

Model Rules for the Procedure of the EPPO

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Model Rules

PART ONE: GENERAL PART

Section 1: Status and function

Rule 1 (status and competence)

1. The European Public Prosecutor's Office (EPPO) is the authority of the European Union (EU) within the area of freedom, security and justice competent for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests. It is independent as regards national authorities and EU institutions.

2. The EPPO is an indivisible supranational body under the direction of a European Public Prosecutor. It includes delegated European Public Prosecutors' offices in national jurisdictions.

Article 86 TFEU provides for the establishment of the EPPO. This Rule corresponds to Art. 86 TFEU and specifies the status of the Office.

1. Accordingly, the EPPO is a European authority within the Area of Freedom, Security and Justice of the EU and should comply with the objectives of this Area. According to Art. 86(1) TFEU the EPPO is competent to investigate, prosecute and bring to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests. It follows from the Treaty that the EPPO is a supranational investigation and prosecution service. In every system, criminal procedure begins with a phase which, once the offence had been reported, consists of identifying the author, collecting evidence and then officially drawing up charges. These consecutive tasks form the pre-trial procedure which runs from the start of the official investigation to the beginning of the trial.

According to Art. 86(1) the material scope of competence of the EPPO is confined to crimes affecting the financial interests of the EU. The Model Rules do not deal with aspects of substantive law, therefore, there is no definition on these offences in the Rules.

In order to carry out its tasks, the EPPO should be independent from both the EU Member States, and also the EU institutions and authorities. This means inter alia that the EPPO is not obliged to execute requests or orders coming from national or European authorities, national executives or European institutions. Nevertheless, the EPPO must be politically accountable. Since the Model Rules do not deal with the institutional aspects of the EPPO, the rules related to the appointment, accountability and immunities and privileges of the EPPO are not treated here.

2. As an authority of the EU, the EPPO is an indivisible supranational body. The EPPO is composed of a central office and a structure of delegates in the Member States so as to secure the link between the EU mechanism and the national systems of justice. The Model Rules do not define, however, the further details of this hierarchical structure (status of delegated prosecutors, chain of command etc.)

Rule 2 (European territoriality)

For the purpose of investigations and prosecutions conducted by the EPPO, the territory of the Member States of the EU constitutes a single legal area.

Art. 3 TEU and Art. 67(2) TFEU decree that the EU shall provide its citizens with a high level of security in the Area of Freedom, Security and Justice through measures to combat crime and to coordinate police and judicial cooperation. This is necessary because internal borders have been removed within the EU and it has become easier for offenders to move from one EU Member State to the other. For the purpose of conducting efficient and effective investigations and prosecutions, the territory of the EU Member States will therefore constitute one single legal area in order for the EPPO to be able to operate in all the different jurisdictions within the EU. The EPPO can operate not only within the territory of the EU Member States participating in it, but also within the EU institutions, bodies and agencies. As far as judicial cooperation with authorities of third countries is concerned, and also cooperation with those EU Member States which do not yet participate in the EPPO, the applicable procedure of judicial cooperation must be followed.

Rule 3 (primary authority for investigations and prosecutions)

1. The EPPO shall have primary authority to investigate and prosecute any offence within its competence.
2. In deciding whether to exercise its authority, the EPPO shall consider *inter alia*:
 - a) whether there is substantial harm to interests of the EU;
 - b) whether the case has a cross-border dimension;
 - c) whether the investigation extends to officials of the EU;
 - d) any need to ensure equivalent protection of the interests of the EU in the Member States.

1. Investigating and prosecuting offences affecting the financial interests of the EU falls within the shared competence of the EU and the Member States. Therefore both the EPPO and the national authorities are competent to deal with these offences. In order to ensure efficient investigations and prosecution, this Rule gives primary authority to the EPPO. This Rule thereby implies a hierarchical relationship between the EPPO and the national investigating and prosecuting authorities.

2. This Rule permits the EPPO to choose between investigating or prosecuting a case within its scope of competence and leaving it to the national prosecution services. This Rule thus allows the EPPO to concentrate its means and efforts on the most serious cases. As for the criteria guiding the EPPO's decision, a) to c) direct the EPPO toward investigating and prosecuting those cases in which EU interests are most seriously affected and/or which are too extensive or complex for national prosecuting authorities to cope with. Although a) does not establish a pecuniary threshold, it suggests that the EPPO should consider the damage caused by the offence when deciding whether to investigate and prosecute the case. The geographical and operational dimension of the case may also constitute a relevant factor in deciding to investigate it at the European level. Since cross-border cases tend to be more complex and it is only the EPPO who is able to investigate and prosecute in several Member States pursuant to the principle of European territoriality, b) requires the EPPO to consider the cross border dimension of the case when deciding on exercising its authority. Where EU officials are involved in the offence it is likely that investigations in EU institutions, agencies and bodies will be necessary which is the prerogative of the EPPO. Even where none of the criteria named in a) to c) are applicable, it may be necessary for the EPPO to proceed for the purpose of ensuring that the financial interests of the EU are being protected in an equivalent manner.

Rule 4 (obligation to report)

1. All competent national authorities and competent institutions, bodies, agencies and offices of the EU shall immediately inform the EPPO of any conduct which could constitute an offence within its competence.
2. The EPPO shall promptly decide whether the matter falls within its competence and whether it wishes to investigate it. The EPPO shall communicate its decision to the relevant national authorities as well as to the relevant institutions, bodies, agencies and offices of the EU.

The objective of this Rule is to ensure that the EPPO receives complete and continuous information from all the actors involved in investigating and prosecuting crimes affecting the financial interests of the EU. This is of primary importance, because the EPPO needs to have a broad, EU-wide view of the cases it handles. What may look like a trivial case to national authorities may well form part of a more serious complex of offences. Through the principle of systematic referral, the EPPO will be in a position to connect separate pieces of information and to see the links between different cases. Furthermore, the EPPO will be best placed to assess the criteria listed in Rule 3(2) (primary authority for investigations and prosecutions), and thus decide whether to act, if it has full and complete information on the cases within its remit.

1. This Rule establishes a system of mandatory reporting to the EPPO by EU authorities and staff and by national authorities of all kinds in performance of their duties. The Rule does not impose a reporting obligation on private citizens, because the nature of offences within the scope of competence of the EPPO makes it more likely that it is national and EU institutions and authorities that will have information of value to the EPPO.

2. Once the EPPO has received the information from the respective authorities and institutions, it must decide whether the matter falls within its competence as provided by Rule 1, and subsequently whether it wishes to investigate it, based on the criteria in Rule 3(2) (primary authority for investigations and prosecutions). This must be done 'promptly' in order not to waste valuable time. If the EPPO accepts a case, it shall then open a file. The decision to open a file does not mean that a decision to initiate an investigation (see Rule 21, initiation of investigation) has been taken.

Rule 5 (exclusive authority of the EPPO)

1. If the EPPO decides to investigate a case, national authorities are no longer competent to investigate and prosecute that case.
2. The EPPO may at any time refer a case within its competence to a competent national authority. In that case, the EPPO may later demand that the national authority refer the case back to the EPPO.

This Rule is an emanation of the primary authority of the EPPO and corresponds to similar competences of federal public prosecutors in federal states, and to the Commission's powers in EU competition law (Art. 11(6) Regulation No 1/2003).

1. The exclusive competence of the EPPO will avoid conflicting decisions being made in a given case, will avoid resources being wasted and will also protect the suspect from cumulative investigative measures in parallel proceedings under EU law and national law. If the EPPO decides to investigate a case the national authorities will be relieved of their competence to investigate the case (see also Art. 11(6) Regulation No 1/2003). The effect of the EPPO's decision is limited to the particular case the EPPO is dealing with; the national authority remains competent to investigate other cases even if they are linked to the case investigated by the EPPO.

2. Because the scope of the case might change over time the EPPO is not bound by its decision to initiate an investigation, but may at any stage of the investigation refer the case to a competent national authority, and may also later request a 're-referral'. In this regard, the rule on referral will apply (Rule 67, referral and revoking of the case).

Rule 6 (position of the EPPO within the national systems)

1. The EPPO is entitled to make use of the powers conferred by these Rules within each national system.
2. After instituting a prosecution in accordance with Rule 63 (*mandatory prosecution*), the EPPO shall have the same powers as a national public prosecutor in respect of bringing a case to judgment.
3. Competent national authorities and competent institutions, bodies, agencies and offices of the EU shall provide information and operational assistance and shall carry out the instructions of the EPPO.

Art. 86 TFEU establishes a hybrid procedural system for the EPPO. According to Art. 86(1) TFEU, European rules apply to the procedure of the EPPO whereas Art. 86(3) TFEU determines that the trial shall take place before the competent courts of the Member States. Accordingly, the Model Rules should apply to the pre-trial procedure whereas the national criminal procedural law of the forum state should apply to the trial. In order to ensure that this complex procedural framework works, this Rule aims to link the EPPO to the national criminal justice systems.

1. *It follows from the principle of European territoriality (Rule 2) that the EPPO may operate within each national system. It may use, however, only those powers which are conferred on it by these Rules. This could lead to a situation where the EPPO may do less than a national prosecutor (e.g. the EPPO has no power to order an online computer search in a Member State where the national prosecutor may do so), or may do more than a national prosecutor (e.g. order interception of content data where the national prosecutor may not do so).*
2. *The EPPO has autonomous powers to investigate and prosecute a case in accordance with the Model Rules. It also has the power to bring to judgment a case within its scope of competence. Since the trial takes place in the national courts according to national procedural law, the EPPO must be able to exercise the powers equivalent to national prosecutors in order to fulfil this task.*
3. *The EPPO may perform its functions only with the help of national authorities. Since there is no European 'police judiciaire' to carry out investigative measures in the field, the national investigating and prosecuting service must give operational assistance to the EPPO. The EPPO may, therefore, issue instructions to the national investigative authorities and prosecution services. This presupposes that the national criminal justice systems of the Member States acknowledge the EPPO as a prosecutorial authority in their respective laws regulating criminal procedure.*

Rule 7 (judicial control)

1. To the extent indicated in these Rules, decisions of the EPPO affecting individual rights are subject to review by the European court.
2. Where these Rules provide for prior authorisation for a measure to be obtained by the EPPO, a judge designated by each Member State shall be competent to decide upon this

authorisation. Authorisation by the judge is effective within the single legal area as defined under Rule 2 (European territoriality).

1. Coercive investigation measures applied by the EPPO – as defined in Sections 3 and 4 of Part II by the Rules – can be judicially reviewed ex post. Art. 263 of the Treaty itself grants every natural or legal person the right to institute proceedings before the CJEU against any act addressed to them or which is of direct and individual concern to them, if the contested act emanates from bodies, offices or agencies of the Union and was intended to produce legal effects vis-à-vis third parties. In accordance with the Treaty a European court must be competent for this kind of subsequent review of decisions of the EPPO. In the Rules, this institution is described as ‘the European court’. It lies outside the scope of the Model Rules to examine in detail the possibility of establishing a European criminal court, e.g., as a specialised chamber at the CJEU. However, in order to guarantee the equivalent and effective enforcement of the Rules, judicial review ex post should not be left to the courts of the individual Member States.

2. Certain investigation measures – as defined in Section 4 of Part II of the Model Rules – are subject to the ex ante authorisation of the competent national court. In these Rules, the authorising national court is called ‘the judge’. It follows from the system of EU law that the national judge applies EU law, even when the national judge is dealing with a criminal matter. In accordance with Rule 2 (European territoriality), the authorisation given by the national judge will have an EU-wide effect. Accordingly there is no need for mutual recognition.

Section 2: General Rules on procedural safeguards and evidence

Rule 8 (procedural legality)

The EPPO shall apply investigative or prosecutorial measures only as provided by these Rules.

This Rule expresses the notion that the Model Rules constitute a complete and self-contained system of procedural rules. For this reason, the Rules do not make any reference to the application of the national criminal procedural laws of the Member States in situations not regulated in the Model Rules (i.e. no ‘fall back clauses’). The powers stipulated in the Model Rules are exhaustive (but see the explanatory notes to Rule 23, general rule for non-coercive measures).

Rule 9 (proportionality)

The EPPO shall exercise its powers in the least intrusive manner and in accordance with the principle of proportionality.

The principle of proportionality is part of the general principles of EU law and is common to the constitutional traditions of the Member States. The types of investigative measures as provided for by Rule 22 (types of investigative measures) reflect the principle of proportionality. In considering what is proportionate, the EPPO must bear in mind the interests of third parties as well as those of the suspect.

