeting of the Permanent Chambers shall be drawn up under the responsibility of the Chair of the Permanent Chamber and shall be registered in the Case Management System.

Article 24: Written procedure

1. The Permanent Chamber may act by way of a written procedure:
 - a) when called to take a decision to dismiss a case in accordance with Article 39 (1) (a) – (d) of the Regulation or to refer it to the national authorities in accordance with Article 34 of the Regulation.
 - b) when the decision to be taken is of limited complexity, including by reason of its content or repetitive nature, or because of the link with previous decisions already taken in the same case.
2. When acting in accordance with the written procedure, the draft decision shall be communicated via the Case Management System to all permanent members of the Permanent Chamber, to the supervising European Prosecutor.
3. If no objection is lodged by a permanent member of the Permanent Chamber or by the supervising European Prosecutor, within a deadline determined by the Chair not shorter than three days, the decision shall be deemed to have been adopted.

Chapter 3: European Chief Prosecutor and Deputy European Chief Prosecutors

Article 25: Functions and tasks of the European Chief Prosecutor

1. The European Chief Prosecutor has the powers granted to him/her by the Regulation and exercises his/her functions in accordance with the Regulation and these rules.
2. In accordance with Article 11(1) of the Regulation, the European Chief Prosecutor shall issue decisions. When the decision is issued in oral form, the addressee may ask for a written confirmation.
3. In accordance with Article 11(3) of the Regulation, the European Chief Prosecutor shall sign instruments on behalf of the EPPO, such as working arrangements and agreements.

Article 26: Selection and appointment of Deputy European Chief Prosecutors

1. Where the position of Deputy European Chief Prosecutor is vacant, or due to become vacant within the next three months, the European Chief Prosecutor shall without delay inform the College of the vacancy and invite any interested European Prosecutor to submit his/her application, together with a statement of motivation. The appointment of a Deputy European Chief Prosecutor shall take place not later than 3 months after the announcement to the College of the vacancy. Applications shall be accepted until 2 weeks prior to the College meeting foreseen for the appointment.
2. At the latest one week prior to the College meeting for the appointment of the Deputy Chief Prosecutor, the European Chief Prosecutor shall propose to the College a candidate for the appointment as Deputy European Chief Prosecutor from amongst the received applications. The European Chief Prosecutor shall provide the application, together with the statement of motivation submitted by the proposed candidate to the College together with the agenda.
3. Following the presentations by the candidate, all the members of the College shall vote by secret ballot.
4. If two Deputy European Chief Prosecutors need to be appointed at the same time, the procedure outlined in paragraphs 1 to 3 of this Article shall apply accordingly.

Article 27: Functions of the Deputy European Chief Prosecutors

1. The European Chief Prosecutor may assign and / or delegate each Deputy European Chief Prosecutor specific tasks or thematic or organisational responsibilities on an ad hoc or general basis. The College shall be informed thereof.
2. The European Chief Prosecutor shall ensure continuity of service at all times. The European Chief Prosecutor shall decide on the order of replacement in case of the European Chief Prosecutor's absence and / or being unable to attend to the duties allocated to the European Chief Prosecutor.

Article 28: Exercise of the functions

When exercising functions in the capacity of Deputy European Chief Prosecutor, this is done under the supervision of the European Chief Prosecutor, and the Deputy European Chief Prosecutor shall in these respects report directly to the European Chief Prosecutor.

Article 29: Resignation and dismissal of a Deputy European Chief Prosecutor

1. If a Deputy European Chief Prosecutor wishes to resign from the function of Deputy European Chief Prosecutor, he/she shall notify the European Chief Prosecutor in writing at least three months prior to his/her intended day of resignation, unless otherwise agreed. The European Chief Prosecutor shall forward the resignation to the College without delay.
2. In cases of grave breaches of trust, the College may, upon request of the European Chief Prosecutor, decide by a majority of its members to dismiss the Deputy European Chief Prosecutor from the function of Deputy European Chief Prosecutor. The Deputy European Chief Prosecutor concerned shall be excluded from the vote. The College shall hear the Deputy European Chief Prosecutor concerned before taking its decision.

Chapter 4: European Prosecutors

Article 30: Substitution between European Prosecutors

1. Where a European Prosecutor will be absent or unable to fulfil his/her duties for a brief period of time, the European Chief Prosecutor shall appoint a European Prosecutor to act as a substitute.
2. The substituted European Prosecutor may propose in writing to the European Chief Prosecutor a European Prosecutor whose consent to act as a substitute has already been obtained. The European Chief Prosecutor shall either assign the proposed European Prosecutor or another.

3. The European Chief Prosecutor shall ensure that the European Prosecutor assigned to act as a substitute can adequately perform his/her duties, taking into due account the extent of the knowledge of the legal system and language required, in light of the specific circumstances of the substitution. The two European Prosecutors and the College shall be informed accordingly.
4. The substitution under this Article shall include all duties, except where stated otherwise in these rules or excluded in the Regulation.
5. This Article shall apply for all cases of absence of the European Prosecutor with the exception of absence dealt with under Article 31.

Article 31: Substitution of a European Prosecutor by a European Delegated Prosecutor

1. Each European Prosecutor shall, upon appointment, or whenever a replacement is necessary, propose to the European Chief Prosecutor one European Delegated Prosecutor from his/her Member State to be designated by the College who would be in a position to act as interim European Prosecutor, in accordance with Article 16(7) of the Regulation.
2. When a European Prosecutor resigns, is dismissed or leaves his/her position in accordance with Article 16(5) and (6) of the Regulation, or is otherwise unable to carry out his/her functions, the European Chief Prosecutor shall without delay seek a decision by the College to enable the respectively designated person to act as interim European Prosecutor as of the date the resignation, dismissal or departure takes effect, for a period of up to 3 months
3. At the latest two weeks prior to the end of the 3 month period, the College may extend the period of substitution for as long as it deems necessary.
4. The interim European Prosecutor shall cease to act in his/her function, when the European Prosecutor from his/her Member State is able to resume his/her duties, or upon appointment of a new European Prosecutor.

Article 32: Allocation of cases to other European Prosecutors

1. Requests made on the basis of Article 12(2) of the Regulation by a European Prosecutor may contain a proposal for a European Prosecutor whose consent to take over the case has already been obtained.
2. When a request is made in relation to workload, the European Chief Prosecutor shall assess the workload of the requesting European Prosecutor, of the availability of any other measure seen as appropriate to address the issue and of the impact of the proposal on the effectiveness of the investigations and prosecutions of the EPPO.
3. When a request is made on the basis of a potential conflict of interest, the European Chief Prosecutor shall grant the request, if he/she concludes that the personal interests of the requesting European Prosecutor actually or potentially impair his/her independence in carrying out the duties of a European Prosecutor in accordance with Article 12 of the Regulation, or may be perceived as such. Paragraph 1 shall apply to the extent possible.
4. The European Chief Prosecutor shall decide on the requests under paragraphs 2 and 3 without undue delay, ensuring the continuation of the proper and effective functioning of the EPPO. The European Chief Prosecutor may reassign the case to the proposed European Prosecutor or to a different one, or reject the request.
5. Where the European Chief Prosecutor reassigns a case based on this Article, he/she shall ensure that the European Prosecutor assigned to take over the case is not a permanent member of the monitoring Permanent Chamber and can adequately perform his/her duties, taking into due account the extent of the knowledge of the legal system and language required, in light of the specific circumstances. The European Prosecutor taking over the case shall exercise his/her tasks in accordance with Article 12 of the Regulation.
6. The reassignment shall be notified to the concerned European Prosecutors and the Permanent Chambers via the Case Management System. The College shall be regularly informed by the European Chief Prosecutor about the reassignment of cases.

Chapter 5: European Delegated Prosecutors

Article 33: Appointment of European Delegated Prosecutors

The College shall appoint the European Delegated Prosecutors based on a proposal by the European Chief Prosecutor. Prior to the proposal, the European Chief Prosecutor shall ensure that the nominees meet the criteria in Article 17(2) of the Regulation and the eligibility criteria provided in the College Decision laying down rules on conditions of employment of the European Delegated Prosecutors.

Article 34: Coordination of the European Delegated Prosecutors

The European Chief Prosecutor may delegate to the European Prosecutors the coordination of the activities of the European Delegated Prosecutors of the respective Member States, including their working programmes, so that the exercise of their functions is ensured.

Article 35: Substitution between European Delegated Prosecutors

Where a European Delegated Prosecutor is temporarily absent, such as on annual leave, sick leave or otherwise unavailable, the European Prosecutor of the same Member State shall assign another European Delegated Prosecutor from that Member State to substitute the absent European Delegated Prosecutor during the period of his/her absence. The provisions set out in the College Decision laying down rules on conditions of employment of the European Delegated Prosecutors remain unaffected.

Chapter 6: Administrative Director

Article 36: Selection and appointment of the Administrative Director

1. The European Chief Prosecutor shall propose for approval to the College the vacancy notice for the selection of the Administrative Director.
2. The vacancy notice shall be published in the Official Journal of the European Union and on the EPPO's website.
3. The European Chief Prosecutor shall assess candidates against the selection criteria set out in the vacancy notice and interview an adequate number of the most suitable candidates. The European Chief Prosecutor shall also nominate a panel to assist him/her.
4. Following the interviews, the European Chief Prosecutor shall draw up a shortlist of not more than 3 candidates, ranked in the order of preference, and transmit it to the College, together with an assessment of each shortlisted candidate.
5. The College shall appoint the Administrative Director from one of the candidates placed on the shortlist.

Article 37: Evaluation of the performance and extension of the mandate of the Administrative Director

1. No later than 6 months before the end of the mandate of the Administrative Director, the European Chief Prosecutor shall submit to the College an evaluation of the performance of the Administrative Director for its approval and, if deemed appropriate, any observations.
2. Prior to the adoption of the evaluation, the Administrative Director may be heard by the College if deemed necessary or if he/she requests it. The Administrative Director shall not be present at the meeting when the College adopts the evaluation report. The College shall

adopt a decision no later than 4 months before the end of the mandate of the Administrative Director.

3. The College, acting on a proposal from the European Chief Prosecutor which takes into account the assessment referred to in paragraph 2, may extend once the term of office of the Administrative Director for a period of no more than 4 years.

TITLE III: OPERATIONAL MATTERS

Chapter 1: Registration and Verification of Information

Article 38: Registration of information

1. All information received by the EPPO in accordance with Article 24 of the Regulation, as well as acquired by the EPPO ex officio which refers to any criminal conduct in respect of which the EPPO may exercise its competence shall be registered in the register kept in accordance with Article 44(4)(a) of the Regulation (hereinafter the Register).
2. The registration shall include the date, time and place of receipt of the information, and the person opening the registration file. It shall further include the following details:
 - a) the source of the information, including the identity and contact details of the organisation or person who has provided it, unless applicable rules regarding the protection of informers and whistle-blowers are applicable and provide otherwise;
 - b) the format of the information, including reference to any document or other item, which cannot be stored in original in the Case Management System;
 - c) whether the file is opened with a view to initiating or evoking an investigation;
3. The registration should also contain, to the extent available:
 - a) the possible legal qualification of the reported criminal conduct, including if it was committed by an organised group;

- b) a short description of the reported criminal conduct, including the date when it was committed;
 - c) the amount and nature of the estimated damage;
 - d) the Member State(s) where the focus of the criminal activity is, respectively where the bulk of the offenses, if several, was committed;
 - e) other Member States that may be involved;
 - f) the names of the potential suspects and any other involved persons in line with Article 24(4) of the Regulation, their date and place of birth, identification numbers, habitual residence and / or nationality, their occupation, suspected membership of a criminal organisation;
 - g) whether privileges or immunities may apply;
 - h) the potential victims (other than the European Union);
 - i) the place where the main financial damage has occurred;
 - j) inextricably linked offences;
 - k) any other additional information, if deemed appropriate by the inserter.
4. To the extent possible, the document containing the information and all the items attached to it shall be converted in an electronically storable format within the Case Management System.
5. Based on the content of paragraph 3(d) above, the Case Management System shall notify the appropriate European Prosecutor(s). Additionally, where the assessment of paragraph 3(g) is positive, the Case Management System shall notify the European Chief Prosecutor.
6. Where the information contains special categories of personal data as defined in Article 55 of the Regulation, these may be only processed if the requirements set out in Article 55 of the Regulation are met. The special categories of personal data shall be marked as such in the Case Management System, and the grounds for their storage noted. The Case Management System shall notify the Data Protection Officer of any such registration.
7. In deviation from paragraph 1, information reported by private parties that manifestly does not refer to a criminal conduct in respect of which the EPPO may exercise its

competence shall be referred by a European Delegated Prosecutor or a European Prosecutor to the competent national authorities without undue delay, in line with Article 24(8) of the Regulation or returned to the reporting party and / or deleted. An appropriate log shall be kept.

Article 39: Assignment for verification

1. All information registered according to Article 38(1) shall be subject to verification by a European Delegated Prosecutor for the purpose of assessing whether there are grounds to exercise the competence of the EPPO.
2. Following the notification from the Case Management System in accordance with Article 38(5), the European Prosecutor shall assign the verification to a European Delegated Prosecutor. The process for assigning the verification shall be determined by the European Prosecutor, which may include a rule based allocation, including for cases where the information was obtained ex officio by a European Delegated Prosecutor.
3. Where multiple European Prosecutors have been notified, or the notified European Prosecutor considers that another European Prosecutor is better placed to make the assignment, they shall consult and decide together. In case no agreement is reached, the European Chief Prosecutor shall make a decision.
4. If the information has been received by the EPPO in accordance with Article 24(2) of the Regulation, it shall be assigned for verification within 24 hours of registration. All other information shall be assigned for verification within 3 days of registration.
5. If the European Prosecutor does not assign the case in the prescribed time limit, or he/she informs his/her inability to do so within the foreseen time limit, the assignment shall be done by the European Chief Prosecutor or by a Deputy European Chief Prosecutor.

Article 40: Verification of information

1. The verification for the purpose of initiating an investigation shall assess whether:
 - a) the reported conduct constitutes a criminal offence falling under the material, territorial, personal and temporal competence of the EPPO;
 - b) there are reasonable grounds under the applicable national law to believe that an offence is being or has been committed;
 - c) there are obvious legal grounds that bar prosecution;
 - d) where applicable, the conditions prescribed by Article 25(2), (3) and (4) of the Regulation are met.
2. The verification for the purpose of evocation shall additionally assess:
 - a) the maturity of the investigation;
 - b) the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
 - c) the cross-border aspects of the investigation;
 - d) the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.
3. The verification shall be carried out using all sources of information available to the EPPO as well as any sources available to the European Delegated Prosecutor, in accordance with applicable national law, including those otherwise available to him / her if acting in a national capacity. The European Delegated Prosecutor may make use of the staff of the EPPO for the purpose of the verification. Where appropriate, the EPPO may consult and exchange information with Union institutions, bodies, offices or agencies, as well as national authorities, subject to the protection of the integrity of a possible future criminal investigation.
4. The European Delegated Prosecutor shall finalise the verification related to the evocation of an investigation at least 2 days before the expiration of the deadline prescribed by Article 27(1) of the Regulation. The verification related to initiating an investigation shall be finalised no later than 20 days following the assignment.

5. If the European Delegated Prosecutor does not finalise the verification on whether or not to initiate an investigation within the prescribed time limit, or he/she informs their inability to do so within the foreseen time limit, the European Prosecutor shall be informed and where deemed appropriate extend the time available or issue an appropriate instruction to the European Delegated Prosecutor.
6. Where it concerns a decision on evocation, the European Delegated Prosecutor may ask the European Chief Prosecutor to extend the time limit needed to adopt a decision on evocation by up to 5 days.
7. Where the European Delegated Prosecutor does not issue a decision within the time limit, it shall be treated as a consideration not to evoke a case, and Article 42 applied accordingly.

Article 41: Decision to initiate an investigation or to evoke a case

1. Where, following the verification, the European Delegated Prosecutor decides to exercise EPPO's competence by initiating an investigation or evoking a case, a case file shall be opened and it shall be assigned an identification number in the index of the case files (hereinafter the Index). A permanent link to the related registration under Article 38(1) above shall be automatically created by the Case Management System.
2. The corresponding reference in the Index shall contain, to the extent available:
 - a) As regards suspected or accused persons in the criminal proceedings of the EPPO or persons convicted following the criminal proceedings of the EPPO,
 - i. surname, maiden name, given names and any alias or assumed names;
 - ii. date and place of birth;
 - iii. nationality;
 - iv. sex;
 - v. place of residence, profession and whereabouts of the person concerned,
 - vi. social security numbers, ID-codes, driving licences, identification documents, passport data, customs and tax identification numbers;

- vii. description of the alleged offences, including the date on which they were committed;
 - viii. category of the offences, including the existence of inextricably linked offences;
 - ix. the amount of the estimated damages;
 - x. suspected membership of a criminal organisation;
 - xi. details of accounts held with banks and other financial institutions;
 - xii. telephone numbers, SIM-card numbers, email addresses, IP addresses, and account and user names used on online platforms;
 - xiii. vehicle registration data;
 - xiv. identifiable assets owned or utilised by the person, such as crypto-assets and real estate.
 - xv. information whether potential privileges or immunities may apply.
- b) as regards natural persons who reported or are victims of offences that fall within the competence of the EPPO,
- i. surname, maiden name, given names and any alias or assumed names;
 - ii. date and place of birth;
 - iii. nationality;
 - iv. sex;
 - v. place of residence, profession and whereabouts of the person concerned;
 - vi. ID-codes, identification documents, and passport data;
 - vii. description and nature of the offences involving or reported by the person concerned, the date on which the offences were committed and the criminal category of the offences.
- c) as regards contacts or associates of one of the persons referred to in point (a) above,
- i. surname, maiden name, given names and any alias or assumed names;
 - ii. date and place of birth;
 - iii. nationality;
 - iv. sex;
 - v. place of residence, profession and whereabouts of the person concerned;
 - vi. ID-codes, identification documents, and passport data.

The categories of personal data referred to above under points (a) (x) – (xv) shall be entered in the Index only to the extent practicable, taking into account the operational interest and available resources. The reference in the Index shall be maintained up to date during the investigation of a case file. The Case Management System shall periodically notify the European Delegated Prosecutor if certain categories of information are not entered in the Index.

3. The Case Management System shall notify the supervising European Prosecutor and the European Chief Prosecutor and shall randomly assign the monitoring of the investigation to a Permanent Chamber, in accordance with Article 19.

4. Where the handling European Delegated Prosecutor considers that in order to preserve the integrity of the investigation it is necessary to temporarily defer the obligation to inform the authorities referred to in Articles 25(5), 26(2) and 26(7) of the Regulation, he/she shall inform the monitoring Permanent Chamber without delay. The latter may object to this decision and instruct the European Delegated Prosecutor to proceed with the relevant notification immediately.

Article 42: Decision not to initiate an investigation or not to evoke a case

1. Where, following the verification, the European Delegated Prosecutor considers not to initiate an investigation or not to evoke a case, he/she shall record the reasons in the Register. The consideration shall be notified to the assigning European Prosecutor and the Case Management System shall assign its review to a Permanent Chamber whose permanent members do not include the supervising European Prosecutor.

2. If the College has adopted general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke cases concerning specific types of offences, the review of the European Delegated Prosecutor's decision shall be conducted according to the rules prescribed by those guidelines.

3. The Permanent Chamber, if it feels it is appropriate, may ask for assistance from the staff of the EPPO to further inform their decision.

4. The Permanent Chamber's review of the consideration not to evoke a case shall be conducted before the expiration of the deadline prescribed by Article 27(1) of the Regulation. The review of the consideration not to initiate an investigation shall be conducted no later than 20 days following the assignment to the Permanent Chamber. The Permanent Chamber may request the European Chief Prosecutor to extend the time available for the review.
5. If the Permanent Chamber instructs the European Delegated Prosecutor to start an investigation or to evoke the case, the European Delegated Prosecutor shall act in accordance with Article 41.
6. If the Permanent Chamber does not instruct the European Delegated Prosecutor before the expiration of the time limit for the review, the consideration of the European Delegated Prosecutor shall be deemed as accepted. Where possible, the authority or person, who reported the criminal conduct shall be notified of the decision.
7. If the decision not to start an investigation is based on the fact that the reported criminal conduct falls outside the competence of the EPPO, the originally received information, along with, where permissible, any information discovered during the verification by the EPPO, shall be referred to the competent national authorities.

Chapter 2: Investigations

Article 43: Rules on conducting the investigation

1. Notwithstanding the possibility of reallocation in accordance with Article 49, the European Delegated Prosecutor who decided to initiate or to evoke the investigation shall also be handling it.
2. When allowed under the national law, the European Prosecutor may assign one or more European Delegated Prosecutors from the same Member State to conduct the investigation alongside the handling European Delegated Prosecutor.

3. Without prejudice to the provisions of the national law applicable to the case, the EPPO's case files shall be organised and managed in accordance with these rules in order to ensuring the proper functioning of the EPPO as a single office. Copies of all items added to the case file shall be stored in an electronic format in the Case Management System, where possible, in accordance with Article 44(4)(c) of the Regulation.
4. The practical arrangements for the access of the supervising European Prosecutor and of the competent Permanent Chamber to the information and evidence from the case files which cannot be stored electronically in the Case Management System shall be made with the handling European Delegated Prosecutor in a cost-effective manner.
5. On the basis of a proposal made by the European Chief Prosecutor, the College may adopt further rules on the management and the archive of the EPPO's case files.

Article 44: Reporting on the investigations

1. While the investigation is ongoing, the handling European Delegated Prosecutor shall draw up and maintain a progress report. The report shall contain an indicative investigative work plan as well as any significant developments of the investigation, including at least:
 - a) the investigative measures planned, performed and their results;
 - b) any changes in the scope of the investigation concerning the suspect(s), the offence(s) under investigation, the damage caused and the victim(s);
 - c) the gathering of important evidence;
 - d) requests for review of any act or decision of the handling European Delegated Prosecutor, if applicable;
 - e) a brief description of the content of communications, acts or decisions addressed to a Member State or to a person subject to the jurisdiction of a Member State.
2. This report shall be maintained in the Case Management System. The supervising European Prosecutor and the members of the monitoring Permanent Chamber shall receive a notification through the Case Management System whenever the report is amended.

3. The European Prosecutors may adopt guidelines for the European Delegated Prosecutors in their Member States specifying the reporting obligation.

Article 45: Monitoring of the investigations

1. After a case is opened, the Case Management System shall assign it randomly for monitoring to a Permanent Chamber whose permanent members do not include the supervising European Prosecutor, in accordance with Article 19.
2. The monitoring Permanent Chamber, including any one of its permanent members and the supervising European Prosecutor, shall at any time have access to the information from the case file as stored in the Case Management System. When indispensable for taking a decision, the Permanent Chamber may ask the supervising European Prosecutor to ensure the transmission to the Central Office of the original item(s), whose copies are not yet, or are not able to be stored in their original form in the Case Management System and are not held in the Central Office. The item(s) shall be returned without undue delay once the purpose for which it was requested by the Permanent Chamber has been achieved.
3. Without prejudice to the reporting obligations under Article 22, the Permanent Chamber or the supervising European Prosecutor may at any time request a European Delegated Prosecutor to provide information on an ongoing investigation or prosecution.
4. The Permanent Chamber shall review the investigation periodically, according to a timetable established by the Chair, or at any moment at the request of one of its permanent members, the supervising European Prosecutor or the handling European Delegated Prosecutor.
5. At any point during the investigation, the handling European Delegated Prosecutor can request the assistance of a member of the staff of the EPPO.

Article 46: Directing of the investigations

1. Instructions to the handling European Delegated Prosecutors in accordance with Article 10(5) of the Regulation may concern taking or refraining from taking specific measures.
2. The instructions may establish an obligation for the handling European Delegated Prosecutor to report on the corresponding follow-up.
3. The Chair of the Permanent Chamber shall circulate a draft of the instructions or delegate a member of the Permanent Chamber or the supervising European Prosecutor to do so.
4. The instructions shall be entered in the Case Management System which shall automatically notify the concerned European Delegated Prosecutor.
5. The supervising European Prosecutor shall ensure the European Delegated Prosecutor complies with the instructions. If the supervising European Prosecutor considers that the handling European Delegated Prosecutor failed to follow instructions, he/she shall request clarifications and inform the Permanent Chamber, where necessary submitting a proposal in accordance with Article 28(3)(b) of the Regulation.

Article 47: Review of the instructions of the Permanent Chambers

1. When a European Delegated Prosecutor deems that the implementation of an instruction received by the monitoring Permanent Chamber would be contrary to Union law, including the Regulation, or applicable national law, he/she shall immediately inform the Permanent Chamber, proposing to amend or revoke the instructions received. The monitoring Permanent Chamber shall decide without undue delay on this request, after consulting the supervising European Prosecutor.
2. When the Permanent Chamber denies such a request, the European Delegated Prosecutor may submit a request for review to the European Chief Prosecutor. The chair of the monitoring Permanent Chamber may submit observations to the European Chief

Prosecutor. The European Chief Prosecutor shall assign the request to a different Permanent Chamber, who shall take a final decision on the instruction with the participation of the supervising European Prosecutor.

Article 48: Internal review of the acts of European Delegated Prosecutors

1. Where the national law of a Member State provides for the internal review of acts within the structure of its own prosecutor's office, all requests for the review of an act undertaken by the European Delegated Prosecutor shall be inserted in the Case Management System which shall notify the supervising European Prosecutor and the monitoring Permanent Chamber.
2. The handling European Delegated Prosecutor shall submit written observations to the supervising European Prosecutor.
3. The supervising European Prosecutor shall deal with the request for review within the deadline established according to the national law. The review procedure shall have no suspensive effect and shall not delay the efficient handling of on-going investigations or prosecutions, unless the national law provides otherwise.
4. Prior to taking a decision on the request for review, the supervising European Prosecutor shall inform the competent Permanent Chamber. The Permanent Chamber may at any time continue exercising its monitoring powers enshrined in the Regulation.
5. Where, in the context of internal reviews under national law, the national law refers to the supervising / superior prosecutor, for the purposes of this Article it shall be understood as the supervising European Prosecutor in relation to the European Delegated Prosecutor.

Article 49: Reallocation of a case to another European Delegated Prosecutor

The supervising European Prosecutor may propose to reallocate a case to another European Delegated Prosecutor in the same Member State. The reasoned proposal shall be entered in

the Case Management System, which shall notify the monitoring Permanent Chamber and the handling European Delegated Prosecutor. The handling European Delegated Prosecutor may submit written observations within 5 days after receiving the notification, unless, due to the urgency of the matter, this period has been reduced by the European Prosecutor.

Article 50: Reallocation of a case to a European Delegated Prosecutor in another Member State

1. The handling European Delegated Prosecutor, the supervising European Prosecutor or any permanent member of the monitoring Permanent Chamber may propose for a case to be reallocated to a European Delegated Prosecutor in another Member State in accordance with Article 26(5) of the Regulation.
2. The Permanent Chamber may invite the European Prosecutor from the Member State where the case is proposed to be reallocated to, to attend its meeting and may request written observations from the European Delegated Prosecutors concerned.

In case the reallocation results in the supervising European Prosecutor also being a permanent member of the monitoring Permanent Chamber, Article 19 shall apply accordingly.

3. The decision of the Permanent Chamber to reallocate a case according to paragraphs 1 and 2 shall be registered in the Case Management System, which shall notify the European Prosecutors and European Delegated Prosecutors concerned. The decision may not be taken by written procedure.

Article 51: Merging or splitting of cases

1. Any handling European Delegated Prosecutor, supervising European Prosecutors or permanent member of the monitoring Permanent Chamber may propose to the Permanent

Chamber the merging or splitting of cases falling under the criteria of Article 26(5)(b) and (6) of the Regulation.

2. When the cases to be merged are monitored by different Permanent Chambers, they shall consult each other in order to decide upon the merging of those cases. Where a decision to merge cases is made, the monitoring Permanent Chamber of the first registered case in the Case Management System shall also monitor the merged case, unless the concerned Permanent Chambers jointly decide to deviate from this principle. In case of disagreement between the Permanent Chambers, the European Chief Prosecutor shall decide.

