THE EPPO/OLAF XI

Compendium of National Procedures

Desktop Codes on the Procedural Law of the
Member States with Annotations by National Experts

Pierre Hauck, Jan-Martin Schneider,
Nur Sena Karakocaoğlu and Alastair Alexander Laird

Germany



λογος

The EPPO/OLAF Compendium of National Procedures

Volume XI – Germany

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Desktop Codes on the Procedural Law of the Member States
with Annotations by National Experts,
Volumes I (Austria) – XXVII (Sweden)

Volume XI – Germany

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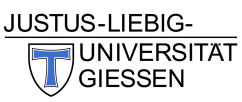
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The EPPO/OLAF Compendium of National Procedures

Volumes

I: Austria

II: Belgium

III: Bulgaria

IV: Croatia

V: Cyprus

VI: Czech Republic

VII: Denmark

VIII: Estonia

IX: Finland

X: France

XI: Germany

XII: Greece

XIII: Hungary

XIV: Ireland

XV: Italy

XVI: Latvia

XVII: Lithuania

XVIII: Luxembourg

XIX: Malta

XX: Netherlands

XXI: Poland

XXII: Portugal

XXIII: Romania

XXIV: Slovakia

XXV: Slovenia

XXVI: Spain

XXVII: Sweden

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Preface and Acknowledgements

Every year, millions of euros of taxpayers' money are lost to fraud against the European Union budget. The fight against fraud has therefore been a key element in protecting the Union's financial interests for decades, and it still is. Since then, many different political and legal approaches have been taken to create a secure situation.

In essence, this financial protection by way of fighting crime is nowadays not only provided by the national judiciary, but also to a significant extent by the EU's own investigative bodies of the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF).

These two authorities work on the basis of their own EU regulations, each of which has in common to refer to the national legal situation with regard to the conduct of investigations. This concerns the law of the EPPO as a whole, insofar as the EPPO Regulation in Art. 30 para. 1 and para. 4 refers to nationally to be created (para. 1) or nationally existing powers (para. 4). This also applies to OLAF's right to carry out so-called external investigations, which are so important, in the event that an economic operator refuses to participate in the investigation, so that in this case it is not Union law but national law that forms the basis for the investigation (cf. Art. 3 para. 6 OLAF Regulation).

However, these references to national law are not enough; the problems of applying the law are only just beginning: Knowledge of national rules is usually reserved for those familiar with the national legal system, and at the level of the EU authorities these are very few. EU authorities, including the investigative authorities in question here, are rather characterized by the fact that they are made up of many employees from the most diverse Member States. It is true that for both authorities, certain mechanisms (namely the EDPs as part of the EPPO and the AFCOS for OLAF) have been put in place to ensure that national legal competence is conveyed. But by and large, the respective national investigative procedure law remains a closed book in terms of criminal procedure or administrative law, not to mention the language barrier that threatens to become insurmountable for most people within the EU when seeking access to the law of other countries.

This publication series aims to remedy these shortcomings. It presents the law of criminal procedure and administrative investigation for all 27 Member States in English and in the language of the Member State. It thus provides easy access to the procedural rules of a foreign legal system, which are so important for EU investigative work. However, this presentation does not stop there, but explains these national rules, which are printed in bilingual form, from a competent source, namely from national experts. In this way, an explanatory work has been created that clearly ensures access to and understanding

of foreign areas of law in the field of criminal procedural and administrative fraud investigations.

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Fair comments and suggestions for improving the work are always welcome at eppo.olaf@web.de.

Giessen/Germany, in November 2023
Pierre Hauck & Jan-Martin Schneider

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Executive Summary: The German CNP Volume provides a comprehensive overview of how EU fraud investigations are regulated in the Federal Republic of Germany with particular focus on the mandates and operational roles of the EPPO and OLAF.
Part A contains a summary of the main legal framworks, institutions and relevant case-law. **Part B** examines the national legal statutes governing EPPO investigations in Germany (Art. 26–33). It details the German procedural architecture and rules on PIF crime-investigations within the EU's anti-fraud architecture being reviewed by the EU since 2025. The roles and tasks of European Delegated Prosecutors and national authorities as well as defence counsels in PIF-investigations are explained. The analysis is complemented by case examples with known fraud schemes (VAT and subsidy fraud) e.g. by citing German EPPO-related court decisions since 2021 and short notes on defence strategies within EPPO proceedings. A short assessment highlights current challenges facing enforcement demands being evaluated in 2026. **Part C** addresses OLAF's administrative investigations in the German context, focusing in particular on on-the-spot checks under Regulation (EC, Euratom) No. 2185/96. It outlines OLAF's cooperation with German authorities, the applicable national legal statutes and can provide practical guidance on managing such inspections. The **Annexes** contain an exemplary EPPO-training-case file, procedural steps sheets and a case-study. The main text is presented in English, while legal sources are quoted in their original German in the footnotes. All in all, it offers procedural insights into investigation situations, interpretative guidance and contextual background relevant to practitioners across the EU especially those involved in PIF offences, asset recovery, FIUs, financial control, and EU fund management like infastructure banks and ministries in the Federal States operating in funding allocation.