Rule 10 (duty to investigate impartially)

The EPPO shall seek all relevant evidence, whether inculpatory or exculpatory.

In the system envisaged by the Model Rules, the EPPO is an impartial authority acting in the public interest. Thus the EPPO is an organ of European criminal justice whose object is not to secure conviction but to present the relevant facts before the judge, these including not only evidence of guilt but also evidence of innocence. By so doing, the EPPO contributes to the discovery of the truth in a judicial setting. This requires the EPPO to perform its duties impartially, being guided only by the concern to see the law applied. It follows from this understanding that the EPPO is obliged pursuant to Rule 17(1) (disclosure of the materials of the case) to disclose exculpatory evidence to the defence.

Rule 11 (definition of the suspect)

1. A 'suspect' is a person whom the EPPO has reasonable grounds to suspect of the commission of an offence.
2. If the EPPO takes an investigative measure that may be taken only against a suspect, the person affected then acquires the status of a suspect.

Traditionally a person against whom criminal proceedings are directed may acquire a different status entailing different rights at different stages of the criminal process.

1. *Since these Rules regulate only the pre-trial procedure they refer to the suspect, this being a person under investigation by the EPPO in circumstances where there are reasonable grounds to suspect that s/he has committed an offence. In these Rules the suspect is considered to be a party to the criminal procedure and thus has the rights set out in Rule 12 (rights of the suspect).*
2. *Some measures, such as Rule 58 (short term arrest), Rule 59 (threshold for pre-trial detention) and Rule 44 (targeted surveillance in public places), are permissible only with respect to a suspect. Any person against whom such measures are taken thereby acquires the status of suspect. This normally implies that the person enjoys the rights conferred by Rule 12 (rights of the suspect), except where the nature of the measure necessarily means that these rights are inapplicable at that time.*

Rule 12 (rights of the suspect)

The suspect has the following rights:

- a) the right to consult a defence lawyer, to have him/her present and to be assisted by him/her during questioning as provided by Rule 14 (right to legal assistance).
- b) the right to remain silent, in accordance with Rule 18 (privilege against self-incrimination).
- c) the right to be informed by the EPPO that any statement s/he makes during the questioning may be used as evidence.
- d) the right to an interpreter and to a translation of essential documents as provided by Rules 13 (right to interpretation and translation) and 20 (interpretation and application).
- e) the right to gather evidence and to request the EPPO to collect evidence on his/her behalf in accordance with Rule 15 (right to gather evidence).
- f) the right of access to materials as provided by Rule 16 (access to the materials of the case).
- g) the right to be given a letter setting out his/her rights.
- h) the right to be promptly informed by the EPPO that s/he is suspected of a criminal offence and of the legal and factual grounds on which the suspicion is based, except where the EPPO has reasonable grounds to believe that to do so would prejudice an ongoing investigation.

The Model Rules have a ‘model character’ in the sense that they strive to establish a fair balance between the powers of the EPPO and the rights of the suspect. The Model Rules place strong emphasis on procedural safeguards and extend them beyond the current EU acquis on defence rights.

a. See explanatory notes to Rule 14 (right to legal assistance).

b. See explanatory notes to Rule 18 (privilege against self-incrimination).

c. When cautioning the suspect about his/her right to remain silent, the EPPO informs the suspect that his/her statements may be used as evidence. In order to be able to assess the consequences of the decision whether to make a statement the suspect needs to be informed that his/her statements may be used as evidence.

d. See explanatory notes to Rules 13 (right to interpretation and translation) and to Rule 20 (interpretation and application).

e. See explanatory notes to Rule 15 (right to gather evidence).

f. See explanatory notes to Rule 16 (access to the materials of the case).

g. This Rule confirms Art. 4 of the Directive 2012/13/EU on the right to information, which provides for the suspect’s right to receive a Letter of Rights. Setting out the suspect’s rights is essential if the suspect is to be able to exercise those rights.

h. Art. 6(3) (a) ECHR affords the defendant the right to be informed not only of the cause of the accusation, i.e. the acts s/he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts. That information should be detailed. The scope of this provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Art. 6(1) ECHR. Art. 6(3)(a) does not impose any special formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him. In this regard, Art. 6 of the Directive 2012/13/EU on the right to information in criminal proceedings establishes the right to information about the accusation. This is confirmed by this Rule. However, the EPPO may make an exception to this right where it has reasonable grounds to believe that giving certain information to the suspect would prejudice an ongoing investigation, for example by enabling the suspect to interfere with the witness.

Rule 13 (right to interpretation and translation)

1. To the extent that the suspect does not speak or understand the language of the proceedings the EPPO shall without delay ensure that s/he is provided with interpretation.

2. Where necessary for the purpose of safeguarding the fairness of the proceedings and the exercise of the right of defence the EPPO shall:

a) make interpretation available for communication between the suspect and his/her lawyer in direct connection with any questioning;

b) provide the suspect with a written translation of all essential documents except where an oral translation or oral summary adequately safeguards the fairness of the proceedings.

1. Linguistic assistance is specifically provided for in Art. 6(3)(e) ECHR, which confers on the suspect the right to ‘have the free assistance of an interpreter if he cannot understand or speak the language used in court’. This Rule confirms the case law of the ECtHR and the obligation contained in Art. 4 of the Directive 2010/64/EU. Thus this Rule does not apply to all cases in which the language of the proceedings is not the suspect’s native language. This obligation arises only if the suspect does not speak or understand the language of the proceedings.

It should be stressed that the duty is to ensure an interpretation of good quality. This duty is

explicitly enshrined in Art. 2(8) of the Directive 2010/64/EU.

2.

a. This Rule confirms Art. 2(2) of the Directive 2010/64/EU and provides for the right of the suspect to interpretation and translation in order to be able to communicate with his/her lawyer.

*b. Art. 6(3)(e) ECHR refers to an ‘interpreter’ and not a ‘translator’. This suggests that oral linguistic assistance may satisfy the requirements of the Convention (see *Husain v Italy*, App no 18913/03, 24 February 2005). Although the Court specifies that the ECHR ‘does not go as far as to require a written translation of all items of written evidence or official documents in the procedure’; ‘the interpretative assistance should be such as to enable the defendant to understand the case against him and to defend himself, notably being able to put before the court his version of the events’ (*Kamasinski v Austria*, App no 9783/82, 19 December 1989, para 74).*

This Rule confirms Art. 3 of the Directive 2010/64/EU and provides that ‘essential documents’ need to be translated, a term which includes the detention order and the indictment.

Rule 14 (right to legal assistance)

1. Every suspect shall have the right to be assisted by a lawyer of his/her choice.
2. Where a suspect has no lawyer, the EPPO shall ensure that a lawyer is appointed, unless the suspect objects.
3. If the suspect is indigent the EU shall bear the reasonable cost of the appointed lawyer for the investigation phase of the proceedings.

*1. The assistance of a defence lawyer is provided for in Art. 47 CFR and Art. 6 (3)(c) ECHR. The latter recognises the right of the suspect either to choose ‘to defend himself in person’ or to have ‘legal assistance of his own choosing’. Especially in the early stages of the criminal investigation it is the task of the lawyer to ensure respect for the right of the suspect not to incriminate himself. The principle of equality of arms requires that a suspect be afforded the whole range of assistance which is integral to legal advice, such as discussion of the case, preparation for interrogation, providing support for the suspect and checking the conditions under which the suspect is detained. Furthermore, the ECtHR has confirmed that the right to legal assistance arises from the first interrogation of the suspect by the police (*Salduz v Turkey*, App no 36391/02, 27 November 2008). In full compliance with the case law of the ECtHR, this Rule ensures the right to legal assistance as also envisaged by the Draft Directive (COM(2011)326) regarding access to a lawyer.*

2. Since legal advice is an essential aspect of a proper defence, the EPPO is responsible for appointing a lawyer for the suspect where s/he does not have one. It is, however, not obligatory for the suspect to have a lawyer and s/he can waive the right to legal assistance.

3. In line with Art. 47(3) CFR this Rule provides for the EU to cover the reasonable costs of legal assistance if the suspect cannot afford it. In assessing the prerequisites of legal aid, an objective standard should be applied.

Rule 15 (right to gather evidence)

1. The suspect is entitled to gather information and materials and to submit it for the consideration of the EPPO. The suspect has no coercive powers to gather evidence and must not interfere with the process of justice.

2. The suspect may request the EPPO to perform any investigative act. The request must be made in writing and with reasons given. The EPPO shall undertake the required measure, unless it reasonably believes that this would jeopardise the investigation or would be futile or disproportionate. Any refusal must be made in writing, with reasons given.
3. Refusal is subject to appeal to the European court.

Both the CFR and Art. 6 ECHR do not contain any explicit provision giving the defence the right to seek evidence, investigate facts, interview prospective witnesses or obtain expert evidence.

1. *Taking account of the superior position of the EPPO to gather evidence and allowing for the impartial nature of the EPPO as set out in Rule 10 (duty to investigate impartially), this Rule ensures that the defence is entitled to undertake investigatory measures/acts on its own. Thus the defence has the power to interview witnesses, conduct scientific tests, instruct experts etc. Such investigations, however, may not entail the use of coercive powers.*
2. *Although the defence may have the right under subparagraph 1 to gather evidence, defendants often lack both the funds and the structural means to conduct investigations. This Rule therefore gives the defence the right to request the EPPO to gather evidence on its behalf. This is especially relevant for those investigative measures which involve coercive powers and which therefore cannot be performed by the defence. The EPPO has a discretion as to whether to comply with the request of the defence. In order to enable the EPPO to make a decision, the defence must support its request with reasons. In principle the EPPO should normally grant such requests made by the defence. It may refuse them only when it reasonably believes that granting them would jeopardise the investigation or that they would be futile or disproportionate.*
3. *Undue denial by the EPPO to perform the requested act may influence the outcome of the proceedings. Thus in line with Rule 7(1) (judicial control) such a decision may be appealed.*

Rule 16 (access to the materials of the case)

1. The suspect may at any time during the investigation request access to relevant materials in the possession of the EPPO.
2. The request may be refused or the response delayed only insofar as access might prejudice the investigation or any other investigation in progress or might lead to serious risk to life or limb or might seriously jeopardise the security of any Member State or of the EU. The EPPO shall decide within a reasonable time on any request for access to materials.
3. Access may never be denied to reports of those investigative measures at which the suspect or his/her lawyer had the right to be present in accordance with these Rules. Refusal is subject to appeal to the European court.

Access to the file during the preparatory phase is essential for preparing the defence. This consideration qualifies the permissible level of secrecy of the investigation.

1. *In the system of the Model Rules, evidence gathered during the pre-trial procedure may have the legal status of evidence (Rule 19, status of evidence). For this reason it is necessary that the defence should have the right to discovery during the investigation. 'Relevant materials' mean those which could be helpful to the defence. The practical working of the Model Rules already ensures the defence a certain measure of discovery before the close of the investigation, in that the defence has the right to be present when certain official records are drawn up (Rule 48 (searches), etc.). This Rule adds to that by giving the suspect the right to inspect the investigative file at any time by requesting access to the relevant materials. This right is qualified by Rule 16 (2).*

2. *There are many situations where access may be restricted. Examples are where there is a need to protect the confidentiality of the information, or to protect the safety of witnesses and victims and members of their families, or where there is a risk of destroying witness privilege or of interfering with other investigations, or a need to protect state secrets. According to the ECtHR case-law, measures restricting the rights of the defence are permissible only to the extent that they are strictly necessary, and where, in order to ensure that the defendant has a fair trial, any difficulties which defence may encounter due to the limitations of their rights are adequately compensated for in the proceedings before the judicial authorities (Jasper v UK, App no 27052/95, 16 February 2000, para 52; Rowe and Davis v UK, App no 28901/95, 16 February 2000, para 61). This right is also ensured in Art. 7(4) of the Directive 2012/13/EU. This Rule confirms Art. 7(4) of the Directive 2012/13/EU. It reaffirms that access is at the discretion of the EPPO until the end of the investigation. Therefore the decision of the EPPO to restrict access is not subject to judicial review.*

3. *The disclosure of evidence obtained in circumstances where defence had the right to be present cannot prejudice the investigation. In such cases the need to ensure the confidentiality of the investigation does not arise.*

In accordance with Rule 7 (judicial control) the defence can challenge the delay or the refusal of the EPPO before the European court.