3. When the monitoring Permanent Chamber decides to split a case, it shall remain competent for all the cases which resulted from the split. If there is a reason to deviate from this rule, the monitoring Permanent Chamber shall inform the European Chief Prosecutor who shall decide. The new case(s) resulting from the split shall receive a new case number, in accordance with Article 41.

4. The decision to merge or split cases, and the choice of allocation to a different Permanent Chamber following a merge or a split of cases shall be registered in the Case Management System.

5. The decision shall also contain the Permanent Chamber's choice on the European Delegated Prosecutor handling the merged or split cases in accordance with Article 26 of the Regulation. In case of disagreement between the Permanent Chambers, the European Chief Prosecutor shall decide.

Article 52: Investigations conducted by a European Prosecutor

1. Before taking a reasoned decision in accordance with Article 28(4) of the Regulation, the supervising European Prosecutor who intends to conduct an investigation personally shall request the approval of the Permanent Chamber through the Case Management System.

2. The request shall include the reasons why the investigation should be conducted by the supervising European Prosecutor.
3. The Permanent Chamber may ask for clarifications from the handling European Delegated Prosecutor.
4. If the approval is granted by the Permanent Chamber, the supervising European Prosecutor shall record the decision in the Case Management System, which shall notify the concerned European Delegated Prosecutor(s). The decision shall also be communicated to the national authorities.
5. Where a European Prosecutor conducts an investigation personally, Article 44 shall apply in analogy.

Article 53: Assignment of measures to another European Delegated Prosecutor

1. The assignment of an investigation measure by the handling European Delegated Prosecutor to an assisting European Delegated Prosecutor from another Member State shall be registered in the Case Management System, which shall notify the concerned European Prosecutors. The European Prosecutor of the Member State where the measure needs to be carried out shall allocate the appropriate European Delegated Prosecutor to undertake the measure. The European Delegated Prosecutor shall be notified by the Case Management System.

Where an assisting European Delegated Prosecutor has already been determined, the handling European Delegated Prosecutor may assign the execution of the measure directly to that European Delegated Prosecutor. In urgent cases the handling European Delegated Prosecutor may assign the execution of the measure to any European Delegated Prosecutor of the respective Member State.

2. The decision shall contain all the elements necessary to allow the assisting European Delegated Prosecutor to undertake the measure and shall indicate a time limit for the execution of the assignment.

3. If the assisting European Delegated Prosecutor cannot undertake the measure within the set time limit, he/she shall inform the supervising European Prosecutor and consult with the handling European Delegated Prosecutor to resolve the matter bilaterally.
4. If deemed necessary, for example in complex cross border investigations, a coordination meeting may be organised at the Central Office of the EPPO.

Article 54: Exceptionally costly investigation measures

1. Where an exceptionally costly investigation measure is carried out or could be carried out on behalf of the EPPO, the handling European Delegated Prosecutor may file a reasoned request in the Case Management System for a partial financial contribution of the EPPO, in accordance with Article 91(6) of the Regulation.
2. The reasoned request shall contain details on the exceptional nature of the cost of the measure. The request shall also specify the requested amount of the EPPO's financial contribution.
3. The request is automatically notified in the Case Management System to the permanent members of the competent Permanent Chamber as well as to the supervising European Prosecutor.
4. The Permanent Chamber shall periodically examine the requests. The Permanent Chamber shall accept or reject the request in accordance with the guidelines on the contribution of the EPPO to exceptionally costly investigation measures, without indicating the amount to be awarded.
5. The decision of the Permanent Chamber shall be automatically notified through the Case Management System to the concerned European Delegated Prosecutor.
6. Where the request is accepted by the Permanent Chamber, the Administrative Director shall be informed of that decision and, if applicable, of the proposed amount to be awarded. The Administrative Director shall periodically take a decision on the amount to award in compliance with the Financial Rules and in accordance with the guidelines on the

contribution of the EPPO to exceptionally costly investigation measures. The decision is notified without delay to the concerned European Delegated Prosecutor, the supervising European Prosecutor, the European Chief Prosecutor and the permanent members of the Permanent Chamber.

Chapter 3: Conclusion of cases

Article 55: Delegation of powers to conclude cases

1. The Permanent Chamber may decide to delegate its decision-making power in accordance with Article 10(7) of the Regulation at any stage before the termination of the investigation. The decision may not be taken by written procedure. The decision shall be registered in the Case Management System and notified to the European Chief Prosecutor. If the European Chief Prosecutor is a member of the relevant Permanent Chamber, the Deputy European Chief Prosecutors shall be notified about the decision.
2. The request for review of this decision in accordance with Article 10(7), second subparagraph of the Regulation shall be communicated forthwith by the Case Management System to the supervising European Prosecutor and the handling European Delegated Prosecutor, who shall refrain thereafter from any act which may impair the effectiveness of the review.
3. The matter shall be decided by the Permanent Chamber without undue delay. The European Chief Prosecutor or, as the case may be, the Deputy European Chief Prosecutor, who has submitted the request, may attend the meeting of the Permanent Chamber on this matter. The College shall be notified of the request and of the outcome of the review procedure.

Article 56: Termination of the investigation

1. When the handling European Delegated Prosecutor considers the investigation to be completed, he/she shall provide a report containing, inter alia:

- a) a summary of the facts that were the object of the investigation, as resulting from the existing evidence;
- b) the legal qualification of the facts and their application to the specific case;
- c) a reasoned proposal to prosecute, to apply a simplified prosecution procedure, to dismiss the case or to refer it to the competent national authorities;
- d) if applicable, a proposal to join several cases and the court where the case should be brought to judgement;
- e) any deadlines applicable under national law.

This provision shall also apply to the European Prosecutor who is conducting the investigation personally in accordance with Article 28(4) of the Regulation.

2. The report and the draft decision provided by the European Delegated Prosecutor to be submitted to the Permanent Chamber shall be registered in the Case Management System, which shall notify the supervising European Prosecutor and all the members of the monitoring Permanent Chamber.

3. The report and the draft decision shall be submitted to the supervising European Prosecutor, who, within 10 days shall forward them to the Permanent Chamber, including any own observations he/she may have. Unless the draft decision by the European Delegated Prosecutor proposes to bring a case to judgment, the European Prosecutor may ask the chair of the Permanent Chamber for an extension of the 10-day deadline.

4. The chair of the Permanent Chamber shall decide the date when the report and the draft decision shall be discussed. When the European Delegated Prosecutor submits a draft decision proposing to bring a case to judgement, it shall be discussed at least 5 days before the expiration of the time limit prescribed by Article 36 (1) of the Regulation.

5. When the European Delegated Prosecutor submits a draft decision proposing to bring a case to judgement or to apply a simplified prosecution procedure, the decision of the Permanent Chamber cannot be adopted by written procedure.
6. The Permanent Chamber may adopt or amend the decision proposed by the European Delegated Prosecutor, may adopt a different decision or may instruct the European Delegated Prosecutor to continue the investigation, indicating the specific activities to be undertaken, in accordance with Article 46. If it deems necessary, it may also conduct its own review in line with Article 35(2) of the Regulation.
7. If a decision to dismiss the case has been adopted, the European Delegated Prosecutor shall undertake the notification and information required pursuant to Article 39(4) of the Regulation and note it in the Case Management System.
8. The report shall be submitted by the European Delegated Prosecutor in a manner which ensures the ability to comply with the deadlines foreseen in paragraphs 3 and 4, taking into account the existence of any deadlines applicable in line with national procedural laws. Where this is not possible, the report shall highlight this aspect, as well as giving reasons for it. The supervising European Prosecutor and the Permanent Chamber shall act accordingly.
9. In case the respectively competent Permanent Chamber has delegated its decision-making power in line with Article 55, the report under paragraph 1 shall be provided to the supervising European Prosecutor, who shall adopt the decision as proposed or after amending it as deemed appropriate. If the decision by the supervising European Prosecutor is to dismiss the case, Article 56(7) shall apply.

Article 57: Referral of cases to the national authorities

1. At any point during the investigation, the handling European Delegated Prosecutor, the supervising European Prosecutor or any member of the monitoring Permanent Chamber may propose for a case to be referred to the national authorities according to Articles 34(1)-(3) of the Regulation.

2. The draft decision shall be registered in the Case Management System, which shall notify the permanent members of the Permanent Chamber, the supervising European Prosecutor and the handling European Delegated Prosecutor.
3. If no comments from any of the notified parties under paragraph 2 are received within a timeline of 5 days, the decision shall be deemed to have been adopted, shall be translated and shall be sent to the competent national authority.
4. If the competent national authority decides to take over the case, or if the referral is based on Article 34(1) and / or (2) of the Regulation, the European Delegated Prosecutor shall transfer the case file without undue delay.
5. In cases where the referral is based on Article 34(3) of the Regulation, the competent national authority does not take over the case or does not respond in 30 days after receiving the referral decision, the European Delegated Prosecutor shall continue the investigation, or proceed with the application of Article 56.

Article 58: Consultation with the national authorities

1. Where the European Delegated Prosecutor intends to propose the dismissal of a case in relation to an offence indicated by Article 22(3) of the Regulation in line with Article 39(3) of the Regulation, he/she shall notify the national authorities specified by the respective Member State in line with Article 25(6) of the Regulation.
2. Based on the observations received from the national authority within 20 days following the notification under paragraph 1 above, the European Delegated Prosecutor shall register the corresponding report and draft decision into the Case Management System.

Article 59: Reopening an investigation

1. If the EPPO receives information related to facts which were not known at the time of the decision to dismiss a case and which may warrant further investigation, the following rules shall apply.
2. The verification shall be assigned by the supervising European Prosecutor to the same European Delegated Prosecutor who conducted the investigation or, where appropriate, to a different European Delegated Prosecutor from the same Member State.
3. The European Delegated Prosecutor, following the assessment of the new facts, shall draw a report concerning their influence on the dismissal decision, specifying and taking into account any relevant provisions in the national law, and if any further investigative activity is deemed necessary.
4. The report and the corresponding draft decision shall be registered in the Case Management System, which shall assign it to the same Permanent Chamber which decided upon the dismissal, unless that Permanent Chamber no longer operates, in which case the Case Management System shall assign it randomly to a Permanent Chamber whose permanent members do not include the supervising European Prosecutor, in accordance with Article 19.
5. If the Permanent Chamber following from paragraph 4 above, or a national court or the European Court of Justice following the review of a dismissal decision decide that the EPPO should reopen the case, the supervising European Prosecutor shall assign a European Delegated Prosecutor to continue the investigation.

Chapter 4: Court proceedings

Article 60: Representation in court

1. In proceedings before national courts in line with Article 36 of the Regulation, the EPPO shall in principle be represented by a European Delegated Prosecutor.

2. The European Delegated Prosecutor shall draw up a report containing any significant developments of the proceedings and shall update it periodically. The report shall be registered in the Case Management System and all updates shall be notified to the members of the Permanent Chamber.
3. The Permanent Chamber may issue instructions to the European Delegated Prosecutor or the European Prosecutor in accordance with Article 10(5) of the Regulation.
4. By derogation from paragraph 1 above, the EPPO may also be represented by the supervising European Prosecutor in accordance with Article 28(4) of the Regulation. Paragraphs 2 and 3 above of the present Article shall apply.

TITLE IV: CASE MANAGEMENT SYSTEM

Article 61: Rules regarding the right of access to the Case Management System

1. The European Chief Prosecutor, the Deputy European Chief Prosecutors, other European Prosecutors and the European Delegated Prosecutors shall access the Register and the Index only to the extent required for the performance of their duties.
2. The European Chief Prosecutor shall designate the EPPO staff whose access to the Register and / or to the Index is required for the performance of their duties. The decision shall also indicate the level of access and the conditions of exercising it.
3. In exceptional cases, if needed to ensure confidentiality, the European Chief Prosecutor may decide that the access to a specific information in the Register and / or to a specific case file in the Index is temporarily only available to the permanent members of the Permanent Chamber, the supervising European Prosecutor and the handling European Delegated Prosecutors and other specifically nominated staff.
4. The European Chief Prosecutor and the Deputy European Chief Prosecutors shall have direct access to information stored electronically in the Case Management System or access to the case file to the extent required for the performance of their duties.

5. The handling European Delegated Prosecutor shall grant access to information stored electronically in the Case Management System or to the case file to the assisting European Delegated Prosecutor, or other European Delegated Prosecutors having submitted a reasoned request, or staff of the EPPO only to the extent required for the undertaking of the tasks assigned to them.
6. When entering information into the Case Management System, the handling European Delegated Prosecutor may be assisted by the staff of the EPPO or by other administrative staff acting under his/her control put at the EPPO's disposal by the respective participating Member State, only to the extent required to ensure that the EPPO can function as a single office and that the content of information in the Case Management System reflects at all times the case file.
7. The EPPO shall implement appropriate technical and organisation measures to ensure the protection of the personal data stored in the Case Management System.

Article 62: Cross checking of information

1. Information entered in the Index shall automatically be crosschecked against the Register, the Index and all information from the case files stored electronically in the Case Management System.
2. In case of a hit, the handling European Delegated Prosecutor and the supervising European Prosecutor of the underlying cases shall be notified.
3. If access to one of the linked cases was temporarily restricted to certain users in accordance with Article 61(3), only the handling European Delegated Prosecutor and the supervising European Prosecutor of the respective case shall be notified.
4. The application of paragraphs 1 to 3 above shall also be permissible for information inserted into or added to the Register and information from the case files stored electronically in the Case Management System not in the Index.

TITLE V: DATA PROTECTION

Article 63: General Principles

1. Personal data may only be processed by the EPPO in full compliance with the respectively applicable data protection framework applicable to such processing. Any personal data shall be processed by the EPPO only in compliance with the principles of purpose limitation, lawfulness and fairness, data minimisation, accuracy, storage limitation, integrity and confidentiality and accountability.
2. The EPPO shall take into full account its obligations stemming from the application of the data protection by design as foreseen in Article 67 of the Regulation and ensure its appropriate implementation, especially as regards the automated processing of personal data and developments of systems in this respect.
3. The EPPO shall ensure that all receipts of personal data, as well as any transfers thereof, are duly logged and traceable, including, where required in line with these or other implementing rules, the grounds for their transfer.
4. The Data Protection Officer shall have access to the record of all transfers and receipts of personal data under paragraph 2 above, allowing for the fulfilment of the obligations of the Data Protection Officer under specifically Article 79(1)(d) of the Regulation.
5. No personal data, be it administrative or operational, shall be kept longer than necessary for the purpose for which it has been processed, or than required due to other legal obligations.
6. The College, acting upon proposal of the European Chief Prosecutor, shall adopt further implementing rules on the processing of personal data by the EPPO, in accordance with Article 64 below.
7. The College, acting upon a proposal by the European Chief Prosecutor, shall adopt the implementing rules on the Data Protection Officer.

8. As foreseen and in line with Article 79(1)(a) of the EPPO Regulation, the Data Protection Officer shall ensure in an independent manner, the compliance of the EPPO with the data protection provisions of the Regulation, of Regulation 2018/1725 as regards administrative personal data, and of the relevant data protection provisions in the internal rules of procedure of the EPPO.

Article 64: Implementing Rules on the processing of personal data

1. The College, upon a proposal by the European Chief Prosecutor, shall adopt a further implementing decision on the processing of administrative and operational personal data by the EPPO.
2. Those rules shall outline and define, at a minimum:
 - a) practicalities of the exercise of the rights of the data subject;
 - b) time limits concerning the storage of administrative personal data;
 - c) the criteria and process for the exchange of information ;
 - d) if required, the establishment of automated data files other than case files for the processing of operational personal data.

Article 65: Establishment of automated data files other than case files for the processing of operational personal data

1. Where required for the fulfilment of its tasks, the EPPO may process operational personal data other than in case files, in line with Article 44(5) of the Regulation.
2. Where such processing is necessary, the procedure for the notification of the European Data Protection Supervisor, as well as the procedure for the actual processing of operational personal data and the respectively applicable safeguards, shall be dealt with in the implementing rules adopted under Article 64 above.

TITLE VI: RULES ON RELATIONS WITH PARTNERS

Article 66: General Rules on Working Arrangements and Agreements

1. Where the European Chief Prosecutor identifies the need to conclude working arrangements with the entities referred to in Article 99(1) of the Regulation, he/she shall inform the College in writing, setting out guidelines for the negotiations.
2. Following the information to the College, the European Chief Prosecutor may enter into negotiations on the working arrangements and shall report regularly to the College on the progress made. The European Chief Prosecutor may request guidance to the College during the negotiations.
3. The working arrangements shall be adopted by the College.
4. The provisions of paragraphs 2 and 3 shall apply mutatis mutandis for the conclusion of the agreements referred to in Article 103 (1) of the Regulation.

Article 67: Contact points in third countries

1. The College may indicate a list of third countries with which the EPPO shall seek to establish contact points, for the purpose of Article 104(2) of the Regulation.
2. The EPPO may designate contact points in third countries by exchange of formal letters between the European Chief Prosecutor and the competent authorities concerned.

TITLE VII: FINAL RULES

Article 68: Conclusion of Headquarters Agreement

The provisions of Article 66(2) and (3) shall apply mutatis mutandis for the conclusion of the agreement referred to in Article 106(2) of the Regulation.

Article 69: Conflict of Interest

1. The European Delegated Prosecutors, the European Prosecutors and the European Chief Prosecutor shall act free of any conflict of interest.
2. If any actual or potential conflict of interest arises in relation with an investigation, which may actually or potentially impair his/her independence in carrying out his/her duties, or may be perceived as such, the concerned European Delegated Prosecutor or European Prosecutor shall immediately inform in writing respectively, the competent supervising European Prosecutor or the European Chief Prosecutor. If the conflict of interest concerns the European Chief Prosecutor, he/she shall immediately inform one of the Deputy European Chief Prosecutors.
3. Where the supervising European Prosecutor concludes that a European Delegated Prosecutor has an actual or potential conflict of interest, he/she shall propose to reallocate a case to another European Delegated Prosecutor in the same Member State, in accordance with Article 49, or shall assign a substitute European Delegated Prosecutor from that Member State in accordance with Article 35.
4. Where the European Chief Prosecutor concludes that a supervising European Prosecutor has an actual or potential conflict of interest, he/she shall assign the case to another European Prosecutor, in accordance with Article 32.
5. Where the European Chief Prosecutor concludes that a permanent member of a Permanent Chamber has an actual or potential conflict of interest, he/she shall reallocate the case to another Permanent Chamber, in accordance with Article 20. Where the permanent member of the Permanent Chamber is the European Chief Prosecutor, the decision on the reallocation to another Permanent Chamber shall be taken by a Deputy European Chief Prosecutor.

Article 70: Amendment of the internal rules of procedure

1. Modifications to these rules may be proposed by the European Chief Prosecutor and any European Prosecutor. To this end, a reasoned proposal for amendment shall be communicated to the College. The European Chief Prosecutor may consult the Administrative Director.
2. Within 1 month of receiving the proposal, the European Chief Prosecutor, any European Prosecutor and the Administrative Director, where appropriate, may submit written comments.
3. The vote on the proposal for amendment of these rules shall be included in the agenda of the first possible College meeting after the deadline for submission of comments under paragraph 2.
4. Any amendments shall be adopted with a majority of two-thirds, in line with Article 21(3) of the Regulation.

Article 71: Procedure in case of unavailability of the Case Management System

Where these rules refer to any action being undertaken by or through the Case Management System, and the Case Management System is not functioning properly, or technically unavailable, those actions shall be undertaken in a suitable manner capable of creating a permanent and reviewable record. Once the Case Management System is available again, any actions undertaken shall be updated within the system accordingly.

Article 72: Publication and entry into force

1. The provisions of the internal rules of procedure and any amendment thereof shall enter into force on the date of their adoption.
2. The internal rules of procedure shall be published in the Official Journal of the European Union and shall also be made public through the website of the EPPO.

Done at Luxembourg on 12 October 2020.

On behalf of the College,

Laura Codruța KÖVESI

European Chief Prosecutor



I

(Legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2017/1939

of 12 October 2017

implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 86 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the notification by Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain, by which those Member States on 3 April 2017 notified the European Parliament, the Council and the Commission of their wish to establish enhanced cooperation on the basis of the draft Regulation,

Having regard to the consent of the European Parliament ⁽¹⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of establishing an area of freedom, security and justice.
- (2) The possibility of setting up the European Public Prosecutor's Office ('the EPPO') is foreseen by the Treaty on the Functioning of the European Union (TFEU) in the Title concerning the area of freedom, security and justice.
- (3) Both the Union and the Member States of the European Union have an obligation to protect the Union's financial interests against criminal offences, which generate significant financial damages every year. Yet, these offences are currently not always sufficiently investigated and prosecuted by the national criminal justice authorities.
- (4) On 17 July 2013, the Commission adopted a proposal for a Council Regulation on the establishment of the EPPO.
- (5) At its meeting of 7 February 2017, the Council registered the absence of unanimity on the draft Regulation.
- (6) In accordance with the second subparagraph of Article 86(1) TFEU, a group of seventeen Member States requested, by a letter of 14 February 2017, that the draft Regulation be referred to the European Council.
- (7) On 9 March 2017, the European Council discussed the draft Regulation and noted that there was disagreement within the meaning of the third subparagraph of Article 86(1) TFEU.

⁽¹⁾ Consent of 5 October 2017 (not yet published in the Official Journal).

- (8) On 3 April 2017, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain notified the European Parliament, the Council and the Commission that they wished to establish enhanced cooperation on the establishment of the EPPO. Therefore, in accordance with the third subparagraph of Article 86(1) TFEU, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union (TEU) and Article 329(1) TFEU is deemed to be granted and the provisions on enhanced cooperation apply as from 3 April 2017. In addition, respectively by letters of 19 April 2017, 1 June 2017, 9 June 2017 and 22 June 2017, Latvia, Estonia, Austria and Italy indicated their wish to participate in the establishment of the enhanced cooperation.
- (9) In accordance with Article 328(1) TFEU, when enhanced cooperation is being established it is to be open to all Member States of the European Union. It is also to be open to them at any other time, including with regard to an enhanced cooperation in progress subject to compliance with the acts already adopted within that framework. The Commission and the Member States which participate in enhanced cooperation on the establishment of the EPPO (the 'Member States') should ensure that they promote participation by as many Member States of the European Union as possible. This Regulation should be binding in its entirety and directly applicable only in the Member States which participate in enhanced cooperation on the establishment of the EPPO, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU.
- (10) In accordance with Article 86 TFEU, the EPPO should be established from Eurojust. This implies that this Regulation should establish a close relationship between them based on mutual cooperation.
- (11) The TFEU provides that the material scope of competence of the EPPO is limited to criminal offences affecting the financial interests of the Union in accordance with this Regulation. The tasks of the EPPO should thus be to investigate, prosecute and bring to judgment the perpetrators of offences against the Union's financial interests under Directive (EU) 2017/1371 of the European Parliament and of the Council⁽¹⁾ and offences which are inextricably linked to them. Any extension of this competence to include serious crimes having a cross-border dimension requires a unanimous decision of the European Council.
- (12) In accordance with the principle of subsidiarity, combatting crimes affecting the financial interests of the Union can be better achieved at Union level by reason of its scale and effects. The present situation, in which the criminal prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States of the European Union, does not always sufficiently achieve that objective. Since the objectives of this Regulation, namely, to enhance the fight against offences affecting the financial interests of the Union by setting up the EPPO, cannot be sufficiently achieved by the Member States of the European Union, given the fragmentation of national prosecutions in the area of offences committed against the Union's financial interests but can rather, by reason of the fact that the EPPO is to have competence to prosecute such offences, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives and ensures that its impact on the legal orders and the institutional structures of the Member States is the least intrusive possible.
- (13) This Regulation provides for a system of shared competence between the EPPO and national authorities in combating crimes affecting the financial interests of the Union, based on the right of evocation of the EPPO.
- (14) In the light of the principle of sincere cooperation, both the EPPO and the competent national authorities should support and inform each other with the aim of efficiently combatting the crimes falling under the competence of the EPPO.
- (15) This Regulation is without prejudice to Member States' national systems concerning the way in which criminal investigations are organised.

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (16) Since the EPPO is to be granted powers of investigation and prosecution, institutional safeguards should be put in place to ensure its independence as well as its accountability towards the institutions of the Union.
- (17) The EPPO should act in the interest of the Union as a whole and neither seek nor take instructions from any person external to the EPPO.
- (18) Strict accountability is a complement to the independence and the powers granted to the EPPO under this Regulation. The European Chief Prosecutor is fully accountable for the performance of his/her duties as the head of the EPPO and as such he/she bears an overall institutional accountability for its general activities to the European Parliament, the Council and the Commission. As a result, any of these institutions can apply to the Court of Justice of the European Union (the 'Court of Justice'), with a view to his/her removal under certain circumstances, including in cases of serious misconduct. The same procedure should apply for the dismissal of European Prosecutors.
- (19) The EPPO should issue a public Annual Report on its general activities, which at a minimum should contain statistical data on the work of the EPPO.
- (20) The organisational structure of the EPPO should allow quick and efficient decision-making in the conduct of criminal investigations and prosecutions, whether they involve one or several Member States. The structure should also ensure that all national legal systems and traditions of the Member States are represented in the EPPO, and that prosecutors with knowledge of the individual legal systems will in principle handle investigations and prosecutions in their respective Member States.
- (21) To that end, the EPPO should be an indivisible Union body operating as a single office. The central level consists of a European Chief Prosecutor, who is the head of the EPPO as a whole and the head of the College of European Prosecutors, Permanent Chambers and European Prosecutors. The decentralised level consists of European Delegated Prosecutors located in the Member States.
- (22) In addition, to ensure consistency in its action and thus an equivalent protection of the Union's financial interests, the organisational structure and the internal decision-making process of the EPPO should enable the Central Office to monitor, direct and supervise all investigations and prosecutions undertaken by European Delegated Prosecutors.
- (23) In this Regulation, the terms 'general oversight', 'monitoring and directing' and 'supervision' are used to describe different control activities exercised by the EPPO. 'General oversight' should be understood as referring to the general administration of the activities of the EPPO, in which instructions are only given on issues which have a horizontal importance for the EPPO. 'Monitoring and directing' should be understood as referring to the powers to monitor and direct individual investigations and prosecutions. 'Supervision' should be understood as referring to a closer and continuous oversight of investigations and prosecutions, including, whenever necessary, intervention and instruction-giving on investigations and prosecution matters.
- (24) The College should take decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO, as well as on general issues arising from individual cases, for example regarding the application of this Regulation, the correct implementation of the investigation and prosecution policy of the EPPO or questions of principle or of significant importance for the development of a coherent investigation and prosecution policy of the EPPO. The decisions of the College on general issues should not affect the duty to investigate and prosecute in accordance with this Regulation and national law. The College should use its best efforts to take decisions by consensus. If such a consensus cannot be reached, decisions should be taken by voting.
- (25) The Permanent Chambers should monitor and direct investigations and ensure the coherence of the activities of the EPPO. The composition of Permanent Chambers should be determined in accordance with the internal rules of procedure of the EPPO, which should allow, among other things, for a European Prosecutor to be a member of more than one Permanent Chamber where this is appropriate to ensure, to the extent possible, an even workload between individual European Prosecutors.

