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Subject: Proposal for a Regulation on the establishment of the European Public Prosecutor's Office
- Preparation for Council

Following the discussions at the meeting of Friends of Presidency on 17-18 May 2016, the Presidency would propose the attached draft provisions for the data protection section of the EPPO Regulation. The draft largely but not exclusively builds on the expertise and suggestions made by the Commission services.

On three provisions (Article X(2)(c), Article 44c and Article 37(5)), two alternatives are proposed in this document. As regards Article 44(c), the difference between the two options are essentially to be found in point 3 of the Article and in particular in letters (c), (d), (e) and (f). As regards Article 37(5), the alternative text can be found in three provisions: Articles 37g(4), 37i(1a) and 37j(4) (in brackets in this document).

The draft will be discussed at the meeting of Friends of Presidency on 25 May 2016. Modifications in relation to document 8251/16 are indicated in underlined or ~~strike through~~.

CHAPTER I

Subject matter and definitions

(...)

Article 2

Definitions

For the purposes of this Regulation:

- (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (4) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (5) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

- (6) ‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (7) ‘controller’ means the European Public Prosecutor’s Office or another competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (8) ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (9) ‘recipient’ means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. However, Member States’ public authorities other than competent authorities defined in Article 3(7)(a) of Directive (EU) 2016/680, which receive personal data in the framework of a particular inquiry of the European Public Prosecutor’s Office shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing¹;
- (10) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (11) ‘administrative personal data’ means all personal data processed by the European Public Prosecutor’s Office apart from operational personal data;
- (12) ‘operational personal data’ means all personal data processed by the European Public Prosecutor’s Office to meet the purposes laid down in Article 37.

¹ COM, supported by DE and AT, suggests deletion of the second phrase of this recital. ES, FR and LT would like to keep it in.

- (13) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (14) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (15) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
- (16) 'supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679 or pursuant to Article 41 of Directive (EU) 2016/680.
- (17) 'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

CHAPTER VI

Data protection

Article X

Principles relating to processing of personal data

1. Personal data shall be:
 - (a) processed lawfully and fairly ('lawfulness and fairness')²;
 - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes provided that the European Public Prosecutor's Office provides appropriate safeguards for the rights and freedoms of data subjects ('purpose limitation');³
 - (c) adequate, relevant, and not excessive ~~limited to what is necessary~~ 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');⁴

² See the Police Directive (hereafter PD). SI has suggested that a recital similar to recital 26 of the PD, which provides that "(...) The data protection principle of fair processing is a distinct notion from the right to a fair trial as defined in Article 47 of the Charter and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)(...)" should be introduced. AT and DE have stated that they would like a clarification on when the EPPO is authorised to process the data.

³ See Article 5 General Data Protection Regulation (hereafter GDPR, Art 4 PD).

⁴ See GDPR/PD.

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; ~~personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes provided that the European Public Prosecutor's Office provides appropriate safeguards for the rights and freedoms of data subjects, in particular by the implementation of the appropriate technical and organisational measures required by this Regulation ('storage limitation')~~⁵;
- (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').⁶
- 1a. The European Public Prosecutor's Office shall be responsible for, and be able to demonstrate compliance with paragraph 1 ('accountability') when processing personal data wholly or partly by automated means and when processing other than by automated means personal data which form part of a filing system or are intended to form part of a filing system.
2. Processing by the European Public Prosecutor's Office for any of the purposes set out in Article 37 of this Regulation other than that for which the personal data are collected shall be permitted in so far as ⁷:
- (a) the European Public Prosecutor's Office is authorised to process such personal data for such a purpose in accordance with this Regulation; and
- (b) processing is necessary and proportionate to that other purpose in accordance with Union law; and
- [(c) *the European Public Prosecutor's Office complies with the specific conditions for the processing, if any, in accordance with Article 37cc.*
- OR ALTERNATIVELY**
- (c) the use of such personal data for such a purpose is in compliance with the applicable law of the Member State where the data was obtained.]

⁵ See Article 5(1)(e) GDPR. COM, supported by FR, HR, LV and SE, wants to keep the second phrase.

⁶ See GDPR/PD.

⁷ See Article 4(2) PD.

Article XX

Administrative personal data

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

Article 37

Processing of operational personal data

1. The European Public Prosecutor's Office shall process personal data ~~by automated means or in structured manual files~~ in accordance with this Regulation ~~only the categories of personal data, and the categories of persons, listed in the Annex⁸, and only~~ for the following purposes:
 - = criminal investigations and prosecutions undertaken in accordance with this Regulation;
 - or
 - = information exchange with the competent authorities of Member States and other Union institutions, bodies, offices and agencies in accordance with this Regulation; or
 - = co-operation with third countries and international organisations in accordance with this Regulation.
- 1a. Categories of personal data, and the categories of persons whose personal data may be processed by the European Public Prosecutor's Office for each purpose referred to in paragraph 1 are listed in the Annex.
- 1b. The Commission shall be empowered to adopt delegated acts in accordance with Article a to modify the personal data and the categories of data subjects listed in the Annex, to take account of developments in information technology and in the light of the state of progress in the information society.