Rule 17 (disclosure of the materials of the case)

1. Without prejudice to Rule 16 (access to the materials of the case) and to any specific duty of disclosure in respect of any specific investigative measure, the EPPO shall at the end of the investigation disclose the materials of the case to the defence.
2. Access to specified materials may be refused by the EPPO where access to these materials might lead to serious risk to life or limb or might seriously jeopardise the security of any Member State or of the EU. In such a case, the EPPO shall provide an index of these materials to the defence. At the request of the defence the European court will examine the materials in question and decide whether and to what extent they can be disclosed, and if so, in what form.
3. Paragraph 1 does not apply if the EPPO decides to dismiss the case or to refer the case to the national authorities.
4. If the EPPO later acquires materials that have not yet been disclosed, it shall grant an adequate and prompt prior disclosure to the defence.

1. Access to the file is essential to enable the suspect to inform him/herself about the accusations that s/he faces. The right to a fair trial as enshrined in Art. 6 TEU, Art. 47 and Art. 48 CFR and Art. 6 ECHR requires full discovery in favour of the defence before the trial. This right of access to the file is a corollary to the principle of equality of arms. The ECtHR has ruled that unrestricted access to the case file and unrestricted note-taking, including, if necessary, the possibility of obtaining copies of relevant documents, are important guarantees of a fair trial in criminal proceedings.

In addition, Art. 7(3) of the Directive 2012/13/EU stipulates that there must be full disclosure 'at the latest upon submission of the merits of the accusation to the judgment of a court'. Once the investigations are closed, access to the file cannot be denied. At this stage disclosure must be complete: it must include all reports of investigative activities and all relevant documentation, whether counting for and against the suspect (ECtHR, Edwards v UK, App no 13071/87, 16 December 1992, para 36). All material obtained by the prosecution during the criminal investigation which is relevant to the investigation must be retained and

made available to the defence ahead of trial, even if it is still 'unused'. This Rule includes the right of the suspect to obtain a copy of all evidence and information.

In order to guarantee full respect for the right to the full disclosure of evidence, the defendant has the right to challenge the extent of disclosure granted before the European court.

2. Once the investigation is complete the right of the defence to full disclosure may be limited only in exceptional circumstances as stipulated in this Rule. Since withholding information before the trial seriously interferes with the suspect's right to information about the accusation that s/he faces, the Rules provide for judicial review in such cases. The European court may then order the disclosure of the information in full or in part and decide the form that it shall take (e.g. anonymise, etc.).

3. There is no need to disclose the file in case of dismissal of the case by the EPPO. Where the EPPO decides to refer the case to the national authorities, national rules on access to the file will then apply.

4. There is a need to specify that the right of access to the file does not end with the beginning of the trial: in order to guarantee a fair trial, the EPPO must disclose documents or information not previously disclosed. The same guarantee is provided for by Art. 7(3) of the Directive 2012/13/EU.

Rule 18 (privilege against self-incrimination)

Subject to any obligation to produce documents under national or EU law, no person is obliged to actively contribute to establishing his/her own guilt.

The case law of the ECtHR (Lingens and Leitgeb v Austria, App no 8803/79, 11 December 1981) consistently stresses that the right to remain silent and the right not to incriminate oneself are fundamental features of the concept of fair trial enshrined in Art. 6 ECHR, these being 'generally recognised international standards which lie at the heart of the notion of a fair procedure' (Funke v France, App no 10828/84, 25 February 1993). According to the case law of the ECtHR the privilege against self-incrimination applies to pre-trial proceedings (Saunders v UK, App no 19187/91, 17 December 1996, para 69).

The scope of this privilege is limited. The Rules oblige the suspect to cooperate to a certain extent with the EPPO. As permitted by the case-law of the ECtHR, the suspect must submit to certain bodily examinations, like the taking of blood samples, DNA, fingerprints, etc. (Rule 35, identification measures), as they are independent of the will of the person. In accordance with the Rules, the suspect can also be required to provide certain personal details.

Rule 19 (status of evidence)

National courts may not treat as illegally or improperly obtained evidence that has been gathered in accordance with these Rules.

Since the assessment of evidence is part of the trial, it falls outside the scope of the Model Rules to formulate provisions on the admissibility of evidence. However, this Rule ensures that evidence cannot be excluded on the sole basis that it was collected contrary to the national provisions of the country where the case is tried, if the evidence was collected in accordance with the Model Rules. This Rule does not prejudice, however, the right of the trial court to freely assess the evidence.

Rule 20 (interpretation in conformity with fundamental rights)

These Rules shall be interpreted and applied in conformity with the obligation under Article 6 of the TEU to respect fundamental rights and general principles of EU law.

The EPPO must comply with the objectives of the TFEU and performs its duties with respect to the fundamental rights and general principles of EU law and the CFR.

PART TWO: INVESTIGATION PHASE

Section 1: Initiation of investigation

Rule 21 (initiation of investigation)

1. When it has reasonable grounds to suspect that an offence within its competence is being or has been committed the EPPO shall initiate an investigation.
2. The initiation of an investigation by the EPPO is not susceptible to legal challenge.
3. Where a person has been under investigation for two years, the European court shall, upon request of that person, order the investigation against that person to be discontinued, if it finds that there are no reasonable grounds for that investigation to be continued.

In the system envisaged by Art. 86 TFEU, ‘investigation, prosecution and bringing to judgement’ denote the different prerogatives of the European Public Prosecutor. The procedural phase ‘investigation’ as mentioned in Art. 86 TFEU is the preparatory phase of the procedure which runs from the start of the official investigation to the indictment. In most of the EU Member States investigation is understood as a set of procedural activities carried out by the investigating authorities and aimed at determining whether a criminal offence has been committed, identifying the person or persons responsible and collecting and preserving the evidence necessary to prosecute the perpetrators. The purpose of the investigation is to determine whether the reported information and suspicion are well grounded and that the offence has indeed been committed and to provide the grounds for the decision on whether or not to prosecute.

Before starting the official investigation, the EPPO decides, on the basis of Rule 4 (obligation to report), whether the matter falls within its competence as defined in Rule 1 (status and competence), and whether it wishes to investigate using the criteria listed in Rule 3(2) (primary authority for investigations and prosecutions). Once an investigation has been officially opened, the EPPO may execute investigative measures under these Rules.

1. This provision establishes reasonable suspicion as a general threshold for opening the official investigation. Reasonable suspicion presupposes the existence of facts or information indicating that an offence may have been committed. At this stage it is not necessary for the suspicion to be individualised.

2. Save for the deprivation of personal liberty, the ECHR does not establish standards for the review of pre-trial decisions. Because the mere initiation of an investigation does not by itself affect fundamental rights, this provision does not permit anyone to challenge the decision of the EPPO to open an official investigation. Coercive investigative measures with or without prior judicial authorisation may be appealed in accordance with Rules 31 (general rules for coercive measures without prior judicial authorisation) and 47 (general rules for coercive measures with prior judicial authorisation).

3. This subparagraph strikes a balance between the need for investigations that may be time-consuming due to the complexity of the economic and financial offences that the EPPO is required to investigate, and the need to prevent excessively long investigations that may violate the right of the affected person to a fair trial under Art. 47 CFR and Art. 6 ECHR. Although this provision does not impose an absolute time limit on investigations, it gives the person under investigation the right to request a ruling from the European court as to whether it is reasonable for the investigation to continue.

Rule 22 (types of investigative measures)

1. For the purposes of the investigation, the EPPO may apply the following types of measures:

- a) non-coercive measures,
- b) coercive measures without prior judicial authorisation,
- c) coercive measures with prior judicial authorisation.

In these Rules, all investigative measures are placed in one or other of three categories. The different categories of investigative measures presuppose different thresholds, as detailed in Rules 23 (general rule for non-coercive measures), 31 (general rules for coercive measures without prior judicial authorisation) and 47 (general rules for coercive measures with prior judicial authorisation).

The powers stipulated in these Rules are exhaustive; those powers which are not regulated in the Rules are not available to the EPPO. This could lead to a situation where the EPPO may do less than a national prosecutor (e.g. the EPPO has no power to order an online computer search in a Member State where the national prosecutor may do so), or where it may do more than a national prosecutor (e.g. order interception of content data where the national prosecutor may not do so).

Section 2: Non-coercive measures

Rule 23 (general rule for non-coercive measures)

The EPPO may for the purpose of the investigation collect any information and evidence, provided that any measure affecting fundamental rights must be specifically authorised by these Rules.

In accordance with procedural legality (Rule 8), even the mere collection of information and evidence requires a legal basis. This Rule allows the EPPO to resort to any non-coercive investigative measure not specifically listed in the Rules whenever it reasonably suspects that an offence within its competence has been committed (Rule 21, initiation of investigation). A measure to which the affected person freely consents is regarded as non-coercive (for example access to private premises with the consent of the owner or of the occupier). Non-coercive investigative measures do not need to be ordered in writing and are not open to challenge by the affected party. Neither this Rule nor Rule 24 (access to registers) precludes the collection, before the official investigation is initiated, of information under legal powers existing outside these Rules.

Rule 24 (access to registers)

The EPPO shall be given access to any national or European registers or records maintained for a public purpose.

This provision gives the EPPO a general right of access to all types of recorded or registered information which is held for public purposes, irrespective of whether the record or register is kept by a public authority or by a private organisation. This includes the right not only to receive such information but also the right to be told whether such information exists. Records which would typically fall within the scope of this Rule are registers or records of

convictions, arrests, investigations (including on-going investigations), property, notarial acts, company data, tax and customs data, vehicle registration data, and population registers.

The EPPO shall have access to both national and European records and registers. In particular, full access to information contained in European records or registers is in line with Art. 8(2) of the Regulation No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, which already provides for such right in relation to the administrative investigations of OLAF.

Rule 25 (questioning of the suspect)

1. The EPPO may question the suspect.
2. The EPPO shall inform the suspect in writing at the beginning of each questioning of the rights contained in Rule 12 (rights of the suspect).

- 1. The questioning may be carried out face to face or by using communication technology such as telephone or video conferencing.*
- 2. Before being questioned by the EPPO the suspect must be informed of the rights contained in Rule 12 (rights of the suspect). This applies not only to the first questioning, but also to any later questioning.*

Rule 26 (questioning of witnesses)

The EPPO may question witnesses. Witnesses are obliged to identify themselves and to give truthful answers about facts known to them regarding the subject of the investigation.

The EPPO has the right to question anyone who is likely to have relevant information about the facts, persons, or circumstances of the offence under investigation. The questioning may be carried out face to face or by using communication technology such as telephone or video conference. Communication technology should be used if it is not possible for the witness to attend the hearing in person, e.g. because of absence abroad, or where attendance at the hearing is undesirable e.g. for safety reasons.

Witnesses are obliged to cooperate with the EPPO and answer questions except in those cases specified in Rule 27 (the right of a witness to refuse to give evidence). Witnesses are obliged to state the truth and not to conceal anything known to them. False testimony will be sanctioned according to national criminal law.

Rule 27 (the right of a witness to refuse to give evidence)

1. The witness may refuse to answer questions to the extent that s/he would thereby incriminate himself/herself or any of the persons mentioned in subsection (2).
2. The spouse and close relatives of the suspect may refuse to answer any question.
3. Public officials may on instructions from their superiors refuse to answer questions in relation to secrets entrusted to them in their official capacity, if the interest of public security outweighs the interest in discovering the truth. If the public servant refuses to answer questions the judge shall, upon request of the EPPO or of the defence, question him/her and draw up a protocol containing as much of his/her statement as can be disclosed without risk to the security of a Member State or the EU.

4. Unless they have the duty to answer questions under EU law, members of the clergy, lawyers, notaries, physicians, psychiatrists, auditors, external accountants, tax advisors, and their support staff, may refuse to answer questions in relation to any secrets entrusted to them in their professional capacity or which they become aware of in the course of their work. The privilege does not apply where the client consents.
5. Journalists may refuse to disclose their sources of information.
6. Notwithstanding subsection (4) and (5) the person is obliged to answer questions if s/he has been ordered by a judge to disclose information indispensable for the investigation.
7. Except with the consent of the suspect, his/her defence lawyer may not be questioned on any facts communicated to him/her in connection with the case.
8. The EPPO shall inform the witness of his/her right to refuse to answer questions as soon as it becomes aware that such a right may apply.