- (26) Permanent Chambers should be chaired by the European Chief Prosecutor, one of the deputy European Chief Prosecutors or a European Prosecutor, in accordance with principles laid down in the internal rules of procedure of the EPPO.
- (27) The allocation of cases between the Permanent Chambers should be based on a system of a random distribution so as to ensure, to the extent possible, an equal division of workload. Deviations from this principle should be possible to ensure the proper and efficient functioning of the EPPO on a decision by the European Chief Prosecutor.
- (28) A European Prosecutor from each Member State should be appointed to the College. The European Prosecutors should in principle supervise, on behalf of the competent Permanent Chamber, the investigations and prosecutions handled by the European Delegated Prosecutors in their Member State of origin. They should act as liaison between the central office and the decentralised level in their Member States, facilitating the functioning of the EPPO as a single office. The supervising European Prosecutor should also check any instruction's compliance with national law and inform the Permanent Chamber if the instructions do not do so.
- (29) For reasons of workload linked to the high number of investigations and prosecutions in a given Member State, a European Prosecutor should be able to request that, exceptionally, the supervision of certain investigations and prosecutions in his/her Member State of origin may be assigned to other European Prosecutors. The decision should be taken by the European Chief Prosecutor with the agreement of the European Prosecutor who would take over the cases concerned. The criteria for such decisions should be laid down in the internal rules of procedure of the EPPO, and should include the requirement that the European Prosecutor taking over the cases has sufficient knowledge of the language and legal system of the Member State concerned.
- (30) The investigations of the EPPO should as a rule be carried out by European Delegated Prosecutors in the Member States. They should do so in accordance with this Regulation and, as regards matters not covered by this Regulation, in accordance with national law. European Delegated Prosecutors should carry out their tasks under the supervision of the supervising European Prosecutor and under the direction and instruction of the competent Permanent Chamber. Where the national law of a Member State provides for the internal review of certain acts within the structure of the national prosecutor's office, the review of such decisions taken by the European Delegated Prosecutor should fall under the supervision powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO. In such cases, Member States should not be obliged to provide for review by national courts, without prejudice to Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- (31) The functions of prosecutor in competent courts apply until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any legal action or remedies available until that decision has become definitive.
- (32) The European Delegated Prosecutors should be an integral part of the EPPO and as such, when investigating and prosecuting offences within the competence of the EPPO, they should act exclusively on behalf and in the name of the EPPO on the territory of their respective Member State. This should entail granting them under this Regulation a functionally and legally independent status which is different from any status under national law.
- (33) Notwithstanding their special status under this Regulation, the European Delegated Prosecutors should, during their term of office, also be members of the prosecution service of their Member State, namely a prosecutor or member of the judiciary, and should be granted by their Member State at least the same powers as national prosecutors.
- (34) The European Delegated Prosecutors should be bound to follow instructions coming from the Permanent Chambers and the European Prosecutors. Where a European Delegated Prosecutor considers that an instruction would require him/her to undertake any measure that would not be in compliance with national law, he/she should ask for a review of that instruction by the European Chief Prosecutor.

- (35) The European Delegated Prosecutor handling a case should report any significant developments in a case, such as the performance of investigative measures or changes to the list of suspected persons, to the supervising European Prosecutor and to the competent Permanent Chamber.
- (36) The Permanent Chambers should exercise their decision-making power at specific steps of the proceedings of the EPPO with a view to ensuring a common investigation and prosecution policy. They should adopt decisions on the basis of a draft decision proposed by the handling European Delegated Prosecutor. However, in exceptional cases, a Permanent Chamber should be able to adopt a decision without a draft decision of the handling European Delegated Prosecutor. In such cases, the European Prosecutor supervising the case may present such a draft decision.
- (37) A Permanent Chamber should be able to delegate its decision-making power to the supervising European Prosecutor in specific cases where an offence is not serious or the proceedings are not complex. When assessing the degree of seriousness of an offence, account should be taken of its repercussions at Union level.
- (38) A substitution mechanism between European Prosecutors should be provided for in the internal rules of procedure of the EPPO. The substitution mechanism should be used in cases where a European Prosecutor is briefly unable to fulfil his/her duties, for example, due to absence.
- (39) In addition, a European Prosecutor should be substituted by one of the European Delegated Prosecutors of his/her Member State when the European Prosecutor resigns, is dismissed or leaves his/her position for any other reason or in cases, for example, of prolonged illness. The substitution should be limited to a period of up to 3 months. The possibility to prolong this time limit should be left to the discretion of the College, where deemed to be necessary, taking into account the workload of the EPPO and the duration of the absence, pending replacement or return of the European Prosecutor. The European Delegated Prosecutor substituting the European Prosecutor should, for the period of the substitution, no longer be in charge of investigations and prosecutions handled by him/her as a European Delegated Prosecutor or as national prosecutor. With regard to proceedings of the EPPO which were handled by the European Delegated Prosecutor substituting a European Prosecutor, the EPPO's rules on reallocation should apply.
- (40) The procedure for the appointment of the European Chief Prosecutor and the European Prosecutors should guarantee their independence. Their legitimacy should be drawn from the institutions of the Union involved in the appointment procedure. The Deputies to the European Chief Prosecutor should be appointed by the College from among its members.
- (41) A selection panel should establish a short list of candidates for the position of European Chief Prosecutor. The power to establish the panel's operating rules and to appoint its members should be conferred on the Council, based on a proposal from the Commission. Such an implementing power would mirror the specific powers conferred on the Council under Article 86 TFEU, and reflects the specific nature of the EPPO, which will remain firmly embedded in national legal structures while at the same time being a Union body. The EPPO will be acting in proceedings where most other actors will be national, such as courts, police and other law enforcement authorities, and therefore the Council has a specific interest in being closely involved in the appointment procedure. Conferring those powers on the Council also adequately takes into account the potential sensitive nature of any decision-making powers with direct implications for the national judicial and prosecution structures. The European Parliament and the Council should appoint, by common accord, one of the shortlisted candidates as Chief Prosecutor.

- (42) Each Member State should nominate three candidates for the position of European Prosecutor to be selected and appointed by the Council. With a view to ensuring the continuity of the work of the College, there should be a partial replacement of one third of the European Prosecutors every 3 years. The power to adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period should be conferred on the Council. That implementing power mirrors the power of the Council to select and appoint the European Prosecutors. This is also justified by the specific nature of the European Prosecutors as being linked to their respective Member States while at the same time being Members of the College and more generally, by the specific nature of the EPPO following the same logic underlying the implementing power conferred on the Council to establish the panel's operating rules and to appoint its members. The Council should take into account the geographical range of the Member States when deciding on the partial replacement of one third of the European Prosecutors during their first mandate period.
- (43) The procedure for the appointment of the European Delegated Prosecutors should ensure that they are an integral part of the EPPO while they remain integrated at an operational level in their national legal systems and judicial and prosecution structures. Member States should nominate candidates for the position of European Delegated Prosecutors, who should be appointed by the College on a proposal by the European Chief Prosecutor.
- (44) There should be two or more European Delegated Prosecutors in each Member State to ensure the proper handling of the caseload of the EPPO. The European Chief Prosecutor should approve the number of European Delegated Prosecutors per Member State, as well as the functional and territorial division of tasks among them, in consultation with each Member State. In such consultations, due account should be taken of the organisation of the national prosecution systems. The notion of functional division of competences between European Delegated Prosecutors could allow for a division of tasks.
- (45) The total number of European Delegated Prosecutors in a Member State may be modified with the approval of the European Chief Prosecutor, subject to the limits of the annual budget line of the EPPO.
- (46) The College should be responsible for disciplinary procedures concerning European Delegated Prosecutors acting under this Regulation. Since European Delegated Prosecutors remain active members of the public prosecution or the judiciary of the Member States, and may also exercise functions as national prosecutors, national disciplinary provisions may apply for reasons not connected with this Regulation. However, in such cases the European Chief Prosecutor should be informed of the dismissal or of any disciplinary action, given his responsibilities for the management of the EPPO and in order to protect its integrity and independence.
- (47) The work of the EPPO should, in principle, be carried out in electronic form. A case management system should be established, owned and managed by the EPPO. The information in the case management system should include information received about possible offences that fall under the EPPO's competence, as well as information from the case files, also when those have been closed. The EPPO should, when establishing the case management system, ensure that the system allows the EPPO to operate as a single office, where the case files administered by European Delegated Prosecutors are available to the Central Office for the exercise of its decision-making, monitoring and direction, and supervision tasks.
- (48) National authorities should inform the EPPO without delay of any conduct that could constitute an offence within the competence of the EPPO. In cases which fall outside its scope of competence, the EPPO should inform the competent national authorities of any facts of which it becomes aware, and which might constitute a criminal offence, for example false testimony.
- (49) Institutions, bodies, offices and agencies of the Union, as well as national authorities, should provide without delay any information to the EPPO about offences in respect of which it could exercise its competence. The EPPO may also receive or gather information from other sources, such as private parties. A verification mechanism in the EPPO should aim to assess whether, on the basis of the information received, the conditions for material, territorial and personal competence of the EPPO are fulfilled.

- (50) Whistle-blowers may bring new information to the attention of the EPPO thereby assisting it in its work to investigate, prosecute and bring to judgment perpetrators of offences affecting the Union's financial interests. However, whistleblowing may be deterred by fear of retaliation. With a view to facilitating the detection of offences that fall within the competence of the EPPO, Member States are encouraged to provide, in accordance with their national law, effective procedures to enable reporting of possible offences that fall within the competence of the EPPO and to ensure protection of the persons who report such offences from retaliation, and in particular from adverse or discriminatory employment actions. The EPPO should develop its own internal rules if necessary.
- (51) In order to comply fully with their obligation to inform the EPPO where a suspicion of an offence within its competence is identified, the national authorities of the Member States as well as all institutions, bodies, offices and agencies of the Union should follow the existing reporting procedures and have in place efficient mechanisms for a preliminary evaluation of allegations reported to them. The institutions, bodies, offices and agencies of the Union may make use of the European Anti-Fraud Office ('OLAF') to that end.
- (52) Member States' authorities should set up a system that ensures that information is reported to the EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralised system.
- (53) Compliance with that reporting obligation is essential for the EPPO's good functioning and should be interpreted broadly to ensure that national authorities report cases where the assessment of some criteria is not immediately possible (for example the level of damage or the applicable penalty). The EPPO should also be able to request information from the Member States' authorities on a case-by-case basis about other offences affecting the Union's financial interests. This should not be considered as a possibility for the EPPO to request systematic or periodic information from Member States' authorities concerning minor offences.
- (54) The efficient investigation of offences affecting the financial interests of the Union and the principle of *ne bis in idem* may require, in certain cases, an extension of the investigation to other offences under national law, where these are inextricably linked to an offence affecting the financial interests of the Union. The notion of 'inextricably linked offences' should be considered in light of the relevant case-law which, for the application of the *ne bis in idem* principle, retains as a relevant criterion the identity of the material facts (or facts which are substantially the same), understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space.
- (55) The EPPO should have the right to exercise competence, where offences are inextricably linked and the offence affecting the Union's financial interests is preponderant, in terms of the seriousness of the offence concerned, as reflected in the maximum sanctions that could be imposed.
- (56) However, the EPPO should also have the right to exercise competence in the case of inextricably linked offences where the offence affecting the financial interests of the Union is not preponderant in terms of sanctions levels, but where the inextricably linked other offence is deemed to be ancillary in nature because it is merely instrumental to the offence affecting the financial interests of the Union, in particular where such other offence has been committed for the main purpose of creating the conditions to commit the offence affecting the financial interests of the Union, such as an offence strictly aimed at ensuring the material or legal means to commit the offence affecting the financial interests of the Union, or to ensure the profit or product thereof.
- (57) The notion of offences relating to participation in a criminal organisation should be subject to the definition provided for in national law in accordance with Council Framework Decision 2008/841/JHA ⁽¹⁾, and may cover, for example, membership in, or the organisation and leadership of, such a criminal organisation.

⁽¹⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (58) The competence of the EPPO regarding offences affecting the financial interests of the Union should, as a general rule, take priority over national claims of competence so that it can ensure consistency and provide steering of investigations and prosecutions at Union level. With regard to those offences the authorities of Member States should refrain from acting, unless urgent measures are required, until the EPPO has decided whether to conduct an investigation.
- (59) A particular case should be considered to have repercussions at Union level, *inter alia*, where a criminal offence has a transnational nature and scale, where such an offence involves a criminal organisation, or where the specific type of offence could pose a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence.
- (60) Where the EPPO cannot exercise its competence in a particular case because there is reason to assume that the damage caused, or likely to be caused, to the Union's financial interests does not exceed the damage caused, or likely to be caused, to another victim, the EPPO should nevertheless be able to exercise its competence provided that it would be better placed to investigate or prosecute than the authorities of the respective Member State(s). The EPPO could appear to be better placed, *inter alia*, where it would be more effective to let the EPPO investigate and prosecute the respective criminal offence due to its transnational nature and scale, where the offence involves a criminal organisation, or where a specific type of offence could be a serious threat to the Union's financial interests or the Union institutions' credit and Union citizens' confidence. In such a case the EPPO should be able to exercise its competence with the consent given by the competent national authorities of the Member State(s) where damage to such other victim(s) occurred.
- (61) When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence and considers that the EPPO could not exercise its competence, it should inform the EPPO thereof, in order to allow the latter to assess whether it should exercise competence.
- (62) In the case of disagreement over the questions of exercise of competence, the competent national authorities should decide on the attribution of competence. The notion of competent national authorities should be understood as any judicial authorities which have competence to decide on the attribution of competence in accordance with national law.
- (63) As the EPPO should bring prosecutions before national courts, its competence should be defined by reference to the criminal law of the Member States that criminalises acts or omissions affecting the Union's financial interests and determines the applicable penalties by implementing the relevant Union legislation, in particular Directive (EU) 2017/1371, in national legal systems.
- (64) The EPPO should exercise its competence as broadly as possible so that its investigations and prosecutions may extend to offences committed outside the territory of the Member States.
- (65) The investigations and prosecutions of the EPPO should be guided by the principles of proportionality, impartiality and fairness towards the suspect or accused person. This includes the obligation to seek all types of evidence, inculpatory as well as exculpatory, either *motu proprio* or at the request of the defence.
- (66) In order to ensure legal certainty and to effectively combat offences affecting the Union's financial interests, the investigation and prosecution activities of the EPPO should be guided by the legality principle, whereby the EPPO applies strictly the rules laid down in this Regulation relating in particular to competence and its exercise, the initiation of investigations, the termination of investigations, the referral of a case, the dismissal of the case and simplified prosecution procedures.

- (67) In order to best safeguard the rights of the defendant, in principle a suspect or accused person should only face one investigation or prosecution by the EPPO. Where an offence has been committed by several persons, the EPPO should in principle initiate only one case and conduct investigations in respect of all suspect or accused persons jointly.
- (68) Where several European Delegated Prosecutors have opened investigations in respect of the same criminal offence, the Permanent Chamber should where appropriate merge such investigations. The Permanent Chamber may decide not to merge such proceedings or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, for example if proceedings against one suspect or accused person could be terminated at an earlier stage, whereas proceedings against other suspect or accused persons would still have to be continued, or if splitting the case could shorten the period of pre-trial detention of one of the suspects. Where different Permanent Chambers are in charge of the cases to be merged, the internal rules of procedure of the EPPO should determine the appropriate competence and procedure. Where the Permanent Chamber decides to split a case, its competence for the resulting cases should be maintained.
- (69) The EPPO should rely on national authorities, including police authorities, in particular for the execution of coercive measures. Under the principle of sincere cooperation, all national authorities and the relevant bodies of the Union, including Eurojust, Europol and OLAF, should actively support the investigations and prosecutions of the EPPO, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case.
- (70) It is essential for the effective investigation and prosecution of offences affecting the Union's financial interests that the EPPO be able to gather evidence by using at least a minimum set of investigation measures, while respecting the principle of proportionality. Those measures should be available with regard to the offences that are within the mandate of the EPPO, at least where they are punishable by a maximum penalty of at least 4 years of imprisonment, for the purpose of its investigations and prosecutions, but may be subject to limitations in accordance with national law.
- (71) In addition to the minimum set of investigation measures listed in this Regulation, European Delegated Prosecutors should be entitled to request or to order any measures which are available to prosecutors under national law in similar national cases. Availability should be ensured in all situations where the indicated investigative measure exists but may be subject to limitations in accordance with national law.
- (72) In cross-border cases, the handling European Delegated Prosecutor should be able to rely on assisting European Delegated Prosecutors when measures need to be undertaken in other Member States. Where judicial authorisation is required for such a measure, it should be clearly specified in which Member State the authorisation should be obtained, but in any case there should be only one authorisation. If an investigation measure is finally refused by the judicial authorities, namely after all legal remedies have been exhausted, the handling European Delegated Prosecutor should withdraw the request or the order.
- (73) The possibility foreseen in this Regulation to have recourse to legal instruments on mutual recognition or cross-border cooperation should not replace the specific rules on cross-border investigations under this Regulation. It should rather supplement them to ensure that, where a measure is necessary in a cross-border investigation but is not available in national law for a purely domestic situation, it can be used in accordance with national law implementing the relevant instrument, when conducting the investigation or prosecution.
- (74) The provisions of this Regulation on cross-border cooperation should be without prejudice to existing legal instruments that facilitate cross-border cooperation between national authorities, other than prosecution or judicial authorities. The same should apply to national authorities cooperating on the basis of administrative law.
- (75) The provisions of this Regulation relating to pre-trial arrest and cross-border surrender should be without prejudice to the specific procedures in Member States where judicial authorisation is not required for the initial arrest of a suspect or accused person.

- (76) The handling European Delegated Prosecutor should be entitled to issue or request European Arrest Warrants within the area of competence of the EPPO.
- (77) The EPPO should be entitled to refer a case to national authorities, where the investigation reveals that the offence is outside the competence of the EPPO. In such a referral, national authorities should preserve their full prerogatives under national law to open, continue or dismiss the investigation.
- (78) This Regulation requires the EPPO to exercise the functions of a prosecutor, which includes taking decisions on a suspect or accused person's indictment and the choice of the Member State whose courts will be competent to hear the prosecution. The decision whether to indict the suspect or accused person should in principle be made by the competent Permanent Chamber on the basis of a draft decision by the European Delegated Prosecutor, so that there is a common prosecution policy. The Permanent Chamber should be entitled to take any decision within 21 days of receiving the draft decision, including requesting further evidence, before deciding to bring a case to judgment, except a decision to dismiss a case where the European Delegated Prosecutor has proposed to bring the case to judgment.
- (79) The Member State whose courts will be competent to hear the prosecution should be chosen by the competent Permanent Chamber on the basis of a set of criteria laid down in this Regulation. The Permanent Chamber should take its decision on the basis of a report and a draft decision by the handling European Delegated Prosecutor, which should be transmitted to the Permanent Chamber by the supervising European Prosecutor with, if necessary, his/her own assessment. The supervising European Prosecutor should retain all the powers to give specific instructions to the European Delegated Prosecutor provided for in this Regulation.
- (80) The evidence presented by the EPPO in court should not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State, provided that the trial court considers its admission to respect the fairness of the procedure and the suspect or accused person's rights of defence under the Charter. This Regulation respects the fundamental rights and observes the principles recognised by Article 6 TEU and in the Charter, in particular Title VI thereof, by international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by Member States' constitutions in their respective fields of application. In line with those principles, and in respecting the different legal systems and traditions of the Member States as provided for in Article 67(1) TFEU, nothing in this Regulation may be interpreted as prohibiting the courts from applying the fundamental principles of national law on fairness of the procedure that they apply in their national systems, including in common law systems.
- (81) Taking into account the legality principle, the investigations of the EPPO should as a rule lead to prosecution in the competent national courts in cases where there is sufficient evidence and no legal ground bars prosecution, or where no simplified prosecution procedure has been applied. The grounds for dismissal of a case are exhaustively laid down in this Regulation.
- (82) National legal systems provide for various types of simplified prosecution procedures, which may or may not include involvement of a court, for example in the form of transactions with the suspect or accused person. If such procedures exist, the European Delegated Prosecutor should have the power to apply them under the conditions provided for in national law and in the situations provided for by this Regulation. Those situations should include cases where the final damage of the offence, after possible recovery of an amount corresponding to such damage, is not significant. Considering the interest of a coherent and effective prosecution policy of the EPPO, the competent Permanent Chamber should always be called upon 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.

- (83) This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO. The activities of the EPPO should thus be exercised in full compliance with those rights and this Regulation should be applied and interpreted accordingly.
- (84) Article 82(2) TFEU allows the Union to establish minimum rules on rights of individuals in criminal proceedings, in order to ensure that the rights of defence and the fairness of the proceedings are respected. Those minimum rules have been gradually set out by the Union legislator in Directives on specific rights.
- (85) The rights of defence provided for in the relevant Union law, such as Directives 2010/64/EU ⁽¹⁾, 2012/13/EU ⁽²⁾, 2013/48/EU ⁽³⁾, (EU) 2016/343 ⁽⁴⁾, (EU) 2016/1919 ⁽⁵⁾, of the European Parliament and of the Council as implemented by national law, should apply to the activities of the EPPO. Any suspect or accused person in respect of whom the EPPO initiates an investigation should benefit from those rights, as well as from the rights provided for in national law to request that experts are appointed or that witnesses are heard, or that evidence on behalf of the defence is otherwise produced by the EPPO.
- (86) Article 86(3) TFEU allows the Union legislator to determine the rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions. That competence granted to the Union legislator reflects the specific nature of the tasks and structure of the EPPO, which is different from that of all other bodies and agencies of the Union and requires special rules regarding judicial review.
- (87) According to Article 86(2) TFEU, the EPPO exercises its functions of prosecutor before the competent courts of the Member States. Acts undertaken by the EPPO in the course of its investigations are closely related to the prosecution which may result therefrom, and thus have effects in the legal order of the Member States. In many cases the acts will be carried out by national law enforcement authorities acting under the instructions of the EPPO, in some cases after having obtained the authorisation of a national court.

It is therefore appropriate to consider that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. This should ensure that the procedural acts of the EPPO that are adopted before the indictment and intended to produce legal effects vis-à-vis third parties (a category which includes the suspect, the victim, and other interested persons whose rights may be adversely affected by such acts) are subject to judicial review by national courts. Procedural acts that relate to the choice of the Member State whose courts will be competent to hear the prosecution, which is to be determined on the basis of the criteria laid down in this Regulation, are intended to produce legal effects vis-à-vis third parties and should therefore be subject to judicial review by national courts, at the latest at the trial stage.

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

⁽²⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁽³⁾ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁽⁴⁾ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁽⁵⁾ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

Actions before competent national courts for failures of the EPPO to act are those regarding procedural acts which the EPPO is under a legal obligation to adopt and which are intended to produce legal effects vis-à-vis third parties. Where national law provides for judicial review concerning procedural acts which are not intended to produce legal effects vis-à-vis third parties or for legal actions concerning other failures to act, this Regulation should not be interpreted as affecting such legal provisions. In addition, Member States should not be required to provide for judicial review by the competent national courts of procedural acts which are not intended to produce legal effects vis-à-vis third parties, such as the appointment of experts or the reimbursement of witness costs.

Finally, this Regulation does not affect the powers of national trial courts.

- (88) The legality of procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to judicial review before national courts. In that regard, effective remedies should be ensured in accordance with the second subparagraph of Article 19(1) TEU. Furthermore, as underlined by the case-law of the Court of Justice, the national procedural rules governing actions for the protection of individual rights granted by Union law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Union law (principle of effectiveness).

When national courts review the legality of such acts, they may do so on the basis of Union law, including this Regulation, and also on the basis of national law, which applies to the extent that a matter is not dealt with by this Regulation. As underlined in the case-law of the Court of Justice, national courts should always refer preliminary questions to the Court of Justice when they entertain doubts about the validity of those acts vis-à-vis Union law.

However, national courts may not refer to the Court of Justice preliminary questions on the validity of the procedural acts of the EPPO with regard to national procedural law or to national measures transposing Directives, even if this Regulation refers to them. This is however without prejudice to preliminary references concerning the interpretation of any provision of primary law, including the Treaties and the Charter, or the interpretation and validity of any provision of Union secondary law, including this Regulation and applicable Directives. In addition, this Regulation does not exclude the possibility for national courts to review the validity of the procedural acts of the EPPO which are intended to produce legal effects vis-à-vis third parties with regard to the principle of proportionality as enshrined in national law.

- (89) The provision of this Regulation on judicial review does not alter the powers of the Court of Justice to review the EPPO administrative decisions, which are intended to have legal effects vis-à-vis third parties, namely decisions that are not taken in the performance of its functions of investigating, prosecuting or bringing to judgement. This Regulation is also without prejudice to the possibility for a Member State of the European Union, the European Parliament, the Council or the Commission to bring actions for annulment in accordance with the second paragraph of Article 263 TFEU and to the first paragraph of Article 265 TFEU, and to infringement proceedings under Articles 258 and 259 TFEU.
- (90) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾ applies to the processing of administrative personal data performed by the EPPO.
- (91) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Union.
- (92) Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the TEU and to the TFEU, provides that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU may prove to be necessary because of the specific nature of these fields.

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

- (93) The rules of this Regulation on the protection of personal data should be interpreted and applied in accordance with the interpretation and application of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁾, which will apply to the processing of personal data by competent authorities of the Member States of the European Union for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- (94) 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.
- (95) The data protection provisions of this Regulation are without prejudice to the applicable rules on the admissibility of personal data as evidence in criminal court proceedings.
- (96) All Member States of the European Union are affiliated to the International Criminal Police Organisation (Interpol). To fulfil its mission, Interpol receives, stores and circulates personal data to assist competent authorities in preventing and combating international crime. It is therefore appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where operational personal data are transferred from the EPPO to Interpol, and to countries which have delegated members to Interpol, this Regulation, in particular the provisions on international transfers, should apply. This Regulation should be without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA ⁽²⁾ and Council Decision 2007/533/JHA ⁽³⁾.
- (97) When the EPPO transfers operational personal data to an authority of a third country or to an international organisation or Interpol by virtue of an international agreement concluded pursuant to Article 218 TFEU, appropriate safeguards for the protection of privacy and the fundamental rights and freedoms of individuals should ensure that the data protection provisions of this Regulation are complied with.
- (98) In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Regulation as regards operational personal data, as required by Article 8 of the Charter, the European Data Protection Supervisor should have the tasks laid down in this Regulation and should have effective powers, including investigative, corrective, and advisory powers which constitute the necessary means to perform those tasks. However, the powers of the European Data Protection Supervisor should not unduly interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary.
- (99) In order to enable the EPPO to fulfil its tasks and to take account of developments in information technology, and in light of the state of progress in the information society, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of listing and updating the list of the categories of operational personal data and the categories of data subjects listed in an Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ⁽⁴⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of the Commission expert group dealing with the preparation of delegated acts.

⁽¹⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽²⁾ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

⁽³⁾ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

⁽⁴⁾ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

- (100) The EPPO should work closely with other institutions, bodies, offices and agencies of the Union in order to facilitate the exercise of its functions under this Regulation and establish, where necessary, formal arrangements on detailed rules relating to exchange of information and cooperation. Cooperation with Europol and OLAF should be of particular importance to avoid duplication and enable the EPPO to obtain the relevant information in their possession, as well as to draw on their analysis in specific investigations.
- (101) The EPPO should be able to obtain any relevant information that falls within its competence stored in databases and registers of the institutions, bodies, offices and agencies of the Union.
- (102) 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 within the competence of Eurojust is considered to be necessary or appropriate. Whenever the EPPO is requesting such cooperation of Eurojust, the EPPO should liaise with the Eurojust national member of the handling European Delegated Prosecutor's Member State. The operational cooperation may also involve third countries that have a cooperation agreement with Eurojust.
- (103) The EPPO and OLAF should establish and maintain a close cooperation aimed at ensuring the complementarity of their respective mandates, and avoiding duplication. In that regard, OLAF should in principle not open any administrative investigations parallel to an investigation conducted by the EPPO into the same facts. This should, however, be without prejudice to the power of OLAF to start an administrative investigation on its own initiative, in close consultation with the EPPO.
- (104) In all actions in support of the EPPO, OLAF will act independently of the Commission, in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾.
- (105) In cases where the EPPO is not conducting an investigation, it should be able to provide relevant information to allow OLAF to consider appropriate action in accordance with its mandate. In particular, the EPPO could consider informing OLAF of cases where there are no reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, but an administrative investigation by OLAF may be appropriate, or where the EPPO dismisses a case and a referral to OLAF is desirable for administrative follow-up or recovery. When the EPPO provides information, it may request that OLAF considers whether to open an administrative investigation or take other administrative follow-up or monitoring action, in particular for the purposes of precautionary measures, recovery or disciplinary action, in accordance with Regulation (EU, Euratom) No 883/2013.
- (106) To the extent that recovery procedures are deferred as a result of decisions taken by the EPPO in connection with investigations or prosecutions under this Regulation, Member States should not be considered at fault or negligent for the purposes of recovery procedures within the meaning of Article 122 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽²⁾.
- (107) The EPPO should enable the institutions, bodies, offices or agencies of the Union and other victims to take appropriate measures. This may include taking precautionary measures, in particular to prevent any continuous wrongdoing or to protect the Union from reputational damage, or to allow them to intervene as a civil party in the proceedings in accordance with national law. The exchange of information should take place in a manner that fully respects the independence of the EPPO, and only to the extent possible, without any prejudice to the proper conduct and confidentiality of investigations.