⁸ Many delegations raised issues as regards the Annex. The issue will be reflected further upon.

Where imperative grounds of urgency so require, the procedure provided for in Article b shall apply to delegated acts adopted pursuant to this paragraph.⁹

2. The European Public Prosecutor's Office may temporarily process personal data for the purpose of determining whether such data are relevant to its tasks and for the purposes referred to in paragraph 1. The College, acting on a proposal from the European Chief Prosecutor and after consulting the European Data Protection Supervisor, shall further specify the conditions relating to the processing of such personal data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data that may not exceed [six months]¹⁰.
3. The European Public Prosecutor's Office shall process operational personal data in such a way that it can be established which authority provided the data or where the data has been retrieved from.¹¹
4. National law implementing the Directive (EU) 2016/680 ~~{data protection police directive}~~ applies to the ~~collection and transmission~~ processing of personal data by national authorities ~~to the European Public Prosecutor's Office for the purposes of this Regulation prevention, investigation, detection or prosecution of criminal offences,~~ irrespective whether they act on their own motion or ~~as processor on request~~ instruction of the European Public Prosecutor's Office.¹²
5. When applying Articles 37f to 37k in this Regulation, the European Public Prosecutor's Office shall act in compliance with relevant national procedural law on the obligation to provide information to the data subject and the possibilities of omit, restrict or delay such information.

⁹ Point 1 b, as well as Articles a and b, which have been proposed by the Commission services in light of the discussion on the annex, remain to be discussed by delegations. A suggested text of Articles a and b can be found at the end of this text.

¹⁰ Exact term to be decided later as some delegations consider this term to be too short.

¹¹ Moved from Article 44.

¹² Moved from Article 44. AT, DE and HU have asked for further clarification of this provision and referred to the situation where the EPPO decided not to start an investigation. SE has doubts about deleting a, b and d.

Article 37a

Time limits for the storage of operational personal data

1. The European Public Prosecutor's Office shall review periodically the need for the storage of the personal data processed. At latest, such a review shall be carried out every three years after the personal data were first processed. If personal data are stored for a period exceeding five years, the European Data Protection Supervisor shall be informed of that fact.
2. Operational personal data processed by the European Public Prosecutor's Office shall not be stored beyond the ~~first applicable among the~~ following dates:¹³
 - a) ~~the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;~~
 - b) ~~the date on which the person has been acquitted and the judicial decision became final;~~
 - c) [three years] after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions became final;
 - d) ~~the date on which the European Public Prosecutor's Office established that it was no longer necessary for it to continue the investigation or prosecution.~~
3. Before [one of] the deadline[s] referred to in paragraph 2 expires, the European Public Prosecutor's Office shall review the need for the continued storage of the personal data where and as long this is necessary to perform its tasks. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of personal data, those data shall be deleted automatically.
4. ~~Where a file exists containing non-automated and unstructured data, once the deadline for storage of the last item of automated data from the file has elapsed all documents in the file and any copies shall be destroyed.~~

¹³ A number of other delegations wish to further analyse the need of points a, b and c.

Article 37b

Distinction between different categories of data subject

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

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

Article 37c

Distinction between personal data and verification of quality of personal data

1. The European Public Prosecutor's Office shall distinguish, as far as possible, personal data based on facts from personal data based on personal assessments.
2. The European Public Prosecutor's Office shall take all reasonable steps to ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the European Public Prosecutor's Office shall, as far as practicable, verify the quality of personal data before they are transmitted or made available. As far as possible, in all transmissions of personal data, necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of personal data, and the extent to which they are up to date shall be added.

3. If it emerges that incorrect personal data have been transmitted or personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the personal data shall be rectified or erased or processing shall be restricted in accordance with Article 37j.

Article 37cc
Specific processing conditions¹⁴

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

Article 37ccc¹⁵
Transmission of personal data to Union institutions, bodies, offices and agencies

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

¹⁴ See Article 9 PD. BE and FR have suggested that the provision should be better aligned with the PD.

¹⁵ Replaces Article 60 in the original proposal. This provision needs further reflection, also in the light of the provision on cooperation with external partners. HU has suggested that a proportionality criterion should be added throughout this provision.

