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Zadeva: Predlog uredbe o ustanovitvi Evropskega javnega tožilstva
– *orientacijska razprava*

A. Ozadje

Latvijsko predsedstvo Sveta si je intenzivno prizadevalo za dokončanje prvih petih poglavij Uredbe. Ta poglavja zadevajo večino vprašanj, pomembnih za delovanje tožilstva, saj vključujejo pravila o statusu, strukturi in organiziranosti tožilstva, postopku preiskav, pregonu in sodnih postopkih.

V okviru latvijskega predsedstva je bilo o tej zadevi organiziranih trinajst sej v pristojni delovni skupini (COPEN), ena razprava v odboru CATS in več sej svetovalcev za PNZ. O dokumentu so razpravljali tudi ministri na marčevski seji Sveta. Na zelo konstruktivnih srečanjih je bil dosežen pomemben napredek. Kljub temu med stališči držav članic še vedno obstajajo nezanemarljiva razhajanja. Predsedstvo je pripravilo uravnoteženo kompromisno besedilo prvih 16 členov, kot so navedeni v Prilogi 1.

V Prilogi 2 je celotno besedilo členov 17–33, vključno z opombami.

B. Trenutno stanje

I. Za prvih 16 členov iz Priloge I je bila razprava na ravni strokovnjakov osredotočena predvsem na:

- *potrebo po zagotavljanju enakovredne porazdelitve dela med stalnimi senati*
- *pooblastila stalnih senatov med preiskavami in pregonom*
- *možnost, da stalni senati pooblastila za odločanje prenesejo na evropskega tožilca, ki nadzoruje zadevo*
- *pravico evropskega tožilca, ki nadzoruje zadevo, do glasovanja v stalnem senatu*
- *pooblastila evropskih tožilcev, da dajejo navodila evropskim delegiranim tožilcem*
- *mehanizme nadomeščanja med evropskimi tožilci*
- *mehanizemčasne zamenjave evropskega tožilca s strani evropskega delegiranega tožilca*

Besedilo, ki je navedeno v Prilogi 1, je kompromisni predlog, ustrezno uravnotežen glede na različna stališča, ki so jih delegacije izrazile med pogajanjem, pri čemer ponuja rešitve za večino pomislekov, izraženih v okviru delovnih skupin.

II. V zvezi s preostalimi členi (od 17 do 33) so najintenzivnejše razprave zadevale naslednje:

- *obveznost držav članic, da poročajo o vsakem kaznivem ravnanju, ki bi lahko pomenilo kaznivo dejanje, ki sodi v pristojnost Evropskega javnega tožilstva*
- *načine poročanja, vključno z zbirnim poročilom in njegovo vsebino*
- *pooblastila stalnega senata, da evropskemu delegiranemu tožilcu naroči, naj začne preiskavo*

- *dodelitev in predodelitev zadeve s strani stalnega senata*
- *pravico do poziva k odstopu od zadeve in prenos postopka z nacionalnih organov na Evropsko javno tožilstvo*
- *preiskovalne ukrepe in čezmejne preiskave*
- *poravnave*

Napredek, dosežen v času latvijskega predsedovanja, se kaže v besedilu iz Priloge 2. Kljub temu nekatera od navedenih vprašanj še niso rešena, kot je izpostavljeno v opombah, in jih bo treba ponovno obravnavati. Členi 30–33 so bili le na kratko obravnavani in v času latvijskega predsedovanja niso bili spremenjeni.

C. Vprašanja

Brez poseganja v končno odločitev posameznih držav članic o sodelovanju v Evropskem javnem tožilstvu predsedstvo poziva ministre, naj:

- 1. se načelno dogovorijo o besedilu prvih 16 členov Uredbe, kot so navedeni v Prilogi 1, ob upoštevanju, da bo podrobnosti o besedilu treba znova preučiti, ko bo Svet dosegel načelni dogovor o celotnem besedilu Uredbe;**
- 2. pozdravijo napredek, dosežen v zvezi s členi 17–33, in se seznanijo s trenutnim besedilom teh členov, kot so navedeni v Prilogi 2.**

Osnutek

UREDBE SVETA

o ustanovitvi Evropskega javnega tožilstva

POGLAVJE I

VSEBINA IN OPREDELITEV POJMOV

Člen 1

Vsebina

S to uredbo se ustanavlja Evropsko javno tožilstvo in določajo pravila za njegovo delovanje.

Člen 2

Opredelitev pojmov¹

Za namene te uredbe se uporabljajo naslednje opredelitve pojmov:

- (a) „oseba“ pomeni vsako fizično ali pravno osebo;
- (b) „finančni interesi Unije“ pomenijo vse prihodke, odhodke in sredstva, ki so zajeti v proračunu Unije in proračunih institucij, organov, uradov in agencij, ustanovljenih na podlagi Pogodb, ter proračunih, ki jih te institucije, organi, uradi in agencije upravljajo in spremljajo, ali vse prihodke, odhodke in sredstva, ki so z navedenimi proračuni pridobljeni ali jim dolgovani;
- (c) „upravni osebni podatki“ pomenijo vse osebne podatke, ki jih obdela Evropsko javno tožilstvo, razen operativnih osebnih podatkov;

¹ Ta člen bo dokončno oblikovan šele, ko bo znano besedilo celotne uredbe. Opredelitve pojmov ter besedilo na splošno bo treba še spremeniti, da se bo zagotovila skladnost z opredelitvami pojmov, ki bodo na koncu vključene v direktivo o zaščiti finančnih interesov. Vprašanje poenotenosti s pravom EU je treba še dodatno obravnavati. Uskladiti z dokončno opredelitvijo pojma finančnih interesov Unije iz direktive o zaščiti finančnih interesov. IE je opozorila, da je ta točka nepotrebna.

- (d) „operativni osebni podatki“ pomenijo vse osebne podatke[, povezane z zadevo], ki jih Evropsko javno tožilstvo obdela v skladu z nameni iz člena [37];
- (e) „osebje Evropskega javnega tožilstva“ pomeni osebje na centralni ravni, ki podpira kolegij, stalne senate, evropskega glavnega tožilca, evropske tožilce in evropske delegirane tožilce v vsakodnevnih dejavnostih pri izvrševanju nalog tožilstva v skladu s to uredbo;
- (f) „evropski delegirani tožilec, ki obravnava zadevo“ pomeni evropskega delegiranega tožilca, pristojnega za preiskavo in pregon, ki jo je sam začel, mu je bila dodeljena oziroma jo je prevzel z uporabo pravice do poziva k odstopu od zadeve;
- (g) „pomočnik evropskega delegiranega tožilca“ pomeni evropskega delegiranega tožilca v državi članici, ki ni država članica evropskega delegiranega tožilca, ki obravnava zadevo, v kateri se izvaja preiskovalni ali drug ukrep, ki mu je bil dodeljen.

POGLAVJE II

Ustanovitev, naloge in osnovna načela Evropskega javnega tožilstva

Člen 3

Ustanovitev

1. Evropsko javno tožilstvo je ustanovljeno kot organ Unije.
2. Evropsko javno tožilstvo je pravna oseba.
3. Evropsko javno tožilstvo sodeluje z Eurojustom in je deležno njegove podpore v skladu s členom [57].

Člen 4

Naloge

Evropsko javno tožilstvo je pristojno za preiskavo, pregon in obtožbo storilcev in sotorilcev kaznivih dejanj, ki vplivajo na finančne interese Unije [ki so navedeni v Direktivi 2015/xx/EU in določeni v tej uredbi]². S tega vidika Evropsko javno tožilstvo opravlja preiskave ter izvaja ukrepe pregona in opravlja funkcije tožilca na pristojnih sodiščih držav članic, dokler zadeva ni dokončno rešena³.

Člen 5

Osnovna načela dejavnosti

1. Evropsko javno tožilstvo skrbi, da se pri njegovih dejavnostih spoštujejo pravice, opredeljene v Listini Evropske unije o temeljnih pravicah.
2. Evropsko javno tožilstvo je pri vseh svojih dejavnostih dolžno upoštevati načeli pravne države in sorazmernosti⁴.
3. Ta uredba ureja preiskave in pregon, ki se izvajajo v imenu Evropskega javnega tožilstva. Za vprašanja, ki jih ta uredba ne ureja, se uporablja nacionalna zakonodaja. Razen če je v tej uredbi drugače določeno, je veljavna nacionalna zakonodaja države članice, v kateri se nahaja evropski delegirani tožilec, ki obravnava zadevo v skladu s členom 12(1). Če neko vprašanje urejata nacionalna zakonodaja in ta uredba, prevlada slednja.

² IE predlaga, naj bo to sklicevanje na člen 17.

³ Preučiti bi bilo treba naslednjo uvodno izjavo: „Funkcije tožilca na pristojnih sodiščih se uporabljajo do zaključka postopka, torej do končne ugotovitve, ali je osumljena ali obdolžena oseba storila kaznivo dejanje, če je ustrezno, tudi do izreka kazni in rešitve morebitne pritožbe. Funkcije tožilstva bi lahko denimo izključevale zastopanje v postopkih na najvišjih sodiščih držav članic s strani najvišjih tožilskih ustanov, npr. generalnih tožilcev, zlasti če služijo le namenu delovanja pravosodnega sistema in ne izvrševanja tožilskih funkcij.“

⁴ IT bi na tem mestu vključila načelo zakonitosti. PT ima enake pomisleke kot IT, vendar je opozorila, da bi lahko to vprašanje rešili v okviru člena 21.

4. Evropsko javno tožilstvo izvaja preiskave nepristransko in poskuša pridobiti vse ustrezne obremenilne, pa tudi razbremenilne dokaze⁵.
5. Evropsko javno tožilstvo začne in izvaja preiskave brez nepotrebnega odlašanja.
6. Pristojni nacionalni organi Evropskemu javnemu tožilstvu dejavno pomagajo pri izvajanju preiskav in pregona ter ga podpirajo. Ukrepi, politike ali postopki iz te uredbe se izvajajo po načelu lojalnega sodelovanja⁶⁷.

Člen 6

Neodvisnost in odgovornost

1. Evropsko javno tožilstvo je neodvisno. Evropski glavni tožilec, namestniki evropskega glavnega tožilca, evropski tožilci, evropski delegirani tožilci in osebje Evropskega javnega tožilstva delujejo v interesu Unije kot celote, kot je določeno z zakonodajo, ter pri opravljanju nalog v skladu s to uredbo ne smejo zahtevati ali sprejemati navodil od posameznikov, ki niso del tožilstva, od držav članic ali institucij, organov, uradov ali agencij Unije. Države članice in institucije, organi, uradi ali agencije Unije spoštujejo neodvisnost Evropskega javnega tožilstva ter ne poskušajo nanj vplivati pri opravljanju njegovih nalog.

⁵ SI je izrazila željo, naj se s to določbo in drugimi določbami pojasni vloga preiskovalnih sodnikov v zadevah, ki jih obravnava Evropsko javno tožilstvo.

⁶ Dodala bi se lahko spremljevalna uvodna izjava, ki bi se glasila približno takole: „Evropsko javno tožilstvo in pristojni nacionalni organi bi se morali v duhu lojalnega sodelovanja medsebojno obveščati z namenom učinkovitega preprečevanja kaznivih dejanj. Evropsko javno tožilstvo bi moralo celo v zadevah, ki ne spadajo v področje njegovih pristojnosti, pristojne nacionalne organe obveščati o vseh dejstvih, o katerih je bilo obveščeno ali jih je samostojno pridobilo ter bi lahko pomenila kaznivo dejanje, denimo o lažnih pričanjih. Takšni primeri bi lahko zajemali različna dejstva, o katerih bi morali biti pristojni nacionalni organi obveščeni, s čimer bi zagotovili učinkovito zatiranje kaznivih dejanj.“

⁷ V besedilo uredbe (npr. v poglavje VIII, poglavje IX ali člen 69) se vključi naslednja določba: „Kolikor se postopki izterjave na podlagi upravnega prava odložijo zaradi odločitev, ki jih sprejmejo Evropsko javno tožilstvo ali nacionalni organi pregona v povezavi s preiskavami ali pregonom za zaščito finančnih interesov Evropske unije, finančni primanjkljaji, ki bi morebiti lahko nastali, ne bremenijo nacionalnega proračuna zadevne države članice.“

2. Evropsko javno tožilstvo za izvajanje svojih splošnih dejavnosti odgovarja Evropskemu parlamentu, Svetu in Evropski komisiji ter predloži letna poročila v skladu s členom 6a.