General structure and concept: Prof. Dr. *Pierre Hauck* LL.M. (Sussex); Special Introduction (B. I.) by former EDP Dr *Anna-Elisabeth Krause-Ablaß* and Prof. Dr. *Pierre Hauck* LL.M. (Sussex); Part B (EPPO Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex) / Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen) / *Alastair Laird* (R.A., University of Gießen) / *Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM.; R.A., University of Gießen) and organisations like ZKA via questionnaires (AFCOS, OAFCN members and Experts); Part C (OLAF Analysis): Prof. Dr. *Pierre Hauck* LL.M. (Sussex) / Dr. *Jan-Martin Schneider* (Dipl.-Jur. MR; R.A., University of Gießen) / *Alastair Laird* (R.A.) / *Nur Sena Karakocaoğlu* (Dipl.-Jur. FFM.; R.A.) all University of Gießen. We acknowledge Mgr. *Tereza Ottová* for her contribution to terminology.

Table of Contents

Preface and Acknowledgements 9

Abbreviations 31

Tables & Figures 35

Explanation of Symbols & Highlighting 39

Navigation of the CNP Volume via the Structure of an Indictment 41

A. General collection of material for Parts B and C 43
I. Collection of cases for OLAF and EPPO investigations 44
1. EPPO Regulation 44
2. OLAF Regulation 53
II. Institutions 57
1. The EPPO in Germany 57
2. Organisation of the criminal justice system in Germany 58
3. AFCOS – Partner of OLAF in Germany 64
III. Sources of law 64
1. National Laws 64
a) EPPO-investigation related codes, (Pre-)laws and documents 64
aa. EU Regulations and German statutes 66
bb. Decrees 67
b) OLAF-Investigation related laws 67
2. European Public Prosecutor's Office Act – EUStAG 68
a) Synopsis of the official text of the EPPO Adoption Act and Translation 68
b) Administrative guidelines for interactions with the EPPO (RiStBV) 79
c) Secondment of EDPs 86

B. EPPO-Regulation 93
I. Special Introduction 93
1. Two years of experience with the EPPO from a German perspective 93
2. Introduction 93
3. Legal basis of the EPPO 95
4. Conception of the EPPO 96
5. Investigation procedures of the EPPO in Germany 97
a) Legal foundations 97
b) Course of the investigation procedure 98

aa. Active exercise of jurisdiction 98
bb. Conduct of the investigation 101
c) Cross-border cooperation of the EDPs 102
d) Closure of the investigation 104
6. Defence in "German" EPPO proceedings 108
7. Conclusion and outlook 110
II. General introduction 112
1. General remarks 112
a) Current state of affairs, the EPPO in Germany and the idea of a federal "Financial" criminal state office (Bundesfinanzkriminalamt) 113
b) Integration of the EPPO into the German judicial system 114
aa. The tasks of the EDPs 114
bb. First successful cases 115
cc. An investigation into "organized Crime/illegal gang operations" 115
c) German judicature on the EPPO's activities 116
d) Local EDP Centers 117
e) Who do the German EDPs work with? 117
f) Budget of the EDPs in Germany 118
g) Supranational law enforcement 122
h) Expenses and remuneration of German EDPs 123
i) Short outlook: Europe, EPPO and Germany 2030 124
j) Typical structure of proceedings of an EPPO Investigation in Germany and Guide of tasks for EDPs, judges, defence lawyers 125
k) Drafting of charges to the trial of an EPPO investigation: Objective and legal basis of EPPO investigations in PIF offences 131
aa. Rules on drafting indictments 131
bb. EPPO's progress reports 131
l) Thoughts on prosecutorial actions of EDPs in Germany: Our methodology of analysis based on final judgments from German EPPO regional offices 132
m) Investigation and evidence collection measures 132
aa. Conclusion of the investigation 132
bb. Opening of the main Proceedings 133
cc. Judgments in EPPO cases 134
n) If an EPPO indictment is filed and what is typical EPPO evidence? 134
aa. Findings regarding VAT fraud carousels 134
bb. Confessions and expert testimony 135
cc. Witness testimony 135
dd. Searches, seizures, and digital chats 135
ee. Importance of chat messages as evidence in EPPO proceedings 136