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

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

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

Article 37d

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for the European Public Prosecutor's Office investigations, subject to appropriate safeguards for the rights and freedoms of the data subject and only if they supplement other personal data already processed by the European Public Prosecutor's Office.
- ~~2. Where such data refer to witnesses, victims or persons under the age of 18, the decision to process them shall be taken only by or under the authority of the European Chief Public Prosecutor. The European Chief Prosecutor could delegate the decision to process such data, in accordance with this Regulation.~~
3. The Data Protection Officer shall be informed immediately of recourse to this Article.

Article 37e¹⁶

No automated individual decision-making, including profiling

- 1.—The data subject shall have the right not to be subject to a decision of the European Public Prosecutor's Office based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
- 2.—~~Paragraph 1 shall not apply if such a decision of the European Public Prosecutor's Office is authorised by Union law, or, if necessary, by the European Data Protection Supervisor. In either case, suitable measures to safeguard the data subject's rights and freedoms and legitimate interests must be provided for, at least the right to obtain human intervention on the part of the European Public Prosecutor's Office, to express his or her point of view and to contest the decision.~~
- 3.—~~Decisions referred to in paragraph 1 of this Article shall not be based on special categories of personal data referred to in Article 37d, unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.~~
- 4.—~~Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 37d shall be prohibited, in accordance with Union law.~~

Article 37f

Communication and modalities for exercising the rights of the data subject

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

¹⁶ BG, HR, LV oppose the deletion of paragraphs 2-4.

2. The European Public Prosecutor's Office shall facilitate the exercise of the rights of the data subject under Articles 37g and 37h to 37k. [If, in a specific case, the applicable national provisions on criminal procedure provide for a higher level of protection for data subjects than that laid down in this Regulation, the European Delegated Prosecutor shall facilitate the exercise of the rights of the data subject under Articles 37g to 37k while respecting the level of protection granted by such national provisions, on condition that the proper functioning of the European Public Prosecutor's Office, including exchanges of information at central and decentralised level, as provided for in this Regulation, is not affected.]
3. The European Public Prosecutor's Office shall inform the data subject in writing about the follow up to his or her request without undue delay, and in any case at the latest after three months after receipt of the request by the data subject.
4. The European Public Prosecutor's Office shall provide for the information provided under Article 37g and any communication made or action taken pursuant to Articles 37e, 37h to 37k and 38f to be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the European Public Prosecutor's Office may either:
 - (a) charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested; or
 - (b) refuse to act on the request.

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

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

Article 37g¹⁷

Information to be made available or given to the data subject

1. The European Public Prosecutor's Office shall make available to the data subject at least the following information:
 - (a) the identity and the contact details of the European Public Prosecutor's Office;
 - (b) the contact details of the data protection officer;
 - (c) the purposes of the processing for which the personal data are intended;
 - (d) the right to lodge a complaint with the European Data Protection Supervisor and its contact details;
 - (e) the existence of the right to request from the European Public Prosecutor's Office access to and rectification or erasure of personal data and restriction of processing of the personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, the European Public Prosecutor's Office shall give to the data subject, in specific cases, the following further information to enable the exercise of his or her rights:
 - (a) the legal basis for the processing;
 - (b) the period for which the personal data will be stored, or, where that is not possible, the criteria used to determine that period;
 - (c) where applicable, the categories of recipients of the personal data, including in third countries or international organisations;
 - (d) where necessary, further information, in particular where the personal data are collected without the knowledge of the data subject.

¹⁷ BE has issued a scrutiny reservation on this and following provisions. ES has suggested that a reference to national law should be included as regards points 1 b and e. SE has suggested that a recital such as recital 42 in PD could be added. AT, DE and LU also have issues with aspects of this provision.

3. The European Public Prosecutor's Office may delay, restrict or omit the provision of the information to the data subject pursuant to paragraph 2 to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:
- (a) avoid obstructing official or legal inquiries, investigations or procedures;
 - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
 - (c) protect public security of the Member States;
 - (d) protect national security of the Member States;
 - (e) protect the rights and freedoms of others.

[4. The European Public Prosecutor's Office shall consult with the national authority of the Member State concerned on a decision to be taken in accordance with paragraph 3. Where a national authority of the Member State concerned objects to the European Public Prosecutor's Office proposed response, it shall notify the European Public Prosecutor's Office of the reasons for its objection. The national authority of the Member State concerned shall subsequently be notified of the decision of the European Public Prosecutor's Office.]¹⁸

Article 37h

Right of access by the data subject

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

- (a) the purposes of and legal basis for the processing;
- (b) the categories of personal data concerned;

¹⁸ This provision should, together with Articles 37i(1a) and 37j(4), be seen as an alternative to Article 37(5).