Člen 6a

Poročanje

1. Evropsko javno tožilstvo vsako leto pripravi in izda javno letno poročilo⁸ v uradnih jezikih institucij Unije o izvajanju svojih splošnih dejavnosti. Pošlje ga Evropskemu parlamentu in nacionalnim parlamentom ter Svetu in Komisiji.
2. Evropski glavni tožilec enkrat letno nastopi pred Evropskim parlamentom in Svetom ter pred nacionalnimi parlamenti na njihovo zahtevo, da predstavi splošne dejavnosti Evropskega javnega tožilstva, pri čemer ne posega v obveznost tožilstva glede nerazkrivanja in zaupnosti v zvezi s posameznimi zadevami in osebnimi podatki. Evropskega glavnega tožilca lahko pri predstavitev, ki jih organizirajo nacionalni parlamenti, nadomesti eden od namestnikov.

POGLAVJE III

STATUS, STRUKTURA IN ORGANIZACIJA EVROPSKEGA JAVNEGA TOŽILSTVA

Oddelek 1

STATUS in struktura Evropskega javnega tožilstva

Člen 7

Struktura Evropskega javnega tožilstva

1. Evropsko javno tožilstvo je nedeljiv organ Unije, ki deluje kot enoten urad z decentralizirano strukturo.

⁸ Vključi se uvodna izjava, s katero se podrobneje pojasni vsebina letnega poročila: „*Poročilo Evropskega javnega tožilstva bi moralo biti pripravljeno vsako leto in bi moralo zajemati vsaj vse ustrezne statistične podatke o delu tožilstva.*“

2. Evropsko javno tožilstvo je organizirano na centralni in decentralizirani ravni.
3. Na centralni ravni ga sestavlja glavni urad na sedežu. Glavni urad sestavljajo kolegij, stalni senati, evropski glavni tožilec, njegovi namestniki in evropski tožilci.
4. Na decentralizirani ravni ga sestavljajo evropski delegirani tožilci v državah članicah.
5. Glavnemu uradu in evropskim delegiranim tožilcem pri njihovih nalogah v skladu s to uredbo pomaga osebje Evropskega javnega tožilstva.

Člen 8

Kolegij

1. Kolegij Evropskega javnega tožilstva sestavljajo evropski glavni tožilec in po en evropski tožilec iz vsake države članice. Evropski glavni tožilec predseduje sestankom kolegija in je odgovoren za njihovo pripravo.

2. Kolegij se redno sestaja in je pristojen za splošni nadzor⁹ dejavnosti tožilstva. Sprejema odločitve o strateških vprašanjih in splošni problematiki glede posameznih zadev¹⁰, zlasti da bi zagotovil usklajenost, učinkovitost in doslednost politike tožilstva glede pregona po vsej Uniji, pa tudi o drugih vprašanjih, opredeljenih v tej uredbi. Kolegij ne sprejema operativnih odločitev v posameznih zadevah. Poslovnik določa modalitete kolegija za splošni nadzor dejavnosti in odločitve o strateških vprašanjih ter splošni problematiki v skladu s tem členom.
3. Kolegij na predlog evropskega glavnega tožilca in v skladu s poslovnikom ustanovi stalne senate.
4. Kolegij v skladu s členom 16 sprejme poslovnik Evropskega javnega tožilstva ter nadalje določi pristojnosti za opravljanje nalog članov kolegija in osebja Evropskega javnega tožilstva.

⁹ V tem dokumentu se izrazi „splošni nadzor“, „spremljanje in usmerjanje“ ter „nadzor“ uporabljajo za opis različnih nadzornih dejavnosti. V uvodnih izjavah bo treba te izraze podrobneje opredeliti v skladu z naslednjim:

- ✓ „splošni nadzor“ se nanaša na splošno upravljanje dejavnosti tožilstva, v okviru katerega se navodila dajejo le v zvezi z vprašanji, ki so za tožilstvo horizontalnega pomena;
- ✓ „spremljanje in usmerjanje“ se nanaša na določene jasne pristojnosti spremljanja in usmerjanja posameznih preiskav in pregona, če se zdi, da so takšne usmeritve potrebne;
- ✓ „nadzor“ se nanaša na podrobnejši in razmeroma stalen nadzor nad preiskavami in pregonom, vključno – kadar koli je to potrebno –, s posredovanjem in dajanjem navodil v zvezi z vprašanji, povezanimi s preiskavami in pregonom. PT in SI sta opozorili, da ta predlagana opredelitev pojmov morda ne bo sprejemljiva, saj bi pomenila kršitev načela avtonomije njihovih državnih tožilcev, kakor je določena v njunem nacionalnem pravu in ustavi. SI je zato predlagala, naj se beseda „nadzor“ v celotnem besedilu nadomesti z besedo „usmerjanje“.

¹⁰ Razmislili bi lahko o uvodni izjavi, ki bi se glasila: „Kolegij bi moral sprejemati odločitve o strateških vprašanjih, tudi glede določanja prednostnih nalog in politike tožilstva, ter o splošnih vprašanjih, ki se pojavijo v posameznih primerih, denimo v zvezi z uporabo uredbe in pravilnim izvajanjem politike tožilstva, ali o načelnih vprašanjih oz. vprašanjih, ki so bistvena za oblikovanje skladne tožilske politike tožilstva. Odločitve kolegija o splošnih vprašanjih bi morale biti politične in ne bi smele vplivati na dolžnost preiskovanja in pregona v skladu s to uredbo in nacionalnim pravom.“

5. Razen če je v tej uredbi drugače določeno, kolegij sprejema odločitve z navadno večino. Vsak član kolegija ima pravico sprožiti glasovanje o vprašanjih, o katerih odloča kolegij. Vsak član kolegija ima po en glas. Evropski glavni tožilec ima v primeru neodločenega izida pri glasovanju o vprašanju, o katerem odloča kolegij, odločilni glas¹¹.

Člen 9

Stalni senati¹²

1. Stalnemu senatu predseduje evropski glavni tožilec ali eden od namestnikov ali evropski tožilec, ki je imenovan za predsednika v skladu s poslovníkom¹³. Stalni senat ima še po dva dodatna stalna člana. Pri številu stalnih senatov, njihovi sestavi in delitvi pristojnosti med senati se ustrezno upoštevajo funkcionalne potrebe tožilstva, določijo pa se v skladu s poslovníkom¹⁴.

¹¹ Dodati bi bilo treba uvodno izjavo, ki bi se glasila: „Kolegij bi si moral po svojih najboljših močeh prizadevati za dosego soglasja. Če takega soglasja ni mogoče doseči, bi se morale odločitve sprejeti z glasovanjem.“

¹² SE, ki so jo podprle CY, CZ, FI, HR, HU, IE, MT, NL, PT in SI, še vedno na splošno meni, da bi sistem, v katerem bi bili evropski delegirani tožilci pristojni za sprejemanje večine operativnih odločitev, bistveno povečal učinkovitost Evropskega javnega tožilstva. Evropski delegirani tožilci bi morali v zadevah, ki jih obravnavajo, sprejemati kar največ potrebnih odločitev. SE še vedno meni, da bi morala uredba zagovarjati ta pristop. To bi lahko dosegli na več načinov, najlaže pa s skrajšanjem seznama odločitev, ki bi jih moral sprejeti senat, iz člena 9. Preučili bi lahko druge možnosti, denimo več možnosti za stalni senat, da svoja pooblastila prenese na evropske delegirane tožilce, in/ali uvedbo več možnosti za uporabo pisnega postopka ali tihega postopka. FR pa po drugi strani meni, da bi takšni mehanizmi oslabili pooblastila centralne ravni Evropskega javnega tožilstva.

¹³ Razmisliti bi morali o vključiti naslednje uvodne izjave: „Ko se Evropsko javno tožilstvo upravno vzpostavlja in po potrebi tudi kasneje, bi moral biti evropski tožilec načeloma imenovan za predsednika stalnega senata, če ni dovolj namestnikov“.

¹⁴ Dodati bi bilo treba uvodno izjavo, ki bi se glasila: „Sestava stalnega senata bi se morala določiti v skladu s poslovníkom, kjer bi se med drugim lahko določilo, da je evropski tožilec lahko član več stalnih senatov, če je to ustrezno – in kolikor je to mogoče – zaradi zagotavljanja enake delovne obremenitve posameznih evropskih tožilcev.“

Poslovník določa enakovredno porazdelitev dela na podlagi sistema naključnega dodeljevanja zadev, v izrednih primerih pa določa postopke, ki omogočajo odstopanja od načela naključnega dodeljevanja, kjer je to potrebno zaradi pravilnega delovanja tožilstva, na podlagi odločitve evropskega glavnega tožilca.¹⁵

2. Stalni senati spremljajo in usmerjajo preiskave in pregon, ki jih izvajajo evropski delegirani tožilci v skladu z odstavki 3, 3a in 4 tega člena¹⁶. Zagotavljajo tudi usklajevanje preiskav in preгона v čezmejnih primerih ter izvajanje odločitev, ki jih v skladu s členom 8(2) sprejme kolegij.
- 3.¹⁷ Kadar je to ustrezno po pregledu osnutka odločitve, ki ga predlaga evropski delegirani tožilec, ki obravnava zadevo, stalni senati v skladu s pogoji in postopki iz te uredbe sprejmejo odločitve o:
 - a) vložitvi obtožnice v skladu s členom 27(2)¹⁸;
 - b) opustitvi zadeve v skladu s členom 28(1)(a–f)¹⁹;
 - c) opustitvi zadeve s poravnavo v skladu s členom 29.

¹⁵ Preučiti bi bilo treba vključitev naslednje uvodne izjave: „*Pri dodeljevanju zadev bi bilo treba zagotoviti, da se zadeve med stalnimi senati razdelijo v skladu z vnaprej določenimi merili in v naključnem zaporedju, da se – kolikor je mogoče – zagotovi enakomerna porazdelitev dela.*“

¹⁶ Komisija se zavzema za to, da bi bil eden od članov stalnega senata, ne glede na njegovo državljanstvo, izbran kot poročevalec za zadevo, s čimer bi zagotovili nevtralnost poročevalca. PT in SI bi izključili možnost, da lahko stalni senati v posameznih primerih intervenirajo, razen v primerih neaktivnosti ali očitnih zamud. Predlagali sta, naj se pojem spremljanja pojasni v uvodni izjavi, kot sledi: „*Vloga spremljanja, ki jo ima senat, zadeva splošni nadzor, v okviru katerega se načeloma lahko dajejo navodila zoper neaktivnost ali očitne zamude v kazenskih postopkih, ki potekajo.*“ AT, RO, DE, IT, LT, BG, ES, FR in COM tej uvodni izjavi nasprotujejo.

¹⁷ Člen 9(3) in 9(3a) bo natančneje oblikovan, ko bodo dopolnjene ostale povezane določbe. .

¹⁸ CZ in PT nasprotujeta pristojnosti stalnega senata za odločanje glede tega, ali bo o zadevi odločalo sodišče. CZ meni, da bi o tem morali odločati evropski delegirani tožilci.

¹⁹ PT se ne strinja s pristojnostjo stalnega senata, da lahko zadevo opusti zaradi razlogov v zvezi z avtonomijo sodnikov in zaradi učinkovitosti postopka. Zavzema se za naknadno intervencijo ali mehanizem tihega pregleda.

- 3a. Stalni senati v skladu s pogoji in postopki iz te uredbe po potrebi sprejmejo odločitve o:
- a) navodilu evropskemu delegiranemu tožilcu, naj začne preiskavo v skladu s pravili iz člena 21(1)–(3), če preiskava ni bila začeta;
 - b) navodilu evropskemu delegiranemu tožilcu, naj prevzame zadevo v skladu s členom 21a(6), če zadeva ni bila prevzeta;
 - c) predložitvi vprašanj strateškega ali splošnega pomena, ki izhajajo iz posameznega primera, kolegiju v skladu s členom 8(2);
 - d) dodelitvi zadeve v skladu s členom 21(2);
 - e) predodelitvi zadeve v skladu s členoma 21(4) in 23(3a);
- [(i)odobritvi odločitve evropskega tožilca, da bo sam izvedel preiskavo v skladu s členom 23(4).]
4. Pristojni stalni senat, ki deluje prek evropskega tožilca, ki nadzoruje preiskavo ali pregon, lahko v posebnem primeru v skladu z veljavno nacionalno zakonodajo²⁰ evropskemu delegiranemu tožilcu, ki obravnava zadevo, daje navodila²¹, če je to potrebno za učinkovito izvajanje preiskave ali pregona ali v interesu pravičnosti ali skladnega delovanja Evropskega javnega tožilstva.