1. *Witnesses may refuse to answer questions if the reply would put the witness, his spouse or one of his relatives at risk of being prosecuted for a criminal offence. The notion 'close relative' should be understood broadly to cover, inter alia, the descendants and ascendants of the suspect, the registered or cohabiting partner of the suspect, a person who has a child together with the suspect, the brother or sister of the suspect or the spouse of the brother or sister of the suspect, a sibling or stepsibling of the suspect and the spouse and children of the sibling or stepsibling, the foster parents, foster children and foster siblings of the suspect, and a person appointed as the suspect's guardian.*
2. *The testimonial privilege belongs to the witness, not to the suspect. Thus the defendant has no legal right to influence a relative's decision whether to testify.*
3. *Public officials enjoy a limited privilege to refuse to testify. The privilege may be invoked only in relation to secrets that were entrusted to them in their official capacity and only if so instructed by their superior. On the request of the EPPO or the defence, public officials under an obligation of secrecy are obliged to give evidence to the judge. If, however, disclosure of the information in question could jeopardise the interests of a Member State or the EU, the judge shall exclude the information from the official record.*
4. *Members of those professions listed in subparagraph 4 may decline to testify as to any information obtained in the course of their professional activities, unless the person who provided the information authorises the disclosure or where subsection 6 applies.*
5. *Journalists enjoy a relative privilege against answering questions with regard to sources of information.*
6. *The testimonial privilege of members of certain professions (see subparagraph 4) and of journalists (see subparagraph 5) may be overruled by the judge if the disclosure of the information is indispensable for the investigation. Disclosure is indispensable if facts critical to the investigation cannot be established on the basis of other evidence.*
7. *Since legal privilege is part of the general principles of EU law (ECJ, AM & S Europe, Case 155/79, 18 May 1982, para 21 et seq) correspondence between defence counsel and their clients enjoys absolute protection. The defence lawyer can decline to testify on any information obtained in the course of conducting the case, unless the suspect releases him from the obligation of confidentiality.*
8. *The possibility of a witness's benefiting from a testimonial privilege depends on whether the witness is properly informed about his right to refuse to answer. The EPPO is therefore obliged to inform the witness of any testimonial privilege he may have at the beginning of the questioning and subsequently as soon as it becomes aware of it.*

Rule 28 (witness protection)

1. If there are reasons to believe that a witness might, by answering questions, expose himself/herself, or a spouse or a close relative to substantial danger to life or limb, the EPPO may grant identity protection, restrict disclosure of information concerning a person's place of residence to the investigative authorities only, and issue an order for a person's physical protection.
2. Under the same conditions as set out in subsection (1), the EPPO may with the authorisation of the judge take measures to conceal the appearance and disguise the voice of the witness during questioning.

This Rule offers the EPPO a range of measures to protect witnesses in criminal proceedings who are thought to be intimidated or are fearful to give evidence. All protection measures mentioned in this Rule can be extended to any persons who need protection. If a protective measure is applied, the data withheld cannot be made available to anybody other than the EPPO and national investigative authorities. The data may not be made available, in particular, to the suspect and his/her defence lawyer.

1. The EPPO may grant ex officio three kinds of protective measure; identity protection, limited disclosure of the place of residence and physical protection. This list is exhaustive; thus the EPPO may not apply measures not mentioned in this Rule. The first protective measure is identity protection, which includes granting anonymity to the witness. When deciding to grant anonymity, the EPPO should consider the effect of this measure on the fairness of the trial (ECtHR, Kok v The Netherlands, App no 43149/98, 4 July 2000; ECtHR, Doorson v The Netherlands, App no 20524/92, 26 March 1996).

The second protective measure is the limited disclosure of the place of residence of the witness or any other person who needs protection. This may be applied if full anonymity is not deemed necessary in order to ensure that the witness can testify without being intimidated. Thirdly, the EPPO may order the physical protection of any person. This includes measures under witness protection programmes. This protective measure may also be ordered after the witness had testified. Subject to the principle of proportionality, the EPPO may combine all three of these measures.

2. This subparagraph relates to judicial questioning of witnesses pre-trial. On the request of the EPPO the judge may authorise the concealment of the witness or the distortion of his voice during the questioning.

Rule 29 (recording statements)

1. Statements shall be recorded digitally or in writing. The statement of the suspect shall, if s/he so wishes, be recorded verbatim.
2. The person interrogated is entitled to review the transcript and request corrections to his/her statement. Remaining objections shall be noted in the transcript.
3. Any person questioned has the right to receive a copy of the transcript of his/her interview.
4. Questionings conducted through an interpreter shall be digitally recorded.

Given the crucial importance of statements in criminal proceedings as potential evidence, this Rule establishes a general duty to record statements. With the exception of subparagraph 1, second sentence, which is specific to the suspect, this Rule has a general scope and applies to all statements made by those who are interviewed, questioned or heard, including suspects, witnesses, victims and experts.

1. Without prejudice to subparagraph 4, the EPPO may, depending on the circumstances, record the statement either in writing or digitally. Preference should be given to digital recording as it reproduces the statement verbatim and the accuracy or otherwise of

transcripts or protocols can be established easily. Digital recording also makes it possible to verify whether the proceedings were in full compliance with the Model Rules. Any recording that records, stores, and reproduces either the sound (audio recording) or the image and the sound (video recording) is classed as digital recording. If digital recording is not possible, it is also sufficient to record in writing the essential elements of the questioned person's answers, together with the circumstances, from which it may be determined whether the questioning was in full compliance with the Model Rules. Since statements made by the suspect during the pre-trial investigation of the EPPO could potentially be used in evidence at trial, the suspect has a pivotal interest in the proper recording of his/her statements. The EPPO must therefore record the statements of the suspect verbatim if s/he so requests.

2./ 3. Since transcripts which are in accordance with paragraph 1 serve as evidence as to the probity of the procedural measures undertaken, it is of the utmost importance that transcripts are accurate. Thus all interviewed persons have the right to receive a copy of the transcript of their statement. This should allow the person to check whether the transcript correctly and fully records their answers to the questions of the EPPO. For the purposes of this Rule, 'transcript' includes protocols taken in writing. If the person contests any part of the transcript and it is not possible to verify exactly what was said, the objections of the interviewed person must be noted on the transcript.

4. Because of the nature of the cases to be investigated by the EPPO and the multinational composition of the Office, it may often happen that the interviewed person needs the assistance of an interpreter. It is widely acknowledged that good quality interpretation is essential to safeguard the fairness of the proceedings. Thus Art. 7 of the Directive 2010/64/EU already provides that when a suspect is questioned with the assistance of an interpreter it must be noted that an interpreter was used. Rule 29 goes a step further by requiring interviews conducted through an interpreter to be digitally recorded. This should enable all parties to the proceedings, and in particular the trial judge, to check the adequacy of the interpretation.

Rule 30 (appointment of experts)

1. Where specialised knowledge is required, the EPPO may, ex officio or at the request of the suspect, appoint an expert.

2. Before appointing an expert, the EPPO shall inform the suspect of the person to be appointed and the questions to be put to him/her, except where this would prejudice the investigation.

If the EPPO does not have the required knowledge, it may invoke the assistance of experts.

1. According to this Rule, during the pre-trial proceedings the EPPO decides whether experts are to be called and also decides whom to appoint. The prerogative of the EPPO to call experts does not prejudice the right of the suspect to call experts at his or her own expense. The suspect has the right to request the appointment of an expert.

2. The EPPO should give the suspect an opportunity to voice his/her opinion on the choice of the expert and on the questions put to it, except where involving the suspect would jeopardise the investigation. Any observations made by the suspect as to the subject and formulation of the questions put to the expert should be considered by the EPPO.

Section 3: Coercive measures without prior judicial authorisation

Rule 31 (general rules for coercive measures without prior judicial authorisation)

1. The EPPO may order measures enumerated in Rules 34 (*summoning of the suspect and witness*) to 46 (*controlled deliveries of goods and transactions*) by a reasoned decision in writing.
2. Any person directly and individually affected by a measure may appeal to the European court.

The second group of investigative measures available to the EPPO are coercive measures, which may substantially affect the individual concerned. Prior judicial authorisation is not required for these measures, since they neither result in deprivation of liberty, nor are they otherwise intrusive.

1. *The EPPO must order the measures enumerated in this section by a written decision explaining the grounds why the measure is necessary in the case in hand.*
2. *Following Rule 7(1) (judicial control), this subparagraph guarantees to every individual directly and individually affected by the measures listed in this section the right to seek review by the European court. Such right derives from the TFEU itself, which in Art. 263 grants to every natural or legal person the right to institute proceedings before the CJEU against any act addressed to them or which is of direct and individual concern to them, if the act impugned emanates from bodies, offices or agencies of the Union and was intended to produce legal effects vis-à-vis third parties.*

Rule 32 (duty of cooperation of service providers and financial and credit institutions)

1. The EPPO may order any telecommunication service provider and any financial or credit institution to provide without delay any information required by the EPPO for the execution any powers explicitly provided in the following Rules.
2. They shall keep the measures confidential.
3. If they fail to cooperate, the EPPO may impose a financial penalty.

The Model Rules apply the threefold categorisation on banking data contained in the 2001 EU MLA Protocol and in the Draft Directive on the European Investigation Order. Accordingly the Rules distinguish between three categories of measure: first, banking information (i.e. banking ‘identity’, Rule 32, duty of cooperation of service providers and financial and credit institutions), second, banking transactions (any operations made in the past, Rule 50, production order), third, monitoring (any ongoing and future operations, Rule 55, monitoring of financial transactions). A fourth category may be added concerning freezing (temporary period during which the financial institution is ordered to refrain from carrying out specified operation(s), Rule 56, freezing of future financial transactions). Concerning banking information, the consolidated legal framework on money laundering requires all credit and financial institutions to maintain a minimum list of data concerning the holder or owner of the account.

Concerning telecommunication data, Art. 3 of the Directive 2006/24/EC obliges telecommunication providers to retain telecommunications traffic data (see Rule 52, real-time surveillance of telecommunications traffic data) if these ‘are generated or processed by providers of publicly available electronic communications services or of a public communications networks’.

1. *If credit or financial institutions hold information about specified bank accounts (except for information on transactions), they must produce them upon the request of the EPPO. A request for banking information extends to any information that credit and financial institutions are obliged to keep by European or by national law. This information comprises*

all the details of a bank account that make it possible to identify the owner, holder, person (natural or legal) that controls or has power of attorney over the specified account(s), or is the beneficial owner. As for telecommunication providers, these must ensure access to retained data upon request of the EPPO in accordance with Art. 4 of the Directive 2006/24/EC.

2. As well as stating the reasons and the object of its request, the EPPO will at the same time require directors and employees of credit and financial institutions and of telecommunication service providers not to disclose to the account holder or to other third persons the fact that information concerning the bank account or telecommunication data has been sought or obtained by the EPPO, or the fact that an investigation is being carried out (see Art. 7d of the 2005 Council of Europe Convention on Money laundering; Art. 18(4) of the Proposal for a European Investigation Order).

3. The penalty is a procedural sanction to compel the financial and credit institutions and telecommunication service providers to comply fully with the request of the EPPO. This is subject to judicial review pursuant to Rule 31 subsection 2.

Rule 33 (obligation to notify)

On the termination of any investigative measure of which, by reason of its nature, the person concerned is unaware, the EPPO shall promptly inform that person of the measure. Notification may be delayed as long as necessary to avoid jeopardising the investigation.

Upon termination of such measures the EPPO must inform all persons who have been subject to them of any investigative measures which were not revealed to them during their execution. This obligation is of particular relevance if the EPPO does not bring charges, or where the evidence resulting from such measure is not reflected in the indictment.

Rule 34 (summoning of the suspect and witness)

1. Where there are reasonable grounds to believe that a person might provide information useful to the investigation the EPPO may summon him or her to appear in person in order to answer questions. Where appropriate the summons may require the person to answer questions by communication technology.

2. The summons shall contain a warning that the person may be compelled to appear.

3. Subject to Rules 12 (rights of the suspect) and 27 (the right of a witness to refuse to give evidence), if the person without due cause fails to appear, fails to confirm his/her identity or fails to answer questions, the EPPO may impose a financial penalty.

Summoning the suspect or the witness is a general investigative measure informing him/her of an obligation to appear in person before the EPPO.

1. The EPPO may summon only those persons whom can be requested either as a witness (Rule 26, questioning of witnesses) or as a suspect (Rule 11, definition of the suspect). Persons who may refuse to give evidence in accordance with Rule 27 (the right of a witness to refuse to give evidence) may be also summoned. The summoned person must appear in person. However, the summons may require the person to answer questions by telephone conference or video conference.

2. The summons must contain a warning that if the person summoned does not appear, s/he may be compelled to do so, with the use of legitimate force if necessary. Such force may involve, inter alia, search by the police and being escorted by the police to the place indicated in the summons.