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

Article 37i

Limitations to the right of access

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

[1a. The European Public Prosecutor's Office shall consult with the national authority of the Member State concerned on a decision to be taken in accordance with paragraph 1. Where a national authority of the Member State concerned objects to the European Public Prosecutor's Office proposed response, it shall notify the European Public Prosecutor's Office of the reasons for its objection. The national authority of the Member State concerned shall subsequently be notified of the decision of the European Public Prosecutor's Office.]¹⁹

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

~~In the cases referred to in paragraph 1, the European Public Prosecutor's Office shall inform the data subject, without undue delay, in writing of any refusal or restriction of access and of the reasons for the refusal or the restriction. Such information may be omitted where the provision thereof would undermine a purpose under paragraph 1. The European Public Prosecutor's Office shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or seeking a judicial remedy in the Court of Justice of the European Union against the European Public Prosecutor's Office's decision.~~²⁰

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

¹⁹ This provision should, together with Articles 37g(4) and 37j(4) second subparagraph, be seen as an alternative to Article 37(5).

²⁰ This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).

Article 37j

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

1. The data subject shall have the right to obtain from the European Public Prosecutor's Office without undue delay the rectification of inaccurate personal data relating to him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement²¹.
2. The European Public Prosecutor's Office shall erase personal data without undue delay and the data subject shall have the right to obtain from the European Public Prosecutor's Office the erasure of personal data concerning him or her without undue delay where processing infringes Articles X, 37g or 37d, or where personal data must be erased in order to comply with a legal obligation to which the European Public Prosecutor's Office is subject.
3. Instead of erasure, the European Public Prosecutor's Office shall restrict processing where:
 - (a) the accuracy of the personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or
 - (b) the personal data must be maintained for the purposes of evidence.

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

4. The European Public Prosecutor's Office shall inform the data subject in writing of any refusal of rectification or erasure of personal data or restriction of processing and of the reasons for the refusal. The European Public Prosecutor's Office may restrict, wholly or partly, the obligation to provide such information to the extent that such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned in order to:

²¹ HU has suggested the addition of a provision inspired by Article 18(2) in the GDPR.

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect public security of the Member States;
- (d) protect national security of the Member States;
- (e) protect the rights and freedoms of others.

[The European Public Prosecutor's Office shall consult with the national authority of the Member State concerned on a decision to be taken in accordance with this paragraph. Where a national authority of the Member State concerned objects to the European Public Prosecutor's Office proposed response, it shall notify the European Public Prosecutor's Office of the reasons for its objection. The national authority of the Member State concerned shall subsequently be notified of the decision of the European Public Prosecutor's Office.]²²

The European Public Prosecutor's Office shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or seeking a judicial remedy in the Court of Justice of the European Union against the European Public Prosecutor's Office's decision.²³

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

²² This provision should, together with Articles 37g(4) and 37i(1a), be seen as an alternative to Article 37(5).

²³ This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).

Article 37k²⁴

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

1. In the cases referred to in Article 37g(3), Article 37i(2) and Article 37j(4) the rights of the data subject may also be exercised through the European Data Protection Supervisor.
2. The European Public Prosecutor's Office shall inform the data subject of the possibility of exercising his or her rights through the European Data Protection Supervisor pursuant to paragraph 1.
3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall inform the data subject at least that all necessary verifications or a review by it have taken place. The European Data Protection Supervisor shall also inform the data subject of his or her right to seek a judicial remedy in the Court of Justice of the European Union against the European Data Protection Supervisor's decision.²⁵

Article 37l

Obligations of the European Public Prosecutor's Office

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

²⁴ BE, ES, FR and LU argued for the idea to introduce a provision regarding a specific regime for judicial data.

²⁵ This provision may need to be discussed as part of the overall discussion on CJEU jurisdiction (cf. Article 36 on judicial review).

Article 37l(a)²⁶
Joint controllers

1. Where the European Public Prosecutor's Office together with ~~two~~ 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 ~~under this Regulation~~, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information ~~referred to in Article 37g~~, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

Article 37l(b)
Processor²⁷

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

²⁶ Article 26 GDPR, Article 21 PD.

²⁷ See Article 28 GDPR, Article 22 PD.