²⁰ Treba bi bilo vključiti uvodno izjavo, v kateri se pojasni, da je nadzorujoči evropski tožilec dolžan preveriti skladnost navodil s svojim nacionalnim pravom in stalni senat obvestiti, če temu ni tako.

²¹ Preuči se naslednja uvodna izjava: „*Evropski delegirani tožilci bi morali obvezno upoštevati navodila glavnega urada.*“ Če evropski delegirani tožilec meni, da bi moral zaradi navodila sprejeti ukrepe, ki ne bi bili skladni z nacionalnim pravom, zaprosi za pregled odločitve, moralo pa bi se mu tudi omogočiti, da ne upošteva zadevnih navodil in zaprosi za razrešitev odgovornosti za obravnavo zadeve.“ IT in RO nasprotujeta besedilu navedene uvodne izjave.

5. Stalni senat odloča z navadno večino. Če to zahteva eden od njegovih članov, izvede glasovanje. Vsak član ima en glas. Predsedujoči ima v primeru neodločenega izida glasovanja odločilni glas. Odločitve se sprejmejo po posvetovanju na sejah senata, če je ustrezno²² na podlagi osnutka odločitve, ki ga predloži evropski delegirani tožilec, ki obravnava zadevo..

Celotno gradivo v zadevi je na zahtevo dostopno pristojnemu stalnemu senatu zaradi priprave odločitev.²³

- 5a. Stalni senat lahko odloči, da svoja pooblastila za odločanje v skladu z odstavkom 3(a), ali 3(b) le v zvezi s točkami (a) do (e) člena 28(1), prenese na evropskega tožilca, ki nadzoruje zadevo v skladu s členom 11(1), in sicer v zadevah, kjer je mogoče tak prenos ustrezno upravičiti s sklicevanjem na težo kaznivega dejanja²⁴ ali z zapletenostjo postopka v posamezni zadevi, ter za kazniva dejanja, ki so povzročila ali bi lahko povzročila škodo za finančne interese Unije v vrednosti manj kot 100 000 evrov. Smernice za zagotavljanje usklajene uporabe v okviru tožilstva se določijo v poslovniku²⁵.

²² Preučiti bi bilo treba naslednjo uvodno izjavo: „*Stalni senat bi moral odločitve, ki jih sprejme v skladu s členom 9(3), sprejemati na podlagi osnutkov odločitev, ki jih predlaga evropski delegirani tožilec, ki obravnava zadevo. Vendar bi lahko senat v izjemnih primerih sprejel odločitev brez osnutka odločitve, ki ga pripravi evropski delegirani tožilec, ki obravnava zadevo. V takšnih primerih lahko takšen osnutek odločitve pripravi evropski tožilec, ki zadevo nadzoruje.*“ CZ in SI bi zadnji stavek oblikovali takole: „*V takšnih primerih bi moral takšen osnutek odločitve pripraviti evropski javni tožilec, ki zadevo nadzoruje.*“ CZ se zavzema za črtanje izraza „če je ustrezno“, uporabljenega v odstavku 5 (in ustrezno tudi v odstavku 3), oz. vsaj za pojasnilo, da bi morali stalni senati v izjemnih primerih, kadar sprejmejo odločitev brez osnutka odločitve, ki ga pripravi evropski delegirani tožilec, ki obravnava zadevo, pri svoji odločitvi upoštevati osnutek odločitve, ki ga pripravi evropski tožilec, ki zadevo nadzoruje.

²³ Razmisliti bi morali o uvodni izjavi, ki bi se glasila: „*Delo Evropskega javnega tožilstva bi bilo treba načeloma zagotavljati elektronsko.*“

²⁴ Preučiti bi bilo treba naslednjo uvodno izjavo: „*Pri določanju teže kaznivega dejanja bi bilo treba zlasti upoštevati posledice na ravni Unije.*“

²⁵ BE in LT sta podali pridržek glede tega odstavka.

Senat vse odločitve o prenosu pooblastil za odločanje sporoči evropskemu glavnemu tožilcu. Evropski glavni tožilec lahko ob prejemu te informacije v roku treh dni senat zaprosi za pregled njegove odločitve, če meni, da je to potrebno zaradi zagotavljanja usklajenosti preiskav in pregona tožilstva. Če je evropski glavni tožilec član zadevnega senata, pravico do zahteve po zadevnem pregledu izvrši eden od njegovih namestnikov.

Nadzorujoči evropski tožilec obvesti stalni senat o dokončni ureditvi oz. zaključku zadeve ter mu sporoči kakršne koli informacije ali okoliščine, za katere meni, da bi lahko zahtevale novo presojo ustreznosti ohranitve prenosa, zlasti v zadevah iz člena 27(2).

Prenos se lahko na zahtevo člana stalnega senata kadar koli prekliče, o čemer se odloča v skladu z odstavkom 5. Prenos se prekliče, če evropski delegirani tožilec v skladu s členom 14(7) nadomesti evropskega tožilca.

Za zagotovitev usklajene uporabe načela prenosa pooblastil vsak stalni senat kolegiju letno poroča o uporabi tega prenosa.

- 5b. S poslovníkom so stalni senati pooblašćeni, da sprejemajo odloćitve po pisnem postopku, ki je natanćno doloćen v poslovníku.

Vse sprejete odloćitve in navodila, dana v skladu z odstavki 3, 3a, 4 in 5a, se pisno zabeležíjo in postanejo del spisa zadeve.

6. Poleg stalnih članov pri posvetovanjih stalnega senata sodeluje evropski tožilec, ki nadzoruje preiskavo ali pregon v skladu s členom 11(1). Evropski tožilec ima pravico do glasovanja, razen v zvezi z odločitvami stalnega senata o prenosu ali preklicu prenosa pooblastil v skladu s členom 9(5a), o dodelitvi in predodelitvi iz členov 21(3) in (4) ter 21a(5) in o vložitvi obtožnice (člen 27(2)), kadar ima jurisdikcijo za zadevo več kot ena država članica, pa tudi v primerih, opisanih v členu 26a(8).²⁶

Stalni senat lahko povabi tudi druge evropske tožilce ali evropske delegirane tožilce, ki so udeleženi v zadevi, da sodelujejo na njegovih sejah brez pravice do glasovanja, in sicer na zahtevo evropskega tožilca ali evropskega delegiranega tožilca ali na svojo lastno pobudo.

7. Predsedniki stalnih senatov v skladu s poslovníkom obveščajo kolegij o odločitvah, sprejetih v skladu s tem členom, da mu omogočijo opravljanje nalog v skladu s členom 8(2).

Člen 10

Evropski glavni tožilec in namestniki

1. Evropski glavni tožilec vodi Evropsko javno tožilstvo. Organizira delo tožilstva, usmerja njegove dejavnosti ter sprejema odločitve v skladu s to uredbo in poslovníkom.
2. Imenujeta se [dva] namestnika, ki evropskemu glavnemu tožilcu pomagata pri opravljanju njegovih nalog in ga nadomeščata, kadar je odsoten ali ne more opravljati svojih nalog.

²⁶ Komisija je izrazila pomisleke glede glasovalne pravice nadzorjuočega evropskega tožilca, saj meni, da bi morali imeti pravico do glasovanja v senatu le „nevtralni“ člani, ter da ne bi bilo ustrezno, če bi glasovalno pravico podelili le enemu od potencialno več evropskih tožilcev, ki so udeleženi v zadevi. MT se zavzema, da bi imeli evropski delegirani tožilci pravico do glasovanja v vseh primerih.

3. Evropski glavni tožilec predstavlja Evropsko javno tožilstvo v odnosih z institucijami Unije, državami članicami in tretjimi stranmi. Svoje naloge v zvezi s predstavljanjem lahko prenese na enega od svojih namestnikov ali na evropskega tožilca.

Člen 11

Evropski tožilci²⁷

1. Evropski tožilci v imenu stalnega senata²⁸ in skladno z morebitnimi navodili, ki jih je dal v skladu s členi 9(3), 9(3a) in 9(4), nadzorujejo preiskave in pregon, za katere so pristojni evropski delegirani tožilci, ki obravnavajo zadevo v svoji matični državi članici²⁹. Evropski tožilci predstavijo povzetke zadev, ki jih nadzorujejo, in po potrebi predloge za odločitve, ki jih sprejme zadevni senat, na podlagi osnutkov odločitev, ki jih pripravijo evropski delegirani tožilci.

V poslovniku je brez poseganja v člen 14(7) določen mehanizem nadomeščanja med evropskimi tožilci, če je nadzorujoči evropski tožilec začasno³⁰ odsoten z delovnega mesta ali zaradi drugih razlogov ne more opravljati funkcije evropskega tožilca. Nadomestni evropski tožilec lahko izpolnjuje vse naloge evropskega tožilca, razen možnosti, da izvaja preiskavo, kakor je predvideno v členu 23(4).

2. Nadzorujoči evropski tožilci lahko v skladu z veljavno nacionalno zakonodajo in v skladu z navodili pristojnega stalnega senata v posebnem primeru dajejo navodila evropskemu delegiranemu tožilcu, ki obravnava zadevo, če je to potrebno za učinkovito izvajanje preiskave ali pregona oz. je v interesu pravičnosti ali skladnega delovanja Evropskega javnega tožilstva.

²⁷ CY, FI in MT bi želeli ohraniti staro različico odstavka 3, v skladu s katero bi evropskim tožilcem dovolili opravljanje nalog, ki niso naloge evropskega tožilca.

²⁸ PT in SI nasprotujeta predlogu, da bi evropski tožilci nadzorovali preiskave in pregon v imenu stalnega senata.

²⁹ COM in BG nasprotujeta dodatku besedila „v svoji matični državi članici“.

³⁰ Lahko bi razmislili o vključitvi uvodne izjave: „Načeloma bi mehanizem nadomeščanj morali uporabljati v primerih, ko evropski tožilec za kratek čas ne more opravljati svojih nalog, denimo zaradi dopusta ali bolezni.“

3. Evropski tožilci delujejo kot točka za zvezo in informacijski kanal med stalnimi senati in evropskimi delegiranimi tožilci v svojih matičnih državah članicah ter spremljajo izvajanje nalog tožilstva v svojih državah članicah, pri čemer se temeljito posvetujejo z evropskimi delegiranimi tožilci. Evropski tožilci v skladu s to uredbo in poslovníkom zagotavljajo, da se vse ustrezne informacije iz glavnega urada posredujejo evropskim delegiranim tožilcem in obratno.

Člen 12

Evropski delegirani tožilci

1. Evropski delegirani tožilci delujejo v imenu Evropskega javnega tožilstva v svojih državah članicah³¹ in imajo poleg in ob upoštevanju posebnih pooblastil in statusa, ki jim je bil podeljen, ter v skladu s pogoji iz te uredbe enaka pooblastila kot državni tožilci v zvezi s preiskavami, pregonom in vlaganjem obtožnice.

Evropski delegirani tožilci so pristojni za preiskave in pregon, ki so jih začeli so jim bile dodeljene ali ki so jih prevzeli z uporabo pravice do poziva k odstopu od zadeve. Sledijo usmeritvam in navodilom stalnega senata, pristojnega za zadevo, ter navodilom nadzorujočega evropskega tožilca.