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

⁽²⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

- (108) In so far as necessary for the performance of its tasks, the EPPO should also be able to establish and maintain cooperative relations with the authorities of third countries and international organisations. For the purpose of this Regulation, 'international organisations' means international organisations and their subordinate bodies governed by public international law or other bodies which are set up by, or on the basis of, an agreement between two or more countries as well as Interpol.
- (109) Where the College identifies an operational need for cooperation with a third country or an international organisation, it should be able to suggest that the Council draw the attention of the Commission to the need for an adequacy decision or for a recommendation on the opening of negotiations on an international agreement.

Pending the conclusion of new international agreements by the Union or the accession by the Union to multilateral agreements already concluded by the Member States, on legal assistance in criminal matters, the Member States should facilitate the exercise by the EPPO of its functions pursuant to the principle of sincere cooperation enshrined in Article 4(3) TEU. If permitted under a relevant multilateral agreement and subject to the third country's acceptance, the Member States should recognise and, where applicable, notify the EPPO as a competent authority for the purpose of the implementation of those multilateral agreements. This may entail, in certain cases, an amendment to those agreements but the renegotiation of such agreements should not be regarded as a mandatory step, since it may not always be possible. The Member States may also notify the EPPO as a competent authority for the purpose of the implementation of other international agreements on legal assistance in criminal matters concluded by them, including by way of an amendment to those agreements.

Where the notification of the EPPO as a competent authority for the purposes of multilateral agreements already concluded by the Member States with third countries is not possible or is not accepted by the third countries and pending the Union accession to such international agreements, European Delegated Prosecutors may use their status as national prosecutor toward such third countries, provided that they inform and where appropriate endeavour to obtain consent from the authorities of third countries that the evidence collected from these third countries on the basis of those international agreements, will be used in investigations and prosecutions carried out by the EPPO.

The EPPO should also be able to rely on reciprocity or international comity vis à-vis the authorities of third countries. This should however be carried out on a case-by-case basis, within the limits of the material competence of the EPPO and subject to possible conditions set by the authorities of the third countries.

- (110) Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO are not bound by this Regulation. The Commission should, if appropriate, submit proposals in order to ensure effective judicial cooperation in criminal matters between the EPPO and Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO. This should in particular concern the rules relating to judicial cooperation in criminal matters and surrender, fully respecting the Union *acquis* in this field as well as the duty of sincere cooperation in accordance with Article 4(3) TEU.
- (111) To guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union. The financial, budgetary and staff regime of the EPPO should follow the relevant Union standards applicable to bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽¹⁾, with due regard, however, to the fact that the competence of the EPPO to carry out criminal investigations and prosecutions at Union level is unique.
- (112) The costs of investigation measures undertaken by the EPPO should in principle be covered by the national authorities carrying them out. Exceptionally high costs for investigation measures such as complex experts' opinions, extensive police operations or surveillance activities over a long period of time could partly be reimbursed by the EPPO, including, where possible, by reallocating resources from other budget lines of the EPPO, or by amending the budget in accordance with this Regulation and the applicable financial rules.

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

When preparing the proposal for the provisional draft estimate of the revenue and expenditure the Administrative Director should take into account the need of the EPPO to partly reimburse exceptionally costly investigation measures accepted by the Permanent Chamber.

- (113) Operational expenditures of the EPPO should be covered from the budget of the EPPO. These should include the cost of operational communication between the European Delegated Prosecutor and the central level of the EPPO, such as mail delivery costs, travel expenses, translations necessary for the internal functioning of the EPPO, and other costs not previously incurred by Member States during an investigation which are caused only due to the EPPO having assumed responsibilities for investigation and prosecution. However, the costs of the European Delegated Prosecutors' office and secretarial support should be covered by the Member States.

In accordance with Article 332 TFEU, expenditure resulting from the implementation of the EPPO will be borne by the Member States. That expenditure does not include the administrative costs entailed for the institutions within the meaning of Article 13(1) TEU.

- (114) The College should in principle always delegate its powers conferred on the appointing authority by the Staff Regulations of Officials and the Conditions of Employment of Other Servants⁽¹⁾ ('the Staff Regulations and the Conditions of Employment') to conclude contracts of employment, to the Administrative Director, unless specific circumstances call for it to exercise that power.
- (115) The Administrative Director, as authorising officer, is responsible for the implementation of the budget of the EPPO. When consulting with the Permanent Chamber regarding exceptionally costly investigation measures, the Administrative Director is responsible for deciding on the amount of the grant to be awarded, based on the available financial resources and in accordance with the criteria set out in the internal rules of procedure of the EPPO.
- (116) The remuneration of the European Delegated Prosecutors as special advisers, which will be set through a direct agreement, should be based on a specific decision to be taken by the College. This decision should, inter alia, ensure that the European Delegated Prosecutors, in the specific case that they also exercise functions as national prosecutors in accordance with Article 13(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. Each Member State retains the power to determine in its legislation, in compliance with Union law, the conditions for granting benefits under their social security scheme.
- (117) In order for the EPPO to be fully operational on the date to be determined, it will need staff with experience within the institutions, bodies, offices or agencies of the Union. With a view to meeting that need, the recruitment by the EPPO of temporary and contract agents already working in the institutions, bodies, offices or agencies of the Union should be facilitated by guaranteeing those staff members continuity of their contractual rights if they are recruited by the EPPO in its set-up phase until 1 year after the EPPO becomes operational in accordance with the decision in Article 120(2).
- (118) The EPPO's proceedings should be transparent in accordance with Article 15(3) TFEU and specific provisions on how the right of public access to documents is ensured, would need to be adopted by the College. Nothing in this Regulation is intended to restrict the right of public access to documents in so far as it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter and other relevant provisions.

⁽¹⁾ Council Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385/62).

- (119) The general rules on transparency that apply to Union agencies should also apply to the EPPO but only with regard to documents other than case files, including electronic images of such files, so as not to jeopardise in any manner the requirement of confidentiality in its operational work. In the same manner, administrative inquiries conducted by the European Ombudsman should respect the requirement of confidentiality of the EPPO. In view of ensuring the integrity of the investigations and prosecutions of the EPPO, documents relating to the operational activity should not be covered by the rules of transparency.
- (120) The European Data Protection Supervisory has been consulted and, on 10 March 2014, delivered an opinion.
- (121) The Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003, have determined the seat of the EPPO in accordance with the provisions of the Decision of 8 April 1965 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

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

Article 2

Definitions

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

- (1) 'Member State' means, except where otherwise indicated, in particular in Chapter VIII, a Member State which participates in enhanced cooperation on the establishment of the EPPO, as deemed to be authorised in accordance with the third subparagraph of Article 86(1) TFEU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU;
- (2) 'person' means any natural or legal person;
- (3) 'financial interests of the Union' means all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budgets of the institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them;
- (4) 'staff of the EPPO' means the personnel at the central level who supports the College, the Permanent Chambers, the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors and the Administrative Director in the day-to-day activities in the performance of the tasks of this Office under this Regulation;
- (5) 'handling European Delegated Prosecutor' means a European Delegated Prosecutor responsible for the investigations and prosecutions, which he/she has initiated, which have been allocated to him/her or which he/she has taken over using the right of evocation according to Article 27;
- (6) 'assisting European Delegated Prosecutor' means a European Delegated Prosecutor located in a Member State, other than the Member State of the handling European Delegated Prosecutor, where an investigation or other measure assigned to him/her is to be carried out;

⁽¹⁾ Decision (67/446/EEC) (67/30/Euratom) of the representatives of the governments of the Member States of 8 April 1965 on the provisional location of certain institutions and departments of the Communities (OJ 152, 13.7.1967, p. 18).

- (7) '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;
- (8) 'processing' means any operation or set of operations which are 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;
- (9) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (10) '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;
- (11) '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;
- (12) '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;
- (13) 'controller' means the EPPO 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 law or the law of a Member State of the European Union, the controller or the specific criteria for its nomination may be provided for by Union law or the law of a Member State of the European Union;
- (14) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (15) '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 of the European Unions' public authorities other than competent authorities defined in point 7(a) of Article 3 of Directive (EU) 2016/680, which receive personal data in the framework of a particular inquiry of the EPPO shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
- (16) '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;
- (17) 'administrative personal data' means all personal data processed by the EPPO apart from operational personal data;
- (18) 'operational personal data' means all personal data processed by the EPPO for the purposes laid down in Article 49;

- (19) '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;
- (20) '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;
- (21) '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/her health status;
- (22) 'supervisory authority' means an independent public authority which is established by a Member State of the European Union pursuant to Article 51 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾ or pursuant to Article 41 of Directive (EU) 2016/680;
- (23) 'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

ESTABLISHMENT, TASKS AND BASIC PRINCIPLES OF THE EPPO

Article 3

Establishment

1. The EPPO is hereby established as a body of the Union.
2. The EPPO shall have legal personality.
3. The EPPO shall cooperate with Eurojust and rely on its support in accordance with Article 100.

Article 4

Tasks

The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.

Article 5

Basic principles of the activities

1. The EPPO shall ensure that its activities respect the rights enshrined in the Charter.
2. The EPPO shall be bound by the principles of rule of law and proportionality in all its activities.
3. The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation. Unless otherwise specified in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is handling the case in accordance with Article 13(1). Where a matter is governed by both national law and this Regulation, the latter shall prevail.

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

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

Article 6

Independence and accountability

1. The EPPO shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks.
2. The EPPO shall be accountable to the European Parliament, to the Council and to the Commission for its general activities, and shall issue annual reports in accordance with Article 7.

Article 7

Reporting

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

CHAPTER III

STATUS, STRUCTURE AND ORGANISATION OF THE EPPO

SECTION 1

Status and structure of the EPPO

Article 8

Structure of the EPPO

1. The EPPO shall be an indivisible Union body operating as one single Office with a decentralised structure.
2. The EPPO shall be organised at a central level and at a decentralised level.
3. The central level shall consist of a Central Office at the seat of the EPPO. The Central Office shall consist of the College, the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director.

4. The decentralised level shall consist of European Delegated Prosecutors who shall be located in the Member States.
5. The Central Office and the European Delegated Prosecutors shall be assisted by the staff of the EPPO in their duties under this Regulation.

Article 9

The College

1. The College of the EPPO shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and shall be responsible for their preparation.
2. The College shall meet regularly and shall be responsible for the general oversight of the activities of the EPPO. It shall take decisions on strategic matters, and on general issues arising from individual cases, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The internal rules of procedure of the EPPO shall provide for modalities on the exercise by the College of the general oversight activities and for taking decisions on strategic matters and general issues in accordance with this Article.
3. On a proposal by the European Chief Prosecutor and following the internal rules of procedure of the EPPO, the College shall set up Permanent Chambers.
4. The College shall adopt internal rules of procedure of the EPPO in accordance with Article 21, and shall further stipulate the responsibilities for the performance of functions of the members of the College and the staff of the EPPO.
5. Unless otherwise stated in this Regulation, the College shall take decisions by simple majority. Any member of the College shall have the right to initiate voting on matters to be decided by the College. Each member of the College shall have one vote. The European Chief Prosecutor shall have a casting vote in the event of a tie vote on any matter to be decided by the College.

Article 10

The Permanent Chambers

1. The Permanent Chambers shall be chaired by the European Chief Prosecutor or one of the Deputy European Chief Prosecutors, or a European Prosecutor appointed as Chair in accordance with the internal rules of procedure of the EPPO. In addition to the Chair, the Permanent Chambers shall have two permanent Members. The number of Permanent Chambers, and their composition, as well as the division of competences between the Chambers, shall take due account of the functional needs of the EPPO and be determined in accordance with the internal rules of procedure of the EPPO.

The internal rules of procedure of the EPPO shall ensure an equal distribution of workload on the basis of a system of random allocation of cases and shall, in exceptional cases, establish procedures, where necessary for the proper functioning of the EPPO, to allow the European Chief Prosecutor to decide to deviate from the principle of random allocation.

2. The Permanent Chambers shall monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3, 4 and 5 of this Article. They shall also ensure the coordination of investigations and prosecutions in cross-border cases, and shall ensure the implementation of decisions taken by the College in accordance with Article 9(2).
3. In accordance with the conditions and procedures set out by this Regulation, where applicable after reviewing a draft decision proposed by the handling European Delegated Prosecutor, the Permanent Chambers shall decide on the following issues:

- (a) to bring a case to judgment in accordance with Article 36(1), (3) and (4);
- (b) to dismiss a case in accordance with point (a) to (g) of Article 39(1);

(c) to apply a simplified prosecution procedure and to instruct the European Delegated Prosecutor to act with a view to finally dispose of the case in accordance with Article 40;

(d) to refer a case to the national authorities in accordance with Article 34(1), (2), (3) or (6);

(e) to reopen an investigation in accordance with Article 39(2).

4. Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in this Regulation:

(a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 26(1) to (4) where no investigation has been initiated;

(b) to instruct the European Delegated Prosecutor to exercise the right of evocation in accordance with Article 27(6) where the case has not been evoked;

(c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 9(2);

(d) to allocate a case in accordance with Article 26(3);

(e) to reallocate a case in accordance with Article 26(5) or 28(3);

(f) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 28(4).

5. The competent Permanent Chamber, acting through the European Prosecutor who is supervising the investigation or the prosecution, may in a specific case give instructions in compliance with applicable national law to the handling European Delegated Prosecutor, where it is necessary for the efficient handling of the investigation or prosecution, in the interest of justice, or to ensure the coherent functioning of the EPPO.

6. The Permanent Chamber shall take decisions by simple majority. The Chamber shall vote at the request of any of its members. Each member shall have one vote. The Chair shall have a casting vote in the event of a tie vote. Decisions shall be taken after deliberation in meetings of the Chamber on the basis, where applicable, of the draft decision proposed by the handling European Delegated Prosecutor.

All case material shall be accessible upon request to the competent Permanent Chamber for the purpose of preparing decisions.

7. The Permanent Chambers may decide to delegate their decision-making power under point (a) or (b) of paragraph 3 of this Article, and in the latter case only in respect of the rules set out in points (a) to (f) of Article 39(1) to the European Prosecutor supervising the case in accordance with Article 12(1) where such delegations can be duly justified with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, with regard to an offence that has caused or is likely to cause damage to the financial interests of the Union of less than EUR 100 000. The internal rules of procedure of the EPPO shall set guidelines with a view to ensuring a consistent application within the EPPO.

The Permanent Chamber shall inform the European Chief Prosecutor of any decision to delegate their decision-making power. On reception of that information, the European Chief Prosecutor may within 3 days request the Permanent Chamber to review its decision if the European Chief Prosecutor considers that the interest to ensure the coherence of the investigations and prosecutions of the EPPO so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of the Deputy European Chief Prosecutors shall exercise the right to request the said review. The supervising European Prosecutor shall report to the Permanent Chamber about the final disposal of the case as well as any information or circumstance he/she deems to be likely to necessitate a new assessment of the opportunity to maintain the delegation, in particular in circumstances referred to in Article 36(3).

The decision to delegate decision-making power may be withdrawn at any time on the request of one of the Members of the Permanent Chamber and shall be decided in accordance with paragraph 6 of this Article. A delegation shall be withdrawn when a European Delegated Prosecutor has substituted the European Prosecutor in accordance with Article 16(7).

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

8. The internal rules of procedure of the EPPO shall authorise the Permanent Chambers to take decisions by means of a written procedure to be laid down in detail in the internal rules of procedure of the EPPO.

All decisions taken and instructions given in accordance with paragraphs 3, 4, 5 and 7 shall be recorded in writing and become part of the case file.

9. In addition to the permanent Members, the European Prosecutor who is supervising an investigation or a prosecution in accordance with Article 12(1) shall participate in the deliberations of the Permanent Chamber. The European Prosecutor shall have a right to vote, except as regards the Permanent Chamber's decisions on delegation or withdrawal of delegation in accordance with paragraph 7 of this Article, on allocation and reallocation under Article 26(3), (4) and (5) and Article 27(6) and on bringing a case to judgment in accordance with Article 36(3), where more than one Member State has jurisdiction for the case, as well as situations described in Article 31(8).

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

10. The Chairs of the Permanent Chambers shall, in accordance with the internal rules of procedure of the EPPO, keep the College informed of the decisions taken pursuant to this Article, in order to enable the College to fulfil its role under Article 9(2).

Article 11

The European Chief Prosecutor and the Deputy European Chief Prosecutors

1. The European Chief Prosecutor shall be the Head of the EPPO. The European Chief Prosecutor shall organise the work of the EPPO, direct its activities, and take decisions in accordance with this Regulation and the internal rules of procedure of the EPPO.

2. Two Deputy European Chief Prosecutors shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and to act as replacement when he/she is absent or is prevented from attending to those duties.

3. The European Chief Prosecutor shall represent the EPPO vis-à-vis the institutions of the Union and of the Member States of the European Union, and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputy European Chief Prosecutors or to a European Prosecutor.

Article 12

The European Prosecutors

1. On behalf of the Permanent Chamber and in compliance with any instructions it has given in accordance with Article 10(3), (4) and (5), the European Prosecutors shall supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible. The European Prosecutors shall present summaries of the cases under their supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.

The internal rules of procedure of the EPPO shall, without prejudice to Article 16(7), provide for a mechanism of substitution between European Prosecutors where the supervising European Prosecutor is temporarily absent from his/her duties or is for other reasons not available to carry out the functions of the European Prosecutors. The substitute European Prosecutor may fulfil any function of a European Prosecutor, except the possibility to conduct an investigation provided for in Article 28(4).

2. A European Prosecutor may request, on an exceptional basis, on grounds related to the workload resulting from the number of investigations and prosecutions in the European Prosecutor's Member State of origin, or a personal conflict of interest, that the supervision of investigations and prosecutions of individual cases handled by European Delegated Prosecutors in his/her Member State of origin be assigned to other European Prosecutors, subject to the agreement of the latter. The European Chief Prosecutor shall decide on the request based on the workload of a European Prosecutor. In the case of a conflict of interests concerning a European Prosecutor, the European Chief Prosecutor shall grant that request. The internal rules of procedure of the EPPO shall lay down the principles governing that decision and the procedure for the subsequent allocation of the cases concerned. Article 28(4) shall not apply to investigations and prosecutions supervised in accordance with this paragraph.

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

4. Where the national law of a Member State provides for the internal review of certain acts within the structure of a national prosecutor's office, the review of such acts taken by the European Delegated Prosecutor shall fall under the supervisory powers of the supervising European Prosecutor in accordance with the internal rules of procedure of the EPPO without prejudice to the supervisory and monitoring powers of the Permanent Chamber.

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

Article 13

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.

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

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

2. There shall be two or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant authorities of the Member States, approve the number of European Delegated Prosecutors, as well as the functional and territorial division of competences between the European Delegated Prosecutors within each Member State.

3. The European Delegated Prosecutors may also exercise functions as national prosecutors, to the extent that this does not prevent them from fulfilling their obligations under this Regulation. They shall inform the supervising European Prosecutor of such functions. In the event that a European Delegated Prosecutor at any given moment is unable to fulfil his/her functions as a European Delegated Prosecutor because of the exercise of such functions as national prosecutor, he/she shall notify the supervising European Prosecutor, who shall consult the competent national prosecution authorities in order to determine whether priority should be given to their functions under this Regulation. The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State or that he/she conduct the investigations himself/herself in accordance with Article 28(3) and (4).

SECTION 2

Appointment and dismissal of the members of the EPPO

Article 14

Appointment and dismissal of the European Chief Prosecutor

1. The European Parliament and the Council shall appoint by common accord the European Chief Prosecutor for a non-renewable term of 7 years. The Council shall act by simple majority.
2. The European Chief Prosecutor shall be selected from among candidates:
 - (a) who are active members of the public prosecution service or judiciary of the Member States, or active European Prosecutors;
 - (b) whose independence is beyond doubt;
 - (c) who possess the qualifications required for appointment to the highest prosecutorial or judicial offices in their respective Member States and have relevant practical experience of national legal systems, financial investigations and of international judicial cooperation in criminal matters, or have served as European Prosecutors, and
 - (d) who have sufficient managerial experience and qualifications for the position.
3. The selection shall be based on an open call for candidates, to be published in the *Official Journal of the European Union*, following which a selection panel shall draw up a shortlist of qualified candidates to be submitted to the European Parliament and to the Council. The selection panel shall comprise twelve persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence. One of the persons chosen shall be proposed by the European Parliament. The Council shall establish the selection panel's operating rules and shall adopt a decision appointing its members on a proposal from the Commission.
4. If a European Prosecutor is appointed to be the European Chief Prosecutor, his/her position of European Prosecutor shall without delay be filled in accordance with the procedure set out in Article 16(1) and (2).
5. The Court of Justice may, upon the application of the European Parliament, of the Council or of the Commission, dismiss the European Chief Prosecutor if it finds that he/she is no longer able to perform his/her duties, or that he/she is guilty of serious misconduct.
6. If the European Chief Prosecutor resigns, if he/she is dismissed or leaves his/her position for any reason, the position shall immediately be filled in accordance with the procedure set out in paragraphs 1, 2 and 3.

Article 15

Appointment and dismissal of the Deputy European Chief Prosecutors

1. The College shall appoint two European Prosecutors to serve as Deputy European Chief Prosecutors for a renewable mandate period of 3 years, which shall not exceed the periods for their mandates as European Prosecutors. The selection process shall be regulated by the internal rules of procedure of the EPPO. The Deputy European Chief Prosecutors shall retain their status as European Prosecutors.
2. The rules and conditions for the exercise of the function of Deputy European Chief Prosecutor shall be set out in the internal rules of procedure of the EPPO. If a European Prosecutor is no longer able to perform his/her duties as Deputy European Chief Prosecutor, the College may decide in accordance with the internal rules of procedure of the EPPO to dismiss the Deputy European Chief Prosecutor from that position.
3. If a Deputy European Chief Prosecutor resigns, is dismissed or leaves his/her position as a Deputy European Chief Prosecutor for any reason, the position shall, without delay, be filled in accordance with the procedure set out in paragraph 1 of this Article. Subject to the rules in Article 16, he/she shall remain European Prosecutor.

*Article 16***Appointment and dismissal of the European Prosecutors**

1. Each Member State shall nominate three candidates for the position of European Prosecutor from among candidates:

- (a) who are active members of the public prosecution service or judiciary of the relevant Member State;
- (b) whose independence is beyond doubt; and
- (c) who possess the qualifications required for appointment to high prosecutorial or judicial office in their respective Member States, and who have relevant practical experience of national legal systems, of financial investigations and of international judicial cooperation in criminal matters.

2. After having received the reasoned opinion of the selection panel referred to in Article 14(3), the Council shall select and appoint one of the candidates to be the European Prosecutor of the Member State in question. If the selection panel finds that a candidate does not fulfil the conditions required for the performance of the duties of a European Prosecutor, its opinion shall be binding on the Council.

3. The Council, acting by simple majority, shall select and appoint the European Prosecutors for a non-renewable term of 6 years. The Council may decide to extend the mandate for a maximum of 3 years at the end of the 6-year period.

4. Every 3 years there shall be a partial replacement of one third of the European Prosecutors. The Council, acting by simple majority, shall adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period.

5. The Court of Justice may, upon application of the European Parliament, of the Council or of the Commission, dismiss a European Prosecutor if it finds that he/she is no longer able to perform his/her duties or that he/she is guilty of serious misconduct.

6. If a European Prosecutor resigns, is dismissed or leaves his/her position for any other reason, the position shall without delay be filled in accordance with the procedure set out in paragraphs 1 and 2. If the European Prosecutor in question also serves as Deputy European Chief Prosecutor, he/she shall automatically be dismissed from the latter position.

7. The College shall, upon nomination of each European Prosecutor, designate one of the European Delegated Prosecutors of the same Member State to substitute the European Prosecutor in case he/she is unable to carry out his/her functions or left his/her position according to paragraphs 5 and 6.

Where the College acknowledges the need for substitution, the designated person shall act as an interim European Prosecutor, pending replacement or return of the European Prosecutor, for a period not exceeding 3 months. The College may, upon request, prolong that period if necessary. The mechanisms and modalities of temporary substitution shall be determined and governed by the internal rules of procedure of the EPPO.

*Article 17***Appointment and dismissal of the European Delegated Prosecutors**

1. Upon a proposal by the European Chief Prosecutor, the College shall appoint the European Delegated Prosecutors nominated by the Member States. The College may reject a person who has been nominated if he/she does not fulfil the criteria referred to in paragraph 2. The European Delegated Prosecutors shall be appointed for a renewable term of 5 years.

2. The European Delegated Prosecutors shall, from the time of their appointment as European Delegated Prosecutors until dismissal, be active members of the public prosecution service or judiciary of the respective Member States which nominated them. Their independence shall be beyond doubt and they shall possess the necessary qualifications and relevant practical experience of their national legal system.

3. The College shall dismiss a European Delegated Prosecutor if it finds that he/she no longer fulfils the requirements set out in paragraph 2, is unable to perform his/her duties, or is guilty of serious misconduct.

4. If a Member State decides to dismiss, or to take disciplinary action against, a national prosecutor who has been appointed as European Delegated Prosecutor for reasons not connected with his/her responsibilities under this Regulation, it shall inform the European Chief Prosecutor before taking such action. A Member State may not dismiss, or take disciplinary action against, a European Delegated Prosecutor for reasons connected with his/her responsibilities under this Regulation without the consent of the European Chief Prosecutor. If the European Chief Prosecutor does not consent, the Member State concerned may request the College to review the matter.

5. If a European Delegated Prosecutor resigns, if his/her services are no longer necessary to fulfil the duties of the EPPO, or if he/she is dismissed or leaves his/her position for any other reason, the relevant Member State shall immediately inform the European Chief Prosecutor and, where necessary, nominate another prosecutor to be appointed as the new European Delegated Prosecutor in accordance with paragraph 1.

Article 18

Status of the Administrative Director

1. The Administrative Director shall be engaged as a temporary agent of the EPPO under Article 2(a) of the Conditions of Employment.

2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the European Chief Prosecutor, following an open and transparent selection procedure in accordance with the internal rules of procedure of the EPPO. For the purpose of concluding the contract of the Administrative Director, the EPPO shall be represented by the European Chief Prosecutor.

3. The term of office of the Administrative Director shall be 4 years. By the end of that 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 a period of no more than 4 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 in the Staff Regulations and the Conditions of Employment, the Administrative Director may be removed from the EPPO.

Article 19

Responsibilities of the Administrative Director

1. For administrative and budgetary purposes, the EPPO 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/her duties and shall neither seek nor take instructions from any government or any other body.

3. The Administrative Director shall be the legal representative of the EPPO for administrative and budgetary purposes. The Administrative Director shall implement the budget of the EPPO.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to the EPPO, in particular:
 - (a) the day-to-day administration of the EPPO 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 documents and reporting to the College on their implementation;
 - (e) preparing the administrative and budgetary parts of the annual report on the EPPO'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 EPPO and presenting it to the College for approval;
 - (h) preparing a proposal for the draft financial rules applicable to the EPPO, and submitting it to the European Chief Prosecutor;
 - (i) preparing a proposal for the EPPO's draft statement of estimates of revenues and expenditures, and submitting it to the European Chief Prosecutor;
 - (j) providing necessary administrative support to facilitate the operational work of the EPPO;
 - (k) providing support to the European Chief Prosecutor and the Deputy European Chief Prosecutors in the carrying out of their duties.