2. The processor shall not engage another processor without prior specific or general written authorisation of the European Public Prosecutor's Office. In the case of general written authorisation, the processor shall inform the European Public Prosecutor's Office of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the European Public Prosecutor's Office and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the European Public Prosecutor's Office. That contract or other legal act shall stipulate, in particular, that the processor:
 - (a) ~~acts only on instructions from the controller processes the personal data only on documented instructions from the European Public Prosecutor's Office, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the European Public Prosecutor's Office of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;~~
 - (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) assists the controller by any appropriate means to ensure compliance with the provisions on the data subject's rights ~~takes all measures required pursuant to Article 38d;~~
 - (d) ~~respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;~~
 - (e) ~~taking into account the nature of the processing, assists the European Public Prosecutor's Office by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the European Public Prosecutor's Office obligation to respond to requests for exercising the data subject's rights laid down in this Regulation;~~

- ~~(f) —assists the European Public Prosecutor’s Office in ensuring compliance with the obligations pursuant to Articles 38b to 38f taking into account the nature of processing and the information available to the processor;~~
- (d) at the choice of the European Public Prosecutor’s Office, deletes or returns all the personal data to the European Public Prosecutor’s Office after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
- (e) makes available to the European Public Prosecutor’s Office all information necessary to demonstrate compliance with the obligations laid down in this Article; ~~and allow for and contribute to audits, including inspections, conducted by the European Public Prosecutor’s Office or another auditor mandated by the European Public Prosecutor’s Office.~~

~~With regard to point (h) of the first subparagraph, the processor shall immediately inform the European Public Prosecutor’s Office if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.~~

(f) complies with the conditions referred to in paragraphs 2 and 3 for engaging another processor.

4. ~~Where a processor engages another processor for carrying out specific processing activities on behalf of the European Public Prosecutor’s Office, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the European Public Prosecutor’s Office for the performance of that other processor's obligations.~~

- ~~5. Adherence of a processor to an approved code of conduct as referred to in Article 40 of Regulation (EU) 2016/... or an approved certification mechanism as referred to in Article 42 of Regulation (EU) 2016/... may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.~~
5. The contract or the other legal act referred to in paragraphs 3 ~~and 4~~ shall be in writing, including in electronic form.
6. If a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

Article 37l(c)²⁸

Processing under the authority of the controller or processor

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

Article 37m

Data protection by design and by default

1. The European Public Prosecutor's Office shall, taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing, as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing, in order to meet the requirements of this Regulation and protect the rights of the data subjects.

²⁸ See Article 23 PD.

2. The European Public Prosecutor's Office shall implement appropriate technical and organisational measures ensuring that, by default, only personal data which are adequate, relevant and not excessive in relation to the necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons²⁹.

Article 37n

Records of processing activities

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

²⁹ DE would like to delete the last sentence. FR and LU would like to keep it, be it with a distinction for categories of persons.

Article 37o

Logging in respect of automated processing

1. The European Public Prosecutor's Office shall keep logs for any of the following processing operations in automated processing systems: collection, alteration, consultation, disclosure including transfers, combination and erasure of operational personal data used for operational purposes. The logs of consultation and disclosure shall make it possible to establish the justification, date and time of such operations, the identification of the person who consulted or disclosed personal data, and, as far as possible, the identity of the recipients of such personal data³⁰.
2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the personal data, and for criminal proceedings. Such logs shall be deleted after 3 years, unless they are required for on-going control.
3. The European Public Prosecutor's Office shall make the logs available to the European Data Protection Supervisor on request.

Article 37p³¹

Cooperation with the European Data Protection Supervisor

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

Article 38b³²

Data protection impact assessment

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

³⁰ Slightly adapted version of Article 25(1) PD.

³¹ See Article 26 PD.

³² The following four Articles come from PD.

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

Article 38c

Prior consultation of the European Data Protection Supervisor

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

Office according to its powers in accordance with Article 44~~and may use any of its powers referred to in Regulation 45/2001~~. That period may be extended by a month, taking into account the complexity of the intended processing. The European Data Protection Supervisor shall inform the European Public Prosecutor's Office of any such extension within one month of receipt of the request for consultation, together with the reasons for the delay.

Article 38d

Security of processing of operational personal data

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

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

Article 38e

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

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

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

Article 38f

Communication of a personal data breach to the data subject

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

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

Article 40

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

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

Article 41

Designation of the Data Protection Officer³³

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

³³ Article 37 GDPR, Article 32 PD.

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

Article 41a
Position of the data protection officer³⁴

1. The European Public Prosecutor's Office shall ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.
2. The European Public Prosecutor's Office shall support the data protection officer in performing the tasks referred to in Article ~~41e~~41b by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.

³⁴ Article 38 GDPR, Article 33 PD.

3. The European Public Prosecutor's Office shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the ~~European Public Prosecutor's Office~~ College for performing his or her tasks. The data protection officer shall directly report to the European Chief Prosecutor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation and Regulation (EC) No 45/2001.
5. The College shall adopt implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer and his or her dismissal, tasks, duties and powers and safeguards for independence of the Data Protection Officer.
6. The European Public Prosecutor's Office shall provide the Data Protection Officer with the staff and resources necessary for him or her to carry out his or her duties.
7. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 64.