³¹ Razmisлити bi bilo treba o naslednji uvodni izjavi: „Evropski delegirani tožilci so sestavni del Evropskega javnega tožilstva in v tej funkciji ob preiskovanju in pregonu kaznivih dejanj, ki sodijo v pristojnost tožilstva, delujejo izključno v imenu in za račun tožilstva na ozemlju svoje države članice. To pomeni, da se jim na podlagi te uredbe podeli funkcionalno in pravno neodvisen status, ki se razlikuje od katerega koli statusa na podlagi nacionalnega prava, tudi statusa državnega tožilca. Evropski delegirani tožilci so ne glede na svoj status na podlagi te uredbe v času svojega mandata tudi aktivni člani tožilstva v svoji državi članici, zadevna država članica pa jim podeli enaka pooblastila kot državnim tožilcem.“
Delegacije CY, IE in MT menijo, da bi bilo treba v uvodnih izjavah pojasniti, da bi Evropski delegirani tožilci morali imeti možnost, da odredijo policijsko preiskavo v skladu z nacionalnim pravnim sistemom. Tozadevna uvodna izjava bi se lahko glasila: „Evropski delegirani tožilec, ki obravnava zadevo, bi moral biti odgovoren za preiskave v skladu z nacionalnim pravom, pri čemer bi moral upoštevati usmeritve in navodila stalnega senata, pristojnega za to zadevo, ter navodila nadzorujočega evropskega tožilca.“ Tej uvodni izjavi nasprotujeta delegaciji DE in IT, ki ju je podprla tudi Komisija.

Evropski delegirani tožilci so tudi pristojni za vložitev obtožnice, zlasti so pooblaščen za vlaganje pritožb, sodelovanje pri dokazovanju in izvajanje razpoložljivih pravnih sredstev v skladu z nacionalno zakonodajo.

2. Vsaka od držav članic ima po dva³² ali več evropskih delegiranih tožilcev. Evropski glavni tožilec po posvetovanju z zadevnimi organi držav članic in po dogovoru z njimi odobri³³ število evropskih delegiranih tožilcev ter funkcionalno³⁴ in ozemeljsko delitev pristojnosti med evropskimi delegiranimi tožilci v vsaki državi članici.
3. Evropski delegirani tožilci lahko opravljajo tudi naloge državnih tožilcev, kolikor jim to ne preprečuje izpolnjevanja obveznosti, ki jih imajo po tej uredbi. Nadzorjuočega evropskega tožilca obvestijo o takšnih funkcijah. Če evropski delegirani tožilec v katerem koli trenutku zaradi tovrstnih drugih obveznosti ne more izpolnjevati nalog evropskega delegiranega tožilca, o tem obvesti nadzorjuočega evropskega tožilca, ki se posvetuje s pristojnimi nacionalnimi organi pregona, da bi določil, ali bi se morala dati prednost njegovim nalogam, ki izhajajo iz te uredbe. Evropski tožilec lahko predlaga stalnemu senatu, da predodeli zadevo v skladu s členom 23(3a) in 4.

³² Ta določba ne bi smela vplivati na prihodnje razprave v okviru upravnih določb v drugi polovici Uredbe glede tega, kolikšno število mest evropskih delegiranih tožilcev v ekvivalentu polnega delovnega časa bo financiranih iz proračuna EU. Besedilo iz odstavka 2, zlasti del „število evropskih delegiranih tožilcev“, bo morda treba ponovno pregledati ob upoštevanju določb o formalnem statusu evropskih delegiranih tožilcev („posebni svetovalci“) ter finančnih določb.

³³ Besedilu bo dodana naslednja uvodna izjava: „Evropski javni tožilec bi moral pri posvetovanju z zadevno državo članico o številu evropskih delegiranih tožilcev ter o funkcionalni in ozemeljski delitvi pristojnosti med evropskimi delegiranimi tožilci v vsaki državi članici ustrezno upoštevati organizacijo nacionalnega sistema pregona.“

³⁴ Besedilu bo dodana naslednja uvodna izjava: „Koncept funkcionalne delitve pristojnosti med evropskimi delegiranimi tožilci bi moral omogočiti takšno delitev nalog, pri čemer bi lahko bili nekateri evropski delegirani tožilci pristojni za obravnavanje zadev in sprejemanje nekaterih specifičnih odločitev o začetku preiskav, drugi evropski delegirani tožilci pa za obravnavanje pritožb zoper take odločitve.“

ODDELEK 2

IMENOVANJE IN RAZREŠITEV ČLANOV EVROPSKEGA JAVNEGA TOŽILSTVA

Člen 13³⁵

Imenovanje in razrešitev evropskega glavnega tožilca

1. Evropski parlament in Svet soglasno imenujeta evropskega glavnega tožilca za mandat sedmih let, ki ni obnovljiv. Svet o tem odloča z navadno večino.
2. Evropskega glavnega tožilca se izbere izmed kandidatov,
 - (a) ki so aktivni člani državnega tožilstva ali pravosodja v državah članicah ali aktivni evropski tožilci;
 - (b) katerih neodvisnost je nedvomna;
 - (c) ki imajo v svojih državah potrebne kvalifikacije za imenovanje na najvišjo tožilsko ali pravosodno funkcijo ter imajo ustrezne praktične izkušnje z nacionalnimi pravnimi sistemi, finančnimi preiskavami in mednarodnim pravosodnim sodelovanjem v kazenskih zadevah ali so bili evropski tožilci, ter
 - (d) ki imajo zadostne vodstvene izkušnje in kvalifikacije za to mesto.

³⁵ Delegacije CY, PT, MT, HU, ES, HR in PL se zavzemajo za to, da bi bil evropski glavni tožilec izbran med člani kolegija.

3. Izbira se opravi na podlagi javnega razpisa za predložitev kandidatur, ki se objavi v Uradnem listu Evropske unije, nato pa izbirna komisija sestavi ožji seznam kvalificiranih kandidatov ter ga predloži Evropskemu parlamentu in Svetu. Izbirno komisijo sestavlja 12 oseb, izbranih med nekdanjimi člani Sodišča in Računskega sodišča, nekdanjimi nacionalnimi člani Eurojusta, člani nacionalnih vrhovnih sodišč, visokimi tožilci in odvetniki, ki imajo priznane kompetence, pri čemer enega od njih predlaga Evropski parlament³⁶. Svet določi operativna pravila komisije in sprejme sklep o imenovanju njenih članov na predlog Komisije³⁷.
- 3a. Če je za evropskega glavnega tožilca imenovan evropski tožilec, se njegovo mesto evropskega tožilca nemudoma zapolni v skladu s postopkom iz člena 14(1) in (2).
4. Sodišče Evropske unije lahko na zahtevo Evropskega parlamenta, Sveta ali Komisije razreši evropskega glavnega tožilca, če ugotovi, da ne more več opravljati svojih nalog, ali če ga spozna za krivega resne kršitve.
5. Če evropski glavni tožilec odstopi ali če je razrešen ali odstopi s položaja iz kakršnega koli razloga, se njegovo mesto nemudoma zapolni v skladu s postopkom iz odstavkov 1–3.

Člen 13a

Imenovanje in razrešitev namestnikov evropskega glavnega tožilca

1. Kolegij³⁸ imenuje [dva] evropska tožilca za namestnika evropskega glavnega tožilca za obnovljiv mandat treh let, ki pa ne sme biti daljši od njunega mandata evropskega tožilca. Izbirni proces ureja poslovnik. Namestnika evropskega glavnega tožilca ohranita status evropskega tožilca.

³⁶ Dodati bi bilo treba naslednjo uvodno izjavo: „Upoštevati bi bilo treba uravnoteženost sestave odbora, tako z geografskega vidika kot z vidika zastopanosti pravnih sistemov držav članic.“

³⁷ Dodana bo uvodna izjava, v kateri bo ustrezno utemeljen prenos izvedbenih pooblastil na Svet v skladu s členom 291(2) PDEU.

³⁸ Komisija vztraja, da bi morala namestnike evropskega glavnega tožilca tako kot evropskega glavnega tožilca imenovati Svet in Evropski parlament.

2. Pravila in pogoji za opravljanje funkcije namestnika evropskega glavnega tožilca so določeni v poslovniku. Če evropski tožilec ne more več opravljati svojih nalog namestnika evropskega glavnega tožilca, lahko kolegij v skladu s poslovníkom odloči, da ne bo več namestnik evropskega glavnega tožilca in se razreši s položaja.
3. Če namestnik evropskega glavnega tožilca odstopi ali če je razrešen ali odstopi s položaja namestnika iz kakršnega koli razloga, se njegovo mesto nemudoma zapolni v skladu s postopkom iz odstavka 1. Ob upoštevanju pravil iz člena 14 ostane evropski tožilec.

Člen 14

Imenovanje in razrešitev evropskih tožilcev

1. Vsaka država članica predlaga tri kandidate za mesto evropskega tožilca med kandidati:
 - (a) ki so aktivni člani državnega tožilstva ali pravosodja v državah članicah;
 - (b) katerih neodvisnost je nedvomna in
 - (c) ki imajo v svojih državah potrebne kvalifikacije za imenovanje na visoko tožilsko ali pravosodno funkcijo ter imajo ustrezne praktične izkušnje z nacionalnimi pravnimi sistemi, finančnimi preiskavami in mednarodnim pravosodnim sodelovanjem v kazenskih zadevah.
2. Svet po prejemu utemeljenega mnenja izbirne komisije iz člena 13(3) izbere in imenuje enega kandidata na mesto evropskega tožilca za zadevno državo članico. Če izbirna komisija ugotovi, da kandidat ne izpolnjuje pogojev, ki se zahtevajo za opravljanje nalog evropskega tožilca, je njeno mnenje za Svet zavezujoče.

3. Evropske tožilce za neobnovljiv mandat šestih let izbere in imenuje Svet, ki odloča z navadno večino. Svet se lahko ob koncu šestletnega obdobja odloči, da bo mandat podaljshal za največ tri dodatna leta.
4. Vsaka tri leta se izvede delna zamenjava tretjine evropskih tožilcev. Svet z navadno večino sprejme prehodna pravila³⁹ za imenovanje evropskih tožilcev, ki veljajo za njihovo prvo mandatno obdobje in med njim⁴⁰.
5. Sodišče Evropske unije lahko na zahtevo Evropskega parlamenta, Sveta ali Komisije razreši evropskega tožilca, če ugotovi, da ne more več opravljati svojih nalog, ali če ga spozna za krivega resne kršitve.
6. Če evropski tožilec odstopi, če je razrešen ali odstopi s položaja iz kakršnega koli drugega razloga, se njegovo mesto nemudoma zapolni v skladu s postopkom iz odstavkov 1 in 2. Če je evropski tožilec namestnik evropskega glavnega tožilca, je avtomatično razrešen tudi s tega položaja.
7. Kolegij ob imenovanju vsakega evropskega tožilca izmed evropskih delegiranih tožilcev iz iste države članice določi osebo, ki bo nadomeščala evropskega tožilca, ki ne more opravljati svojih nalog ali ki je odstopil s položaja v skladu z odstavkoma 5 in 6⁴¹.

³⁹ Dodana bo uvodna izjava, v kateri bo ustrezno utemeljen prenos izvedbenih pooblastil na Svet v skladu s členom 291(2) PDEU.

⁴⁰ V zvezi s tem bo dodana naslednja uvodna izjava: „Svet bi moral pri odločanju o delni zamenjavi tretjine evropskih tožilcev v njihovem prvem mandatnem obdobju upoštevati geografski razpon držav članic.“

⁴¹ Preuči se naslednja spremljajoča uvodna izjava: „Evropski delegirani tožilec, ki nadomešča evropskega tožilca v skladu s členom 14(7), v času nadomeščanja ne bi smel biti odgovoren za preiskavo, ki jo vodi v funkciji evropskega delegiranega tožilca ali državnega tožilca. V zvezi s postopki Evropskega javnega tožilstva, ki jih vodi evropski delegirani tožilec, ki nadomešča evropskega tožilca, bi se moral uporabljati člen 23(3)(a).“

Če kolegij ugotovi, da je potrebna zamenjava, določena oseba deluje kot začasni evropski tožilec do zamenjave ali vrnitve evropskega tožilca za obdobje, ki ne presega treh mesecev. Kolegij lahko to časovno obdobje na zahtevo podaljša, če je to potrebno⁴². Mehanizme in načine začasne zamenjave določa in ureja poslovnik⁴³.