Article 20

Provisional administrative arrangements of the EPPO

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 EPPO 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 on the appointing authority regarding administrative staff of the EPPO, 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 18;
 - (b) offer assistance to the EPPO, in particular by seconding a limited number of Commission officials necessary to carry out the administrative activities of the EPPO under the responsibility of the interim Administrative Director.
2. The interim Administrative Director may authorise all payments covered by appropriations entered in the EPPO's budget and may conclude contracts, including staff contracts.

3. Once the College takes up its duties in accordance with Article 9(1), the interim Administrative Director shall exercise his/her duties in accordance with Article 18. The interim Administrative Director shall cease to exercise that function once the Administrative Director has taken up duties following appointment by the College in accordance with Article 18.

4. Until the College takes up its duties in accordance with Article 9(1), the Commission shall exercise its functions set out in this Article in consultation with a group of experts composed of representatives of the Member States.

SECTION 3

Internal rules of procedure of the EPPO

Article 21

Internal rules of procedure of the EPPO

1. The organisation of the work of the EPPO shall be governed by its internal rules of procedure
2. Once the EPPO has been set up, the European Chief Prosecutor shall without delay prepare a proposal for the internal rules of procedure of the EPPO, to be adopted by the College by a two-thirds majority.
3. Modifications to the internal rules of procedure of the EPPO may be proposed by any European Prosecutor and shall be adopted if the College so decides by a two-thirds majority.

CHAPTER IV

COMPETENCE AND EXERCISE OF THE COMPETENCE OF THE EPPO

SECTION 1

Competence of the EPPO

Article 22

Material competence of the EPPO

1. The EPPO shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million.
2. The EPPO shall also be competent for offences regarding participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in paragraph 1.
3. The EPPO shall also be competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of paragraph 1 of this Article. The competence with regard to such criminal offences may only be exercised in conformity with Article 25(3).
4. In any case, the EPPO shall not be competent for criminal offences in respect of national direct taxes including offences inextricably linked thereto. The structure and functioning of the tax administration of the Member States shall not be affected by this Regulation.

Article 23

Territorial and personal competence of the EPPO

The EPPO shall be competent for the offences referred to in Article 22 where such offences:

- (a) were committed in whole or in part within the territory of one or several Member States;
- (b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or

- (c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

SECTION 2

Exercise of the competence of the EPPO

Article 24

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3).
2. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence for which the EPPO could exercise its competence in accordance with Article 22, Article 25(2) and (3), or where, at any time after the initiation of an investigation, it appears to the competent judicial or law enforcement authority of a Member State that an investigation concerns such an offence, that authority shall without undue delay inform the EPPO so that the latter can decide whether to exercise its right of evocation in accordance with Article 27.
3. When a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence as defined in Article 22 and considers that the EPPO could, in accordance with Article 25(3), not exercise its competence, it shall inform the EPPO thereof.
4. The report shall contain, as a minimum, a description of the facts, including an assessment of the damage caused or likely to be caused, the possible legal qualification and any available information about potential victims, suspects and any other involved persons.
5. The EPPO shall also be informed, in accordance with paragraphs 1 and 2 of this Article, of cases where an assessment of whether the criteria in Article 25(2) are met is not possible.
6. Information provided to the EPPO shall be registered and verified in accordance with its internal rules of procedure. The verification shall assess whether, on the basis of the information provided in accordance with paragraphs 1 and 2, there are grounds to initiate an investigation or to exercise the right of evocation.
7. Where upon verification the EPPO decides that there are no grounds to initiate an investigation in accordance with Article 26, or to exercise its right of evocation in accordance with Article 27, the reasons shall be noted in the case management system.

The EPPO shall inform the authority that reported the criminal conduct in accordance with paragraph 1 or 2, as well as crime victims and if so provided by national law, other persons who reported the criminal conduct.

8. Where it comes to the knowledge of the EPPO that a criminal offence outside of the scope of the competence of the EPPO may have been committed, it shall without undue delay inform the competent national authorities and forward all relevant evidence to them.
9. In specific cases, the EPPO may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States. The requested information may concern infringements which caused damage to the Union's financial interests, other than those within the competence of the EPPO in accordance with Article 25(2).
10. The EPPO may request other information in order to enable the College, in accordance with Article 9(2), to issue general guidelines on the interpretation of the obligation to inform the EPPO of cases falling within the scope of Article 25(2).

Article 25

Exercise of the competence of the EPPO

1. The EPPO shall exercise its competence either by initiating an investigation under Article 26 or by deciding to use its right of evocation under Article 27. If the EPPO decides to exercise its competence, the competent national authorities shall not exercise their own competence in respect of the same criminal conduct.

2. Where a criminal offence that falls within the scope of Article 22 caused or is likely to cause damage to the Union's financial interests of less than EUR 10 000, the EPPO may only exercise its competence if:

- (a) the case has repercussions at Union level which require an investigation to be conducted by the EPPO; or
- (b) officials or other servants of the Union, or members of the institutions of the Union could be suspected of having committed the offence.

The EPPO shall, where appropriate, consult the competent national authorities or bodies of the Union to establish whether the criteria set out in points (a) and (b) of the first subparagraph are met.

3. The EPPO shall refrain from exercising its competence in respect of any offence falling within the scope of Article 22 and shall, upon consultation with the competent national authorities, refer the case without undue delay to the latter in accordance with Article 34 if:

- (a) the maximum sanction provided for by national law for an offence falling within the scope of Article 22(1) is equal to or less severe than the maximum sanction for an inextricably linked offence as referred to in Article 22(3) unless the latter offence has been instrumental to commit the offence falling within the scope of Article 22(1); or
- (b) there is a reason to assume that the damage caused or likely to be caused, to the Union's financial interests by an offence as referred to in Article 22 does not exceed the damage caused, or likely to be caused to another victim.

Point (b) of the first subparagraph of this paragraph shall not apply to offences referred to in Article 3(2)(a), (b) and (d) of Directive (EU) 2017/1371 as implemented by national law.

4. The EPPO may, with the consent of the competent national authorities, exercise its competence for offences referred to in Article 22 in cases which would otherwise be excluded due to application of paragraph 3(b) of this Article if it appears that the EPPO is better placed to investigate or prosecute.

5. The EPPO shall inform the competent national authorities without undue delay of any decision to exercise or to refrain from exercising its competence.

6. In the case of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation of the case. Member States shall specify the national authority which will decide on the attribution of competence.

CHAPTER V

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

SECTION 1

Rules on investigations

Article 26

Initiation of investigations and allocation of competences within the EPPO

1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25(2) and (3), initiate an investigation and note this in the case management system.

2. Where upon verification in accordance with Article 24(6), the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24(1) or (2).

3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.

4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:

- (a) the place of the suspect's or accused person's habitual residence;
- (b) the nationality of the suspect or accused person;
- (c) the place where the main financial damage has occurred.

5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

- (a) reallocate the case to a European Delegated Prosecutor in another Member State;
- (b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,

if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.

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

7. The EPPO shall inform the competent national authorities without undue delay of any decision to initiate an investigation.

Article 27

Right of evocation

1. Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.

2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking any decision under national law that may have the effect of precluding the EPPO from exercising its right of evocation.

The national authorities shall take any urgent measures necessary, under national law, to ensure effective investigation and prosecution.

3. If the EPPO becomes aware, by means other than the information referred to in Article 24(2), of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24(2), the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.

4. The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.

5. Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.

6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.

Where a European Delegated Prosecutor, who has received the information in accordance with Article 24(2), considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).

7. Where the EPPO has refrained from exercising its competence, it shall inform the competent national authorities without undue delay. At any time in the course of the proceedings, the competent national authorities shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.

The EPPO may exercise its right of evocation after receiving such information, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.

8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9(2), issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.

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

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

Article 28

Conducting the investigation

1. The European Delegated Prosecutor handling a case may, in accordance with this Regulation and with national law, either undertake the investigation measures and other measures on his/her own or instruct the competent authorities in his/her Member State. Those authorities shall, in accordance with national law, ensure that all instructions are followed and undertake the measures assigned to them. The handling European Delegated Prosecutor shall report through the case management system to the competent European Prosecutor and to the Permanent Chamber any significant developments in the case, in accordance with the rules laid down in the internal rules of procedure of the EPPO.

2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures in accordance with national law necessary to ensure effective investigations even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall without undue delay inform the handling European Delegated Prosecutor of the urgent measures they have taken.

3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor:

(a) cannot perform the investigation or prosecution; or

(b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.

4. In exceptional cases, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:

- (a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
- (b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
- (c) in the event of failure of the reallocation mechanism provided for in paragraph 3.

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

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

Article 29

Lifting privileges or immunities

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

SECTION 2

Rules on investigation measures and other measures

Article 30

Investigation measures and other measures

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
 - (a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
 - (b) obtain the production of any relevant object or document either in its original form or in some other specified form;
 - (c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council ⁽¹⁾;
 - (d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the judgement ordering confiscation.

⁽¹⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

(f) track and trace an object by technical means, including controlled deliveries of goods.

2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.

3. The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.

4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.

5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The procedures and the modalities for taking the measures shall be governed by the applicable national law.

Article 31

Cross-border investigations

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

2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor. Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.

3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.

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

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

4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.

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

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

6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.

8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, in accordance with applicable national law as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

Article 32

Enforcement of assigned measures

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

Article 33

Pre-trial arrest and cross-border surrender

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases.
2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA ⁽¹⁾.

SECTION 3

Rules on prosecution

Article 34

Referrals and transfers of proceedings to the national authorities

1. Where an investigation conducted by the EPPO reveals that the facts subject to investigation do not constitute a criminal offence for which it is competent under Articles 22 and 23, the competent Permanent Chamber shall decide to refer the case without undue delay to the competent national authorities.

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

2. Where an investigation conducted by the EPPO reveals that the specific conditions for the exercise of its competence set out in Article 25(2) and (3) are no longer met, the competent Permanent Chamber shall decide to refer the case to the competent national authorities without undue delay and before initiating prosecution at national courts.

3. Where, with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution, it shall in accordance with Article 9(2), issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities.

Such guidelines shall also allow the Permanent Chambers to refer a case to the competent national authorities where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim.

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

Such referrals shall also include any inextricably linked offences within the competence of the EPPO as referred to in Article 22(3).

4. The Permanent Chamber shall communicate any decision to refer a case to national authorities on the basis of paragraph 3 to the European Chief Prosecutor. Within 3 days of receiving of this information, the European Chief Prosecutor may request the Permanent Chamber to review its decision if the European Chief Prosecutor considers that the interest to ensure the coherence of the referral policy of the EPPO so requires. If the European Chief Prosecutor is a Member of the relevant Permanent Chamber, one of the Deputy European Chief Prosecutors shall exercise the right to request the said review.

5. Where the competent national authorities do not accept to take over the case in accordance with paragraph 2 and 3 within a timeframe of maximum 30 days, the EPPO shall remain competent to prosecute or dismiss the case, in accordance with the rules laid down in this Regulation.

6. Where the EPPO considers a dismissal in accordance with Article 39(3), and if the national authority so requires, the Permanent Chamber shall refer the case without delay to that authority.

7. If, following a referral in accordance with paragraph (1), (2) or (3) of this Article and Article 25(3), the national authority decides to open an investigation, the EPPO shall transfer the file to that national authority, refrain from taking further investigative or prosecutorial measures and close the case.

8. If a file is transferred in accordance with paragraph (1), (2) or (3) of this Article and Article 25(3), the EPPO shall inform the relevant institutions, bodies, offices and agencies of the Union, as well as, where appropriate under national law, suspects or accused persons and the crime victims of the transfer.

Article 35

Termination of the investigation

1. When the handling European Delegated Prosecutor considers the investigation to be completed, he/she shall submit a report to the supervising European Prosecutor, containing a summary of the case and a draft decision whether to prosecute before a national court or to consider a referral of the case, dismissal or simplified prosecution procedure in accordance with Article 34, 39 or 40. The supervising European Prosecutor shall forward those documents to the competent Permanent Chamber accompanied, if he/she considers it to be necessary, by his/her own assessment. When the Permanent Chamber, in accordance with Article 10(3), takes the decision as proposed by the European Delegated Prosecutor, he/she shall pursue the matter accordingly.

2. If the Permanent Chamber, based on the reports received, considers that it will not take the decision as proposed by the European Delegated Prosecutor, it shall, where necessary, undertake its own review of the case file before taking a final decision or giving further instructions to the European Delegated Prosecutor.

3. Where applicable, the report of the European Delegated Prosecutor shall also provide sufficient reasoning for bringing the case to judgment either at a court of the Member State where he/she is located, or, in accordance with Article 26(4) at a court of a different Member State which has jurisdiction over the case.

Article 36

Prosecution before national Courts

1. When the European Delegated Prosecutor submits a draft decision proposing to bring a case to judgment, the Permanent Chamber shall, following the procedures set out in Article 35, decide on this draft within 21 days. The Permanent Chamber cannot decide to dismiss the case if a draft decision proposes bringing a case to judgment.

2. Where the Permanent Chamber does not take a decision within the 21-day time limits, the decision proposed by the European Delegated Prosecutor shall be deemed to be accepted.

3. Where more than one Member State has jurisdiction over the case, the Permanent Chamber shall in principle decide to bring the case to prosecution in the Member State of the handling European Delegated Prosecutor. However, the Permanent Chamber may, taking into account the report provided in accordance with Article 35(1), decide to bring the case to prosecution in a different Member State, if there are sufficiently justified grounds to do so, taking into account the criteria set out in Article 26(4) and (5), and instruct a European Delegated Prosecutor of that Member State accordingly.

4. Before deciding to bring a case to judgment, the competent Permanent Chamber may, on the proposal of the handling European Delegated Prosecutor, decide to join several cases, where investigations have been conducted by different European Delegated Prosecutors against the same person(s) with a view to prosecuting these cases in the courts of a single Member State which, in accordance with its law, has jurisdiction for each of those cases.

5. Once a decision on the Member State in which the prosecution shall be brought has been taken, the competent national court within that Member State shall be determined on the basis of national law.

6. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, interested persons and the relevant institutions, bodies, offices and agencies of the Union of the decision to prosecute.

7. Where, following a judgment of the Court, the prosecution has to decide whether to lodge an appeal, the European Delegated Prosecutor shall submit a report including a draft decision to the competent Permanent Chamber and await its instructions. Should it be impossible to await those instructions within the deadline set by national law, the European Delegated Prosecutor shall be entitled to lodge the appeal without prior instructions from the Permanent Chamber, and shall subsequently submit the report to the Permanent Chamber without delay. The Permanent Chamber shall then instruct the European Delegated Prosecutor either to maintain or withdraw the appeal. The same procedure shall apply when, in the course of the court proceedings and in accordance with applicable national law, the handling European Delegated Prosecutor would take a position that would lead to the dismissal of the case.

Article 37

Evidence

1. Evidence presented by the prosecutors of the EPPO or the defendant to a court shall not be denied admission on the mere ground that the evidence was gathered in another Member State or in accordance with the law of another Member State.

2. The power of the trial court to freely assess the evidence presented by the defendant or the prosecutors of the EPPO shall not be affected by this Regulation.

*Article 38***Disposition of confiscated assets**

Where, in accordance with the requirements and procedures under national law including the national law transposing Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the EPPO, such assets or proceeds shall be disposed of in accordance with applicable national law. This disposition shall not negatively affect the rights of the Union or other victims to be compensated for damage that they have incurred.

*SECTION 4***Rules on alternatives to prosecution***Article 39***Dismissal of the case**

1. Where prosecution has become impossible, pursuant to the law of the Member State of the handling European Delegated Prosecutor, the Permanent Chamber shall, based on a report provided by the European Delegated Prosecutor handling the case in accordance with Article 35(1), decide to dismiss the case against a person on account of any of the following grounds:

- (a) the death of the suspect or accused person or winding up of a suspect or accused legal person;
- (b) the insanity of the suspect or accused person;
- (c) amnesty granted to the suspect or accused person;
- (d) immunity granted to the suspect or accused person, unless it has been lifted;
- (e) expiry of the national statutory limitation to prosecute;
- (f) the suspect's or accused person's case has already been finally disposed of in relation to the same acts;
- (g) the lack of relevant evidence.

2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts which were not known to the EPPO at the time of the decision and which become known after the decision. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.

3. Where the EPPO is competent in accordance with Article 22(3), it shall dismiss a case only after consultation with the national authorities of the Member State referred to in Article 25(6). If applicable, the Permanent Chamber shall refer the case to the competent national authorities in accordance with Article 34(6), (7) and (8).

The same applies where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim.

4. Where a case has been dismissed, the EPPO shall officially notify the competent national authorities and shall inform the relevant institutions, bodies, offices and agencies of the Union, as well as, where appropriate under national law, the suspects or accused persons and the crime victims, of such dismissal. The dismissed cases may also be referred to OLAF or to the competent national administrative or judicial authorities for recovery or other administrative follow-up.

*SECTION 5***Rules on simplified procedures***Article 40***Simplified prosecution procedures**

1. If the applicable national law provides for a simplified prosecution procedure aiming at the final disposal of a case on the basis of terms agreed with the suspect, the handling European Delegated Prosecutor may, in accordance with Article 10(3) and Article 35(1), propose to the competent Permanent Chamber to apply that procedure in accordance with the conditions provided for in national law.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

Where the EPPO exercises a competence in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interest does not exceed the damage caused or likely to be caused to another victim, the handling European Delegated Prosecutor shall consult national prosecution authorities before proposing to apply a simplified prosecution procedure.

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;
- (b) the willingness of the suspected offender to repair the damage caused by the illegal conduct;
- (c) the use of the procedure would be in accordance with the general objectives and basic principles of the EPPO as set out in this Regulation.

The College shall, in accordance with Article 9(2), adopt guidelines on the application of those 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 upon fulfilment of the terms agreed with the suspect, the Permanent Chamber shall instruct the European Delegated Prosecutor to act with a view to finally dispose of the case.

CHAPTER VI

PROCEDURAL SAFEGUARDS

Article 41

Scope of the rights of the suspects and accused persons

1. The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence.

2. Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law, such as:

- (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU;
- (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU;
- (c) the right of access to a lawyer and the right to communicate with and have third persons informed in the event of detention, as provided for in Directive 2013/48/EU;
- (d) the right to remain silent and the right to be presumed innocent as provided for in Directive (EU) 2016/343;
- (e) the right to legal aid as provided for in Directive (EU) 2016/1919.

3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have all the procedural rights available to them under the applicable national law, including the possibility to present evidence, to request the appointment of experts or expert examination and hearing of witnesses, and to request the EPPO to obtain such measures on behalf of the defence.

Article 42

Judicial review

1. Procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. The same applies to failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation.

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

- (a) the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law;
- (b) the interpretation or the validity of provisions of Union law, including this Regulation;
- (c) the interpretation of Articles 22 and 25 of this Regulation in relation to any conflict of competence between the EPPO and the competent national authorities.

3. By way of derogation from paragraph 1 of this Article, the decisions of the EPPO to dismiss a case, in so far as they are contested directly on the basis of Union law, shall be subject to review before the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU.

4. The Court of Justice shall have jurisdiction in accordance with Article 268 TFEU in any dispute relating to compensation for damage caused by the EPPO.

5. The Court of Justice shall have jurisdiction in accordance with Article 272 TFEU in any dispute concerning arbitration clauses contained in contracts concluded by the EPPO.

6. The Court of Justice shall have jurisdiction in accordance with Article 270 TFEU in any dispute concerning staff-related matters.

7. The Court of Justice shall have jurisdiction on the dismissal of the European Chief Prosecutor or European Prosecutors, in accordance, respectively, with Article 14(5) and Article 16(5).

8. This Article is without prejudice to judicial review by the Court of Justice in accordance with the fourth paragraph of Article 263 TFEU of decisions of the EPPO that affect the data subjects' rights under Chapter VIII and of decisions of the EPPO which are not procedural acts, such as decisions of the EPPO concerning the right of public access to documents, or decisions dismissing European Delegated Prosecutors adopted pursuant to Article 17(3) of this Regulation, or any other administrative decisions.

CHAPTER VII

PROCESSING OF INFORMATION

Article 43

Access to information by the EPPO

1. European Delegated Prosecutors shall 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, under the same conditions as those that apply under national law in similar cases.

2. The EPPO shall also be able to obtain any relevant information falling within its competence that is stored in databases and registers of the institutions, bodies, offices and agencies of the Union.

Article 44

Case management system

1. The EPPO 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 of the EPPO.

2. The purpose of the case management system shall be to:

- (a) support the management of investigations and prosecutions conducted by the EPPO, in particular by managing internal information workflows and by supporting investigative work in cross-border cases;
- (b) ensure secure access to information on investigations and prosecutions at the Central Office and by the European Delegated Prosecutors;

- (c) allow for the cross-referencing of information and the extraction of data for operational analysis and statistical purposes;
- (d) facilitate monitoring to ensure that the processing of operational personal data is lawful and complies with the relevant provisions of this Regulation.

3. The case management system may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA ⁽¹⁾.

4. The case management system shall contain:

- (a) a register of information obtained by the EPPO in accordance with Article 24, including 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 45(3).

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

5. For the processing of operational personal data, the EPPO may only establish automated data files other than case files in accordance with this Regulation and with the internal rules of procedure of the EPPO. Details on such other automated data files shall be notified to the European Data Protection Supervisor.

Article 45

Case files of the EPPO

1. Where the EPPO 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 and evidence available to the European Delegated Prosecutor that relates to the investigation or prosecution by the EPPO.

Once an investigation has been opened, the information from the register referred to in Article 44(4)(a) shall become part of the case file.

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

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

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

Article 46

Access to the case management system

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

⁽¹⁾ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

The supervising European Prosecutor as well as the competent Permanent Chamber shall, when exercising their competences in accordance with Articles 10 and 12, 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 shall decide on granting such access to 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 of the EPPO shall set out 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 European Chief Prosecutors, other European Prosecutors, the European Delegated Prosecutors and the staff of the EPPO, to the extent required for the performance of their duties.

CHAPTER VIII

DATA PROTECTION

Article 47

Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully and fairly ('lawfulness and fairness');
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes provided that the EPPO 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 EPPO 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');
- (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').

2. The EPPO 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.

3. Processing by the EPPO for any of the purposes set out in Article 49 other than that for which the operational personal data are collected shall be permitted in so far as:

- (a) the EPPO is authorised to process such operational personal data for such a purpose in accordance with this Regulation; and
- (b) processing is necessary and proportionate to that other purpose in accordance with Union law; and
- (c) where relevant, the use of operational personal data is not prohibited by the applicable national procedural law on the investigative measures taken in accordance with Article 30. The applicable national procedural law is the law of the Member State where the data was obtained.

Article 48

Administrative personal data

- 1. Regulation (EC) No 45/2001 applies to all administrative personal data processed by the EPPO.
- 2. The EPPO shall determine the time limits for the storage of administrative personal data in the data protection provisions of its internal rules of procedure.

Article 49

Processing of operational personal data

- 1. The EPPO shall process operational personal data by automated means or in structured manual files in accordance with this Regulation, and only for the following purposes:
 - (a) criminal investigations and prosecutions undertaken in accordance with this Regulation; or
 - (b) information exchange with the competent authorities of Member States of the European Union and other institutions, bodies, offices and agencies of the Union in accordance with this Regulation; or
 - (c) cooperation with third countries and international organisations in accordance with this Regulation.
- 2. Categories of operational personal data, and the categories of data subjects whose operational personal data may be processed in the index as referred to in point (b) of Article 44(4) by the EPPO for each purpose referred to in paragraph 1 of this Article shall be listed in an Annex in accordance with paragraph 3.
- 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to list the categories of operational personal data and the categories of data subjects referred to in paragraph 2 of this Article and to update such a list in order 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 116 shall apply to delegated acts adopted pursuant to this paragraph.

- 4. The EPPO may temporarily process operational 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 operational 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.
- 5. The EPPO 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.
- 6. When applying Articles 57 to 62, the EPPO 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 57 to 62.

*Article 50***Time limits for the storage of operational personal data**

1. The EPPO shall review periodically the need for the storage of the operational personal data processed. At the latest, such a review shall be carried out not later than 3 years after the operational personal data were first processed and then every 3 years. If operational personal data are stored for a period exceeding 5 years, the European Data Protection Supervisor shall be informed of that fact.
2. Operational personal data processed by the EPPO shall not be stored beyond 5 years after an acquitting decision in respect of the case has become final; in case the accused was found guilty the time limits shall be extended until the penalty that has been imposed, is enforced or can no longer be enforced under the law of the sentencing Member State.
3. Before one of the deadlines referred to in paragraph 2 expires, the EPPO shall review the need for the continued storage of the operational 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 operational personal data, those data shall be deleted automatically.

*Article 51***Distinction between different categories of data subject**

The EPPO shall, where applicable and as far as possible, make a clear distinction between operational personal data of different categories of data subjects, such as:

- (a) persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) victims of a criminal offence or persons with regard to whom certain facts give rise to reasons for believing that they could be the victim of a criminal offence; and
- (d) other parties to a criminal offence, such as persons who might be called upon 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 52***Distinction between operational personal data and verification of quality of personal data**

1. The EPPO shall distinguish, as far as possible, operational personal data based on facts from operational personal data based on personal assessments.
2. The EPPO shall take all reasonable steps to ensure that operational personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the EPPO shall, as far as practicable, verify the quality of operational personal data before they are transmitted or made available. As far as possible, in all transmissions of operational personal data, the EPPO shall add necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of operational personal data, and the extent to which they are up to date.
3. If it emerges that incorrect operational personal data have been transmitted or operational personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the operational personal data shall be rectified or erased or processing shall be restricted in accordance with Article 61.

*Article 53***Specific processing conditions**

1. When required by this Regulation, the EPPO shall provide for specific conditions for processing and shall inform the recipient of such operational personal data of those conditions and the requirement to comply with them.

2. The EPPO shall comply with specific processing conditions for processing provided by a national authority in accordance with Article 9(3) and (4) of Directive (EU) 2016/680.

Article 54

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

1. Subject to any further restrictions pursuant to this Regulation, in particular Article 53, the EPPO shall only transmit operational personal data to another institution, body, office or agency of the Union if the data are necessary for the legitimate performance of tasks covered by the competence of the other institution, body, office or agency of the Union.
2. Where the operational personal data are transmitted following a request from the other institution, body, office or agency of the Union, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

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

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

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

Article 55

Processing of special categories of operational personal data

1. Processing of operational 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, operational personal data concerning health or operational personal data concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for the EPPO's investigations, subject to appropriate safeguards for the rights and freedoms of the data subject and only if they supplement other operational personal data already processed by the EPPO.
2. The Data Protection Officer shall be informed immediately of recourse to this Article.

Article 56

Automated individual decision-making, including profiling

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

Article 57

Communication and modalities for exercising the rights of the data subject

1. The EPPO shall take reasonable steps to provide any information referred to in Article 58. It shall make any communication with regard to Articles 56, 59 to 62 and 75 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 EPPO shall facilitate the exercise of the rights of the data subject under Articles 58 to 62.
3. The EPPO shall inform the data subject in writing about the follow up to his/her request without undue delay, and in any case at the latest after 3 months after receipt of the request by the data subject.

4. The EPPO shall provide for the information provided under Article 58 and any communication made or action taken pursuant to Articles 56, 59 to 62 and 75 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 EPPO 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 EPPO shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

5. Where the EPPO has reasonable doubts concerning the identity of the natural person making a request referred to in Article 59 or 61, the EPPO may request the provision of additional information necessary to confirm the identity of the data subject.

Article 58

Information to be made available or given to the data subject

1. The EPPO shall make available to the data subject at least the following information:

- (a) the identity and the contact details of the EPPO;
- (b) the contact details of the data protection officer;
- (c) the purposes of the processing for which the operational 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 EPPO access to and rectification or erasure of operational personal data and restriction of processing of the operational personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, the EPPO shall give to the data subject, in specific cases, the following further information to enable the exercise of his/her rights:

- (a) the legal basis for the processing;
- (b) the period for which the operational 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 operational personal data, including in third countries or international organisations;
- (d) where necessary, further information, in particular where the operational personal data are collected without the knowledge of the data subject.