Article 41b

Tasks of the data protection officer³⁵

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

³⁵ Article 39 GDPR, Article 34 PD.

- xa) to inform and advise the European Public Prosecutor's Office and the staff who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
 - xb) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 38b;
 - k) ensuring that a record of the transfer and receipt of personal data is kept in accordance with the provisions to be laid down in the internal rules of procedure of the European Public Prosecutor's Office;
 - l) cooperating with the staff of the European Public Prosecutor's Office responsible for procedures, training and advice on data processing;
 - bb) cooperating with the European Data Protection Supervisor;
 - bbb) ensuring that data subjects are informed of their rights under this Regulation;
 - bbbb) to act as the contact point for the European Data Protection Supervisor; on issues relating to processing, including the prior consultation referred to in Article 38c, and to consult, where appropriate, with regard to any other matter.
 - c) preparing an annual report and communicate that report to the [College/the European Chief Prosecutor] and to the European Data Protection Supervisor.
- 2a. The Data Protection Officer shall carry out the functions foreseen by Regulation (EC) No 45/2001 with regard to administrative personal data.
3. ~~In the performance of his or her tasks, the Data Protection Officer shall have access to all the data processed by the European Public Prosecutor's Office and to all of the Office's premises.~~
34. The Data Protection Officer and the staff members of the European Public Prosecutor's Office assisting the Data Protection Officer in the performance of his or her duties shall have access to the personal data processed by the European Public Prosecutor's Office and to its premises to the extent necessary for the performance of their tasks.

4. If the Data Protection Officer considers that the provisions of Regulation (EC) No 45/2001 related to the processing of administrative personal data or the provisions of this Regulation related to the processing of operational personal data have not been complied with, he or she shall inform the [College/European Chief Prosecutor], requiring him or her to resolve the non-compliance within a specified time. If the [College/European Chief Prosecutor] does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the European Data Protection Supervisor.

Article 43a

General principles for transfers of personal data

1. The European Public Prosecutor's Office may transfer personal data to ~~another~~ third country or international organisation, subject to compliance with the other provisions of this Regulation, in particular Article 37cc, only where the conditions laid down in the Articles 43a to 43d are met, namely:
- (a) the transfer is necessary and proportionate for the performance of the tasks of the European Public Prosecutor's Office;
 - (b) the personal data are transferred to a controller in a third country or international organisation that is an authority competent for the purpose of Article 59 (relations with third countries and international organisations);
 - (c) where the personal data to be transferred in accordance with this Article have been transmitted or made available by a Member State to the European Public Prosecutor's Office, the latter shall obtain the prior authorisation to the transfer by the relevant competent authority of that Member State in compliance with its national law, unless that Member State has granted this authorisation to such transfer in general terms or subject to specific conditions;

- (d) the Commission has decided pursuant to Article 43b of this Regulation that the third country or international organisation in question ensures an adequate level of protection, or in the absence of an adequacy decision pursuant to Article 43b, where appropriate safeguards are adduced or exist pursuant to Article 43c of this Regulation, or both in absence of an adequacy decision pursuant to Article 43b and of appropriate safeguards in accordance with Article 43c, derogation for specific situations apply pursuant to Article 43d of this Regulation; and
- (e) in the case of an onward transfer to another third country or international organisation by a third country or international organisation, the European Public Prosecutor's Office shall require the third country or international organisation to seek its prior authorisation for that onward transfer, which the European Public Prosecutor's Office may ~~give~~ provide only after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the personal data was originally transferred and the level of personal data protection in the third country or an international organisation to which personal data are onward transferred.

2. The European Public Prosecutor's Office may transfer personal data without the prior authorisation by a Member State in accordance with point (c) of paragraph 1 only if the transfer of the personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State and the prior authorisation cannot be obtained in good time. The authority responsible for giving prior authorisation shall be informed without delay.

The transfer of personal data received from the European Public Prosecutor's Office to a third country or an international organisation by a Member State, or an Union institution, body, office or agency shall be prohibited. This shall not apply in cases where the European Public Prosecutor's Office has authorised such transfer, after taking into due account all relevant factors, including the seriousness of the criminal offence, the purpose for which the personal data was originally transmitted and the level of personal data protection in the third country or an international organisation to which personal data are transferred. This obligation to obtain prior authorisation from the European Public Prosecutor's Office shall not apply to cases that have been referred to competent national authorities in accordance with Article 28a.

3. Articles 43a to 43d shall be applied in order to ensure that the level of protection of natural persons ensured by this Regulation and Union law is not undermined.