Člen 15

Imenovanje in razrešitev evropskih delegiranih tožilcev

1. Kolegij na predlog evropskega glavnega tožilca imenuje evropske delegirane tožilce, ki jih predlagajo države članice⁴⁴. Kolegij lahko predlagano osebo zavrne, če ne izpolnjuje meril iz odstavka 2. Evropski delegirani tožilci so imenovani za [pet]letni mandat⁴⁵, ki ga je mogoče podaljšati.
2. Evropski delegirani tožilci so od svojega imenovanja za evropskega delegiranega tožilca do razrešitve aktivni člani državnega tožilstva ali pravosodja v državah članicah, ki so jih predlagale. Njihova neodvisnost je nedvomna, sami pa imajo potrebne kvalifikacije in ustrezne praktične izkušnje s svojimi nacionalnimi pravnimi sistemi.⁴⁶

⁴² Dodana bo naslednja uvodna izjava: „O uporabi takšne možnosti bi moral odločati kolegij, kadar presodi, da je to potrebno, ob upoštevanju delovne obremenitve tožilstva in trajanja odsotnosti ter v primerih iz odstavka 6, dokler mesto evropskega tožilca ni zapolnjeno v skladu s postopkom iz odstavkov 1 in 2.“

⁴³ Dodati bi bilo treba uvodno izjavo, ki bi zajela naslednji pomen: „Evropskega tožilca lahko nadomešča eden od evropskih delegiranih tožilcev zadevne države članice v primerih iz člena 14(6) ali na primer zaradi daljše bolezni, če pa evropski tožilec ni na voljo na primer zaradi dopusta ali poslovnega potovanja, pa ga v skladu s poslovnikom (člen 11(1)) nadomešča drug evropski tožilec.“

⁴⁴ Komisija vztraja, da bi moral evropske delegirane tožilce imenovati kolegij na podlagi seznama, na katerem bi bilo zadostno število kandidatov iz vsake države članice, kar bi omogočilo izbiro.

⁴⁵ Ustrezen najdaljši možni mandat bo treba določiti v okviru pogajanj o njihovem formalnem statusu na podlagi prava EU.

⁴⁶ Preučiti bi bilo treba naslednjo uvodno izjavo: „Država članica, ki je imenovala evropskega delegiranega tožilca, bi morala zagotoviti, da je slednji tožilec po nacionalnem pravu, če ob imenovanju za evropskega delegiranega tožilca tega statusa še ni imel.“

3. Kolegij razreši evropskega delegiranega tožilca, če ugotovi, da ne izpolnjuje več zahtev, določenih v odstavku 2, ali če ne more več opravljati svojih nalog ali če ga spozna za krivega resne kršitve.
4. Če se država članica odloči, da bo razrešila državnega tožilca, ki je bil imenovan za evropskega delegiranega tožilca, ali da bo proti njemu sprejela disciplinski ukrep iz razlogov, ki niso povezani z njegovimi pristojnostmi iz te uredbe, pred tem obvesti⁴⁷ evropskega glavnega tožilca. Država članica brez soglasja evropskega glavnega tožilca ne more razrešiti evropskega delegiranega tožilca ali proti njemu sprejeti disciplinskega ukrepa, če so razlogi za to povezani z njegovimi pristojnostmi na podlagi te uredbe⁴⁸. Če se evropski glavni tožilec s tem ne strinja, lahko zadevna država članica kolegij zaprosi, naj znova pregleda zadevo.
5. Če evropski delegirani tožilec odstopi ali če njegove storitve niso več potrebne za opravljanje nalog tožilstva ali če je razrešen ali odstopi s položaja iz katerega koli drugega razloga, ustrežna država članica o tem nemudoma obvesti evropskega glavnega tožilca in, če je to potrebno⁴⁹, v skladu z odstavkom 1 za novega evropskega delegiranega tožilca predlaga drugega tožilca.

⁴⁷ Komisija bi besedo „obvesti“ nadomestila z „se posvetuje“.

⁴⁸ Delegacija CY opozarja, da je morda treba v zvezi s tem bolj pojasniti razliko med vlogo evropskega delegiranega tožilca in vlogo državnega tožilca. Več delegacij je poudarilo tudi stališče, da bodo evropski delegirani tožilci ostali del nacionalne strukture pregona in da bi se morali za njihovo delovanje v funkciji državnih tožilcev uporabljati nacionalni predpisi o disciplinskih ukrepih in drugih zadevah. To določbo bo morda treba znova preučiti v povezavi s celotno uredbo. Razmisliti bi bilo treba o naslednji uvodni izjavi: „Zanje kot za aktivne člane državnega tožilstva ali pravosodja v državah članicah bi se morale ustrezno uporabljati nacionalne določbe o disciplinskih ukrepih.“

⁴⁹ V uvodni izjavi bi morali pojasniti, da števila evropskih delegiranih tožilcev ni mogoče spremeniti brez upoštevanja pravila iz člena 12(2), v skladu s katerim število evropskih delegiranih tožilcev odobri evropski glavni tožilec.

ODDELEK 3

POSLOVNIK

Člen 16⁵⁰

Poslovnik Evropskega javnega tožilstva

1. Poslovnik ureja organizacijo dela tožilstva.
 2. Evropski glavni tožilec pripravi predlog za poslovnik Evropskega javnega tožilstva, sprejme pa ga [kolegij]⁵¹ z dvotretjinsko večino takoj, ko se ustanovi tožilstvo.
 3. Spremembe poslovnika lahko predlaga vsak evropski tožilec, sprejme pa jih [kolegij] z dvotretjinsko večino.
-

⁵⁰ CZ je izrazila nekaj pomislekov o zavezujoči naravi poslovnika glede na nacionalno zakonodajo.

⁵¹ Poslovnik bo morda moral potrditi Svet, kar bo odvisno od njegove vsebine in končne analize glede njegove zavezujoče narave. Predsedstvo predlaga, da bi to vprašanje znova obravnavali v poznejši fazi pogajanj, ko bomo imeli jasnejšo predstavo o tem, katera pravila bo treba vključiti v poslovnik.

SECTION 4
COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

*Article 17*²

Criminal offences within the competence of the European Public Prosecutor's Office

The European Public Prosecutor's Office shall have competence in respect of the criminal offences affecting the financial interests of the Union, which are provided for in Directive 2015/xx/EU³. The European Public Prosecutor's Office shall exercise this competence on the basis of the applicable national law implementing this Directive⁴.

*Article 18*⁵

Ancillary competence

1. Where an offence constituting a criminal offence referred to in Article 17 is based on a set of facts which are identical or inextricably linked to a set of facts constituting, in whole or in part under the law of the Member State concerned, a criminal offence other than those referred to in Article 17, the European Public Prosecutor's Office shall also be competent for those other criminal offences, under the condition that the offence referred to in Article 17 is preponderant. Where the offence referred to in Article 17 is not preponderant, the Member State that is competent for the other offence shall also be competent for the offence referred to in Article 17⁶.

¹ The references in this Annex, as well as the positions of Member States as indicated in footnotes, may not always be up to date with the most recent version of Annex 1.

² PL is of the opinion that the question in Article 17 is linked to the negotiations on the scope of PIF directive. This includes the sensitive issue of VAT fraud. Therefore this provision should be finalized only after the scope of PIF directive has been clarified and confirmed.

³ The competence of the EPPO as determined by this Article raises complex legal issues that will need to be considered further. One of the open issues in this Article is whether a dynamic reference (the standard solution ensuring legal certainty) or a static reference to the substantive law should be chosen. Some delegations would prefer to see the offences defined in this Regulation directly.

⁴ COM and CZ have a reservation on this wording and proposes to go back to the previous text ('[...] *which are provided for in Directive 2015/xx/EU, as implemented in national law*'). This is considered necessary because the national law implementing the PIF Directive will not and cannot govern the exercise of EPPO's competence. DE has proposed an alternative Article 17, which would be linked to modifications in other provisions as well. The proposal of DE has the support, fully or in part, from a number of delegations. Other delegations have suggested that the applicable national law should be made available in an Annex to the Regulation or on a dedicated website.

⁵ Many delegations continue to question whether the legal basis in Article 86 TFEU covers this Article.

⁶ The need for this provision has been questioned by some. Others have noted that it must be seen in the light of the right of evocation as foreseen in Article 21a.

2. When assessing whether two set of facts are inextricably linked within the meaning of paragraph 1, account shall be taken as to whether one of the relevant offences has been instrumental in committing the other offence or to whether one offence has been committed with a view to ensuring impunity⁷.
3. An offence in accordance with Article 17 shall be considered to be preponderant:
 - a) if the damage caused or likely to be caused to the Union exceeds the damage caused or likely to be caused by the same act to the Member State or a third party, or⁸,
 - b) in case the same act, under the law of the Member State, constitutes a different type of offence: if the sanction that may be imposed in respect of the offence in accordance with Article 17 is ⁹ more severe than the sanction that may be imposed in respect of the other type of offence.
4. The European Public Prosecutor's Office and the national prosecution authorities shall consult each other in order to determine which authority should exercise its competence pursuant to paragraph 1. Where appropriate to facilitate this choice, Eurojust may be associated in accordance with Article [57].

⁷ A few delegations have suggested that this provision should rather be a recital. Others have suggested that the text should be given more detail.

⁸ Many delegations have pointed out that it would be difficult to measure and compare the financial damage, or that it would at least be difficult to know what the damage is at an early stage of investigation. The assessment of the damage may also change during an investigation. It has been suggested that this rule should be seen as a hierarchical order of criteria. An explanatory recital could be considered to address these concerns.

⁹ COM, CZ and some other delegations would add the words '*equal or*' here.

5. In case of disagreement between the European Public Prosecutor's Office and the national prosecution authorities over the exercise of competence pursuant to this Article, the national authorities¹⁰ competent to decide on the attribution of competences concerning prosecution at national level¹¹ shall decide who shall exercise the ancillary competence.

*Article 19*¹²

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

1. The European Public Prosecutor's Office shall have has priority¹³ competence to investigate and prosecute any criminal offence referred to in Articles 17 and, where applicable, Article 18, where such offence¹⁴
- a) was committed in whole or in part within the territory of one or several Member States, or
 - b) was committed by a national of a Member State, or
 - c) when committed outside of these territories referred to in point a) of this Article by a person who was subject to the Staff Regulations or Conditions of Employment of Other Servants, at the time of the offence, provided that a Member State, according to its law, has jurisdiction for such offences when committed outside its territory.

¹⁰ A recital explaining that the notion of national authorities in this provision refers to judicial authorities or other authorities who have competence to decide on the attribution of competence in accordance with national law.

¹¹ IT, some delegations and COM would prefer to refer to the College or to the Court of Justice for these decisions (linked to Article 33 on judicial review).

¹² COM has a reservation on the lack of proper safeguards for the EPPO's priority competence: Member States should refrain from starting investigations –with the exception of taking urgent measures- until the EPPO has decided not to exercise its competence.

¹³ FI, MT, NL and PL would delete the word '*priority*' here.

¹⁴ This jurisdiction provision should at term be in principle identical with the corresponding jurisdiction provision in the PIF-Directive. Some delegations would introduce a reference to "participating Member States" in this and other provisions.

2. The European Public Prosecutor's Office shall exercise its competence by initiating an investigation in accordance with Article 21 unless the Office has become aware that national authorities have already opened an investigation in respect of the same offence. If the European Public Prosecutor's Office decides to exercise its competence, the national authorities shall not exercise an own competence in respect of the same offence. If the national authorities have already started a criminal investigation in respect of the same offence, the European Public Prosecutor's Office may take over the investigation initiated by the national authority by exercising its right of evocation in accordance with Article 21a.

CHAPTER IV

RULES OF PROCEDURE ON INVESTIGATIONS, PROSECUTIONS AND TRIAL PROCEEDINGS

SECTION 1

REPORTING AND BASIC RULES ON INVESTIGATIONS

*Article 20*¹⁵

Reporting, registration and verification of information

1. The institutions, bodies, offices and agencies of the Union, and the authorities of the Member States competent in accordance with applicable national law, shall inform without delay the European Public Prosecutor's Office of any criminal conduct which might constitute an offence within its competence.¹⁶ Information referred to in this Article shall be provided in a structured way, as established by the European Public Prosecutor's Office. The report shall include, as a minimum, a short description of the conduct, including an assessment of the damages caused or likely to be caused, and available information about victims and suspects. The report may be presented in the form of automatically generated information¹⁷.