3. The EPPO 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 of the European Union;
- (d) protect national security of the Member States of the European Union;
- (e) protect the rights and freedoms of others.

*Article 59***Right of access by the data subject**

The data subject shall have the right to obtain from the EPPO confirmation as to whether or not operational personal data concerning him/her are being processed, and, where that is the case, access to the operational personal data and the following information:

- (a) the purposes of and legal basis for the processing;
- (b) the categories of operational personal data concerned;
- (c) the recipients or categories of recipients to whom the operational personal data have been disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the operational 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 EPPO rectification or erasure of operational personal data or restriction of processing of operational 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) the communication of the operational personal data undergoing processing and of any available information as to their origin.

*Article 60***Limitations to the right of access**

1. The EPPO 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 of the European Union;
- (d) protect national security of the Member States of the European Union;
- (e) protect the rights and freedoms of others.

2. Where the provision of such information would undermine the purpose of paragraph 1, the EPPO shall only notify the data subject concerned that it has carried out the checks, without giving any information which might reveal to him/her whether or not operational personal data concerning him/her are processed by the EPPO.

The EPPO 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 against the EPPO's decision.

3. The EPPO 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.

*Article 61***Right to rectification or erasure of operational personal data and restriction of processing**

1. The data subject shall have the right to obtain from the EPPO without undue delay the rectification of inaccurate operational personal data relating to him/her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete operational personal data completed, including by means of providing a supplementary statement.

2. The EPPO shall erase operational personal data without undue delay and the data subject shall have the right to obtain from the EPPO the erasure of operational personal data concerning him/her without undue delay where processing infringes Article 47, 49 or 55, or where operational personal data must be erased in order to comply with a legal obligation to which the EPPO is subject.

3. Instead of erasure, the EPPO shall restrict processing where:

(a) the accuracy of the operational personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or

(b) the operational personal data must be maintained for the purposes of evidence.

Where processing is restricted pursuant to point (a) of the first subparagraph, the EPPO shall inform the data subject before lifting the restriction of processing.

4. Where processing has been restricted under paragraph 3, such operational 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 EPPO, or for the purposes laid down in point (b) of paragraph 3.

5. The EPPO shall inform the data subject in writing of any refusal of rectification or erasure of operational personal data or restriction of processing and of the reasons for the refusal. The EPPO 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 of the European Union;

(d) protect national security of the Member States of the European Union;

(e) protect the rights and freedoms of others.

The EPPO shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy from the Court of Justice against the EPPO's decision.

6. The EPPO shall communicate the rectification of inaccurate operational personal data to the competent authority from which the inaccurate operational personal data originate.

7. The EPPO shall, where operational personal data has been rectified or erased or processing has been restricted pursuant to paragraphs 1, 2 and 3, notify the recipients and inform them that they have to rectify or erase the operational personal data or restrict processing of the operational personal data under their responsibility.

Article 62

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

1. In the cases referred to in Articles 58(3), 60(2) and 61(5), the rights of the data subject may also be exercised through the European Data Protection Supervisor.

2. The EPPO shall inform the data subject of the possibility of exercising his/her rights through the European Data Protection Supervisor pursuant to paragraph 1.

3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall 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/her right to seek a judicial remedy in the Court of Justice against the European Data Protection Supervisor's decision.

*Article 63***Obligations of the EPPO**

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 EPPO 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 EPPO.

*Article 64***Joint controllers**

1. Where the EPPO 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 law or the law of a Member State of the European Union to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his/her rights under this Regulation in respect, and against each, of the controllers.

*Article 65***Processor**

1. Where processing is to be carried out on behalf of the EPPO, the EPPO 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 EPPO. In the case of general written authorisation, the processor shall inform the EPPO 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 law, or the law of a Member State of the European Union, that is binding on the processor with regard to the EPPO and that sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of operational personal data and categories of data subjects and the obligations and rights of the EPPO. 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 operational 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 EPPO, deletes or returns all the operational personal data to the EPPO after the end of the provision of services relating to processing, and deletes existing copies unless Union law or the law of a Member State of the European Union requires storage of the operational personal data;

- (e) makes available to the EPPO 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 66

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the EPPO or of the processor, who has access to operational personal data, shall not process those data except on instructions from the EPPO, unless required to do so by Union law or the law of a Member State of the European Union.

Article 67

Data protection by design and by default

1. The EPPO 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 EPPO shall implement appropriate technical and organisational measures ensuring that, by default, only operational 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 operational 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 operational personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

Article 68

Records of categories of processing activities

1. The EPPO 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 operational personal data;
 - (d) the categories of recipients to whom the operational personal data have been or will be disclosed including recipients in third countries or international organisations;
 - (e) where applicable, transfers of operational 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 73.
2. The records referred to in paragraph 1 shall be in writing, including in electronic form.
3. The EPPO shall make the record available to the European Data Protection Supervisor on request.

*Article 69***Logging in respect of automated processing**

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

*Article 70***Cooperation with the European Data Protection Supervisor**

The EPPO shall, on request, cooperate with the European Data Protection Supervisor in the performance of its tasks.

*Article 71***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 EPPO shall carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of operational 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 operational 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 72***Prior consultation of the European Data Protection Supervisor**

1. The EPPO 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 71 indicates that the processing would result in a high risk in the absence of measures taken by the EPPO 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 EPPO shall provide the European Data Protection Supervisor with the data protection impact assessment pursuant to Article 71 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 operational 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 EPPO has insufficiently identified or mitigated the risk, the European Data Protection Supervisor shall provide, within a period of up to 6 weeks of receipt of the request for consultation, written advice to the EPPO according to its powers in accordance with Article 85. 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 EPPO of any such extension within 1 month of receipt of the request for consultation, together with the reasons for the delay.

Article 73

Security of processing of operational personal data

1. The EPPO 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 55.

2. In respect of automated processing, the EPPO 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 operational 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 operational personal data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish the bodies to which operational 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 operational 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 operational personal data during transfers of operational 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 operational personal data cannot be corrupted by means of a malfunctioning of the system (integrity).

Article 74

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

1. In the case of a personal data breach, the EPPO 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 EPPO to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
3. Where, and in so far as, it is not possible to provide the information referred to in paragraph 2 at the same time, the information may be provided in phases without undue further delay.
4. The EPPO 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 EPPO shall communicate the information referred to in paragraph 3 to that controller without undue delay.

Article 75

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 EPPO 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 74(2).
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 EPPO 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 EPPO 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 EPPO 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 60(3).

Article 76

Authorised access to operational personal data within the EPPO

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 EPPO.

*Article 77***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/her duties, the Data Protection Officer shall act independently and may not receive any instructions.
2. The Data Protection Officer shall be selected on the basis of the Officer's professional qualities and, in particular, expert knowledge of data protection law and practice, and the ability to fulfil the tasks referred to in this Regulation, in particular those referred to in Article 79.
3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between the Officer's duty as Data Protection Officer and any other official duties, in particular in relation to the application of this Regulation.
4. The Data Protection Officer shall be appointed for a term of 4 years and shall be eligible for reappointment up to a maximum total term of 8 years. The Officer may be dismissed from the post of Data Protection Officer by the College only with the agreement of the European Data Protection Supervisor, if the Officer no longer fulfils the conditions required for the performance of his/her duties.
5. The EPPO shall publish the contact details of the data protection officer and communicate them to the European Data Protection Supervisor.

*Article 78***Position of the Data Protection Officer**

1. The EPPO 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 EPPO shall support the data protection officer in performing the tasks referred to in Article 79 by providing resources necessary to carry out those tasks and by providing access to personal data and processing operations, and to maintain his or her expert knowledge.
3. The EPPO shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. The Officer shall not be dismissed or penalised by the College for performing his/her tasks. The data protection officer shall directly report to the European Chief Prosecutor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation and under Regulation (EC) No 45/2001.
5. The College shall adopt implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer and the Officer's dismissal, tasks, duties and powers and safeguards for independence of the Data Protection Officer.
6. The EPPO shall provide the Data Protection Officer with the staff and resources necessary for him/her to carry out his/her duties.
7. The Data Protection Officer and his/her staff shall be bound by the obligation of confidentiality in accordance with Article 108.

*Article 79***Tasks of the data protection officer**

1. The Data Protection Officer shall in particular have the following tasks, regarding the processing of personal data:
 - (a) ensuring, in an independent manner the EPPO's compliance with the data protection provisions of this Regulation, of Regulation (EC) No 45/2001 and of the relevant data protection provisions in the internal rules of procedure of the EPPO; this includes monitoring compliance with this Regulation, with other Union or national data protection provisions and with the policies of the EPPO 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;

- (b) informing and advising the EPPO and the staff who carry out processing of their obligations pursuant to this Regulation and to other Union or national data protection provisions;
- (c) providing advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 71;
- (d) 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 EPPO;
- (e) cooperating with the staff of the EPPO responsible for procedures, training and advice on data processing;
- (f) cooperating with the European Data Protection Supervisor;
- (g) ensuring that data subjects are informed of their rights under this Regulation;
- (h) acting as the contact point for the European Data Protection Supervisor; on issues relating to processing, including the prior consultation referred to in Article 72, and consulting, where appropriate, with regard to any other matter;
- (i) preparing an annual report and communicate that report to the European Chief Prosecutor and to the European Data Protection Supervisor.

2. The Data Protection Officer shall carry out the functions provided for in Regulation (EC) No 45/2001 with regard to administrative personal data.

3. The Data Protection Officer and the staff members of the EPPO assisting the Data Protection Officer in the performance of duties shall have access to the personal data processed by the EPPO and to its premises to the extent necessary for the performance of their tasks.

4. If the Data Protection Officer considers that the provisions of Regulation (EC) No 45/2001 related to the processing of administrative personal data or the provisions of this Regulation related to the processing of operational personal data have not been complied with, the Officer shall inform the European Chief Prosecutor, requesting him/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 80

General principles for transfers of operational personal data

1. The EPPO may transfer operational personal data to a third country or international organisation, subject to compliance with the other provisions of this Regulation, in particular Article 53, only where the conditions laid down in the Articles 80 to 83 are met, namely:

- (a) the transfer is necessary for the performance of the tasks of the EPPO;
- (b) the operational personal data are transferred to a controller in a third country or international organisation that is an authority competent for the purpose of Article 104;
- (c) where the operational personal data to be transferred in accordance with this Article have been transmitted or made available by a Member State of the European Union to the EPPO, the latter shall obtain prior authorisation for the transfer by the relevant competent authority of that Member State of the European Union in compliance with its national law, unless that Member State of the European Union has granted this authorisation to such transfer in general terms or subject to specific conditions;
- (d) the Commission has decided pursuant to Article 81 that the third country or international organisation in question ensures an adequate level of protection, or in the absence of such an adequacy decision, where appropriate safeguards are adduced or exist pursuant to Article 82, or both in absence of an adequacy decision and of such appropriate safeguards, derogation for specific situations apply pursuant to Article 83; and

(e) in the case of an onward transfer to another third country or international organisation by a third country or international organisation, the EPPO shall require the third country or international organisation to seek its prior authorisation for that onward transfer, which the EPPO may provide only after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data was originally transferred and the level of personal data protection in the third country or an international organisation to which operational personal data are onward transferred.

2. The EPPO may transfer operational personal data without prior authorisation by a Member State of the European Union in accordance with point (c) of paragraph 1 only if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State of the European Union or a third country or to essential interests of a Member State of the European Union and the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.

3. The transfer of operational personal data received from the EPPO to a third country or an international organisation by a Member State of the European Union, or institution, body, office or agency of the Union shall be prohibited. This shall not apply in cases where the EPPO has authorised such transfer, after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data was originally transmitted and the level of personal data protection in the third country or an international organisation to which operational personal data are transferred. That obligation to obtain prior authorisation from the EPPO shall not apply to cases that have been referred to competent national authorities in accordance with Article 34.

4. Articles 80 to 83 shall be applied in order to ensure that the level of protection of natural persons ensured by this Regulation and by Union law is not undermined.

Article 81

Transfers on the basis of an adequacy decision

The EPPO may transfer operational personal data to a third country or an international organisation where the Commission has decided in accordance with Article 36 of 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 82

Transfers subject to appropriate safeguards

1. In the absence of an adequacy decision, the EPPO may transfer operational personal data to a third country or an international organisation where:

- (a) appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument; or
- (b) the EPPO has assessed all the circumstances surrounding the transfer of operational personal data and concludes that appropriate safeguards exist with regard to the protection of operational personal data.

2. The EPPO shall inform the European Data Protection Supervisor about categories of transfers under point (b) of paragraph 1.

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

Article 83

Derogations for specific situations

1. In the absence of an adequacy decision, or of appropriate safeguards pursuant to Article 82, the EPPO may transfer operational 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 of the European Union or a third country; or
- (d) in individual cases for the performance of the tasks of the EPPO, unless the EPPO determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer.

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

Article 84

Transfers of operational personal data to recipients established in third countries

1. By way of derogation from point (b) of Article 80(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 operational 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 49(1);
- (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 49(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 49(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 operational 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 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 shall be made available to the European Data Protection Supervisor on request, including the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred.

Article 85

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 EPPO, and for advising the EPPO and data subjects on all matters concerning the processing of operational personal data. To this end, the European Data Protection Supervisor shall fulfil the duties set out in paragraph 2 of this Article, shall exercise the powers granted in paragraph 3 of this Article and shall cooperate with the national supervisory authorities in accordance with Article 87.

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 EPPO;
 - (d) advise the EPPO, 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 EPPO 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 EPPO when requests to exercise certain rights in relation to operational personal data have been refused in breach of Articles 56 to 62;
 - (d) refer the matter to the EPPO;
 - (e) order the EPPO to carry out the rectification, restriction or erasure of operational personal data which have been processed by the EPPO 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 EPPO;
 - (f) refer the matter to the Court of Justice under the conditions set out in the Treaties;
 - (g) intervene in actions brought before the Court of Justice.
4. The European Data Protection Supervisor shall have access to the operational personal data processed by the EPPO and to its premises to the extent necessary for the performance of its tasks.
5. The European Data Protection Supervisor shall draw up an annual report on the supervisory activities on the EPPO.

Article 86

Professional secrecy of the European Data Protection Supervisor

The European Data Protection Supervisor and 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 official duties.

Article 87

Cooperation between the European Data Protection Supervisor and national 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 Member States of the European Union or finds potentially unlawful transfers using the communication channels of the EPPO, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.
2. In the cases referred to in 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 88

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 EPPO of operational personal data relating to the data subject infringes 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 89.

Article 89

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.

CHAPTER IX

FINANCIAL AND STAFF PROVISIONS

SECTION 1

Financial provisions

Article 90

Financial actors

1. The European Chief Prosecutor shall be responsible for preparing decisions on the establishment of the budget and submitting them to the College for adoption.
2. The Administrative Director shall be responsible as authorising officer for implementing the budget of the EPPO.

Article 91

Budget

1. The European Chief Prosecutor shall prepare estimates of the revenue and expenditure of the EPPO for each financial year, corresponding to the calendar year, on the basis of a proposal drawn up by the Administrative Director. Those estimates shall be shown in the budget of the EPPO.
2. The budget of the EPPO shall be balanced in terms of revenue and expenditure.
3. Without prejudice to other resources, the revenue of the EPPO shall comprise:
 - (a) a contribution from the Union entered in the general budget of the Union, subject to paragraphs 7 and 8;
 - (b) charges for publications and any service provided by the EPPO.
4. The expenditure of the EPPO shall include the remuneration of the European Chief Prosecutor, European Prosecutors, European Delegated Prosecutors, the Administrative Director and the staff of the EPPO, administrative and infrastructure expenses, and operational expenditure.
5. Where European Delegated Prosecutors act within the framework of the EPPO, the relevant expenditure incurred by the European Delegated Prosecutors in the course of those activities shall be regarded as operational expenditure of the EPPO.

The operational expenditure of the EPPO's shall in principle not include costs related to investigation measures carried out by competent national authorities or costs of legal aid. However, it shall, within the budget of the EPPO, include certain costs related to its investigation and prosecution activities as set out in paragraph 6.

The operational expenditure shall also include the setting up of a case management system, training, missions and translations necessary for the internal functioning of the EPPO, such as translations for the Permanent Chamber.

6. Where an exceptionally costly investigation measure is carried out on behalf of the EPPO, the European Delegated Prosecutors may, on their own initiative or at the reasoned request of the competent national authorities, consult the Permanent Chamber as to whether the cost of the investigation measure could partly be met by the EPPO. Such consultations shall not delay the investigation.

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

7. In accordance with Article 332 TFEU, the expenditure of the EPPO referred to in paragraphs 4 and 5 of this Article shall be borne by the Member States. Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO shall receive an adjustment in accordance with Article 11 of Council Regulation (EU, Euratom) No 609/2014 ⁽¹⁾.

8. Paragraph 7 shall not apply to the administrative costs entailed for the Union's institutions resulting from implementation of enhanced cooperation on the establishment of the EPPO.

Article 92

Establishment of the budget

1. Each year the European Chief Prosecutor shall prepare a provisional draft estimate of the revenue and expenditure of the EPPO 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 EPPO shall be sent to the Commission by 31 January each year. The EPPO shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March each year.

3. The Commission shall send the statement of estimates to the European Parliament and to 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 to be 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 TFEU.

5. The budgetary authority shall authorise the appropriations for the contribution from the general budget of the Union to the EPPO.

6. The budgetary authority shall adopt the establishment plan of the EPPO.

7. The College shall adopt the budget of the EPPO on a proposal from the European Chief Prosecutor. It shall become final following the 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 EPPO, Article 88 of Commission Delegated Regulation (EU) No 1271/2013 ⁽²⁾ shall apply.

⁽¹⁾ Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ L 168, 7.6.2014, p. 39).

⁽²⁾ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

*Article 93***Implementation of the budget**

1. The Administrative Director acting as the authorising officer of the EPPO, shall implement its budget under his/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 94***Presentation of accounts and discharge**

1. The accounting officer of the EPPO shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N + 1).
2. The EPPO shall send the report on the budgetary and financial management to the European Parliament, to the Council and to the Court of Auditors, by 31 March of the following financial year.
3. The Commission's Accounting Officer shall send the provisional accounts of the EPPO consolidated with the Commission's accounts, to the Court of Auditors by 31 March following each financial year.
4. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, make its observations on the provisional accounts of the EPPO by 1 June of the following year at the latest.
5. On receipt of the Court of Auditors' observations on the provisional accounts of the EPPO pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the EPPO shall draw up its final accounts under his/her own responsibility and submit these to the College for an opinion.
6. The accounting officer of the EPPO shall, by 1 July following each financial year, send the final accounts to the European Parliament, to the Council, to the Commission and to the Court of Auditors, together with the opinion of the College referred to in paragraph 5.
7. The final accounts of the EPPO shall be published in the *Official Journal of the European Union* by 15 November of the year following each financial year.
8. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September following each financial year at the latest. The Administrative Director shall also send the reply to the Commission.
9. 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 Delegated Regulation (EU) No 1271/2013.
10. 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 95***Financial rules**

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

SECTION 2

Staff provisions

Article 96

General provisions

1. The Staff Regulations and the Conditions of Employment and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and Conditions of Employment shall apply to the European Chief Prosecutor and the European Prosecutors, the European Delegated Prosecutors, the Administrative Director and the staff of the EPPO, unless otherwise provided for in this Regulation.

The European Chief Prosecutor and the European Prosecutors shall be engaged as temporary agents of the EPPO under Article 2(a) of the Conditions of Employment.

2. The staff of the EPPO shall be recruited according to the rules and regulations applicable to officials and other servants of the European Union.

3. The powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment to conclude contracts of employment shall be exercised by the College. The College may delegate these powers to the Administrative Director with respect to the staff of the EPPO. Delegation of powers referred to in this paragraph shall not concern the European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors or the Administrative Director.

4. The College shall adopt appropriate rules to implement the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations. The College shall also adopt staff resource programming as part of the programming document.

5. The Protocol on the Privileges and Immunities of the European Union shall apply to the EPPO and its staff.

6. European Delegated Prosecutors shall be engaged as Special Advisors in accordance with Articles 5, 123 and 124 of the Conditions of Employment. The competent national authorities shall facilitate the exercise of the functions of European Delegated Prosecutors under this Regulation and refrain from any action or policy that may adversely affect their career or 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 shall 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 relating 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 is not lower than what it would be if that prosecutor would only have remained a national prosecutor. The general working conditions and work environment of the European Delegated Prosecutors shall fall under the responsibility of the competent national judicial authorities.

7. The European Prosecutors and the European Delegated Prosecutors shall not receive in the exercise of their investigation and prosecution powers, any orders, guidelines or instructions other than those expressly provided for in Article 6.

Article 97

Temporary agents and contract agents

1. Temporary agents employed under point (a) of Article 2 of the Conditions of Employment in the institutions, bodies, offices or agencies of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under point (f) of Article 2 of the Conditions of Employment whereas all other conditions of the contract shall remain unchanged, without prejudice to the need to respect the obligations stemming from the Conditions of Employment. Those temporary agents shall be deemed to have served their entire service in the EPPO.

2. Contract agents employed under Article 3a or 3b of the Conditions of Employment in the institutions of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under Article 3a Conditions of Employment whereas all other conditions of the contract shall remain unchanged. Those contract agents shall be deemed to have served their entire service in the EPPO.

3. Temporary agents employed under point (f) of Article 2 of the Conditions of Employment and contract agents employed under Article 3a of the Conditions of Employment in the institutions, bodies, offices or agencies of the Union who are engaged by the EPPO with a contract concluded before and no later than 1 year after the EPPO becomes operational in accordance with the decision mentioned in Article 120(2) shall be offered contracts under the same conditions. Those agents shall be deemed to have served their entire service in the EPPO.

Article 98

Seconded national experts and other staff

1. The EPPO 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 EPPO.

2. The College shall adopt a decision laying down rules on the secondment of national experts to the EPPO or other persons put at its disposal but not employed by it.

CHAPTER X

PROVISIONS ON THE RELATIONS OF THE EPPO WITH ITS PARTNERS

Article 99

Common provisions

1. In so far as necessary for the performance of its tasks, the EPPO may establish and maintain cooperative relations with institutions, bodies, offices or agencies of the Union in accordance with their respective objectives, and with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the authorities of third countries and international organisations.

2. In so far as relevant to the performance of its tasks, the EPPO may, in accordance with Article 111, directly exchange all information, with the entities referred to in paragraph 1 of this Article, unless otherwise provided for in this Regulation.

3. For the purposes set out in paragraphs 1 and 2, the EPPO may conclude working arrangements with the entities referred to in paragraph 1. Those working arrangements shall be of a technical and/or operational nature, and shall in particular aim to facilitate cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States.

Article 100

Relations with Eurojust

1. The EPPO shall establish and maintain a close relationship with Eurojust based on mutual cooperation within their respective mandates and on the development of operational, administrative and management links between them as defined in this Article. To this end, the European Chief Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern.

2. In operational matters, the EPPO 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, Member States of the European Union that are members of Eurojust but do not take part in the establishment of the EPPO, as well as third countries.

3. The EPPO shall have indirect access to information in Eurojust's case management system on the basis of a hit/no-hit system. Whenever a match is found between data entered into the case management system by the EPPO and data held by Eurojust, the fact that there is a match shall be communicated to both Eurojust and the EPPO, as well as the Member State of the European Union which provided the data to Eurojust. The EPPO shall take appropriate measures to enable Eurojust to have access to information in its case management system on the basis of a hit/no-hit system.

4. The EPPO may rely on the support and resources of the administration of Eurojust. To that end, Eurojust may provide services of common interest to the EPPO. The details shall be regulated by means of an Arrangement.

Article 101

Relations with OLAF

1. The EPPO shall establish and maintain a close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange. The relationship shall aim in particular to ensure that all available means are used to protect the Union's financial interests through the complementarity and support by OLAF to the EPPO.

2. Without prejudice to the actions set out in paragraph 3, where the EPPO conducts a criminal investigation in accordance with this Regulation, OLAF shall not open any parallel administrative investigation into the same facts.

3. In the course of an investigation by the EPPO, the EPPO may request OLAF, in accordance with OLAF's mandate, to support or complement the EPPO's activity in particular by:

(a) providing information, analyses (including forensic analyses), expertise and operational support;

(b) facilitating coordination of specific actions of the competent national administrative authorities and bodies of the Union;

(c) conducting administrative investigations.

4. The EPPO 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 the EPPO has decided not to conduct an investigation or has dismissed a case.

5. The EPPO shall have indirect access to information in OLAF's case management system on the basis of a hit/no hit system. Whenever a match is found between data entered into the case management system by the EPPO and data held by OLAF, the fact that there is a match shall be communicated to both OLAF and the EPPO. The EPPO shall take appropriate measures to enable OLAF to have access to information in its case management system on the basis of a hit/no-hit system.

Article 102

Relations with Europol

1. The EPPO shall establish and maintain a close relationship with Europol. To that end, they shall conclude a working arrangement setting out the modalities of their cooperation.

2. Where necessary for the purpose of its investigations, the EPPO shall be able to obtain, at its request, any relevant information held by Europol, concerning any offence within its competence, and may also ask Europol to provide analytical support to a specific investigation conducted by the EPPO.

*Article 103***Relations with other institutions, bodies, offices and agencies of the Union**

1. The EPPO shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting the financial interests of the Union. To that 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 EPPO shall without delay, provide the institution, body, office or agency of the Union and other victims concerned sufficient information in order to allow them to take appropriate measures, in particular:
 - (a) administrative measures, such as precautionary measures to protect the financial interests of the Union, in this regard. The EPPO may recommend specific measures to the institution, body, office or agency of the Union;
 - (b) intervention as a civil party in the proceedings;
 - (c) measures for the purpose of administrative recovery of sums due to the Union budget or disciplinary action.

*Article 104***Relations with third countries and international organisations**

1. The working arrangements referred to in Article 99(3) with the authorities of third countries and international organisations may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.
2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in third countries in order to facilitate cooperation in line with the operational needs of the EPPO.
3. International agreements with one or more third countries concluded by the Union or to which the Union has acceded in accordance with Article 218 TFEU in areas that fall under the competence of the EPPO, such as international agreements concerning cooperation in criminal matters between the EPPO and those third countries, shall be binding on the EPPO.
4. In the absence of an agreement pursuant to paragraph 3, the Member States shall, if permitted under the relevant multilateral international agreement and subject to the third country's acceptance, recognise and, where applicable, notify the EPPO as a competent authority for the purpose of the implementation of multilateral international agreements on legal assistance in criminal matters concluded by them, including, where necessary and possible, by way of an amendment to those agreements.

The Member States may also notify the EPPO as a competent authority for the purpose of the implementation of other international agreements on legal assistance in criminal matters concluded by them, including, by way of an amendment to those agreements.

5. In the absence of an agreement pursuant to paragraph 3 of this Article or a recognition pursuant to paragraph 4 of this Article, the handling European Delegated Prosecutor, in accordance with Article 13(1), may have recourse to the powers of a national prosecutor of his/her Member State to request legal assistance in criminal matters from authorities of third countries, on the basis of international agreements concluded by that Member State or applicable national law and, where required, through the competent national authorities. In that case, the European Delegated Prosecutor shall inform and where appropriate shall endeavour to obtain consent from the authorities of third countries that the evidence collected on that basis will be used by the EPPO for the purposes of this Regulation. In any case, the third country shall be duly informed that the final recipient of the reply to the request is the EPPO.

Where the EPPO cannot exercise its functions on the basis of a relevant international agreement as referred to in paragraph 3 or 4 of this Article, the EPPO may also request legal assistance in criminal matters from authorities of third countries in a particular case and within the limits of its material competence. The EPPO shall comply with the conditions which may be set by those authorities concerning the use of the information that they provided on that basis.

6. Subject to the other provisions of this Regulation, the EPPO may, upon request, provide the competent authorities of third countries or international organisations, for the purpose of investigations or use as evidence in criminal investigations, with information or evidence which is already in the possession of the EPPO. After consulting the Permanent Chamber, the handling European Delegated Prosecutor shall decide on any such transfer of information or evidence in accordance with the national law of his/her Member State and this Regulation.