Article 43b

Transfers on the basis of an adequacy decision

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

Article 43c

Transfers subject to appropriate safeguards

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

Article 43d
Derogations for specific situations

1. In the absence of an adequacy decision referred to in Article 43b, or of appropriate safeguards pursuant to Article 43c, the European Public Prosecutor's Office may transfer personal data to a third country or an international organisation only on the condition that the transfer is necessary:
 - (a) in order to protect the vital interests of the data subject or another person;
 - (b) to safeguard legitimate interests of the data subject;
 - (c) for the prevention of an immediate and serious threat to public security of a Member State or a third country; or
 - (d) in individual cases for the performance of the tasks of the European Public Prosecutor's Office, unless the European Public Prosecutor's Office determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer.

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

Supervision by the European Data Protection Supervisor

[OPTION 1:

1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by the European Public Prosecutor's Office, and for advising the European Public Prosecutor's Office and data subjects on all matters concerning the processing of operational personal data. To this end, he or she shall fulfil the duties set out in paragraph 2, shall exercise the powers granted in paragraph 3 and shall cooperate with the national supervisory authorities in accordance with Article 45.
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 or her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
 - (c) monitor and ensure the application of the provisions of this Regulation relating to the protection of natural persons with regard to the processing of operational personal data by the European Public Prosecutor's Office;
 - (d) advise the European Public Prosecutor's Office, either on his or 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;

³⁶ BE, SE and SI have entered a scrutiny reservation on this provision.

3. The European Data Protection Supervisor may under this Regulation, and taking into account the implications for investigations and prosecutions that are taking place in the Member States:
- (a) give advice to data subjects in the exercise of their rights;
 - (b) refer the matter to the European Public Prosecutor's Office in the event of an alleged breach of the provisions governing the processing of operational personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
 - (c) order that requests to exercise certain rights in relation to operational personal data be complied with where such requests have been refused in breach of Articles 37e to 37k;
 - (d) warn the European Public Prosecutor's Office;
 - (e) order the European Public Prosecutor's Office to carry out the rectification, blocking, erasure or destruction of operational personal data which have been processed by the European Public Prosecutor's Office in breach of the provisions governing the processing of operational personal data and the notification of such actions to third parties to whom such data have been disclosed; such rectification, blocking, erasure or destruction should be without prejudice to the admissibility of personal data as evidence in criminal court proceedings;
 - (f) impose a temporary or definitive ban on processing; such ban should be without prejudice to the admissibility of personal data as evidence in criminal court proceedings;
 - (g) refer the matter to the European Public Prosecutor's Office and, if necessary, to the European Parliament, the Council and the Commission;
 - (h) refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaties;
 - (i) intervene in actions brought before the Court of Justice of the European Union.

4. The European Data Protection Supervisor shall have the power:

- (a) to obtain from the European Public Prosecutor's Office access to all operational personal data and to all information necessary for his or her enquiries;
- (b) to obtain access to any premises in which the European Public Prosecutor's Office carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.

5. The European Data Protection Supervisor shall draw up an annual report on the supervisory activities on the European Public Prosecutor's Office.

OPTION 2:

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

2. The European Data Protection Supervisor shall have the following duties under this Regulation:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
- (c) monitor and ensure the application of the provisions of this Regulation relating to the protection of natural persons with regard to the processing of operational personal data by the European Public Prosecutor's Office ;

(d) advise the European Public Prosecutor's Office, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of operational personal data, in particular before it draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of operational personal data.

3. The European Data Protection Supervisor may under this Regulation :

(a) give advice to data subjects in the exercise of their rights;

(b) refer the matter to the European Public Prosecutor's Office in the event of an alleged breach of the provisions governing the processing of operational personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;

(c) consult the European Public Prosecutor's Office when requests to exercise certain rights in relation to operational personal data have been refused in breach of Articles 39 and 40;

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

(e) order the European Public Prosecutor's Office to carry out the rectification, blocking or erasure of operational personal data which have been processed by the European Public Prosecutor's Office in breach of the provisions governing the processing of operational personal data and the notification of such actions to third parties to whom such data have been disclosed, provided that he cannot interfere in investigations and prosecutions led by the European Public Prosecutor's Office;

(f) refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaty;

(g) intervene in actions brought before the Court of Justice of the European Union.

4. The European Data Protection Supervisor shall have the power, provided that it does not affect the confidentiality of the criminal procedures :

- (a) to obtain from the European Public Prosecutor's Office access to all operational personal data and to all information necessary for his/her enquiries;
- (b) to obtain access to any premises in which the European Public Prosecutor's Office carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.]

Article 44d

Professional secrecy of the European Data Protection Supervisor³⁷

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

Article 45

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

1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of the Member States or potentially unlawful transfers using the communication channels of the European Public Prosecutor's Office, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.