¹⁵ FR proposes to include the following additional paragraph: *'The College may, in consultation with national authorities, upon proposal by the European delegated prosecutors, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences, in particular customs infringements violating Union customs legislation. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutor's Office deems to be best dealt with by national authorities under domestic law.'* The provision should be joined with the following recital *'The European Public Prosecutor's Office, on decision by the College, upon proposal by the European delegated prosecutors, should be entitled to determine specific modalities of information or discharge the national authorities from their obligation to report regarding certain types of offences, including where the conduct caused or is likely to cause damage to the Union's financial interest of more than EUR 20 000. Recourse to such possibility could be envisaged in particular in cases of offences of minor nature in order to ensure an even exercise of competence by the European Public Prosecutor's Office, taking into account possible discrepancies in Member States' criminal law.'*

BE, ES and COM would oppose a threshold of EUR 20 000.

SI, BE has proposed that the information obligation could be linked to a review clause.

¹⁶ A recital stating the following should be considered: *'Member States should set up a system which will ensure that information is reported to EPPO as soon as possible. It is up to the Member States to decide whether to set up a direct or centralized system.'*

¹⁷ DE has concerns with the newly inserted text here. This provision would provide unlimited possibilities for the College to discharge national authorities from their obligation to inform the EPPO of PIF offences. Also, the wording seems to suggest that the College may treat national authorities differently.

The College may, in consultation with national authorities, determine specific modalities of information or discharge the national authorities from their obligation to inform the European Public Prosecutor's Office regarding certain types of offences. Recourse to such possibility may be envisaged in particular for offences which the European Public Prosecutor's Office deems to be best dealt with by national authorities.

2. Where the criminal conduct caused or is likely to cause damage to the Union's financial interest of less than EUR [20 000]¹⁸, and neither has repercussions at Union level¹⁹ which require an investigation to be conducted by the Office nor which does not involve a criminal offence has been committed by officials and other servants of the European Union or members of the institutions, the information obligation may be fulfilled through a summary report every six months²⁰. The content of the summary report may be limited to the number of criminal proceedings initiated, a number of cases where an investigation has not been initiated, the number of proceedings dismissed, the number resulting in a conviction, the number resulting in an acquittal and the number of ongoing proceedings. The report may be presented in the form of automatically generated information.

Based on such summary reports, the College shall be entitled to request national authorities to report without delay offences matching a specific pattern likely to cause damage to the Union's financial interest of less than EUR 20 000 when committed in circumstances deemed to have repercussions at Union level.

¹⁸ PL and SE, supported by AT, BE, CY, CZ, EE, ES FI, FR, HR, HU, IT, LT, NL and SI have a reservation on the reporting obligation as regard offences causing or likely to cause damages of less than EUR 10 000. IT, RO, ES, CZ, LT, DE, HR, BE, BG and COM would prefer a 10 000 threshold.

¹⁹ A definition of repercussion at Union level will be added in a recital. FR, supported by EE, ES, HR, IT and LT, proposes the following wording: '*A particular case should be considered as having repercussions at Union level inter alia where a given fraud has a transnational nature and scale, where such fraud involves a criminal organisation, or where, given the nature of the case, the European Public Prosecutor's Office would be best placed to investigate, in view of the seriousness of the damage caused to the Union's financial interests or the Union Institutions' credit and Union citizen' confidence.*' The exact wording of this recital is under discussion. BE has suggested that the College could elaborate guidelines on the meaning of the notion of repercussions. DE agrees with the proposed recital in principal but will provide a proposal for a revised wording

²⁰ COM reservation: reports should be more frequent (every 3 months as in previous versions). DE questions the usefulness of the summary report containing statistical information

3. Information provided to the European Public Prosecutor's Office shall be registered and verified by the European Public Prosecutor's Office in accordance with the Internal Rules of Procedure. The verification shall aim to assess whether, on the basis of the information provided in accordance with Article 21(1), there are grounds to initiate an investigation ²¹.
4. Where, upon verification, the European Public Prosecutor's Office decides that there are no grounds to initiate an investigation, the reasons shall be noted in Case Management system. It shall inform the national authority, the Union institution, body, office or agency, and, if requested, crime victims and other persons who provided the information, thereof. Where the information received by the European Public Prosecutor's Office reveals that a criminal offence outside of the scope of the competence of the Office may have been committed, it shall without undue delay inform the competent national authorities²².
5. The European Public Prosecutor's Office may collect or request²³ any information that is relevant for the functions of the Office ²⁴.

²¹ CZ proposes the following wording: '*Verification shall aim to assess whether the information shows that the conditions set by Articles 17 and 18 determine the competence of the Office*'. This text could be included in a recital.

²² DE considers that "crime victims and other persons" should be treated in the same way as national authorities, Union institutions etc. where they had been providing the information directly to the EPPO.

²³ DE has a reservation on the words 'may request', arguing that the text could be interpreted that the recipient of the request is required – under any circumstance – to provide the requested information.

²⁴ A recital explaining that the rules of registration and verification set out in this Article shall apply *mutatis mutandis* if the information received refers to any conduct which might constitute a criminal offence within its competence will be considered. The recital will also clarify that Member States may provide any information to the Office.

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

1. Where, in accordance with the applicable national law, there are reasonable grounds to believe that an offence within the competence of the European Public Prosecutor's Office is being or has been committed, a European Delegated Prosecutor in a Member State which according to its national law has jurisdiction in the case shall²⁵, without prejudice to the rules in Article 19(2) and 21a(3)²⁶, initiate an investigation and note this in the Case Management System²⁷.
2. The Permanent Chamber which receives the information shall instruct the European Delegated Prosecutor to initiate the investigation²⁸, in accordance with the criteria referred in paragraph 3, where no investigation has been initiated by a European Delegated Prosecutor²⁹.

²⁵ FR and NL would prefer the word "may" here.

²⁶ DE questions the appropriateness of the reference here – in particular the one to Article 21a(3) as that is a provision on the right of evocation; thus it is unclear what “without prejudice” means.”

²⁷ The following recital may be considered: *'The European Public Prosecutor's Office should, when establishing the Case Management System, ensure that the necessary information from the European Delegated Prosecutors to the Central Office is covered'*.

²⁸ The following recital should be introduced in this context: *'An investigation should be systematically initiated where there are reasonable grounds to believe that an offence falling within the EPPO's competence is being or has been committed. Such an obligation should not preclude subsequent decisions of the EPPO not to prosecute, by dismissing the case or proposing a transaction.'* DE believes that a further refinement of the draft recital is necessary.

²⁹ DE has concerns with the wording of this paragraph: competence should be exercised by the competent chamber and not by any chamber that may receive information; furthermore it should be clarified that the conditions for initiating an investigation are those of paragraph 1 and that the reference to paragraph 3 concerns the allocation of the case.

3. A case shall in principle be handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the Office have been committed, the Member State where the bulk of the offences has been committed. A Permanent Chamber may only instruct a European Delegated Prosecutor of a different Member States to initiate an investigation where that Member State has jurisdiction for the case and where a deviation from the above mentioned principles is duly justified, taking into account the following criteria, in order of priority ³⁰:
- a) the place where the suspect or accused person has his/her habitual residence;
 - b) the nationality of the suspect or accused person;
 - c) the place where the main financial damage has occurred ³¹.
4. Until a decision to prosecute in accordance with Article 27 is taken, the competent Permanent Chamber in a case concerning the jurisdiction of more than one Member State may, after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:

³⁰ HU has emitted a reservation on this paragraph. DE agrees with the principals of this paragraph but considers it to be necessary to clarify that the criteria listed here also apply to the first sentence (possible deviations from “in principle”).

³¹ HU and SK would like to add additional criteria, in particular the location of the evidence. PL prefers to follow the model of bases of jurisdiction contained in other EU criminal law instruments, where '*habitual residence*' is absent or - at most - optional – hence no reason to put it in the first place in order of priority. See e.g. Directive 2001/93 and Directive 2013/40.

- a) reallocate a case to a European Delegated Prosecutor in another Member State;
- b) merge or split³² cases and in each case choose the European Delegated Prosecutor handling the case;

if such decisions are in the interest of the efficiency of investigations and in accordance with the criteria for the choice of the European Delegated Prosecutor handling the case set out in paragraph 3 in this Article.

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

³² The term 'split' will be explained in a recital, which could have the following wording: *'In principle a suspect shall only face one investigation or prosecution by the EPPO in order to best safeguard the rights of the defendant. Therefore the Permanent Chamber should seek to merge/combine proceedings concerning the same suspect but may refrain from doing so where this is in the interest of the efficiency of investigations or prosecutions. Where an offence has been committed by several persons, the EPPO should in principle initiate only one case and conduct investigations in respect of all suspects jointly. Where several European Delegated Prosecutors had opened investigations in respect of the same criminal offence, the Permanent Chamber should in principle merge/combine such investigations. The Permanent Chamber may decide not to merge/combine or decide to subsequently split such proceedings if this is in the interest of the efficiency of investigations, e.g. if proceedings against one suspect can be terminated at an earlier stage whereas proceedings against other suspects still have to be continued or if splitting the case could shorten the period of pre-trial detention of one of the suspects etc. In case the Permanent Chamber decides to split a case its competence for the cases should be maintained'. COM considers that splitting a case is against the spirit of EPPO, being one single office.*

Right of evocation and transfer of proceedings to the European Public Prosecutor's Office

1. When a judicial or law enforcement authority³⁴ of a Member State exercises competence in respect of a criminal offence where the European Public Prosecutor's Office could be competent and have a right of evocation in accordance with this Regulation, it shall without delay inform the European Public Prosecutor's Office so that the latter may decide whether to exercise the Office's right of evocation. The European Public Prosecutor's Office shall take its decision as soon as possible but no later than 5 days after having received all relevant information from the national authority, unless the European Chief Prosecutor³⁵ in a specific case takes a reasoned decision to prolong the time frame of 5 days with a maximum prolongation of 5 days. During this timeperiod the national authority shall refrain from taking any decision under national law which may have the effect of precluding the European Public Prosecutor's Office from exercising its right of evocation, but shall take any urgent measures necessary, according to national law, to ensure effective investigation and prosecution.
2. If the European Public Prosecutor's Office becomes otherwise aware of the fact that an investigation in respect of the same case is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay, and shall take a decision on whether to exercise its competence, after being duly informed under paragraph 1, within the time periods of the previous paragraph.

³³ CZ would like to include new paragraph on the right to delegate a case from EPPO to the competent national authorities, if EPPO finds out that it is not competent any more (for example for the reason of the damage which showed up to be lower than previously estimated and is below the threshold of the EPPO competence). COM reservation on this article: the EPPO should enjoy priority competence, and Member States should refrain from starting investigations – with the exception of taking urgent measures - until the EPPO has decided not to exercise its competence.

³⁴ MT, FI, SE would prefer to refer to 'competent authorities' here.

³⁵ FI has a reservation as regards the level of European Chief Prosecutor here.

- 2a. The European Public Prosecutor's Office³⁶ shall, where appropriate, consult competent authorities of the Member State concerned before deciding whether to exercise its right of evocation. Where the European Public Prosecutor's Office exercises its right of evocation, the competent authorities of the Member States shall transfer the proceedings to the Office and refrain from carrying out further acts of investigation in respect of the same offence except when acting on behalf of the European Public Prosecutor's Office in accordance with Article 23.
3. Where a criminal offence caused or is likely to cause damage to the Union's financial interests of less than EUR [20 000]³⁷ the European Public Prosecutor's Office shall refrain from exercising its right of evocation, unless
- a) a case has repercussions at Union level which require an investigation to be conducted by the Office, or
 - b) a case has been opened following suspicions that an offence has been committed by officials and other servants of the European Union, or members of the Institutions³⁸.
- The Office shall, where appropriate³⁹, consult the competent national authorities or Union bodies in view of establishing whether the criteria of the cases defined in (a) and (b) in this provision are fulfilled.
4. In case of an ancillary competence in accordance with Article 18, the European Public Prosecutor's Office may exercise its right of evocation in accordance with the conditions set out in that Article⁴⁰.

³⁶ CZ, NL, SK_ would prefer to refer to the European Delegated Prosecutor here.

³⁷ See footnote 17 above.

³⁸ A few delegations have questioned whether these cases always need to be handled by the Office. DE would like to include a recital to address this issue.