7. Where it is necessary to request the extradition of a person, the handling European Delegated Prosecutor may request the competent authority of his/her Member State to issue an extradition request in accordance with applicable treaties and/or national law.

Article 105

Relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO

1. The working arrangements referred to in Article 99(3) with the authorities of Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO may in particular, concern the exchange of strategic information and the secondment of liaison officers to the EPPO.

2. The EPPO may designate, in agreement with the competent authorities concerned, contact points in the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO in order to facilitate cooperation in line with the EPPO's needs.

3. In the absence of a legal instrument relating to cooperation in criminal matters and surrender between the EPPO and the competent authorities of the Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO, the Member States shall notify the EPPO as a competent authority for the purpose of implementation of the applicable Union acts on judicial cooperation in criminal matters in respect of cases falling within the competence of the EPPO, in their relations with Member States of the European Union which do not participate in enhanced cooperation on the establishment of the EPPO.

CHAPTER XI

GENERAL PROVISIONS

Article 106

Legal status and operating conditions

1. In each of the Member States the EPPO shall have the legal capacity accorded to legal persons under national law.

2. The necessary arrangements concerning the accommodation provided for the EPPO and the facilities made available by Luxembourg, as well as the specific rules applicable in that Member State to the Members of the College, the Administrative Director and the staff of the EPPO, and members of their families, shall be laid down in a Headquarters Agreement to be concluded between the EPPO and Luxembourg by the date the EPPO assumes its investigative and prosecutorial tasks determined in accordance with Article 120(2).

Article 107

Language arrangements

1. Council Regulation (EEC) No 1/58 ⁽¹⁾ shall apply to the acts referred to in Articles 21 and 114 of this Regulation.

2. The College shall decide by a two-thirds majority of its members on the internal language arrangements of the EPPO.

3. The translation services required for the administrative functioning of the EPPO 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 law.

⁽¹⁾ Council Regulation (EEC) No 1/58 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

*Article 108***Confidentiality and professional secrecy**

1. The members of the College, the Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO 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 EPPO.
2. Any other person who participates or assists in carrying out the functions of the EPPO at the national level shall be bound by an obligation of confidentiality as provided for under applicable national law.
3. The obligation of confidentiality shall also apply to the persons referred to in paragraphs 1 and 2 after they have left office or employment and after the termination of activities.
4. The obligation of confidentiality shall, in accordance with applicable national or Union law, apply to all information received by the EPPO, unless that information has already lawfully been made public.
5. Investigations carried out under the authority of the EPPO shall be protected by the rules concerning professional secrecy under the applicable Union law. Any person who participates or assists in carrying out the functions of the EPPO shall be bound to respect professional secrecy under the applicable national law.

*Article 109***Transparency**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾ shall apply to documents other than case files, including electronic images of those files, that are kept in accordance with Article 45 of this Regulation.
2. The European Chief Prosecutor shall, within 6 months of the date of his/her appointment, prepare a proposal for detailed rules for applying this Article. That proposal shall be adopted by the College.
3. Decisions taken by the EPPO under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the European Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 228 and 263 TFEU respectively.

*Article 110***OLAF and the Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013, by 6 months after the date to be set by the Commission pursuant to Article 120(2), the EPPO shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) ⁽²⁾, and shall adopt the appropriate provisions applicable to the European Chief Prosecutor, the European Prosecutors, the Administrative Director and the staff of the EPPO, seconded national experts and other persons put at the disposal of the EPPO but not employed by it, and European Delegated Prosecutors using the template set out in the Annex to that Agreement.
2. The 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 EPPO.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 ⁽³⁾ 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 EPPO.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽²⁾ Interinstitutional agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 15).

⁽³⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with bodies of the Union, authorities of third countries and international organisations, and contracts of the EPPO shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 111

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

1. The EPPO shall establish internal rules on the protection of sensitive non-classified information, including the creation and processing of such information at the EPPO.

2. The EPPO shall establish internal rules on the protection of the EU classified information that shall be consistent with Council Decision 2013/488/EU ⁽¹⁾ in order to ensure an equivalent level of protection for such information.

Article 112

Administrative inquiries

The administrative activities of the EPPO shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

Article 113

General regime of liability

1. The contractual liability of the EPPO shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the EPPO.

3. In the case of non-contractual liability, the EPPO shall, in accordance with the general principles common to the laws of the Member States of the European Union make good any damage caused by the EPPO 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/her duties.

5. The Court of Justice shall have jurisdiction in disputes over compensation for damages as referred to in paragraph 3.

6. The national courts of the Member States of the European Union competent to deal with disputes involving the contractual liability of the EPPO as referred to in this Article shall be determined by reference to Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽²⁾.

7. The personal liability of the staff of the EPPO shall be governed by the applicable provisions laid down in the Staff Regulations and the Conditions of Employment.

Article 114

Implementing rules and programme documents

The College, on the proposal of the European Chief Prosecutor, shall adopt in particular:

- (a) on an annual basis, the programming document containing annual and multi-annual programming of the EPPO;
- (b) an anti-fraud strategy, which is proportionate to the fraud risks having regard to the cost-benefit of the measures to be implemented;
- (c) 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;

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

⁽²⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(d) detailed rules concerning the application of Regulation (EC) No 1049/2001 in the activities of the EPPO;

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

Article 115

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 Article 49(3) shall be conferred on the Commission for an indeterminate period of time from 20 November 2017.

3. The delegation of power referred to in Article 49(3) 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 on the day following the date of publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 49(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to 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 of the Council.

Article 116

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 115(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 117

Notifications

Each Member State shall designate the authorities that are competent for the purposes of implementing this Regulation. Information on the designated authorities, as well as on any subsequent change thereto, shall be notified simultaneously to the European Chief Prosecutor, to the Council and to the Commission. Member States shall also notify to the EPPO an extensive list of the national substantive criminal law provisions that apply to the offences defined in Directive (EU) 2017/1371 and any other relevant national law. The EPPO shall ensure that the information received through these lists is made public. Furthermore, Member States that, in accordance with Article 30(3), intend to limit the application of points (e) and (f) of Article 30(1) to specific serious offences shall notify the EPPO of a list of those offences.

*Article 118***Review of the rules relating to the protection of natural persons with regard to the processing of personal data by the EPPO**

In the context of the adaptation of Regulation (EC) No 45/2001 in accordance with Article 2(3) and Article 98 of Regulation (EU) 2016/679, the Commission shall review the provisions relating to the protection of natural persons with regard to the processing of personal data by the EPPO laid down in this Regulation. The Commission shall, if appropriate, submit a legislative proposal with a view to amending or repealing those provisions.

*Article 119***Review clause**

1. No later than 5 years after the date to be set by the Commission pursuant to Article 120(2), and every 5 years thereafter, the Commission shall commission an evaluation and shall submit an evaluation report on the implementation and impact of this Regulation, as well as on the effectiveness and efficiency of the EPPO and its working practices. The Commission shall forward the evaluation report together with its conclusions to the European Parliament and to the Council and to national parliaments. The findings of the evaluation shall be made public.
2. The Commission shall submit legislative proposals to the European Parliament and the Council if it concludes that it is necessary to have additional or more detailed rules on the setting up of the EPPO, its functions or the procedure applicable to its activities, including its cross-border investigations.

*Article 120***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 EPPO shall exercise its competence with regard to any offence within its competence committed after the date on which this Regulation has entered into force.

The EPPO 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 EPPO 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 3 years after the date of entry into force of this Regulation.

For those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, this Regulation shall apply as from the date indicated in the decision concerned.

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

Done at Luxembourg, 12 October 2017.

For the Council
The President
U. REINSALU

DIRECTIVES

DIRECTIVE (EU) 2017/1371 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 July 2017

on the fight against fraud to the Union's financial interests by means of criminal law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Committee of the Regions ⁽¹⁾

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The protection of the Union's financial interests concerns not only the management of budget appropriations, but extends to all measures which negatively affect or which threaten to negatively affect its assets and those of the Member States, to the extent that those measures are of relevance to Union policies.
- (2) The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests of 26 July 1995 ⁽³⁾, including the Protocols thereto of 27 September 1996 ⁽⁴⁾, of 29 November 1996 ⁽⁵⁾ and of 19 June 1997 ⁽⁶⁾ (the 'Convention') establishes minimum rules relating to the definition of criminal offences and sanctions in the area of fraud affecting the Union's financial interests. The Member States drew up the Convention, in which it was noted that fraud affecting Union revenue and expenditure in many cases was not confined to a single country and was often committed by organised criminal networks. On that basis, it was already recognised in the Convention that the protection of the Union's financial interests called for the criminal prosecution of fraudulent conduct injuring those interests. In parallel, Council Regulation (EC, Euratom) No 2988/95 ⁽⁷⁾ was adopted. That Regulation lays down general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Union law while, at the same time, referring to sectoral rules in that area, fraudulent actions as defined in the Convention and the application of the Member States' criminal law and proceedings.
- (3) Union policy in the area of the protection of the Union's financial interests has already been the subject of harmonisation measures such as Regulation (EC, Euratom) No 2988/95. In order to ensure the implementation of Union policy in this area, it is essential to continue to approximate the criminal law of the Member States by complementing the protection of the Union's financial interests under administrative and civil law for the most serious types of fraud-related conduct in that field, whilst avoiding inconsistencies, both within and among those areas of law.
- (4) The protection of the Union's financial interests calls for a common definition of fraud falling within the scope of this Directive, which should cover fraudulent conduct with respect to revenues, expenditure and assets at the

⁽¹⁾ OJ C 391, 18.12.2012, p. 134.

⁽²⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 25 April 2017 (OJ C 184, 9.6.2017, p. 1). Position of the European Parliament of 5 July 2017 (not yet published in the Official Journal).

⁽³⁾ OJ C 316, 27.11.1995, p. 48.

⁽⁴⁾ OJ C 313, 23.10.1996, p. 1.

⁽⁵⁾ OJ C 151, 20.5.1997, p. 1.

⁽⁶⁾ OJ C 221, 19.7.1997, p. 11.

⁽⁷⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

expense of the general budget of the European Union (the 'Union budget'), including financial operations such as borrowing and lending activities. The notion of serious offences against the common system of value added tax ('VAT') as established by Council Directive 2006/112/EC ⁽¹⁾ (the 'common VAT system') refers to the most serious forms of VAT fraud, in particular carousel fraud, VAT fraud through missing traders, and VAT fraud committed within a criminal organisation, which create serious threats to the common VAT system and thus to the Union budget. Offences against the common VAT system should be considered to be serious where they are connected with the territory of two or more Member States, result from a fraudulent scheme whereby those offences are committed in a structured way with the aim of taking undue advantage of the common VAT system and the total damage caused by the offences is at least EUR 10 000 000. The notion of total damage refers to the estimated damage that results from the entire fraud scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. This Directive aims to contribute to the efforts to fight those criminal phenomena.

- (5) When the Commission implements the Union budget under shared or indirect management, it may delegate budget implementation tasks to the Member States or entrust them to bodies, offices or agencies established pursuant to the Treaties or to other entities or persons. In the event of such shared or indirect management, the Union's financial interests should benefit from the same level of protection as they do when under the direct management of the Commission.
- (6) For the purposes of this Directive, procurement-related expenditure is any expenditure in connection with the public contracts determined by Article 101(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁾.
- (7) Union money laundering law is fully applicable to money laundering involving property derived from the criminal offences covered by this Directive. A reference made to that law should ensure that the sanctioning regime introduced by this Directive applies to all serious cases of criminal offences against the Union's financial interests.
- (8) Corruption constitutes a particularly serious threat to the Union's financial interests, which can in many cases also be linked to fraudulent conduct. Since all public officials have a duty to exercise judgment or discretion impartially, the giving of bribes in order to influence a public official's judgment or discretion and the taking of such bribes should be included in the definition of corruption, irrespective of the law or regulations applicable in the particular official's country or to the international organisation concerned.
- (9) The Union's financial interests can be negatively affected by certain types of conduct of a public official who is entrusted with the management of funds or assets, whether he or she is in charge or acts in a supervisory capacity, which types of conduct aim at misappropriating funds or assets, contrary to the intended purpose and whereby the Union's financial interests are damaged. There is therefore a need to introduce a precise definition of criminal offences covering such conduct.
- (10) As regards the criminal offences of passive corruption and misappropriation, there is a need to include a definition of public officials covering all relevant officials, whether holding a formal office in the Union, in the Member States or in third countries. Private persons are increasingly involved in the management of Union funds. In order to protect Union funds adequately from corruption and misappropriation, the definition of 'public official' therefore needs to cover persons who do not hold formal office but who are nonetheless assigned and exercise, in a similar manner, a public service function in relation to Union funds, such as contractors involved in the management of such funds.
- (11) With regard to the criminal offences provided for in this Directive, the notion of intention must apply to all the elements constituting those criminal offences. The intentional nature of an act or omission may be inferred from objective, factual circumstances. Criminal offences which do not require intention are not covered by this Directive.

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽²⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (12) This Directive does not oblige Member States to provide for sanctions of imprisonment for the commission of criminal offences that are not of a serious nature, in cases where intent is presumed under national law.
- (13) Some criminal offences against the Union's financial interests are in practice often closely related to the criminal offences covered by Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) and Union legislative acts that are based on that provision. Coherence between such legislative acts and this Directive should therefore be ensured in the wording of this Directive.
- (14) Insofar as the Union's financial interests can be damaged or threatened by conduct attributable to legal persons, legal persons should be liable for the criminal offences, as defined in this Directive, which are committed on their behalf.
- (15) In order to ensure equivalent protection of the Union's financial interests throughout the Union by means of measures which should act as a deterrent, Member States should provide for certain types and levels of sanctions when the criminal offences defined in this Directive are committed. The levels of sanctions should not go beyond what is proportionate for the offences.
- (16) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests.
- (17) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than of a criminal nature. Sanctions that cannot be equated to criminal sanctions, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined in this Directive. For other sanctions, the principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*) should be fully respected. This Directive does not criminalise behaviour which is not also subject to disciplinary penalties or other measures concerning a breach of official duties, in cases where such disciplinary penalties or other measures can be applied to the persons concerned.
- (18) Sanctions with regard to natural persons should, in certain cases, provide for a maximum penalty of at least four years of imprisonment. Such cases should include at least those involving considerable damage done or advantage gained whereby the damage or advantage should be presumed to be considerable when it involves more than EUR 100 000. Where a Member State's law does not provide for an explicit threshold for considerable damage or advantage as a basis for a maximum penalty, the Member State should ensure that the amount of damage or advantage is taken into account by its courts in the determination of sanctions for fraud and other criminal offences affecting the Union's financial interests. This Directive does not prevent Member States from providing for other elements which would indicate the serious nature of a criminal offence, for instance when the damage or advantage is potential, but of very considerable nature. However, for offences against the common VAT system, the threshold as of which the damage or advantage should be presumed to be considerable is, in conformity with this Directive, EUR 10 000 000. The introduction of minimum levels of maximum imprisonment sanctions is necessary in order to ensure equivalent protection of the Union's financial interests throughout the Union. The sanctions are intended to serve as a strong deterrent for potential offenders, with effect throughout the Union.
- (19) Member States should ensure that the fact that a criminal offence is committed within a criminal organisation as defined in Council Framework Decision 2008/841/JHA ⁽¹⁾ is considered to be an aggravating circumstance in accordance with the applicable rules established by their legal systems. They should ensure that the aggravating circumstance is made available to judges for their consideration when sentencing offenders, although there is no obligation on judges to take the aggravating circumstance into account in their sentence. Member States are not obliged to provide for the aggravating circumstance where national law provides for the criminal offences as defined in Framework Decision 2008/841/JHA to be punishable as a separate criminal offence and this may lead to more severe sanctions.
- (20) Given, in particular, the mobility of perpetrators and of the proceeds stemming from illegal activities at the expense of the Union's financial interests, as well as the complex cross-border investigations which this entails, each Member State should establish its jurisdiction in order to enable it to counter such activities. Each Member State should thereby ensure that its jurisdiction covers criminal offences which are committed using information and communication technology accessed from its territory.

⁽¹⁾ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (21) Given the possibility of multiple jurisdictions for cross-border criminal offences falling under the scope of this Directive, the Member States should ensure that the principle of *ne bis in idem* is respected in full in the application of national law transposing this Directive.
- (22) Member States should lay down rules concerning limitation periods necessary in order to enable them to counter illegal activities at the expense of the Union's financial interests. In cases of criminal offences punishable by a maximum sanction of at least four years of imprisonment, the limitation period should be at least five years from the time when the criminal offence was committed. This should be without prejudice to those Member States which do not set limitation periods for investigation, prosecution and enforcement.
- (23) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters and to other rules under Union law, in particular under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁾, there is a need for appropriate provision to be made for cooperation to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States and the Commission as well as technical and operational assistance provided by the Commission to the competent national authorities as they may need to facilitate coordination of their investigations. Such assistance should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national authorities. The Court of Auditors and the auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies should disclose to the European Anti-Fraud Office (OLAF) and to other competent authorities any fact which could be qualified as a criminal offence under this Directive, and Member States should ensure that national audit bodies within the meaning of Article 59 of Regulation (EU, Euratom) No 966/2012 do the same, in accordance with Article 8 of Regulation (EU, Euratom) No 883/2013.
- (24) The Commission should report to the European Parliament and to the Council on the measures taken by Member States to comply with this Directive. The report may be accompanied, if necessary, by proposals taking into consideration possible evolutions, in particular regarding the financing of the Union budget.
- (25) The Convention should be replaced by this Directive for the Member States bound by it.
- (26) For the application of point (d) of Article 3(4) of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽²⁾, the reference to serious fraud affecting the Union's financial interests as defined in Article 1(1) and Article 2(1) of the Convention should be construed as fraud affecting the Union's financial interests as defined in Article 3 and in Article 7(3) of this Directive or, as regards offences against the common VAT system, as defined in Article 2(2) of this Directive.
- (27) Proper implementation of this Directive by the Member States includes the processing of personal data by the competent national authorities, and the exchange of such data between Member States on the one hand, and between competent Union bodies on the other. The processing of personal data at national level between national competent authorities should be regulated by the *acquis* of the Union. The exchange of personal data between Member States should be carried out in accordance with Directive (EU) 2016/680 of the European Parliament and of the Council ⁽³⁾. To the extent that the Union institutions, bodies, offices and agencies process personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁴⁾ or, where applicable, other Union legal acts regulating the processing of personal data by those bodies, offices and agencies as well as the applicable rules concerning the confidentiality of judicial investigations, should apply.

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

⁽²⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽³⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽⁴⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (28) The intended dissuasive effect of the application of criminal law sanctions requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and sanctions, as well as the principle of *ne bis in idem*. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (29) Member States should take the necessary measures to ensure the prompt recovery of sums and their transfer to the Union budget, without prejudice to the relevant Union sector-specific rules on financial corrections and recovery of amounts unduly spent.
- (30) Administrative measures and penalties play an important role in the protection of the Union's financial interests. This Directive does not exempt Member States from the obligation to apply and implement administrative Union measures and penalties within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95.
- (31) This Directive should oblige Member States to provide in their national law for criminal penalties in respect of the acts of fraud and fraud-related criminal offences affecting the Union's financial interests to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement to individual cases. Member States may in principle continue to apply administrative measures and penalties in parallel in the area covered by this Directive. In the application of national law transposing this Directive, Member States should, however, ensure that the imposition of criminal sanctions for criminal offences in accordance with this Directive and of administrative measures and penalties does not lead to a breach of the Charter.
- (32) This Directive should not affect the competences of Member States to structure and organise their tax administration as they see fit to ensure the correct determination, assessment and collection of value added tax, as well as the effective application of VAT law.
- (33) This Directive applies without prejudice to the provisions on the lifting of the immunities contained in the TFEU, Protocol No 3 on the Statute of the Court of Justice of the European Union and Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the TFEU and to the Treaty on European Union (TEU), and the texts implementing them, or similar provisions incorporated in national law. In the transposition of this Directive into national law as well as in the application of national law transposing this Directive, those privileges and immunities, including the respect for the freedom of the Member's mandate, are fully taken into account.
- (34) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (35) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (36) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (37) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(39) The European Court of Auditors has been consulted and has adopted an opinion ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal offences which affect those financial interests, in line with the *acquis* of the Union in this field.

Article 2

Definitions and scope

1. For the purposes of this Directive, the following definitions apply:
 - (a) 'Union's financial interests' means all revenues, expenditure and assets covered by, acquired through, or due to:
 - (i) the Union budget;
 - (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them;
 - (b) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.
2. In respect of revenue arising from VAT own resources, this Directive shall apply only in cases of serious offences against the common VAT system. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.
3. The structure and functioning of the tax administration of the Member States are not affected by this Directive.

TITLE II

CRIMINAL OFFENCES WITH REGARD TO FRAUD AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 3

Fraud affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence when committed intentionally.
2. For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
 - (a) in respect of non-procurement-related expenditure, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

⁽¹⁾ OJ C 383, 12.12.2012, p. 1.

- (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;
- (c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to:
 - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
 - (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
 - (iii) misapplication of a legally obtained benefit, with the same effect;
- (d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:
 - (i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;
 - (ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or
 - (iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Article 4

Other criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that money laundering as described in Article 1(3) of Directive (EU) 2015/849 involving property derived from the criminal offences covered by this Directive constitutes a criminal offence.
2. Member States shall take the necessary measures to ensure that passive and active corruption, when committed intentionally, constitute criminal offences.
 - (a) For the purposes of this Directive, 'passive corruption' means the action of a public official who, directly or through an intermediary, requests or receives advantages of any kind, for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
 - (b) For the purposes of this Directive, 'active corruption' means the action of a person who promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests.
3. Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.

For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

4. For the purposes of this Directive, 'public official' means:
- (a) a Union official or a national official, including any national official of another Member State and any national official of a third country:
- (i) 'Union official' means a person who is:
- an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (the 'Staff Regulations'), or
 - seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.
- Without prejudice to the provisions on privileges and immunities contained in Protocols No 3 and No 7, Members of the Union institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be assimilated to Union officials, inasmuch as the Staff Regulations do not apply to them;
- (ii) 'national official' shall be understood by reference to the definition of 'official' or 'public official' in the national law of the Member State or third country in which the person in question carries out his or her functions.
- Nevertheless, in the case of proceedings involving a national official of a Member State, or a national official of a third country, initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.
- The term 'national official' shall include any person holding an executive, administrative or judicial office at national, regional or local level. Any person holding a legislative office at national, regional or local level shall be assimilated to a national official;
- (b) any other person assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries.

TITLE III

GENERAL PROVISIONS RELATING TO FRAUD AND OTHER CRIMINAL OFFENCES AFFECTING THE UNION'S FINANCIAL INTERESTS

Article 5

Incitement, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting, and aiding and abetting the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.
2. Member States shall take the necessary measures to ensure that an attempt to commit any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.

Article 6

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person; or
 - (c) an authority to exercise control within the legal person.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its authority, of any of the criminal offences referred to in Article 3, 4 or 5 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in Articles 3 and 4 or who are criminally liable under Article 5.

Article 7

Sanctions with regard to natural persons

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal sanctions.

2. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty which provides for imprisonment.

3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 are punishable by a maximum penalty of at least four years of imprisonment when they involve considerable damage or advantage.

The damage or advantage resulting from the criminal offences referred to in points (a), (b) and (c) of Article 3(2) and in Article 4 shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.

The damage or advantage resulting from the criminal offences referred to in point (d) of Article 3(2) and subject to Article 2(2) shall always be presumed to be considerable.

Member States may also provide for a maximum sanction of at least four years of imprisonment in other serious circumstances defined in their national law.

4. Where a criminal offence referred to in point (a), (b) or (c) of Article 3(2) or in Article 4 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide for sanctions other than criminal sanctions.

5. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.

Article 8

Aggravating circumstance

Member States shall take the necessary measures to ensure that where a criminal offence referred to in Article 3, 4 or 5 is committed within a criminal organisation in the sense of Framework Decision 2008/841/JHA, this shall be considered to be an aggravating circumstance.

Article 9

Sanctions with regard to legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent exclusion from public tender procedures;
- (c) temporary or permanent disqualification from the practice of commercial activities;

- (d) placing under judicial supervision;
- (e) judicial winding-up;
- (f) temporary or permanent closure of establishments which have been used for committing the criminal offence.

Article 10

Freezing and confiscation

Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3, 4 and 5. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council ⁽¹⁾ shall do so in accordance with that Directive.

Article 11

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where:

- (a) the criminal offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals.

2. Each Member State shall take the necessary measures to establish its jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where the offender is subject to the Staff Regulations at the time of the criminal offence. Each Member State may refrain from applying the rules on jurisdiction established in this paragraph or may apply them only in specific cases or only where specific conditions are fulfilled and shall inform the Commission thereof.

3. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Article 3, 4 or 5 which have been committed outside its territory in any of the following situations:

- (a) the offender is a habitual resident in its territory;
- (b) the criminal offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is one of its officials who acts in his or her official duty.

4. In cases referred to in point (b) of paragraph 1, Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

Article 12

Limitation periods for criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least five years from the time when the offence was committed.

3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than five years, but not shorter than three years, provided that the period may be interrupted or suspended in the event of specified acts.

⁽¹⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

4. Member States shall take the necessary measures to enable the enforcement of:
- (a) a penalty of more than one year of imprisonment; or alternatively
 - (b) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Article 3, 4 or 5, for at least five years from the date of the final conviction. That period may include extensions of the limitation period arising from interruption or suspension.

Article 13

Recovery

This Directive shall be without prejudice to the recovery of the following:

- (1) at Union level of sums unduly paid in the context of the commission of the criminal offences referred to in point (a), (b) or (c) of Article 3(2), or in Article 4 or 5;
- (2) at national level, of any VAT not paid in the context of the commission of the criminal offences referred in point (d) of Article 3(2), or in Article 4 or 5.

Article 14

Interaction with other applicable legal acts of the Union

The application of administrative measures, penalties and fines as laid down in Union law, in particular those within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No 2988/95, or in national law adopted in compliance with a specific obligation under Union law, shall be without prejudice to this Directive. Member States shall ensure that any criminal proceedings initiated on the basis of national provisions implementing this Directive do not unduly affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in Union law or national implementing provisions.

TITLE IV

FINAL PROVISIONS

Article 15

Cooperation between the Member States and the Commission (OLAF) and other Union institutions, bodies, offices or agencies

1. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, the European Public Prosecutor's Office and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3, 4 and 5. To that end the Commission, and where appropriate, Eurojust, shall provide such technical and operational assistance as the competent national authorities need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may, within their competences, exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in Articles 3, 4 and 5. The Commission and the competent national authorities shall take into account in each specific case the requirements of confidentiality and the rules on data protection. Without prejudice to national law on access to information, a Member State may, to that end, when supplying information to the Commission, set specific conditions covering the use of information, whether by the Commission or by another Member State to which the information is passed.

3. The Court of Auditors and auditors responsible for auditing the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties, and the budgets managed and audited by the institutions, shall disclose to OLAF and to other competent authorities any fact of which they become aware when carrying out their duties, which could be qualified as a criminal offence referred to in Article 3, 4 or 5. Member States shall ensure that national audit bodies do the same.

*Article 16***Replacement of the Convention on the protection of the European Communities' financial interests**

The Convention on the protection of the European Communities' financial interests of 26 July 1995, including the Protocols thereto of 27 September 1996, of 29 November 1996 and of 19 June 1997, is hereby replaced by this Directive for the Member States bound by it, with effect from 6 July 2019.

For the Member States bound by this Directive, references to the Convention shall be construed as references to this Directive.

*Article 17***Transposition**

1. Member States shall adopt and publish, by 6 July 2019, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission. They shall apply those measures from 6 July 2019.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that, for the Member States bound by this Directive, references in existing laws, regulations and administrative provisions to the Convention replaced by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 18***Reporting and assessment**

1. The Commission shall by 6 July 2021 submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive.

2. Without prejudice to reporting obligations laid down in other Union legal acts, Member States shall, on an annual basis, submit the following statistics on the criminal offences referred to in Articles 3, 4 and 5 to the Commission, if they are available at a central level in the Member State concerned:

- (a) the number of criminal proceedings initiated, dismissed, resulting in an acquittal, resulting in a conviction and ongoing;
- (b) the amounts recovered following criminal proceedings and the estimated damage.