³⁷ Corresponds to Article 45 of Regulation (EC) No 45/2001; Article 54(2) GDPR; Article 44(2) PD.

2. In cases referred to under paragraph 1 the European Data Protection Supervisor and the national supervisory authorities competent for data protection supervision may, each acting within the scope of their respective competences, exchange relevant information, and assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.
3. The European Data Protection Board established by Regulation (EU) 2016 /679 shall also carry out the tasks laid down in Article 51 of Directive (EU) 2016/680 with regard to matters covered by this Regulation, in particular those referred to in paragraphs 1 and 2 of this Article.

Article 46

Right to lodge a complaint with the European Data Protection Supervisor

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

Article 46a

Right to judicial review against the European Data Protection Supervisor

Actions against ~~the~~ decisions of the European Data Protection Supervisor ~~concerning operational personal data~~ shall be brought before the Court of Justice of the European Union³⁸.

³⁸ To be reviewed in the light of Article 36.

Article 47

Right to compensation

~~Any person who has suffered material or non-material damage as a result of an unlawful processing operation or of any act infringing this Regulation to have the right to receive compensation for the damage suffered from the European Public Prosecutor's Office.~~

[...]

Article 73a

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

In the context of the adaptation of Regulation (EC) 45/2001 in accordance with Articles 2(3) and 98 of Regulation (EU) 2016/679, the Commission shall review the ~~general~~ provisions relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office laid down in this Regulation. ~~with the exception of those provisions which particularise and complement Regulation (EC) No 45/2001, as adapted, for the processing of personal data by the European Public Prosecutor's Office.~~ The Commission shall, if appropriate, submit a legislative proposal with a view to amending or repealing those ~~general~~ provisions ~~if they are to be laid down in Regulation (EC) 45/2001 as adapted.~~

Article a³⁹

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 delegation of power referred to in paragraph 1a of Article 37 shall be conferred for an indeterminate period of time from the (date of entry into force of the basic legislative act).

³⁹ Standard template language.

3. The delegation of powers referred to in paragraph 1a of Article 37 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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

Article b⁴⁰

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article a (5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.]

⁴⁰ Standard template language.

NEW RECITALS OR MODIFICATIONS OF RECITALS

- (42) Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁴¹ applies to the processing of administrative personal data performed by the European Public Prosecutor's Office.
- (new recital) Consistent and homogeneous application of the rules for the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data should be ensured throughout the Union. As a consequence, Regulation (EC) No 45/2001 will need to be adapted in accordance with Articles 2(3) and 98 of Regulation (EU) 2016/859.

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

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

- (new recital) The European Data Protection Supervisor should monitor the processing of personal data by the European Public Prosecutor's Office.
- (43) Directive (EU) 2016/860 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA applies to the processing of personal data by Member States' competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties .

⁴¹ OJ L 8, 12.1.2001, p. 1.

- (new recital) The data protection provisions of this Regulation are without prejudice to the applicable rules on admissibility of personal data as evidence in criminal court proceedings;
- (new recital)⁴² All Member States are affiliated to the International Criminal Police Organisation (Interpol). To fulfil its mission, Interpol receives, stores and circulates personal data to assist competent authorities in preventing and combating international crime. It is therefore appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data whilst ensuring respect for fundamental rights and freedoms regarding the automatic processing of personal data. Where personal data are transferred from the European Public Prosecutor's Office to Interpol, and to countries which have delegated members to Interpol, this Regulation, in particular the provisions on international transfers, should apply. This Regulation should be without prejudice to the specific rules laid down in Council Common Position 2005/69/JHA⁴³ and Council Decision 2007/533/JHA⁴⁴
- (new recital)⁴⁵ In order to ensure effective, reliable and consistent monitoring of compliance with and enforcement of this Regulation as regards operational personal data, as required by Article 8 of the Charter of Fundamental Rights, the European Data Protection Supervisor should have the tasks laid down in this Regulation and effective powers, including investigative, corrective, and advisory powers which constitute necessary means to perform its tasks. However, the powers of the European Data Protection Supervisor should not unduly interfere with specific rules for criminal proceedings, including investigation and prosecution of criminal offences, or the independence of the judiciary.
- (new recital) In order to enable the European Public Prosecutor's Office to fulfil its tasks and to take account of developments in information technology and in the light of the state of progress in the information society, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifying the personal data and the categories of data subjects listed in the Annex, which could be processed by the European Public Prosecutor's Office for the purposes of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

⁴² This is inspired by recital 25 PD.

⁴³ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

⁴⁴ 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).

⁴⁵ Inspired by recital 82 of the Police Directive.