ff. Admissibility of EPPO evidence in court 136
o) Call for legislative reform and outlook 137
2. Article 26 (Initiation of investigations and allocation of competences) .. 138
a) EPPO crime report, verification and relevant sources of the indications for a criminal offence falling within the competence of the EPPO 144
aa. Determination of the competent European Public Prosecutor 146
(1) The Union standards 146
(a) Transfer of information 1: Crime reports by national administrative authorities 147
(b) Transfer of information 2: Obligation to issue crime reports for national tax authorities 148
(c) Transfer of information 3: Customs authorities may issue reports to FIU & EPPO 153
(2) Competence of the EPPO, Art. 22, 23, Art. 26 para. 4 154
bb. Jurisdiction of the EDPs in Germany 154
cc. Internal agreement on jurisdiction of the regional office of the EPPO in Germany 156
b) Initial suspicion for a PIF offence within the competence of the EPPO 165
aa. Initiation of an investigation 165
(1) Applicable provisions 166
(2) Non-applicable provisions due to the national adaption law for the EPPO 170
bb. The concept of "sufficient factual indications" in general 173
cc. PIF offences in German criminal law 175
(1) Methods of investigation, collecting information and documenting the initiation of an investigation for an indictment 185
(a) Pecularieties differentiated by PIF offences (typologies of EU frauds) 185
(b) Fraud 186
(c) Corruption offences 208
(d) Money laundering with PIF crimes 208
(e) Criminal organisation (PIF "Mafia clause") 212
(2) Special national databases and registers for (detecting) PIF offences and identifying potential suspects 212
(3) Digital investigations 213
dd. Overview of judgments for sufficient factual indications for the PIF offences in German criminal law 217
(1) Fraud (-related peculiarities in general) 217
(2) More examples and precedents: 219

(a) In national case-law 219
(b) In the case law of ECtHR and ECJ 220
ee. The level of sufficiency 220
ff. Objective and subjective standards and perspectives 220
gg. Other degrees of suspicion 221
hh. Excerpts and information from selected judgments decided by German courts in the PIF-Crimes Area 221
c) Consequences to the "Decision to open a case" –f-steps: investigate, discontinue or prosecute 225
d) Actions if "Decision to open Art. 26 para. 7 EPPO Regulation / not open a case, Art. 24 para. 7, 27 para. 7 EPPO Regulation" 229
e) Justiciability and appeals 229
f) Excursus: Procedure for summary penalty orders (Verfahren bei Strafbefehlen) 230
3. Article 27 (Right of evocation) 232
a) Decisions under national (German) law which may have the effect of precluding the EPPO from its right of evocation 238
aa. Statute of limitations (*Verjährungsvorschriften*) 242
bb. Amnesty 249
cc. Criminal complaint 249
dd. Prosecution before the trial court 250
ee. Opposing legal validity (Rechtskraft) 250
ff. Abatement of action (dispense with prosecution, dissmissal) 250
b) Urgent measures of national authorities for securing an investigation and prosecution 251
aa. Arrest 255
bb. Detention 256
cc. Search 256
dd. Seizure 256
c) Competent national authorities in paras 3 to 7 of Art. 27 256
d) Provisions regarding the finalization of the national investigation, para. 7 256
e) Actions if "decision to open Art. 26 para. 7 EPPO Regulation/not open a case" 258
aa. Opening, ss. 12 EUStAG, 492 CPC 258
bb. Art. 26 para. 7 EPPO Regulation 261
cc. Informing national authorities, who reported to the EPPO in accordance with Art. 24 paras 1 and 2 EPPO Regulation in case "of no grounds to initiate an investigation in accordance with Article 26" (Art. 24 para. 7 EPPO Regulation) 264