3. Persons summoned who fail without legitimate reason to appear or refuse to answer questions may be fined by the EPPO. Persons summoned who fall within the protection contained in Rules 12 (rights of the suspect) and 27 (the right of a witness to refuse to give evidence) shall not be fined for not answering questions which fall within the scope of the privilege they enjoy.

Rule 35 (identification measures)

1. Where necessary for the purpose of the investigation, the EPPO may order the taking of photographs, visual recording of persons and the recording of a person's biometric features.
2. If any person refuses the measures contained in subsection (1), the EPPO may impose a financial penalty or compel the person to cooperate.

The factual identification of a person involves checking his or her identity by using various methods. These include examination of identity documents, and comparing information held in databases, pictures or other sources of information relevant to identity.

1. A series of ECHR cases has established that the evidential use of fingerprints and intimate samples, such as urine, blood and DNA, does not infringe the privilege against self-incrimination, even where obtained by compulsion (*Saunders v UK*, App no 19187/91, 17 December 1996, para 69).
2. For taking samples, the EPPO may use the same means of compulsion as provided for in Rule 34 subsection 2 (summoning of the suspect and witness) and Rule 49 (physical examination; taking of blood samples etc.).

Rule 36 (access to premises and documents)

1. Where it has reason to believe that this will lead to the discovery of relevant evidence, the EPPO may access for inspection any premises which are used for professional or business activities.
2. The EPPO may inspect documents and take samples of goods related to any business or professional activity. This includes the unsealing or opening of packaging, taking measures of quantity and weight, using scans and the taking of visual images.

The EPPO may enter premises for inspection if there are reasonable grounds to believe that relevant evidence is to be found in the premises to be inspected.

1. The EPPO may enter business premises which are not open to the public and are therefore considered as 'homes' in accordance with Art. 8 ECHR. Prior authorisation by a judge is not necessary, as inspection has a less intrusive character than search (see Rule 48, searches).
2. In the course of the inspection the EPPO may access all data and documents that the owner or occupier is obliged by administrative law to keep at the premises. Thus the inspection, copying or obtaining of data, documents or objects during the inspection does not constitute a search. The nature of the offences falling within the scope of competence of the EPPO means that that evidence will often be obtained by sampling or assessing goods by quality or quantity. The list of measures enumerated in this Rule is not exhaustive. It refers only to the most common ways of collecting evidence.

Rule 37 (production order for data and documents used for professional or business activities)

Where it has reason to believe that this will lead to the discovery of relevant evidence, the EPPO may order

- a) the delivery of samples of goods or other objects or
- b) the production of data and documents

which are used for professional or business activities and which relevant national or EU law impose an obligation to keep.

According to the case-law of the ECtHR, the duty to cooperate with this production order would not constitute an infringement of the protection against self-incrimination. However, the addressee of the production order is obliged to cooperate only if the requested sample, data or document is used for professional or business activities and if national or EU law requires the addressee to keep them.

Rule 38 (inspection of means of transport)

1. Where there are reasonable grounds to believe that goods related to the investigation are being transported the EPPO may inspect any vehicle or other means of transport. The EPPO may order it to stop or to bring it to a specific place for inspection.
2. The EPPO may inspect the legal documents related to the means of transport and copy them.
3. Rule 36 (access to premises and documents) (2) applies *mutatis mutandis*.

1. *The EPPO may enter private and business vehicles which are not open to the public. The guarantees provided by Art. 8 ECHR do not apply to vehicles or other means of transport, as long as they are not registered as 'homes'.*
2. *Evidence gathering by the inspection of means of transport is assimilated to the gathering of evidence in premises. Consequently, Rule 36 (access to premises and documents) applies.*

Rule 39 (seizure of evidence)

1. Where they are needed as evidence, the EPPO may order the seizure of objects.
2. Where these are held by a person who is covered by Rule 27 (the right of a witness to refuse to give evidence), written communications and other objects covered by the privilege shall not be subject to seizure. This restriction does not apply if this person is suspected of being the perpetrator of or an accessory to the offence under investigation, or if the object to be seized is the product of an offence or has been directly employed in committing an offence.
3. Where a person claims a privilege under subsection (2), the EPPO shall seal the object until the judge has decided on the existence of the privilege.

If a person has potential evidence in his custody but refuses to hand it over to the EPPO there is a need for a coercive power to seize the relevant objects. In the context of financial crimes, this power is particularly important as regards business records, documents and data recording media. Search and seizure exist for different purposes. Accordingly, the Model Rules differentiate between seizure (taking of potential evidence) and search (in order to seize objects or to arrest a person). The rule on seizure is based not only on the corresponding national law but also on the provision governing the Commission's investigative powers in competition cases (Art. 20 Regulation No 1/2003) and the relevant case-law.

1. *The objective of the measure is to secure potential evidence. The term ‘object’ is to be interpreted broadly and comprises any object that might be relevant for the investigation (e.g. documents, computers and other devices containing electronic data). The seizure order must be issued by a reasoned decision of the EPPO.*

2. *Only data relevant for the investigation should be seized. To the extent practicable, the EPPO should copy data instead of seizing them or alternatively should provide the owner of the data with copies of the data seized. The investigative power is limited by personal and professional privileges. These limits are determined by the rules on the right to refuse testimony (Rule 27). Insofar as the holder of the privilege cannot be obliged to testify, nor can s/he be required to provide evidence by producing documents etc.; similarly, documents or other objects related to this privilege may not be seized. Correspondence between defence counsel and his client enjoys absolute protection (Rule 27 subsection 7). As regards privileges other than legal privilege, the seizure of confidential material is subject to court authorisation (paragraph 3); this exception corresponds to the rule on questioning witnesses (Rule 27(4 – 6); see also ECJ, M, Case 155/78, 10 June 1980, para 19). The privilege does not apply if its holder is himself a suspect or where the measure relates to ‘instrumenta vel producta sceleris’ (see also ECtHR, André v France, App no 18603/03, 24 July 2008) because the privilege is not meant to protect the holder of the privilege himself from being investigated and prosecuted. This exception even overrules the ‘absolute’ protection of defence counsel. It was not thought necessary to include in the Rules a specific provision on the protection of the right to privacy (covering e.g. the seizure of personal diaries) because the measure is subject to the principle of proportionality (see Art. 7 CFR and Art. 8 ECHR).*

3. *If the addressee of the seizure order invokes a privilege mentioned in para 2, judicial review ‘ex post’ (see supra 1.) would not be sufficient to prevent the EPPO from obtaining confidential information.*

Rule 40 (sealing of evidence)

In order to avoid the loss or contamination of evidence, or to secure the possibility of confiscation, the EPPO may order the sealing of any premises and of any means of transport to the extent necessary for the investigation.

If the EPPO has reason to believe that potential evidence can be found in particular in premises or means of transport the EPPO, if it is not able to secure the evidence immediately, may secure the evidence by placing the relevant premises or means of transport under seal. This Rule is based on Art. 20(2)(d) Regulation No 1/2003. The purpose of the measure is to secure potential evidence that cannot be seized at the time when the decision on sealing is taken. Following the principle of proportionality, the scope and temporal extension of the measure is limited to the extent (i.e. the premises, or means of transport) necessary for the investigation.

Rule 41 (freezing of data)

Where there is reason to believe that specified stored computer data, including stored traffic data and banking account data, may be subject to seizure or a production order as provided for by Rule 50 (production order for computer data), the EPPO may order a person or an institution in control of such data to preserve them and to maintain their integrity for a maximum of ninety days.

This power is given to enable the competent authorities to seek the seizure of these forms of evidence or their delivery by a production order. The freezing order prevents the person or institution in control of such data from altering, deleting, forwarding or otherwise interfering with the data concerned. If the seizure or a production order is not then issued, the freezing should terminate.

Rule 42 (seizure and sealing of proceeds of crime)

1. Rules 39 (seizure of evidence) and 40 (sealing of evidence) on seizure and sealing shall apply, *mutatis mutandis*, to proceeds of crime, if the objects concerned 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 judgment ordering confiscation.
2. If the execution of an order under subsection (1) requires a search of premises, Rule 48 (searches) shall apply.
3. When an order under subsection (1) has been issued, no person may dispose of the assets covered by the order. Upon request of the person concerned, the EPPO shall grant an exemption for any assets necessary to cover basic necessities. The EPPO shall decide upon such a request as a matter of urgency.

When prosecuting financial crimes it is important to prevent the perpetrator from frustrating the confiscation of illegal profits. To that end, the EPPO needs a power to order the seizure or the sealing of objects believed to be either the proceeds or the instruments of the crime.

1./2. The provision empowers the EPPO to seize any object in order to ensure the execution of a (future) confiscation order in relation to it. Contrary to seizure (Rule 39), the purpose of a sealing order is not to collect evidence but to ensure the future possibility of seizure. Accordingly, a sealing order must be based on a two-fold reasoning: a prima facie assessment that the competent national judge will order the confiscation of the relevant object and the identification of grounds to believe that the potential offender would seek to frustrate the judicial order by transferring the object or hiding it.

3. A sealing order will deprive the owner of his legal powers of dealing with the property and thereby prevent him/her from frustrating a confiscation order. However, the EPPO shall be empowered to grant exemptions for humanitarian reasons, taking into account the principle of proportionality.

Rule 43 (collating and processing of personal data)

The EPPO may collate and cross-reference personal data from different databases to which it has lawful access.

The EPPO has lawful access to all records and registers maintained for public purposes in accordance with Rule 24 (access to registers). Furthermore, the EPPO may obtain by production order banking data and telecommunication data in accordance with Rule 32 (duty of cooperation of service providers and financial and credit institutions). In order to develop profiles useful for the investigation, the EPPO may also cross-reference such data with other data that is publicly accessible. Randomised sampling is allowed. The EPPO must respect data protection rules as specified in Art. 6 of the Directive 95/46/EC.

Rule 44 (targeted surveillance in public places)

1. Where necessary for the purposes of an investigation, the EPPO may order the covert video and audio surveillance of a suspect in public places and the recording of its results.
2. This measure may be authorised for a maximum period of three months and may be prolonged for one further period not exceeding thirty days.
3. Personal data concerning third persons may be recorded only to the extent that this is incidental and unavoidable.

This Rule follows the standards established by the ECtHR in relation to surveillance in public places. Accordingly, such surveillance may only be carried out on the basis of an order issued by the EPPO, as the systematic or permanent nature of the recording might violate the right to private life even though the data in question may be available to the public (see P.G. and J.H. v the United Kingdom, App no 44787/98, 25 September 1991, para 59-60).

1. *This Rule refers to targeted surveillance which presupposes that it is directed against a concrete suspect and that s/he is likely to appear in the public place that will be monitored. Surveillance may involve the recording of images, voices and communications, actions and other forms of behaviour.*
2. *Specific time limits are required for every surveillance measure affecting the private life of the individuals concerned. The relatively short maximum duration specified by this rule is designed to prevent this measure being used excessively.*
3. *Since the surveillance takes place in public places the incidental recording of some data concerning third persons is inevitable. Such recording is deemed unavoidable if the data concerning third persons are inextricably linked to the data concerning the target person.*

Rule 45 (tracking and tracing)

1. In order to establish the whereabouts of a person on a given occasion, the EPPO may order cellular location. The continued surveillance of a person is permissible only as provided in Rule 44.
2. The EPPO may order the tracking and tracing of any object by technical means.
3. Such a measure must last no longer than the time strictly necessary to identify the location and the final destination of the good(s) or transaction(s).

1. The EPPO may order the tracking or tracing of objects if this is necessary in order to establish the identity and location of persons involved in the commission of offences falling within its competence. The tracking and tracing of objects may involve mapping crimes and monitoring the movement of persons and therefore must comply with the standards established by the ECtHR in relation to the protection of private life as cited above (see Rule 44(1), targeted surveillance in public places).

2./ 3. Because of the secret nature of the operation specified in this Rule and because the goods, objects or financial transaction would otherwise be subject to criminal law, the measure must last no longer than is absolutely necessary to allow for the enforcement of criminal law.

Rule 46 (controlled deliveries of goods and transactions)

The EPPO may order a controlled delivery of goods and controlled financial transactions.

Controlled delivery is an investigative technique that allows illicit or suspect consignments of controlled substances to pass through the territory of one or more states with the knowledge and under the supervision of their competent authorities, with a view to identifying those

involved in the commission of offences (see Art. 1(g)) of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances). For the purposes of the Model Rules, controlled deliveries which involve undercover agents would fall under Rule 57 (covert investigations).