³⁹ CZ, NL, SK wish to delete the words '*where appropriate*'. RO would oppose such a deletion.

⁴⁰ CY, FI, MT, NL and SI have emitted general reservations as regards Article 18 in the Regulation.

5. The right of evocation in accordance with this Article may be exercised by a European Delegated Prosecutor from any Member State, whose competent authorities have initiated an own investigation in respect of an offence in accordance with Articles 17 or 18, or in cases referred to in Article 9 (3a)(b)⁴¹ upon instruction by a Permanent Chamber. Where a European Delegated Prosecutor, who has received the information in accordance with paragraph 1 and 4 of this Article considers not to exercise the right of evocation, he/she shall inform the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to exercise the Office's right in accordance with Article 9(3a)(b). Article 21(2), (3) and (4) shall apply when the right of evocation is exercised.
6. Where the Office has refrained from exercising its right of evocation, it shall inform the competent national authority without undue delay. The competent judicial or law enforcement authorities shall at any time in the course of the proceedings inform the Office of any new facts which could give the Office reasons to reconsider its previous decision.

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

⁴¹ DE has a reservation as regards the words '*or in cases referred to in Article 9(3)(a) and (b)*'.

Article 23

Conducting the investigation

1. The European Delegated Prosecutor handling the case may, in accordance with national law, either undertake the investigation and other measures⁴² on his/her own or instruct the competent authorities in the Member State where he/she is located. These authorities shall, in accordance with national law, ensure that all instructions from the European Public Prosecutor's Office⁴³, coming through the European Delegated Prosecutor handling the case⁴⁴, are followed and undertake the measures assigned to them. The European Delegated Prosecutor handling the case shall report⁴⁵ through the competent European Prosecutor to the Permanent Chamber on significant developments in the case, in accordance with the rules laid down in the Internal Rules of Procedure.
2. In cross-border cases, where measures need to be executed in another Member State, the European Delegated Prosecutor handling the case shall act in cooperation with the European Delegated Prosecutor where the measure needs to be carried out in accordance with Article 26a.
3. At any time during investigations conducted by the European Public Prosecutor's Office, the competent national authorities shall take urgent measures necessary to ensure effective investigations even where not specifically acting under an instruction given by the European Delegated Prosecutor handling the case. The national authorities shall without delay inform the European Delegated Prosecutor of the urgent measures taken.

⁴² DE would like to see the words '*and other measures*' deleted.

⁴³ NL would like to replace '*European Public Prosecutor's Office*' with '*European Delegated Prosecutors*' in this paragraph.

⁴⁴ COM and DE wishes to delete the reference to the European Delegated Prosecutor here.

⁴⁵ CZ wishes to see a recital explaining the exact meaning of the notion of report, such as how these reports should look like, how they should be prepared and who will translate them. It is presumable that European Delegated Prosecutors could take advantage of automated systems (see Article 20(2)) and that they will not be in charge of translation of the reports; it will be up to the central level to ensure necessary translations.

- 3a.⁴⁶ The European Prosecutor may propose to the Permanent Chamber to reallocate the case to another European Delegated Prosecutor in the same Member State when the European Delegated Prosecutor handling the case
- a) cannot perform the investigation or prosecution, or
 - b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.
4. The supervising European Prosecutor may - with the approval of that Permanent Chamber - in exceptional cases take a reasoned decision to conduct the investigation himself/herself⁴⁷, if this appears indispensable in the interest of the efficiency of the investigation or prosecution on the grounds of one or more of the following criteria:
- a) the seriousness of the offence, in particular in view of its possible repercussions on Union level⁴⁸;
 - b) when the investigation concerns Members of the institutions of the European Union;
 - c) when the European Delegated Prosecutor handling the case in the Member State cannot perform the investigation or prosecution⁴⁹.

When a European Prosecutor conducts the investigation himself/herself, he/she shall have all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.

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

⁴⁶ CZ and HU would like to explicitly clarify the consequences when the instructions given are "wrong".

⁴⁷ CY, IE, NL opposes this provision. CY, MT have noted that the provision is, as such, difficult to conciliate with common law systems. FI, HR, SI have asked for it to be clarified that a European Prosecutor who conducts the investigation himself or herself shall be appointed to be national prosecutor.

⁴⁸ BE, SI considers this criterion to be too broad.

⁴⁹ PT has noted that an explanatory recital is necessary for this point. Such a recital could have the following wording '*This condition entails that the European Delegated Prosecutor or the national authorities in charge of the investigation under his/her instructions are unable or unavailable to undertake certain measures or finalise the investigation within the time-frame set*'.

5. Investigations carried out under the authority of the European Public Prosecutor's Office shall be protected by the rules concerning professional secrecy under the applicable Union legislation. Any person participating or assisting in carrying out the functions of the European Public Prosecutor's Office shall be bound to respect professional secrecy as provided under the applicable national law.⁵⁰

Article 24

Lifting privileges or immunities

1. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under national law, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Delegated Prosecutor handling the case⁵¹ shall make a reasoned written request for its lifting in accordance with the procedures laid down by that national law.
2. Where the investigations of the European Public Prosecutor's Office involve persons protected by privileges or immunities under the law of the European Union, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Delegated Prosecutor handling the case shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law.

⁵⁰ CZ would add another provision here, to deal with evidence-related issues. CZ proposes the following paragraph: *'For using the information obtained within the investigation and prosecution conducted by the European Public Prosecutor's Office as evidence for the purpose of the criminal proceedings by the competent national authorities, it is not necessary to have the consent of the European Public Prosecutor's Office'*.

⁵¹ BE, BG, IT, RO and COM have suggested that this request should rather be made by European Chief Prosecutor, or following instructions from the European Chief Prosecutor or a Permanent Chamber.

SECTION 2

INVESTIGATION AND OTHER MEASURES

Article 25

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

The European Delegated Prosecutor handling the case shall be entitled to order or request the same types of measures in his/her Member State which are available to investigators/prosecutors according to national law in similar national cases. In addition to the conditions set out in national law, such measures may only be ordered where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective.⁵²

Article 26

Investigation and other measures⁵³

Member States shall, in addition to the measures indicated in Article 25, ensure, at least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment, and in accordance with the conditions and procedural requirements foreseen in national law and in Article 25 in this Regulation for the application of these measures, that the following measures are also available⁵⁴ under their laws to the European Public Prosecutor's Office:

⁵² DE, IT and COM would reintroduce the old paragraph 2, and FI, FR, LT the old paragraph 3, in this Article. COM opposes that the European Delegated Prosecutors deal with the lifting of immunities under EU law.

⁵³ The inclusion of following recital should be considered '*Taking into account the status of European Delegated Prosecutors in their respective Member States, they should be able to use investigative or other measures available to the national prosecutors, to the extent these measures would be lawfully available to national prosecutors in a concrete situation.*'

DE, SI, NL, SE has a reservation on the Article. SE sees three options for changing Article 26: (1) deletion of the whole article, (2) inclusion of a clear cut reference to national law without the provisions of "shall ensure", "in addition", "also". , or (3) keep the first paragraph but delete the last two points d) and e). Point d) is not really fully available in the SE legal system as the text is currently proposed. Point e) is of course available but demands a different/higher threshold than foreseen in the current wording of Article 26.

- a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
- b) obtain the production of any relevant object or document, or of stored computer data, including traffic data and banking account data, encrypted or decrypted, either in original or in some other specified form;
- c) freeze instrumentalities or proceeds of crime, including freezing of assets, which are expected to be subject to confiscation by the trial court and there is reason to believe that the owner, possessor or controller will seek to frustrate the judgement ordering confiscation⁵⁵;
- d) freeze future financial transactions, by ordering any financial or credit institution to refrain from carrying out any financial transaction involving any specified account or accounts held or controlled by the suspected or accused person⁵⁶;
- e) intercept electronic communications to and from the suspected person, on any electronic communication connection that the suspected or accused person is using⁵⁷.

*Article 26a*⁵⁸

Cross-border investigations

1. The European Delegated Prosecutors shall assist and regularly consult each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the European Delegated Prosecutor handling the case, the latter shall assign the measure to a European Delegated Prosecutor⁵⁹ located in the Member State where that measure needs to be carried out.

⁵⁵ DE would like c) to be deleted.

⁵⁶ DE, PL would like d) to be deleted, COM and FR oppose the deletion.

⁵⁷ MT would like to delete e), based on the reluctance of national authorities to use it.

⁵⁸ There are many diverging views on the content of this provision. This text is an attempt by the Presidency to reconcile as many as possible of the views expressed by delegations. AT, DE have proposed an alternative content and structure of the Article, and have received support from a number of delegations for this. FI, with support of AT, CZ, DE, MT, PL, SE has suggested an additional Article to be added to the AT/DE proposal. Some delegations have also suggested that the European Delegated Prosecutors should be able to apply the instruments of mutual recognition. SE has noted a reservation on the whole text of the Article.

⁵⁹ A separate provision that will ensure clarity as regards which European Delegated Prosecutor to contact in this context will be added to the Regulation.

2. The European Delegated Prosecutor handling the case may assign any measure in his or her competence in accordance with this Regulation or with national law of the Member State where he or she is located. The adoption and justification of such measures shall be governed by the law of the Member States of the European Delegated Prosecutor handling the case⁶⁰.

The enforcement of such measures, including conditions, modalities and procedures for taking such measures, shall be governed by the law of the Member State of the assisting European Delegated Prosecutor.

3. The assignment shall set out, in particular, a description of the measures(s) needed, and where necessary any specific formalities that have to be complied with, where available and relevant for the handling of the case, the evidence to be obtained, the description of the facts and the legal qualification of the criminal act which is the subject of the investigation. The assignment may call for the measure to be undertaken within a given time.
4. Where the law of the Member State of the assisting European Delegated Prosecutor requires judicial authorisation for a particular measure, it shall be obtained by him/her. Where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the European Delegated Prosecutor handling the case requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor.⁶¹

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

⁶⁰ A recital with the following wording will be considered: *'The European Delegated Prosecutor handling the case should assess the specific need for certain evidence gathering measures, taking into account, from a procedural perspective, the prerequisites set in the law of his MS for ordering the evidence gathering measure or for asking the judicial authorisation, in full respect of the division of judicial powers.'*

⁶¹ Many delegations have criticised this paragraph on different grounds. The following recital maybe considered to accompany the paragraph: *'The purpose of the rules on judicial authorisation of measures in cross-border cases should ensure that the duplication of the procedure of judicial authorisation can be avoided. In principle judicial authorisation should be ensured in all the cases if the law of the handling or assisting Member States provides for such authorisation. In order to ensure efficient investigation, the authorisation of the assisting Member State should be given priority. Authorisation of the handling Member State should only be sought, if the law of the assisting Member State does not require the authorisation, but the law of the handling Member State does'.*

In principle, the remedies against decisions regarding such judicial authorisation shall be governed by the law of the Member State in which the decision is taken. The place in the Regulation of the provision saying this remains to be determined.

5. The assisting European Delegated Prosecutor shall undertake the assigned notified measure, or instruct the competent national authority to do so. The assisting European Delegated Prosecutor shall thereby comply with the formalities and procedures expressly indicated by the European Delegated Prosecutor handling the case, provided that such formalities and procedures are not contrary to fundamental principles of law .
6. Where the assisting European Delegated Prosecutor considers that:
 - a) the assignment is incomplete or contains a manifest relevant error,
 - b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons,
 - c) an alternative measure would achieve the same results as the measure assigned, or
 - d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his or her Member State⁶²,he or she shall consult with the European Delegated Prosecutor handling the case in order to resolve the matter bilaterally.
7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay whether and by when the measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision through the competent European Prosecutor⁶³.

⁶² Some delegations have suggested that it should explicitly be stated that also national law implementing Article 26 a) to e) is covered by this provision.

⁶³ A number of delegations have noted that the link between this provision and Article 9 may need to be clarified.