4. Article 28 (Conducting the investigation) 265
a) The handling EDP carrying out the investigative measures, para. 1 270
b) Methods, databases and investigation tools for PIF area crimes 270
c) Instructions and assignment of investigative measures for "those national authorities" (Ermittlungspersonen der (EU-)StA) 271
aa. Specialised tax and customs, police, and investigative staff in the area of (white collar-) PIF crimes in Germany 273
(1) The investigative staff at the police offices in the Länder 274
(2) Tax and customs police (Steuer- und Zollfahndung) in Germany .. 275
(a) Customs intelligence/investigation service (Zollfahndung) 275
(b) Tax investigators (Steuerfahndung) 278
(3) Task forces, investigative teams, commissions, special committees and the special staff of the criminal bureaus (Landeskriminalämter) .. 279
(4) Overview of the (representative) special units responsible for PIF offences 280
bb. Instructions of police and investigative staff by virtue of the CPC .. 288
cc. Administration of offences Act, Market Organisation Act 294
d) Ensuring compliance with national law 297
aa. Via the general investigation provisions 297
bb. Via national administrative decrees/regulations under criminal procedural law (Nationale strafprozessrechtliche Verwaltungsvorschriften) 300
(1) Germany: RiVASt, RiStBV (amended for Hamburg) 300
(2) Specific Decrees, non-formal laws, execution of the CPC 306
e) Urgent measures within national law to ensure effective investigations 306
aa. Provisions in relation to the gathering of evidence 306
bb. Follow-up due to Art. 28 para. 2, s. 2 EPPO Regulation: Informing the EDP 319
f) Art. 28 para. 3 and 4: Adoption in national law 319
5. Article 29 (Lifting privileges or immunities) 320
a) National privilege and immunity provisions, para. 1 322
aa. Privilege provisions 322
(1) Legal (professional) privilege 322
(a) Provisions in German law ss. 52, 53, 53a, 148 CPC and BRAO 322
(b) Provisions on lifting a legal (professional) privilege 332
(c) National jurisprudence 335
(2) Spousal privilege 335
(a) Provisions in German law 335

(b) Provisions on lifting a spousal privilege 336
(3) Privilege against self-incrimination 337
(a) Enshrinement in German law 337
(b) Related national jurisprudence 341
bb. Conclusion and summary to the different privileges and the lifting/waiving procedure in German law 341
b) Immunity provisons as Verfahrensvoraussetzung and Verfahrenshindernisse according to german criminal doctrine 342
aa. Parliamentary privilege or immunity 344
bb. Provisions to lift the parliamentary privilege/immunity 346
c) Immunities and Privileges under union law, para. 2 355
III. National law applicable in EPPO investigation with special focus on investigation measures 358
1. Article 30 (Investigation measures and other measures) 358
a) Member States shall ensure that the EDPs are entitled to order or request 361
aa. Empowered to “order or request” 361
bb. Violation of CPC, and ban on taking evidence and on use of evidence 362
cc. Relevant suspicion 363
dd. Prior authorisation by a judge (Ermittlungsrichter) 364
ee. Adaption law of the Member State: EUStAG and GVG 365
ff. Provision in the CPC, EUStAG and GVG 366
b) Investigation measures 368
aa. Para 1(a) 368
(1) Search measures 368
(a) Search any premises or land 369
(b) Search any means of transport 372
(c) Search any private home 372
(d) Search any clothes and any other personal property 374
(e) Search any computer system 374
(2) Conservatory measures 375
(a) Necessary to preserve their integrity 376
(b) Necessary to avoid the loss 376
(c) Necessary to avoid the contamination of evidence 377
bb. Para 1(b) 377
cc. Para 1(c) 378
(1) Obtainment of the production of stored computer data (encrypted or decrypted) 378
(a) General provisions in the CPC 379

(b) Special provisions in the CPC and Tax code 390
(2) Obtainment of banking account data and traffic data 391
(3) Exception of data specifically retained in accordance with national law 397
(a) Transposition of this Directive 397
(b) National provision in relation to Art. 15 para. 1 s. 2 of this Directive 397
dd. Para. 1(d) Freezing measure 397
(1) Freezing instrumentalities or proceeds of crime, including assets . 397
(2) National legislation and subject to confiscation Status by the trial court 410
ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person 410
ff. Para 1(f) Track & trace an object 418
c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29 419
aa. Right to refuse to testify 419
bb. Section 97 Prohibition on Seizure 421
cc. Special Restrictions that apply for lawyers 424
d) Para 3: Conditions/thresholds for investigation measures 435
aa. Conditions and limitations for investigation measures of para. 1(c)–(f) 436
bb. Serious offences limitation for offences of para. 1(e) and (f) 438
cc. Notifications according to the last sentence of para. 3 441
e) Para 4: Any other measure(s) in the EDP's Member State 444
aa. Dragnet investigation and procedure, ss. 98a, b CPC 444
bb. Online-search, s. 100b CPC 446
cc. Acoustic surveillance of private premises 449
dd. Accoustic surveillance outside of private premises 451
ee. Undercover Investigators and their Actions 452
f) Para 5: National procedures and national modalities for taking investigative measures 453
2. Article 31 (Cross-border investigations) 464
a) Overview of general national codes and provisions applicable in cross border-cases 466
b) Para 2, 3: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS 466
c) Availability of measures to the EDP 469