The EPPO may order controlled delivery of goods and objects in relation to offences within its competence if this is necessary in order to identify persons involved in the commission of such offences. If the EPPO orders controlled delivery of goods, the national authorities of the Member States through which the consignment passes should refrain from enforcing their criminal laws. The delivery of the goods or objects which are the target of the controlled delivery is or may constitute in itself a criminal offence (e.g. drugs, stolen goods, goods to be confiscated, etc.).

The EPPO may order controlled financial transactions in relation to offences within its competence if these are necessary in order to identify persons involved in the commission of such offences. Unlike the situation envisaged by Rule 55 (monitoring of financial transactions), with controlled financial transactions the transaction would otherwise be frozen or banned. If the EPPO orders controlled financial transactions, the national authorities of the Member States with jurisdiction over the transaction should refrain from enforcing their criminal laws.

Section 4: Coercive measures with prior judicial authorisation

Rule 47 (general rules for coercive measures with prior judicial authorisation)

1. The EPPO may order the measures enumerated in Rule 48 (searches) to Rule 57 (covert investigations) below when authorised by the reasoned written decision of a judge. Where circumstances urgently require, these measures may be executed without prior authorisation of the judge. In such a case, the authorisation of the judge must be obtained within forty-eight hours.
2. The EPPO shall provide the judge with all the information necessary for his/her decision.
3. Unless otherwise provided, Rule 33 (obligation to notify) applies.

The third group of investigative measures available to the EPPO are the most intrusive measures from the viewpoint of the fundamental rights of the individual concerned. In consequence, the EPPO may apply these measures only upon prior judicial authorisation (though, for the sake of linguistic simplicity, these rules describe the order as made by the EPPO).

1. The EPPO must seek the authorisation of the judge in order to apply the measures contained in this section. According to Rule 7 (judicial control), the authorising judge is the national judge. However, in accordance with Rule 2 (European territoriality) the authorisation of the judge applies throughout the single EU area. If the judge refuses authorisation, the EPPO may not seek authorisation for the same measure against the same person under the same conditions from another judge in another Member State.

In urgent cases it will not always be possible to obtain prior judicial authorisation. This Rule allows the measures provided for in this section to be used without prior judicial authorisation in urgent cases. This possibility is provided for, in particular, where there is a serious risk that the evidence will be destroyed or tampered with, and where the lives or limbs of persons are at stake. In such cases, the EPPO must inform the judge without delay and obtain authorisation ex post. If the EPPO does not obtain judicial authorisation ex post

within 48 hours of the commencement of the measure, the EPPO must terminate the investigative measure in question and must exclude from the file any information so obtained.

2. In its request the EPPO must inform the judge about the suspected criminal offences, the identity of the suspect (if known) and all additional circumstances which prove that the same result cannot be achieved without the requested investigative measure. Furthermore, the EPPO must also satisfy the judge that there is a reasonable prospect of obtaining the evidence by using the requested investigative measure.

3. The nature of the measures contained in this section means that those affected by them will frequently be unaware that such measures are being used. Therefore the Rule on informing the affected persons (Rule 33, obligation to notify) applies here mutatis mutandis.

Rule 48 (searches)

- 1. Where there is reason to believe that the search will lead to the seizure of potential evidence (Rule 39) or to the arrest of a suspect (Rule 58), the EPPO may order the search of any premises, land, means of transport, private home, computer systems or data storage devices belonging to the suspect or to any other person.*
- 2. Where a search relates to a computer system or part of it, and the EPPO reasonably suspects that the data sought is stored in another computer system or part of it, and that such data is lawfully accessible from or available to the initial system, the EPPO may immediately extend the search to the other system.*
- 3. Persons affected by the search may attend the search and may have a lawyer present. If no person affected by the search is present, the officer conducting the search must secure the presence of two neutral witnesses. In such a case, the EPPO shall inform the person affected by the search as soon as possible of the search and of any objects that were found and seized.*
- 4. Where there is reason to believe that the search will lead to the seizure of evidence, the EPPO may order the search of any person's clothes and any other property that s/he has with him or her. Such a search must be carried out by an official of the same gender as the person searched.*
- 5. Homes and other private premises may not be searched between 10.00 p.m. and 6.00 a.m. This restriction does not apply if the evidence sought would be lost unless the search was conducted immediately.*

If the EPPO intends to arrest a person or seize potential evidence it must have access to premises in order to take the measure and to assess whether the relevant person / object is in the premises to be searched under this Rule, clandestine searches are not permissible (see subparagraph 3 and 5) and online searches are not permitted.

- 1. The purpose of the measure (search of premises) is twofold: it can be used to seize potential evidence or to arrest a person. The search of premises is subject to prior judicial authorisation. In order to ensure effective judicial review the EPPO must provide the necessary information, such as the subject matter and the purpose of the investigation, the objects or persons to be sought, and the reasons for believing that these objects can be found where the search is to take place. A search warrant is not required if it is thought that the objective of the measure would be endangered by delay.*
- 2. This Rule reproduces Art 19(2) of the Council of Europe Convention on Cybercrime on search of stored computer data for the purposes of obtaining evidence. Stored computer data are not considered to be a tangible object and therefore cannot be secured on the basis of subparagraph 1 of this Rule. In the context of a criminal investigation in the new technological environment where computer data is involved, many of the characteristics of a traditional search are still relevant. For example, the gathering of the data occurs during the*

period of the search and the data is material that is already in existence at that time. However, for searching computer data, additional procedural provisions are necessary to ensure that computer data can be obtained in a manner that is as effective as a search of a tangible data carrier. Due to the connectivity of computer systems, data may not be stored in the particular computer that is searched, but such data may be readily accessible to that system. It could be stored in an associated data storage device that is connected directly to the computer, or connected to the computer indirectly through communication systems, such as the Internet. Therefore this Rule permits the extension of the search to the location where the data is actually stored (or the retrieval of the data from that site to the computer being searched).

3. The search of premises is not a covert investigative measure. Since the search seriously interferes with the right to privacy, the person concerned must have the right to attend the search and to challenge the legality and proportionality of the measure. To that end, the formal guarantees in subparagraph (3) ensure the transparency of the measure and prevent arbitrary searches (see for searches of a lawyer's office: ECtHR, Aleksanyan v Russia, App no 46468/06, 22 December 2008, para 214).

4. In general, searching persons is subject to the same (or at least analogous) rules as searching premises. However, the purpose of a body search is limited to the gathering of evidence. The measure can be taken against any person in respect of whom it can be assumed – on the basis of ascertained facts – that s/he is in the possession of potential evidence and will not hand over it voluntarily. The second sentence ensures that body searches do not violate the modesty of the person to be searched.

5. Searches during night-time are particularly intrusive and must be limited to situations in which a daytime search would not be appropriate. A protection against night-time searches will not be necessary if the relevant premises are accessible to the public at that time.

Rule 49 (physical examination; taking of blood samples etc.)

1. Where there are reasonable grounds to believe that the measure will produce relevant evidence, the EPPO may order the suspect's body to be searched or examined and samples of blood or other body fluids or cells to be taken. Examinations which might be detrimental to the health of the suspect are not permissible.

2. Any invasive examination of the body must be conducted by a physician.

The rules on physical examination are based on the same reasoning as those concerning body searches (i.e. enabling the EPPO to collect evidence). Since the measure is intrusive, judicial authorisation is required.

1. The measure authorises intimate searches to be made with a view to the seizure of potential evidence and physical examinations to be made with a view to providing information about the suspect (e.g. health status). Since a physical examination or an intimate search is intrusive and can affect the health of the person concerned, the measure is subject to prior judicial authorisation. The EPPO's obligation to provide the judge with the relevant information corresponds to Rule 48(1) (searches). Examinations causing detriment to the health of the suspect do not comply with the principle of proportionality and are not allowed.

2. Unlike body searches, invasive measures can put the health of the person concerned at risk. Therefore, the examination must be conducted by a physician (see also ECtHR, Schmidt v Germany, App no 32352/02, 5 January 2006).

Rule 50 (production order)

1. Without prejudice to Rule 37 (production order for objects, data and documents used for professional or business activities), the EPPO may order any person to deliver objects or to produce data or documents.
2. Without prejudice to Rule 37 (production order for objects, data and documents used for professional or business activities), the EPPO may order any person to produce stored computer data, either in its original or in some other specified form. Any person who has the key to encrypted data may also be ordered to decrypt it.
3. The decision of the EPPO shall specify the objects and materials to be produced.
4. Subsection (2) of Rule 39 (seizure of evidence) shall apply accordingly.
5. Subsection (1) does not apply to the suspect or any other person if the production of the object would expose him/her to the risk of being criminally prosecuted. This privilege does not extend to any documents or other objects which the person concerned is obliged under relevant national or EU law to keep; this applies in particular to the production of business records and samples of goods.

The function of a production order is often equivalent to search and seizure. Accordingly, in several Member States production orders are based on the same rules as search and seizure. Nevertheless, production orders are in some cases less intrusive and therefore more appropriate, especially where third parties are concerned.

1. *Production orders may be issued for any object, document or data which may comprise or lead to the discovery of evidence in the investigations of the EPPO. Unlike Rule 32 (duty of cooperation of service providers and financial and credit institutions) a production order based on this Rule may be issued for existing objects and data of any type, including e.g. banking transaction data. The substantial and the formal requirements for issuing a production order correspond to those in the Rule 48 (searches).*
2. *The EPPO may request a production order for obtaining stored computer data including traffic data, content data and banking account data. The EPPO may also issue the production order to those who are in possession of the encryption key. In these cases the production order implies the duty to deliver the data in a decrypted form.*
3. *The production order must specify the exact objects, documents or data to be produced.*
4. *See explanatory note on Rule 39 (2) (seizure of evidence).*
5. *A production order may not be issued in order to make the suspect produce incriminating evidence. In this situation the EPPO must apply for a search warrant (Rule 48, searches). This exception is based on a restrictive understanding of the privilege against self-incrimination (see – also with regard to Article 6 ECHR – the decision of the Dutch Supreme Court – Hoge Raad – no 00895/05 E, 19 September 2006, para 6 et seq.).*

Rule 51 (interception of telecommunication – content data)

1. Where it has reasonable grounds to suspect that a serious offence has been committed, the EPPO may order the interception and recording of telecommunications (including e-mail) to and from the suspect.
2. This order may be extended to other persons where there are reasonable grounds to believe that the suspect is using their telecommunications connection or that they are receiving or forwarding messages on his or her behalf.
3. The measure shall be limited, in the first instance, to a maximum period of three months. Where the relevant conditions are still present, the measure may then be extended by further periods of up to three months, up to a maximum total period of one year.

Telephone tapping and other forms of interception of telecommunications are intrusive and seriously interfere with the rights provided for in Art. 8 ECHR. The purpose of the measure is to discover the content of communications.

1. This Rule follows the most restrictive conditions available in the Member States and establishes a threshold which is higher than the general threshold required in Rule 47 (general rules for coercive measures with prior judicial authorisation). Accordingly, the judge may authorise the interception if there is reasonable suspicion that a serious offence falling in the scope of competence of the EPPO has been or is being committed and provided less intrusive measures would not be sufficient to obtain the evidence. This threshold corresponds to the requirements established by the ECtHR (Kruslin v France, App no 11801/85, 24 April 1990, para 27; Huvig v France, App no 11105/84, 24 April 1990, para 26; Lambert v France, App no 23618/94, 24 August 1998, para 23; Perry v the United Kingdom, App no 63737/00, para 45; Dumitru Popescu v. Romania (no. 2), App no 71525/01, 26 April 2007, para 61; Association for European Integration and Human Rights and Ekimdzhiiev v Bulgaria, App no 62540/00, 28 June 2007, para 71; Liberty and Others v the United Kingdom, App no 58243/00, 1 July 2008, para 59). By referring to serious crimes, the Rule indicates in general terms the offences for which interceptions are allowed. (Kennedy v United Kingdom, App no 26839/05, 18 May 2010, para 159-160).

This Rule applies to all types of communications, including internet communication. The interception must be limited to communications directed to and initiated by the suspect. As regards subparagraph (2), this limitation means the interception of the devices used by the suspect.

2. The interception may be extended to third parties, if known facts clearly show that the suspect is using the telecommunication connection of the third party, or the third party is receiving specific messages for the suspect or forwarding messages from the suspect or other people.

3. All the Member States provide for time limits to the interception of telecommunications and the case law of the ECtHR lays down strict time limits (see case-law cited in subparagraph 1).

Rule 52 (real-time surveillance of telecommunications traffic data)

The EPPO may order instant transmission of telecommunications traffic data.