3. The Commission shall, by 6 July 2024 and taking into account its report submitted pursuant to paragraph 1 and the Member States' statistics submitted pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing the impact of national law transposing this Directive on the prevention of fraud to the Union's financial interests.

4. The Commission shall, by 6 July 2022 and on the basis of the statistics submitted by Member States, pursuant to paragraph 2, submit a report to the European Parliament and to the Council, assessing, with regard to the general objective to strengthen the protection of the Union's financial interests, whether:

- (a) the threshold indicated in Article 2(2) is appropriate;
- (b) the provisions relating to limitation periods as referred to in Article 12 are sufficiently effective;
- (c) this Directive effectively addresses cases of procurement fraud.

5. The reports referred to in paragraphs 3 and 4 shall be accompanied, if necessary, by a legislative proposal, which may include a specific provision on procurement fraud.

*Article 19***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 20***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 5 July 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS



DECISION OF THE COLLEGE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE OF 21 APRIL 2021

ADOPTING OPERATIONAL GUIDELINES ON INVESTIGATION,
EVOCATION POLICY AND REFERRAL OF CASES

AS AMENDED BY

DECISION 007/2022 OF 7 FEBRUARY 2022 OF THE COLLEGE
OF THE EPPO*

The College of the European Public Prosecutor's Office (EPPO),

Having regard to the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO'), hereinafter referred to as "the EPPO Regulation", and in particular Articles 9(2), 25, 26, 27 and 34(3) thereof,

Having regard to the Internal Rules of Procedure of the EPPO, adopted by the College on 12 October 2020, and in particular Articles 42 and 57 thereof,

Considering the need to ensure a coherent prosecution policy and to combat effectively the crimes against the financial interest of the European Union,

Taking into account the proposal of the European Chief Prosecutor, based on the conclusions of the dedicated working group of European Prosecutors,

HAS DECIDED AS FOLLOWS:

* This consolidated text of the "Operational guidelines on investigation, evocation policy and referral of cases" is prepared for information purposes only, to facilitate the reading of these guidelines. According to Article 2 of the College Decision 007/2022, the amendments entered into force on the day of the adoption by the College (7 February 2022).



Article 1

Guidelines on priorities, investigation and prosecution policy of the EPPO are laid down in Annex 1, which forms an integral part of this Decision.

Guidelines on criteria for evocation of pending cases related to the offences falling into the EPPO's competence and committed after 20 November 2017 are laid down in Annex 2, which forms an integral part of this Decision.

Guidelines on criteria for non-evocation of cases by the European Delegated Prosecutors are laid down in Annex 3, which forms an integral part of this Decision.

Guidelines on criteria for referral of cases to the competent national authorities are laid down in the Annex 4, which forms an integral part of this Decision.

Article 2

This decision shall enter into force on the date of its adoption.

Done at Luxembourg on 21 April 2021.

On behalf of the College,

Laura Codruța KÖVESI
European Chief Prosecutor



ANNEX 1: GUIDELINES ON PRIORITIES, INVESTIGATION AND PROSECUTION POLICY OF THE EPPO

Pursuant to paragraph 24 of the recital of the Council Regulation (EU) 2017/1939 (hereinafter, “the EPPO Regulation”), the College of the EPPO takes decisions on strategic matters, including determining the priorities and the investigation and prosecution policy of the EPPO. Furthermore, pursuant to Article 9(2)² of the EPPO Regulation, the College shall take decisions on strategic matters, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States.

Article 25(1) establishes that “the EPPO shall exercise its competence either by initiating an investigation under Article 26 or by deciding to use its right of evocation under Article 27.”

The EPPO initiates an investigation when it receives relevant information about any offence committed or being committed for which it could be competent and in respect of which a judicial or law enforcement authority of a Member State has not initiated an investigation.

The EPPO may decide to use its right of evocation when a judicial or law enforcement authority of a Member State has initiated an investigation in respect of an offence for which the EPPO could exercise its competence.

Article 40(2) of the EPPO’s Internal Rules of Procedure (hereinafter: “IRP”) envisages that the verification for the purpose of evocation shall assess additional criteria, notably:

- a. the maturity of the investigation;
- b. the relevance of the investigation with regard to ensuring the coherence of the EPPO’s investigation and prosecution policy;
- c. the cross-border aspects of the investigation;
- d. the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.

Against this background, the College sets up the following guidelines that shall be taken into account by the European Delegated Prosecutors as regards the priorities and the investigation and prosecution policy of the EPPO:

1. Initiating an investigation

- a) Pursuant to Article 24(1) of the EPPO Regulation, “the institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall, without undue delay, report to the EPPO any criminal conduct in respect of which it could exercise its competence in accordance with Article 22, Article 25(2) and (3)”. This is the main channel that enables the EPPO to exercise its competence by initiating an investigation.

² Unless otherwise specified, Articles herein mentioned are Articles of “the EPPO Regulation”.

- b) Institutions, bodies, offices and agencies of the Union and authorities of the Member States are the main sources of criminal reports. The EPPO may also receive direct information from other sources, such as complaints from natural and legal persons. Indeed, Article 26(1) foresees that the EPPO shall initiate an investigation when “there are reasonable grounds to believe” that an offence within its competence is being or has been committed, not mentioning any specific source.
- c) Article 24(1) refers to Article 22 and Article 25(2) and (3), which means that the EPPO is – in the first instance – the only authority competent to assess whether it should exercise its competence. This includes cases where there is a potential concurrent competence of the EPPO and of the national prosecution authorities. Article 24(1) envisages a channel of communication of the criminal report directly and exclusively dedicated to the EPPO, which cannot involve the national judicial authorities as simultaneous or concurrent addressees of the communication. In this case, institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent under applicable national law, shall file the criminal report directly and exclusively with the EPPO. The communication received in accordance with Article 24(1) is aimed at triggering a decision of the EPPO on whether to exercise its competence by initiating an investigation; hence, it shall be addressed only to the EPPO.
- d) Therefore, reporting of crime by the mentioned authorities primarily and exclusively to the EPPO will prevent interference with the prerogatives of the EPPO and its investigative actions. This exclusive line of reporting would prevent the risk of parallel investigations and their negative consequences, as well as a serious glitch to the mechanism of exchange of information foreseen by the Regulation.
- e) The aforementioned rules are without prejudice to the national authorities’ right to receive timely information in any case the EPPO decides to initiate a case, since the EPPO is obliged to convey this information in accordance with Articles 25(5) and 26(7).

2. Evoking an investigation

- a) The EPPO will receive information in respect of a criminal offence for which it could exercise its competence after a judicial or law enforcement authority of a Member State already initiated an investigation. This information is received in accordance with Article 24(2), and it is related to the possible decision of the EPPO to exercise its competence by exercising its right of evocation.
- b) As previously mentioned, the criteria to be met when deciding whether to evoke a case, in respect of which a national authority already initiated a criminal investigation, are different from those related to the initiation of an investigation.
- c) Pending the decision of the EPPO on the evocation, the national authority can still carry out investigative actions, since - in accordance with Article 27(5) - the national authority is obliged to refrain from carrying out further acts of investigation only after the EPPO exercises its right of evocation. After having provided the information

foreseen in Article 24(2), and before the EPPO undertakes a decision on the evocation, the national authority is only prevented from undertaking any decision that may have the effect of precluding the EPPO from exercising its right of evocation.

- d) It is further noted that Article 24(2) foresees that only “if it appears to the competent judicial or law enforcement authority” of the Member State that the investigation that they are carrying out concerns an offence referred to in Article 22, and Article 25(2) and (3), that authority shall inform the EPPO. As the offences fall within the competence of the EPPO are not enumerated in a “closed list of offences”, and therefore not always immediately identifiable, the competent national authority might need to undertake an initial appraisal before informing the EPPO.
- e) Nevertheless, only and exclusively with reference to the situations referred to in Article 24(3) the competent judicial or law enforcement authority of the Member State may consider that the EPPO could not exercise its competence. In any case, the competent national authority is obliged to inform the EPPO thereof.
- f) In the event the national authority does not believe that the EPPO should be informed, the EPPO might nonetheless exercise its right of evocation after having received information from other sources, and following the procedure envisaged in Articles 27(3) and, consequently, 24(2).

3. Guidelines for exercising the competence of the EPPO

3.1. General Rules

- a) Pursuant to Article 24(1) of the EPPO Regulation, institutions, bodies, offices and agencies of the Union, as well as the authorities of the Member States competent under applicable national law, shall report any criminal conduct referred to in Article 22 and Article 25(2) and (3) exclusively to the EPPO.
- b) For the purpose of these guidelines, the assessment of the damage caused or likely to be caused to the financial interests of the European Union shall take into consideration:
 - 1. the actual loss to the European Union’s resources or assets as well as/or the loss that might have been caused if the offence had been accomplished according to the intention of the perpetrator(s);
 - 2. the value of the contract, in procurement-related cases, when the conduct did not cause an actual material loss to the Union's financial interests but the contract wouldn't have been awarded without the fraudulent activity”.
- c) When the EPPO decides to exercise its competence for an offence that falls within the scope of Article 22(2), or (3), or Article 25(2) or (3), and it is foreseeable that such decision might give rise to a conflict of competence pursuant to Article 25(6), both the decision of the EPPO and the information to the Member State shall be motivated and contain a specific reasoning on the EPPO’s competence for the actual case.

3.2. Exercising the competence by initiating an investigation with reference to information related to criminal conduct, which the EPPO receives in accordance with Article 24(1) or from other autonomous sources

- a) The EPPO shall exercise its competence in respect of any offence referred to in Article 22(1) falling under its material, territorial, personal and temporal competence.
- b) In accordance with Article 22(2) of the EPPO Regulation, the EPPO shall exercise its competence for offences regarding participation in a criminal organisation if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in Article 22(1). In this case, and without prejudice to article 25(3), the EPPO shall initiate the investigation regardless of the concurrent presence of other underlying offences, and regardless of the damage caused or likely to be caused to the financial interests of the Union by the offences not referred to in Article 22(1).
- c) When the unlawful activity of such a criminal organisation is equally addressed at diverse areas and if the purpose of committing one or more of the offences referred to in Article 22(1) concurs with the intent of committing other offences, the EPPO can only exercise its competence if one of the following circumstances occurs:
 1. the maximum sanction provided for by the national law for the offence falling within the scope of Article 22(1) is more severe than the maximum sanction provided for another underlying offence, and the separation of the investigation would be detrimental to the efficient handling of the investigation or prosecution, against the interest of justice, or it could harm procedural guarantees or fundamental rights of the defendants or of the victims. If the maximum sentence for the offence falling out of the EPPO's competence is more severe, the EPPO may still exercise its competence if that offence has been instrumental to commit the offence falling within the scope of Article 22(1), if it has been committed to ensure the impunity of acts in respect of which the EPPO is competent, or if it has been instrumental to any dealing, transfer or disposal of the proceeds of the offence falling within the scope of Article 22(1);
 2. there is a reason to assume that the damage caused or likely to be caused to the Union's financial interests by the criminal activity in question exceeds the damage caused, or likely to be caused to another victim;
 3. the investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level.
- d) The EPPO will exercise its competence in respect of any other criminal offence that is inextricably linked to the criminal conduct that falls within the scope of Article 22(1), in conformity with Articles 22(3) and 25(3) of the EPPO Regulation. A criminal offence shall be considered as inextricably linked to another, *inter alia*, when:

1. the separate decision on whether to prosecute of one of them may generate *ne bis in idem* consequences in the investigation, prosecution or trial of the other;
 2. both offences were committed by means of the same material activity and driven by the same intent;
 3. the set of facts composing those offences was carried out as parts of the execution of the same criminal plan in order to achieve the same common goal;
 4. the specific unlawful conduct composing one of the offences is linked in time, in space and by subject matter to the other, making up an inseparable whole;
 5. the facts subjacent to those offences are interlinked in a way that a separate investigation, prosecution or adjudication of the offences in different proceedings would artificially split up the series of events that form the natural process of action.
- e) In accordance with Article 4(1) of the EU Directive 2017/1371, the EPPO shall exercise its competence in respect of money laundering offences involving property³ derived from offences referred to in Article 22(1).
- f) When money laundering activities involve both property derived from offences referred to in Article 22(1) and from any other criminal offences, the EPPO shall exercise its competence:
1. if the maximum sanction provided for by national law for the predicate offence falling within the scope of Article 22(1) is more severe than the maximum sanction provided for another predicate offence, unless the latter offence has been instrumental to commit the offence falling within the scope of Article 22(1);
 2. if the value of the property derived from offences referred to in Article 22(1) is higher than the value of the property derived from other predicate offences;
- or:
3. if the investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level

3.3. Exercising the competence by evoking an investigation with reference to information related to criminal conduct, which EPPO receives in accordance with Article 24(2)

The EPPO shall exercise its competence by evoking an investigation when the criteria laid down in 3.2, and at least one of the following additional criteria are met:

³ The term "property" is herein used in accordance with the definition set out by the FATF Recommendations: "Property means assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets" (glossary).



- a) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level;
 - b) Officials or other servants of the Union, members of the institutions of the Union, or other public officials⁴, are suspected of having committed, in any capacity, the offence;
 - c) The investigation has a cross-border dimension involving at least two participating Member States, putting the EPPO, as a single office, in a more effective position to investigate and prosecute;
 - d) The investigation has a cross-border dimension, involving both participating and non-participating Member States, and/or third countries, and the national authorities of the participating Member State did not undertake any relevant action or the investigation is considerably delayed;
 - e) The national authority did not undertake, and it is unlikely or unable to undertake, pertinent actions in order to fully recover the damage to the Union's financial interests;
 - f) The national authority did not undertake significant acts of investigation;
 - g) An agreement is reached between the competent national authorities and the EPPO that the latter is better placed to investigate or prosecute;
- or
- h) There is urgent need to deal with one or more of the following situations and the national authority in charge did not undertake pertinent actions, and is unlikely or unable to undertake actions, to tackle it:
 - 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
 - 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;
 - 3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;
 - 4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable
 - 5. risk that the damage to the financial interests of the Union would increase;

⁴ The term "public official" is herein used in conformity with the definitions set out in Article 4(4) and paragraph 10 of the Directive(EU) 2017/1371 of the European Parliament and of the Council L of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), and in Article 2(a), (b) and (c) of the United Nations Convention against corruption, including officials of a public international organization.

4. Raising or reacting to a conflict of competence in accordance with Article 25(6)

4.1. The legal framework

- a) In accordance with Article 25(6) of the EPPO Regulation, in the event of disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the decision on who is competent shall be made by the national authority competent to decide on the attribution of competences concerning prosecution at national level.
- b) Although the Regulation does not set up any procedure for raising the conflict, it is believed that both the EPPO and the national prosecution authority might be in a position to seek for a decision on who is to be competent for the investigation of the case.
- c) In the absence of a specific procedure established by the Regulation, the EPPO shall comply with the rules established by the national Law regarding the resolution of conflicts of competence and address the authority specified by the concerning Member State as the appropriate to decide on the attribution of competence.
- d) The EPPO receives the information in accordance with Article 24(3) only in reference to cases referred to in Article 25(3). In this case, the EPPO may exercise its competence *via* Article 25(6). Article 27(1) foresees that the EPPO shall take its decision on whether to exercise its right of evocation upon receiving all relevant information in accordance with Article 24(2). Paragraph 61 of the recital states that “when a judicial or law enforcement authority of a Member State initiates an investigation in respect of a criminal offence and considers that the EPPO could not exercise its competence, it should inform the EPPO thereof, in order to allow the latter to assess whether it should exercise competence”. The EPPO is entirely autonomous in establishing whether the criminal offence falls within its competence.
- e) Applying analogically Article 27(3) of the Regulation, the EPPO may also inform the competent national authority that the investigation has been assessed by the EPPO as falling within its competence, and of its intention to exercise the right of evocation. Therefore, the EPPO may request the competent national authority to report the information in accordance with Article 24(2) of the Regulation.
- f) However, if the competent national authority disagrees and decides to confirm its consideration that the EPPO could not exercise its competence in accordance with Article 24(3), the EPPO may exercise its competence *via* Article 25(6), applicable in the case of disagreement between the EPPO and the national prosecution authorities.
- g) In all the other cases, including when the investigation is related to organised crime and money laundering offences, the national authority is obliged to inform the EPPO in accordance with Article 24(2) and, as a consequence, if the EPPO believes that it should exercise its competence, it will exercise its right of evocation.

- h) Conversely, the national prosecution authority may raise a “positive conflict⁵” of competence on a number of occasions. As previously mentioned, the EPPO shall inform the competent national authority of any decision to exercise or to refrain from exercising its competence, in accordance with Articles 25(5), 24(7), 26(2), 26(7) and 27(7). Whenever the EPPO exercises its competence, either by initiating or by evoking an investigation, in respect of any criminal conduct that falls within the scope of Article 22(2), or (3) or Article 25(2) or (3), the national prosecution authority is entitled - after having obtained the relevant information - to request the competent national authority to make a decision on who is to be competent for the investigation of the case.
- i) As regards a possible “negative conflict⁶” of competence, the national authorities cannot transfer or refer cases to the EPPO, but can only inform the EPPO in accordance with Article 24(2). After having assessed the information, the EPPO may decide not to exercise its competence and does not need to raise any “negative conflict”. In this case, the investigation will stay with the national competent authority.
- j) However, the national competent authority might raise a “negative conflict” any time the EPPO decides not to exercise its competence in respect of any criminal conduct that falls within the scope of Article 22(2), or (3) or Article 25(2) or (3).
- k) It is noted that the national authority may raise a “negative conflict” also in case of a referral made by the EPPO in accordance with Article 34(1). Indeed, in accordance with Article 34(5), when the EPPO decides to refer to the national authority a case referred to in Article 34(2) and (3), the latter may decide not to accept to take over the case. Nevertheless, the national authority is not entitled to reject a referral for a case that falls within the provision of Article 34(1). The only kind of investigation that can be referred to a national authority in accordance with Article 34(1), in respect of which a negative conflict can be raised, is for offences regarding participation in a criminal organisation, when it emerges that the focus of the criminal activity is not to commit offences referred to in Article 22(1). A disagreement between the EPPO and the national prosecution authorities over the question of whether the criminal conduct falls within the scope of Article 22(2), i.e. on what the focus of the criminal activity is, may be brought to the attention of the competent national authority for its decision in accordance with Article 25(6).

⁵ “Positive conflict” herein refers to situations where both the EPPO and the national prosecution authority claim to be competent to investigate and prosecute the case.

⁶ “Negative conflict” herein refers to situations where both the EPPO and the national prosecution authority claim not to be competent to investigate and prosecute the case, and that the competence belongs to the other authority.

4.2. Guidelines of the EPPO in case of disagreement that may cause a conflict of competence pursuant to Article 25(6) of the EPPO Regulation

- a) After having received the information foreseen in Article 24(3), the EPPO will assess whether it could exercise its competence in accordance with Article 25(3). In this case, on proposal of the European Delegated Prosecutor assigned for verification, the supervising European Prosecutor shall decide whether the EPPO could exercise its competence in accordance with Article 25(3).
- b) In the event the EPPO decides that it may exercise its competence, it can either activate the mechanism foreseen by Article 25(6), or inform the competent national authority thereof and of its intention to exercise the right of evocation. In the latter case, the EPPO will request the competent national authority to report the information in accordance with Article 24(2) of the Regulation.
- c) If, even after having received the information pursuant to the previous paragraph, the competent national authority disagrees with the EPPO's assessment, the EPPO - where appropriate according to the national legislation - will file a reasoned application with the national authority competent pursuant to Article 25(6) requesting that the EPPO is declared competent for the investigation of the case. In this case, the European Delegated Prosecutor will draft an application in accordance with Article 25(6), complying with the procedure and the possible deadline foreseen by the national legislation. The supervising European Prosecutor may approve or amend the application.
- d) Where the national legislation requires the EPPO to make a decision before exercising its competence activating the mechanism foreseen by Article 25(6), the EPPO will exercise its right of evocation.
- e) When the EPPO receives information that a national Prosecutor filed an application with the national authority competent pursuant to Article 25(6) of the EPPO Regulation, the handling European Delegated Prosecutor, after having consulted with the supervising European Prosecutor and where appropriate according to the national legislation, shall file a memorandum with the competent national authority. The handling European Delegated Prosecutor will respond to the application of the national Prosecutor, explaining the reasons of the decision made by the EPPO and providing the competent authority with all the relevant documents.
- f) When necessary in order to take an informed decision for the purpose of the application of Article 25(6), either the supervising European Prosecutor or the Permanent Chamber may request further relevant information available to the institutions, bodies, offices and agencies of the Union and the authorities of the Member States, in accordance with Article 24(9).

ANNEX 2: GUIDELINES ON CRITERIA FOR EVOCATION OF PENDING CASES RELATED TO OFFENCES FALLING INTO THE EPPO'S COMPETENCE AND COMMITTED AFTER 20 NOVEMBER 2017

In accordance with Article 120(2) of the Council Regulation (EU) 2017/1939 (hereafter, "the EPPO Regulation"), the EPPO is competent with regard to any offence within its remit committed after 20 November 2017, provided that the national investigation has not already been finalised and that an indictment has not been submitted to a court pursuant to Article 27(7) second paragraph.

In all probability, during the very early stage of the EPPO's operational activity, the national prosecution services will inform the EPPO, under Article 24(2) of the EPPO Regulation, of a high number of cases in relation to which the EPPO might exercise its right of evocation.

According to the estimates received from the member states, the EPPO will receive information about approximately 2150 ongoing cases, (herein referred to as 'backlog cases'). Following article 27(1) of the EPPO Regulation, each of these pieces of information will activate the 5-day deadline to take a decision on exercising of the right of evocation and, consequently, the obligation of informing the national authorities accordingly.

In accordance with the principles of proportionality and necessity, the EPPO should only evoke those cases where the exercise of its competence would bring added value to the continuation of the investigation.

In this regard, Article 40(2) of the EPPO's Internal Rules of Procedure, setting the rules of verification for the purpose of evocation, makes reference to the following general criteria:

- a. the maturity of the investigation;
- b. the relevance of the investigation with regard to ensuring the coherence of the EPPO's investigation and prosecution policy;
- c. the cross-border aspects of the investigation;
- d. the existence of any other specific reason, which suggests that the EPPO is better placed to continue the investigation.

Against this background, the College sets up the following specific criteria that shall be taken into account by the European Delegated Prosecutors for the evocation of pending investigations concerning offenses committed between 20 November 2017 and the date the EPPO assumes the investigative and prosecutorial tasks conferred on it by this Regulation:

- a) The EPPO will evoke:
 1. investigations that might have repercussions at Union level or that could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level only;



2. investigations where officials or other servants of the Union, members of the institutions of the Union, or other public officials⁷, are suspected of having committed, the offence;
- b) If the requisites set up in paragraph 1 are not met, the EPPO may still evoke the case if:
1. it is relevant to ensuring the coherence of the EPPO's investigation and prosecution policy, or
 2. there are specific reasons which suggest that the EPPO is better placed to continue the investigation
and
 3. the remaining time limit for the investigation and the procedural deadline for filing the indictment are compatible with the acts of investigation still to be carried out, and does not endanger the regular finalisation of the investigation
- c) Without prejudice to the criteria established above, the EPPO will, in principle, not evoke an investigation if it was initiated more than two years before the EPPO became operational in accordance with article 120 (2), second sentence, of the EPPO Regulation.
- d) In any case, the EPPO will evoke investigations falling in its remit if an agreement on the evocation is reached between with the competent national authorities.

⁷ The term “public official” is herein used in conformity with the definitions set out in Article 4(4) and paragraph 10 of the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), and in Article 2(a), (b) and (c) of the United Nations Convention against Corruption, including officials of a public international organization.

ANNEX 3: GUIDELINES OF THE COLLEGE OF THE EPPO ON CRITERIA FOR NON-EVOCATION OF CASES BY THE EUROPEAN DELEGATED PROSECUTORS

The following guidelines shall be taken into account by a European Delegated Prosecutor in order to decide not to evoke a case with regard to offences, which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, in accordance with Article 27(8) of the EPPO Regulation:

Without prejudice to the powers of the Permanent Chamber on this matter, the European Delegated Prosecutors shall decide, independently and without undue delay, not to evoke a case concerning such offences, unless:

- a) Public officials, as defined in Article 4(4) of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, are suspected of having committed, in any capacity, the offence;
 - b) The investigation concerns a criminal organisation pursuant to Article 22(2) of the EPPO Regulation;
 - c) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level;
 - d) The investigation has a cross-border dimension involving at least two Member States participating in the establishment of the EPPO, putting the EPPO, as a single office, in a more effective position to investigate and prosecute;
 - e) The investigation has a cross-border dimension, involving both participating Member States and Member States which do not take part in the establishment of the EPPO, and/or third countries, and the national authorities did not undertake any relevant action or the investigation is considerably delayed;
 - f) The national authority did not undertake, and it is unlikely or unable to undertake, pertinent actions in order to fully recover the damage to the Union's financial interests;
- or
- g) There is an urgent need to deal with one or more of the following situations and the national authority in charge did not undertake pertinent actions, and is unlikely or unable to undertake actions, to tackle it:
 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;



3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;
4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable;
5. risk that the damage to the financial interests of the Union would increase.

ANNEX 4: GUIDELINES ON CRITERIA FOR REFERRAL OF CASES TO THE COMPETENT NATIONAL AUTHORITIES

Pursuant to Article 34(3) and in accordance with Article 9(2) of the EPPO Regulation, the College shall issue general guidelines allowing the Permanent Chambers to refer a case to the competent national authorities in the following cases:

- with regard to offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100 000, when the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute a case at Union level and that it would be in the interest of the efficiency of investigation or prosecution
- in respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371, where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim

Pursuant to Article 34(3), fourth sub-paragraph, of the EPPO Regulation, such referrals shall also include any inextricably linked offences within the competence of the EPPO as referred to in Article 22(3).

1. Offences which caused or are likely to cause damage to the financial interests of the Union of less than EUR 100.000

Pursuant to Article 34(3), first sub-paragraph, of the EPPO Regulation, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the Permanent Chamber may refer the case to the competent national authorities unless:

- a) Public officials, as defined in Article 4(4) of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, are suspected of having committed, in any capacity, the offence;
- b) The investigation concerns a criminal organisation pursuant to Article 22(2) of the EPPO Regulation;
- c) The investigation might have repercussions at Union level or could harm the Union's reputation, including cases where the Union's reputation might be compromised at national or local level only;
- d) The investigation has a cross-border dimension involving at least two Member States participating in the establishment of the EPPO, and/or involving both participating and non-participating Member States and Member States, and/or third countries, putting the EPPO, as a single office, in a better position to investigate and prosecute;

- e) There are reasons to believe that the national authority would not undertake pertinent actions in order to fully recover the damage to the Union's financial interests;
- f) There is an urgent need to deal with one or more of the following situations and there is reason to believe that the national authority in charge would not undertake pertinent actions to tackle it:
 - 1. concrete danger that the proceeds of crime are dissipated, sold, transferred or are anyhow made unavailable for confiscation;
 - 2. concrete danger that the suspect(s) might try to escape or are actually trying to escape prosecution and justice;
 - 3. concrete danger that one or more key witnesses are intimidated, harmed or anyhow approached to modify their statement;
 - 4. concrete danger that important evidence is destroyed, concealed or made anyhow unavailable;
 - 5. risk that the damage to the financial interests of the Union would increase.

2. Offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371 and where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim

In respect of offences referred to in points (a) and (b) of Article 3(2) of Directive (EU) 2017/1371, where the damage caused or likely to be caused to the Union's financial interests does not exceed the damage caused or likely to be caused to another victim, the Permanent Chamber may, upon request of this other victim, refer the case to the competent national authorities, if:

- a) The other victim is a public institution or body of a Member State, and
- b) The competent national authority is better placed to investigate or prosecute.

Notes