Article 26b

Pre-trial arrest and cross-border surrender

1. The European Delegated Prosecutors may order or request from the competent judicial authority the arrest or pre-trial detention of the suspected or accused person in accordance with national law.
2. Where the arrest and surrender of a person who is not present in the Member State in which the European Delegated Prosecutor handling the case is located, is necessary, the latter shall, for the purpose of conducting a criminal prosecution, issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

SECTION 3 ⁶⁴

TERMINATION OF THE INVESTIGATION AND POWERS OF PROSECUTION

Article 27 ⁶⁵

Prosecution before national courts

1. When the European Delegated Prosecutor handling the case considers the investigation to be completed, he/she shall submit a summary of the case with, where applicable, a draft indictment to the competent European Prosecutor and Permanent Chamber for review. Where it does not instruct to dismiss the case pursuant to Article 28, the Permanent Chamber, acting through the competent European Prosecutor, shall instruct the European Delegated Prosecutor to bring the case before the competent national court with an indictment, or refer it back for further investigations. ⁶⁶

⁶⁴ DE proposes a new Article X, as well as a redrafting of Articles 27 and 28.

⁶⁵ It has been suggested that a new Article with an enumeration of the decisions that the Office can take to terminate an investigation are indicated should be introduced before this provision. CZ would prefer the wording included in doc 14710/14.

⁶⁶ The phrase '*If the European Delegated Prosecutor has not received any instruction in this sense within [x working days], it may decide to bring the case to the competent national Court on its proper initiative*' has been deleted following recent discussions in Council, during which a majority of delegations have spoken out against decision-making through silent procedure.

2. The competent Permanent Chamber shall determine, in close consultation with the European Delegated Prosecutor submitting the case, the Member State in which the prosecution shall be brought. The Permanent Chamber shall in principle bring the prosecution in the Member State of the European Delegated Prosecutor handling the case. The Chamber may determine another Member State, which has jurisdiction in the case, if there are sufficiently justified grounds related to the criteria for determining the European Delegated Prosecutor handling the case in Article 21(3)⁶⁷.
3. The competent national court is determined on the basis of national law.
4. Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, the interested persons and the relevant Union institutions, bodies, agencies of the indictment.

Article 28

Dismissal of the case⁶⁸

1. The competent Permanent Chamber shall, on proposal from the European Delegated Prosecutor handling the case⁶⁹, dismiss the case against a person where prosecution has become impossible on account of any of the following grounds⁷⁰:
 - a) death of the suspect or accused person;
 - b) amnesty granted in the state which has jurisdiction in the case;
 - c) immunity granted to the suspect, unless it has been lifted;
 - d) expiry of the national statutory limitation⁷¹ to prosecute;

⁶⁷ Many delegations have called for specific rules on judicial review of the decision on jurisdiction of trial.

⁶⁸ CZ has concerns as regards cases when an accused person insists on prosecution. CZ has also noted further concerns regarding this Article linked to the handling of investigation in practice in CZ.

⁶⁹ It may be necessary to clarify that the law of the European Delegated Prosecutor handling the case will apply here.

⁷⁰ Delegations have made a number of suggestions as regards the grounds. A criterion regarding permanently deranged persons has been called for, and a link to the prescription rules has also been asked for.

⁷¹ SK has raised the question under which national law this expiry should be assessed in cross-border cases.

- e) the suspect or accused person has already been finally acquitted or convicted of the same facts within the Union or the case has been dealt with in accordance with Article 29;
 - f) lack of relevant evidence.
2. A decision in accordance with paragraph 1 shall not bar further investigations on the basis of new facts, which could not have been known to the European Public Prosecutor's Office at the time of the decision and which become known hereafter and before expiry of applicable statutory limitations in all Member States where the case can be brought to judgment. The decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber.
 3. Where a case has been dismissed, the Central Office shall officially notify the competent national authorities and shall inform the relevant Union institutions, bodies and agencies, as well as suspects or accused and the injured party, thereof.⁷² The cases dismissed may also be referred to OLAF or to competent national administrative or judicial authorities for recovery, other administrative follow-up or monitoring.
 4. Where an investigation initiated by the European Public Prosecutor's Office reveals that the conduct subject to investigation may constitute a criminal offence, which is not within its competence, the European Public Prosecutor's Office shall refer the case without delay to the competent national authorities.

⁷² A number of delegations have requested that a more detailed rule on *ne bis in idem* should be inserted in this Article, in particular in relation to point e).

Transactions

1. After obtaining the approval of the competent Permanent Chamber, the European Delegated Prosecutor handling the case may propose⁷⁴, to the suspect to pay a lump-sum fine which, once paid, entails the final dismissal of the case (transaction), if the following cumulative criteria are satisfied:
 - aa) the offence has not been committed in circumstances that may be considered to be particularly serious, for example since the level of guilt of the suspect cannot be considered to be particularly severe;
 - a) the damages caused in total, to the Union's financial interests as well as to other victims, does not exceed 50 000⁷⁵ euros;
 - b) it would serve the purpose of proper administration of justice and the general criminal law objectives;
 - c) the damage has been compensated to all victims;
 - d) the suspect has neither been the subject of a transaction under this Regulation nor been convicted of offences affecting the Union's financial interests before.
2. The suspect shall have the right to receive legal advice on the advisability of accepting or refusing the proposal for the transaction as well as on its legal consequences, in accordance with national law.
3. The European Public Prosecutor's Office shall ensure that the amount of the fine is proportionate to the damage caused and to the suspect's financial means. The amount of the fine shall be calculated in accordance with the method of calculation defined by the rules referred to in Article 72 (e)⁷⁶.

⁷³ Some delegations would prefer if this Article is deleted from the Regulation, or that the provision give Member States the possibility to apply alternative mechanisms instead. CZ, DE, SI are of the opinion that a thorough revision of this Article is necessary. AT has submitted an alternative drafting proposal for the Article which was supported by DE.

⁷⁴ BE, FI, HU, MT, NL, PT and SE would keep a reference to national law here.

⁷⁵ FR and NL consider the threshold to be too low.

⁷⁶ RO has requested that a more precise method for calculation should be included already in this Article.

- 3a. When a judicial authorisation of a transaction is required under the law of the Member State of the European Delegated Prosecutor handling the case, the said European Delegated Prosecutor shall seek such authorisation before communicating the final transaction proposal to the suspect.
- 3b. Where the European Public Prosecutor's Office exercises a competence in accordance with Article 18 (1), the decision to offer a transaction shall be taken only with the consent of the competent national authorities of the Member State concerned. Where the competent authorities deny giving their consent, the European Public Prosecutor's Office may refer the case to the judicial authorities of the Member State for further investigation or prosecution [in accordance with Article 28a (2)].
4. The transaction proposal shall set out the alleged facts, the identity of the suspect, the alleged offence, the compensation of the damage caused and the commitment of the European Public Prosecutor's Office to dismiss the case if the suspect agrees with this proposal and pays the fine to the Union budget, as well as the time-limit within which the suspect has to pay the fine, which shall not exceed 4 months. Where the suspect agrees to such proposal, he/she shall pay within the set time-limit following receipt of the proposal of the European Public Prosecutor's Office. The European Public Prosecutor's Office can upon the request of the suspect extend the period for the payment by another [15/30/45] days, where this is justified.
5. The European Public Prosecutor's Office shall supervise the collection of the financial payment involved in the transaction. Where the fine is paid by the suspect within the time-limit set out in paragraph 4, the European Delegated Prosecutor handling the case shall finally dismiss the case and notify the competent national authorities and shall inform the relevant Union institutions, bodies, agencies and injured parties thereof. The transaction shall be noted in the Case Management System of the European Public Prosecutor's Office.
6. If the proposed fine is not paid within the time set out in paragraph 4 the European Delegated Prosecutor handling the case shall continue the prosecution of the case.
7. The European Public Prosecutor's Office or the competent national authorities may not prosecute the suspect for the same facts which constituted the offence being the subject of the final dismissal through a transaction.

SECTION 4
ADMISSIBILITY OF EVIDENCE

Article 30

Admissibility of evidence⁷⁷

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

⁷⁷ Many delegations have noted that this provision can only be finalised when the final wording of Article 27 will be there. Some delegations have called for a more explicit and detailed rule, in particular as regards illegally collected evidence. A few delegations have asked for a reference to national constitutions to be added. The text of this Article may need to be reassessed as a result of the outcome of discussions on Article 26a.

SECTION 5 CONFISCATION

Article 31

Disposition of the confiscated assets⁷⁸

Where, in accordance with the requirements and procedures laid down by national law including the national law implementing Directive 2014/42, the competent national court has decided by a final ruling to confiscate any property related to, or proceeds derived from, an offence within the competence of the European Public Prosecutor's Office, Member States shall ensure that the monetary value of such property or proceeds shall ultimately be transferred to the Union's budget, to the extent necessary to compensate the prejudice caused to the Union and to administrative measures such as the recovery of any amounts lost as a result of irregularities or negligence. This transfer shall not prejudice the rights of other victims subject to their legitimate claims.

CHAPTER V PROCEDURAL SAFEGUARDS

*Article 32*⁷⁹

Scope of the rights of the suspects and accused persons as well as other persons involved

1. The activities of the European Public Prosecutor's Office shall be carried out in full compliance with the rights of suspected persons enshrined in the Charter of Fundamental Rights of the European Union, including the right to a fair trial and the rights of defense.

⁷⁸ Some delegations have questioned whether there is a legal basis for this provision. Others have suggested that national law should apply in this area. Some delegations have requested that clarifying and detailed provisions on, for example, how money should be collected must be added, how claims should be made, how the monetary value shall be decided etc. It has also been requested that it must be ensured that the EU will not receive the same money twice, first through recovery and then from confiscated proceeds.

⁷⁹ Many delegations have underlined that provisions on access to the file for in particular suspected persons must be included in the Regulation. Some delegations would prefer to delete the list of instruments in this provision, and move it to the recitals. Some have also noted that precisions as regards applicable law are needed.

2. Any suspect and accused persons as well as other persons who are a party in the criminal proceedings of the European Public Prosecutor's Office shall, as a minimum, have the procedural rights as they are provided for in Union law, including directives concerning the rights of individuals in criminal procedures, such as:
 - (a) the right to interpretation and translation, as provided for in Directive 2010/64/EU of the European Parliament and of the Council,
 - (b) the right to information and access to the case materials, as provided for in Directive 2012/13/EU of the European Parliament and of the Council,
 - (c) the right of access to a lawyer and the right to communicate with and have third persons informed in case of detention, as provided for in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,
 - (d) the right to remain silent and the right to be presumed innocent as provided for in Directive 201x/xx/EU of the European Parliament and of the Council to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings,
 - (e) the right to legal aid as provided for in Directive 201x/xx/EU of the European Parliament and of the Council on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant,
3. Without prejudice to the rights provided in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the European Public Prosecutor's Office shall have all the procedural rights available to them under the applicable national law.

CHAPTER VI

JUDICIAL REVIEW

Article 33

Judicial review⁸⁰

OPTION 1:

When adopting procedural measures in the performance of its functions, the European Public Prosecutor's Office shall be considered as a national authority for the purpose of judicial review.

OPTION 2:

1. Only procedural measures taken by the European Public Prosecutor's Office on the basis of Articles [18(6)⁸¹, 27(4)] [and] shall be subject to review of their legality before the Court of Justice of the European Union in accordance with Article 263 of the Treaty⁸².
2. Without prejudice to Article 267 of the Treaty, the courts of Member States shall be competent to review other procedural decisions taken by the European Public Prosecutor's Office in the performance of its functions, in accordance with the requirements and procedures laid down by national law⁸³.

⁸⁰ A relative majority of delegations prefer option 2, but most delegations still believe that the options need to be modified slightly or clarified.

⁸¹ Article 18(5) on ancillary competence should be redrafted as a consequence of this provision. DE does not consider this to be the right approach as Article 18(5) applies only in case of disagreement between the authorities while the question of access to judicial review for the suspect also may arise when the involved authorities do agree.

⁸² A Recital should set out the criteria taken into account to limit the competence of the ECJ on actions for annulment to those specific cases, in the light of relevant objectives and principles.

⁸³ A Recital should be added to explain that the principles of equivalence and effectiveness as interpreted by the case law of the Court of Justice should be respected. Another recital should clarify that this provision is without prejudice to Article 267 of the Treaty, in particular preliminary rulings on the interpretation of Union law, on the validity of this Regulation and of procedural decisions taken by the European Public Prosecutor's Office. Finally another Recital should also clarify the issue of judicial review of procedural decisions taken by the European Public Prosecutor's Office which are governed by national law.