According to Art 2(b) of the Directive 2002/58/EC, traffic data means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof. Thus traffic data are data necessary to trace and identify the source of a communication, the destination of a communication, the date, time and duration of a communication, the type of communication, the users' communication equipment or what purports to be their equipment, or the location of mobile communication equipment. The Council of Europe Convention on Cybercrime provides a complementary definition of traffic data that includes the traffic data of a computer system. According to Art. 1(d) of the Council of Europe Convention on Cybercrime, traffic data refers to 'any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.'

For the purpose of this Rule, traffic data is to be understood as defined in the two instruments mentioned above, i.e. data comprising both phone and computer system communications. Telecommunication traffic data does not include the content of the communication. The

delivery of web-site addresses for finding out the contents of the respective web-sites is excluded under this provision. Unlike Rule 32 (duty of cooperation of service providers and financial and credit institutions), this Rule enables the EPPO to monitor in real time the traffic data of ongoing telecommunications.

**Rule 53 (surveillance in non-public places)*

1. Where it has reasonable grounds to suspect that a serious offence has been committed, the EPPO may order covert video and audio surveillance of non-public places and the recording of its results. Video surveillance of private homes is not permitted.
2. Covert video and audio surveillance in non-public places may be authorised for a maximum of thirty days. Where the relevant conditions are still present, the measure may then be extended by a further period of fifteen days.

This Rule empowers the EPPO to obtain information on communications and behaviour in non-public places. A distinction should be drawn between private homes and other non-public places (such as e.g. company seats, warehouses, hotel rooms). According to the case law of the ECtHR, private homes within the meaning of Art. 8 ECHR are places where someone lives on a settled basis. In non-public places, persons entitled to expect that their communications and behaviour remain confidential. Therefore this Rule seriously interferes with the right to privacy as stipulated in Art. 8 ECHR.

1. *This Rule allows for surveillance of non-public places if there are reasonable grounds to believe that evidence in relation to an offence falling within the scope of competence of the EPPO may be obtained this way. Surveillance may involve the recording of images, voices and communications, actions and other forms of behaviour. Where private homes are concerned, the Rule permits audio surveillance only.*
2. *Because of the intrusive character of this measure, its duration is subject to strict time limits.*

Rule 54 (privileged persons)

Measures under Rules 51 (*interception of telecommunication – content data*), 52 (*real-time surveillance of telecommunications traffic data*), 53 (*surveillance in non-public places*) are not permitted against journalists in relation to their sources of information or defence lawyers in relation to their clients.

This Rule corresponds to the absolute protection granted to journalists in relation to their sources, and the right of defence lawyers to refuse to give evidence in relation to the defendant, as provided by Rule 27 (the right of a witness to refuse to give evidence).

Rule 55 (monitoring of financial transactions)

1. Where there are reasonable grounds to suspect the commission of a serious offence, the EPPO may order any financial or credit institution to inform the EPPO in real time of any financial transaction carried out through any specified accounts held or controlled by the suspect or any other accounts which are reasonably believed to be used in connection with the offence.
2. The measure shall be limited, in the first instance, to a maximum period of three months. Where the relevant conditions are still present the measure may be extended by one further period of no more than three months, up to a total maximum period of six months.

Monitoring of banking transaction represents a key measure for financial investigations. It involves obtaining evidence in real-time and for this reason is considered to be a special type of measure, properly treated together with the interception of telecommunications for the purpose of European cooperation (2001 EU MLA Protocol and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism).

1. Unlike production orders for banking transactions (Rule 50), this measure concerns all operations to be made in the future, allowing a continuous and real-time monitoring of specified bank account(s). The threshold for this measure is higher than the general threshold specified in Rule 47 (general rules for coercive measures with prior judicial authorisation). The order must inform the financial institution of its duty to tell the EPPO immediately of any operation concerning the account being monitored. This would allow the EPPO to order – if the conditions of Rule 56 (freezing of future financial transactions) are met – transactions to be frozen.

Because this measure is exceptional and particularly coercive, the EPPO must specify the exact account to be monitored. The account must be held or controlled by the suspect. Controlling an account means that the person concerned is authorised to execute transactions on that account.

2. Because of the intrusive character of this measure, its duration is subject to strict time limits.

Rule 56 (freezing of future financial transactions)

1. Where there are reasonable grounds to suspect the commission of a serious offence the EPPO may, in order to secure the possibility of confiscation, order any financial or credit institution to refrain from carrying out any financial transaction involving any specified account or accounts held or controlled by the suspect, or which are reasonably believed to be used in connection with the offence.

2. The freezing order shall be valid for five working days.

European instruments do not provide for provisions on freezing of banking transactions whereas a number of Member States do so. Where national law has no specific provisions on the freezing of banking transactions, such a measure may be considered equivalent to the sealing of a bank account. In this case, the measure may be available where the alleged offence could result in confiscation and the purpose of the measure may be limited to securing the possibility of future confiscation.

1. If the EPPO has reason to believe that a serious offence has been taking place with the use of the account, the EPPO may obtain evidence by ordering transactions on the banking accounts held or controlled by the suspect to be blocked. The purpose of the measure is confiscation. In accordance with the principle of proportionality the scope of the measure is limited to one or more specified account held or controlled by the suspect.

2. Since the freezing of future financial transactions infringes the right to property guaranteed by Art. 1 of Protocol No. 1 (ECtHR, Rafiq Aliyev v Azerbaijan, App no 45875/06, 6 December 2011) its maximum duration is limited to five days. Five days provide sufficient time for the judge to decide whether to order seizure and subsequently confiscation.

Rule 57 (covert investigations)

1. Where there are reasonable grounds to suspect the commission of a serious offence, the EPPO may order an officer to act covertly or under a false identity (covert investigation).
2. The authorisation shall list the measures that the officer may perform. To the extent that the officer is authorised to perform a measure listed in Rule 22 (types of investigative measures), the legal conditions for that measure must be satisfied. If the officer needs to perform a measure not included in the authorised list the EPPO may, where circumstances urgently require, authorise it himself or herself and seek the retrospective authorisation of the judge.
3. Covert investigation may be authorised for a maximum of six months. Where the relevant conditions are still present, the measure may then be extended by a further period of six months.

EU instruments dealing with cross-border cooperation, such as Art. 14 of the 2000 EU MLA Convention and Art. 27(a) of the draft Directive on the European Investigation Order as approved in the general approach reached by the Council in December 2011, both refer to 'covert investigations', defined as 'investigations into crime by officers acting under covert or false identity' and consequently limit it to non-technical covert measures or human undercover operations, and even more specifically to 'officers', thereby excluding civilians acting undercover and informants (see also Art. 23 of the Convention on Mutual Assistance And Cooperation Between Customs Administrations of 18 December 1997). The deployment of undercover officers constitutes an important and often crucial tool in clearing up serious crime, including those covered by the EPPO jurisdiction. Given the extent to which such special investigative methods intrude upon the rights and liberties of individuals, their use needs to be subject to strict conditions and control.

1. *Because of the intrusiveness of the measure, the EPPO may order it only upon prior authorisation by the judge (ECtHR, Teixeira de Castro v Portugal, App no 25829/94, 9 June 1998). This Rule only permits the retrospective use of covert investigations, i.e. where the EPPO has reasonable grounds to believe that a serious offence has been committed. The preventive use of this measure is not permitted. The undercover officers shall act under the control of the EPPO, follow its instructions, inform it about the execution of the measure and report on its exercise.*
2. *The undercover agent may employ only those investigative measures that are listed in his authorization. The judge granting the authorization may limit the list of investigative measures that can be used by the agent, or put conditions on the use of certain investigative measures.*
3. *Although intrusive in nature, covert investigations require the undercover agent to have enough time to gather sufficient evidence about the offence and the suspects. Thus covert investigations should be ordered for maximum 6 months, with the possibility of one single prolongation for a further six months. When making the initial order or when deciding on a prolongation, the judge may specify a shorter period of time.*

Section 5: Deprivation of liberty

Rule 58 (short term arrest)

1. Where there is a serious risk that the suspect will evade justice by hiding or by flight, or will unlawfully influence witnesses or otherwise interfere with the evidence, the EPPO may order the suspect's short term arrest.

2. A person so arrested may be held in custody for a period not exceeding twenty-four hours. The judge may, upon written request of the EPPO, extend the duration of custody for a further twenty-four hours.

From the perspective of the state's positive obligations, the right to liberty in the sense of the protection of the individual from arbitrary detention by the state is considered to be one of the most important basic human rights. In line with the criteria developed by the ECtHR distinguishing deprivation of liberty according to Art. 5 ECHR from restriction on movement according to Art. 2 of Protocol 4 ECHR (Guzzardi v. Italy, App no 7367/76, 6 November 1980), arrest is any act designed to temporarily deprive the suspect of his personal liberty in the context of criminal proceedings.

1. Short term arrest may be ordered by the EPPO without judicial authorisation. According to Art. 5(1)(c) ECHR short term arrest can be ordered if, taking account of the circumstances of the commission of the offence and the suspect's personal circumstances, it can be reasonably expected that if at large the suspect would jeopardise the interests of justice. As well as the necessary level of suspicion, this Rule requires further substantive grounds for arrest. The grounds for short term arrest are exhaustive. These include the risk of absconding, flight, influencing witnesses or compromising evidence. Because of its intrusiveness, short term arrest should normally be used only in the case of more serious offences. This Rule, however, does not exclude the possibility of short term arrest in any other cases falling within the scope of competence of the EPPO.

2. Since short term arrest results in the full incapacitation of the suspect without a prior judicial decision, it should be strictly limited in time. Accordingly, the maximum duration of short term arrest is twenty-four hours. Unless the judge prolongs the arrest by a further twenty-four hours, the suspect must then be freed. If the incapacitation of the suspect is required beyond this time limit, detention must be ordered under Rule 59 (pre-trial detention).

Rule 59 (pre-trial detention)

1. Where the EPPO has strong grounds to believe that there is a serious risk that the suspect will evade justice by hiding or by flight, or unlawfully influence witnesses or otherwise interfere with the evidence, it may apply to a judge to order pre-trial detention.

2. The judge, after a hearing in accordance with Rule 62 (hearing for rendering the ruling on pre-trial detention), may then order pre-trial detention, provided s/he is satisfied that the conditions specified in subsection (1) are met.

3. If the suspect is not already under arrest the judge may, if the conditions of subsection (1) are met, order the suspect to be arrested.

4. Pre-trial detention may not be requested or granted if the purpose for which it is sought can be achieved by less intrusive measures.

Pre-trial detention is the most severe measure in pre-trial criminal procedure because it removes the defendant's liberty during the proceedings. The grounds for short term arrest are therefore insufficient to serve as a basis for the ordering of pre-trial detention.

1. The threshold for pre-trial detention is a strong suspicion. Strong suspicion means that the risk that the suspect would jeopardise the interests of justice is much higher than in case of a reasonable suspicion. Strong suspicion should be based on facts or evidence that the suspect, for instance, tried to flee or abscond or to compromise evidence or was caught on doing so. Pre-trial detention is disproportionate in case of minor offences.

2. According to Art. 5 ECHR, pre-trial detention must be ordered by the judge. Because pre-trial detention is highly intrusive the judge must, in accordance with Rule 62 (hearing for rendering the ruling on pre-trial detention), hear the suspect in person, so enabling him or her to explain the likely impact of detention.

3. If the conditions of subparagraph (1) are met and the judge considers that the arrest of the suspect would be sufficient, the judge may order arrest instead of pre-trial detention.

4. The proportionality test must be applied when ordering pre-trial detention. Accordingly the judge must weigh up when considering pre-trial detention whether the same purpose could be achieved by alternative measures such as e.g. bail. The failure to do so violates Art. 5(3) ECHR (*Mamedova v Russia*, App no 7064/05, 1 June 2006, para 78). The choice of alternative measures will depend on the purpose for which detention has been sought.

Rule 60 (time limits)

1. Pre-trial detention may be ordered for a maximum period of thirty days. On a reasoned written request by the EPPO the judge may extend the pre-trial detention for a further thirty days.

2. The maximum period for pre-trial detention is one year (up to the first day of the trial).

Because pre-trial detention is highly intrusive, strict time limits should apply. Short time limits should operate as an incentive for the EPPO to investigate the offence in a timely manner and to collect all necessary evidence in reasonable time.

1. Under this Rule the general maximum duration of pre-trial detention is thirty days. The judge may, however, limit it to less than thirty days. It would violate the principle of proportionality to order pre-trial detention for less than twenty-four hours. The normal maximum duration may be prolonged by the judge on request of the EPPO. The EPPO must reason its request so as to demonstrate that the grounds for which pre-trial detention was ordered still prevail, or that new grounds now exist, in accordance with the criteria pronounced in Rule 59(1) (pre-trial detention). When prolonging the detention of the suspect the judge may prolong it for a shorter period than thirty days.

2. The EPPO may request the prolongation of the pre-trial detention of the suspect more than once. The total period of pre-trial detention may not, however, exceed one calendar year.

Rule 61 (rights of the arrested and detained person)

1. Persons deprived of liberty shall be informed of the legal and factual grounds for their arrest or detention.

2. In addition to the rights listed in Rule 12 (*rights of the suspect*), they shall have the following rights:

a) to communicate with a defence lawyer freely and without supervision,

b) to have their family or another person designated by them informed that they are under arrest or detention,

c) to communicate with their embassy or consular representative if they are foreign nationals,

d) to be informed about the place of arrest or detention,

e) to receive medical assistance.

3. Persons deprived of liberty shall be immediately informed of the above rights. A letter of rights containing this information shall be given to them and may be retained by them during the arrest or detention.

1. This Rule reaffirms Art. 5 (2) ECHR according to which the suspect has the right to be informed promptly of the reasons of one's arrest and of the charge. According to the case law

of the ECtHR, any person arrested must be told, in simple, non-technical language that s/he can understand, the essential legal and factual grounds for his/her arrest, so as to be able, if s/he sees fit, to apply to a court to challenge its lawfulness (*Nechiporuk and Yonkalo v. Ukraine*, Appl. no. 42310/04, 21 April 2011, para. 208). This Rule should guarantee that any person arrested by the EPPO knows why s/he is being deprived of his/her liberty.

2. The person arrested or detained shall have all the rights listed in Rule 12 (rights of the suspect). In addition,

a) ensures, in conformity with Article 6(3)(c) ECHR, that the suspect is able to communicate with his/her lawyer in private. This Rule also corresponds to Art. 3 subsection 3 of the Draft Directive on access to a lawyer, according to which the right of access to a lawyer entails the right of the suspect to meet and communicate with the lawyer representing him in private.

b) The right to have a third person informed of the deprivation of liberty is laid down in Art. 5 of the Draft Directive on Access to a lawyer.

c) The right of suspects who are deprived of their liberty to consular assistance is enshrined in Article 36 of the 1963 Vienna Convention on Consular Relations and in Art. 7 of Draft Directive on Access to a lawyer. This Rule confers a corresponding right on suspects who are deprived of their liberty.

e) This Rule establishes an obligation to provide information to the arrested or detained person about the place of detention.

3. This Rule corresponds to Art. 4 of Directive 2012/13/EU according to which arrested or detained persons should be given a written Letter of Rights about applicable procedural rights.

Rule 62 (hearing for rendering the ruling on pre-trial detention)

1. The judge shall decide on ordering, extending or ending pre-trial detention after an oral hearing.

2. The EPPO, the suspect and defence lawyer shall be summoned to the hearing. It is the responsibility of the party initiating the hearing to ensure the presence of all persons whose presence is obligatory.

3. The defence shall be given timely access to all such information and evidence as may be necessary to challenge the ordering or extending of pre-trial detention. Rule 16 (access to the materials of the case) (2) applies *mutatis mutandis*.

1. It follows from the principle of *habeas corpus* enshrined in Art. 5 ECHR that the judge must establish whether the circumstances mentioned in Rule 59 (pre-trial detention) are present in the given case before deprivation of liberty may be ordered. This Rule requires a hearing not only for ordering pre-trial detention, but also for its extension and its termination. In this respect this Rule goes beyond the requirements of Art. 5 ECHR. Thus the judge may not decide on the basis of the dossier alone whether the reasons for pre-trial detention still exist, but must give both the EPPO and the detainee the possibility to voice their respective opinions.

2. At the hearing the presence of the suspect, the defence lawyer and the EPPO is obligatory. If the defence lawyer or the EPPO does not appear, the hearing cannot take place. If the EPPO fails to appear, this will entail disciplinary consequences. If the defence lawyer fails to appear, this omission must be sanctioned by the national law applicable to the defence lawyer.

3. This Rule does not provide the defence with access to all the evidence, but only to the evidence necessary to carry out its task. The right of the defence in this respect is not limited to exonerating evidence, but extends to any evidence, whether inculpatory or exonerating, which is relevant to whether detention should be ordered or prolonged. Furthermore, under Rule 15 (right to gather evidence) the defence is entitled to collect information and evidence that it is not then obliged to disclose to the EPPO. So in this respect the principle of equality of arms as provided for in Art. 6 ECHR is implemented in a manner which is more favourable to the defence, thereby counterbalancing the superior position of the EPPO to gather evidence.

PART THREE: PROSECUTION PHASE AND BRINGING TO JUDGMENT

Rule 63 (duty to prosecute)

If the EPPO decides that the evidence presents a reasonable prospect of conviction, it shall institute a prosecution, except where the following Rules otherwise provide.

The main objective of the EPPO is to ensure uniform and equivalent protection in the Area of Freedom, Security and Justice. This objective can best be served by establishing a duty to prosecute and by limiting the EPPO's margin of appreciation to establishing the sufficiency of evidence. Charges should be brought if conviction seems more probable than acquittal. The EPPO should establish guidelines detailing the criteria for the test of a reasonable prospect of conviction.

It follows from this Rule that there is a double condition for instituting a prosecution: first, the EPPO must establish its primary competence according to Rule 3 (primary authority for investigations and prosecutions). If the EPPO decides to exercise its primary authority, the EPPO has a margin of appreciation as to whether to investigate the case. The EPPO is not required to initiate an investigation in all of the offences reported to it falling within its remit (Rule 21, initiation of investigation). After completing the investigation, the EPPO examines the evidence and applies the reasonable prospect of conviction test as described above.

Rule 64 (forum choice)

1. The EPPO shall prosecute the case in the jurisdiction which is most appropriate, taking into consideration, in the following sequence:
 - a) the Member State in which the greater part of the conduct occurred,
 - b) the Member State of which the perpetrator(s) is (are) a national or resident, and
 - c) the Member State in which the greater part of the relevant evidence is located.
2. If none of the criteria listed in subsection (1) apply, the case shall be prosecuted in the jurisdiction where the EPPO has its seat.
3. The accused and the aggrieved party may appeal against the EPPO's choice of forum to the European court.

Under Rule 2 (European territoriality) the EPPO may employ its powers across the whole territory of the participating Member States. When deciding on the court of prosecution the EPPO must choose between different courts having substantive jurisdiction to adjudicate in the case. In order to prevent arbitrary decisions resulting in forum shopping by the EPPO, the Rules lay down the main criteria for forum choice.

1. *The criteria for forum choice set out in this Rule are not exhaustive; however, the criteria listed here represent a priority order for consideration.*
2. *This Rule provides for the subsidiary jurisdiction of the court at the seat of the EPPO.*
3. *Since the choice of forum may substantially affect the position of the defence, the defendant may appeal against the EPPO's choice of forum. In such a case the role of the European court is limited to reviewing the discretion of the EPPO.*

Rule 65 (closing the case)

1. If the EPPO finds that prosecution is barred on legal grounds or that the evidence does not present a reasonable prospect of conviction, it shall close the case. The EPPO shall explain in writing its reasons for closing the case.
2. Where a case has been closed for lack of sufficient evidence, the EPPO may at any time resume the investigation.
3. The EU or any aggrieved party may appeal to the European court against the EPPO's decision to close the case.

Fundamentally the EPPO is expected to ensure the prosecution of offences falling within its scope of competence. However, there may be legal or evidentiary problems which preclude prosecution. This Rule provides the EPPO with the relevant powers to close such cases.

1. This provision applies e.g. where the acts concerned do not constitute a crime, where the suspect has previously been subject to a criminal sanction for the behaviour concerned (in accordance with the ne bis in idem definition elaborated by the Court of Justice of the European Union in relation to Art. 54 of the Schengen Agreement and Art. 50 CFR), where the suspect has an immunity from prosecution or benefits from an amnesty or pardon, where the prosecution is barred by a statute of limitations, or where factors relating to the perpetrator preclude prosecution (age, state of health, location – meaning s/he is at large, unknown), etc.

The test of sufficiency of evidence requires a concrete assessment of what is required to bring charges in the appropriate Member State.

2. Where new evidence comes to light, the EPPO should be free to restart investigations. This is precluded only where the prosecution is barred by a statute of limitations.

3. As the EPPO will be dealing with only the most serious of cases, decisions not to proceed may impact significantly upon a number of parties who should have a right to challenge this decision. The likely unique structure of the EPPO, as well as the need to ensure accessible structures for all interested parties, mean that the European court is regarded as the suitable venue for such hearings. This right to challenge the decision not to prosecute made by the EPPO is an important tool to enforce the accountability of the EPPO. Since the EPPO is independent, it may not be ordered to prosecute when it decides against starting a prosecution. However, the possibility of reviewing the decision to close the case is necessary to ensure the fulfillment of the duty to prosecute.

*Annex to Rule 65

Since we believe that the EPPO should institute a prosecution whenever sufficient evidence exists and there is a European public interest in prosecution, we do not recommend that the EPPO be given authority to close a case against a suspect on the condition that the suspect fulfil certain obligations.

However, if the possibility of conditionally closing a case is considered, the following conditions should be met:

- The suspect should agree to the disposition proposed,
- the aggrieved party should be heard,
- the decision should not be made over the objection of relevant national prosecution authorities,
- the proposal should be approved by the trial court,
- conditions imposed should be proportionate to the offence in question, and should as a rule include payment of damages, and
- the conditions on which the case is closed should be put on record.

Rule 66 (suspension of prosecution)

1. The EPPO may suspend the decision whether to prosecute the suspect if the suspect is being prosecuted for or has been convicted of another offence within the competence of the EPPO and the penalty incurred or expected for that other offence is significantly more serious than the penalty expected for the offence currently under investigation.
2. If the sentence expected for the other offence is not imposed, the EPPO may then institute a prosecution for the current offence within three months of the final judgment in relation to the other offence.

This Rule allows for the most efficient use of the resources of the EPPO as well as for humanitarian considerations.

1. *If the suspect is being prosecuted for at least two offences each within the scope of competence of the EPPO, the EPPO may decide not to exercise its powers in relation to the less serious offences. This can be done only if there is a reasonable prospect of a significantly more severe sanction being imposed in respect of the prosecuted offence. In such cases the non-prosecution of the less serious offence does not substantially affect the punishment of the suspect. Therefore, in order to conserve judicial resources and to spare the suspect multiple prosecution, this Rule implies that the less serious offences need not to be prosecuted. The decision made by the EPPO not to prosecute the less serious offence is to be considered - save for subparagraph 2 - as a final disposal of the case.*
2. *If the expectation of the EPPO which served as basis for its decision not to prosecute the less serious offence is not met, there is room for reopening prosecution in the less serious case. The maximum period to reopening of the prosecution of the less serious offence shall not exceed three months starting from the date of the final disposal of the case in the more serious offence.*

Rule 67 (referral and revoking of the case)

1. If the EPPO finds that the matter is not within its competence or declines to prosecute the case, it may refer the case or parts of it to the prosecuting authorities of any competent Member State.
2. The EPPO may at any time take over the prosecution of a case so referred to a national prosecuting agency.
3. If the national prosecuting authorities intend to close a case referred to them by the EPPO, they shall inform the EPPO of their intention and afford it the possibility to advise them and to take over prosecution.

1. This Rule permits the EPPO to choose between prosecuting a case within its competence and referring it to a national prosecution agency. This Rule thus allows the EPPO to concentrate its resources and efforts on the most serious cases. As for the criteria guiding the EPPO's decision, this Rule looks back to Rule 3(2) (primary authority for investigations and prosecutions), which points the EPPO towards investigating and prosecuting those cases in which EU interests are most seriously affected and/or which are beyond the means available to national prosecuting authorities. If an investigation comprises a complex of cases, the EPPO may choose to retain only some parts of the subject matter (for example, prosecution of the leading perpetrators or of the major criminal incidents) and refer the other parts to national prosecuting authorities.

2. *Because the initial assessment of the seriousness of a case may change in the course of an investigation, for example when further facts come to light in the course of other investigations, the EPPO should retain the right to reclaim a case, wholly or in part, that it had earlier referred to the national prosecution agencies.*
3. *For the same reason, it is essential that national authorities consult with the EPPO before finally dismissing a case that has been referred to them.*