aa. Art. 30 para. 1 a: search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence; 473
bb. Art. 30 para. 1 a & d: seizure and freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment ordering confiscation. 486
cc. Art. 30 para. 1 e: intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using; 502
dd. Justification and adoption of such measures governed by the law of the MS of the handling EDP 519
ee. Applicability of general national investigative measures according to national provisions in relevant Codes and the CPC 521
d) Para 8: Decision by the chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP 521
e) Relevant examples and precedents (from mutual legal assistance)..... 522
3. Article 32 (Enforcement of assigned measures) 523
a) Assigned measures according to para. 2 of Art. 31 523
aa. Special provisions in the handling EDP's state that govern this situation 523
bb. Availability of measures to the EDP according to Art. 31 and 30 in combination with the national measures 524
b) Examples for difficulties between handling and the assisting MS..... 524
aa. EDP misses knowledge about "the other country" 524
bb. The role of mutual legal assistance (cf. Art. 31 para. 6 EPPO Regulation) 525
cc. Contact points between the MS 525
4. Article 33 (Pre-trial arrest and cross-border surrender) 526
a) General relation to national law: Applicable Codes 527
b) Para 1: Provisions for arrest and pre-trial detention 528
aa. Arrest 528
bb. Pre-Trial detention 538
c) Para 2: Cross-border surrender 560
d) Fraud-related peculiarities 562
e) Relevant example and precedent for para. 1, 2 562
5. Provisions on defence relating to EPPO actions in Germany 563
a) Defence counsels 569

b) Defence in the investigation phase 570
aa. Art. 26, 27 EPPO Regulation 570
bb. Defence by virtue of s. 140 para. 1 n°1 CPC in combination with s. 141 para. 2 n°3 (notwendige Verteidigung, BGH Beschl. 5. April 2022 – 3 StR 16/22) 576
cc. The Input from the Regulation 2017/1939 581
(1) Access to national case file 581
(a) Section 32f CPC 583
(b) Section 147 CPC 585
(2) Access to EPPO case file 596
dd. Defence while investigation is under-way, Art. 28–33 EPPO Regulation 596
(1) In cases involving investigative measures of Art. 30 EPPO-Regulation 599
(2) Defence in cross-border cases 603
(3) Defence in case of arrest and pre-trial detention, Art. 33 EPPO Regulation 603
c) Request for a discontinuation order pursuant to Article 39 para. 4 of the EPPO Regulation in conjunction with Section 171 para. 1 CPC 608
d) Defence in indictment phase and the trial phase 609
aa. Structure of the EPPO indictment by German EDPs 610
bb. Determining the jurisdiction via the gravitiy of the PIF offence 613
(1) Specialised Economic Chambers of a County Court (Landgericht) 616
(2) Challenging the competence of the court 618
cc. Other defence strategies and relevant provisions 618
(1) Review of prosecutorial actions 619
(2) Interim and procedural complaint remedies 620
(a) In the investigation phase 620
(b) In and after the trial phase 623
e) After the trial 623

C. OLAF-Regulation (EU, EURATOM) No 883/2013 of 11 September 2013 ... 629
I. General Introduction: Investigation powers and national law related to OLAF in Germany (Art. 3–8 OLAF Regulation) 629
1. General remarks 629
a) OLAF's role 629
b) OLAF reports in national law 629
c) Structure of Part C on OLAF investigations and references to national law 630
2. Article 1 (Objectives and tasks) 630

3. Article 2 (Definitions) 631
4. Article 3 (External investigations) 633
a) On the spot-checks and inspections – renouncing the applicable national law – para. 2, 4 638
b) Assistance needed, competent authorities and access to information in the Member States, para. 5 638
c) Resistance by the economic operator vs. law enforcement and effective investigations, para. 6 or the new model and the relevance of resistance or conformity of the economic operator 638
d) The basic principle of conformity to Regulations 2185/96 and 883/2013 639
aa. Submission: Compliance with Union law 639
bb. Resistance: Assistance in conformity with national procedural rules applicable 639
e) Competent authorities 639
f) National law and "checks and inspections" of OLAF 645
aa. Administrative procedure in general 645
bb. Special administrative powers and provisions in certain areas of revenue and expenditure 648
(1) Administrative provisions 648
(a) Administrative provisions in the area of customs duties (Zölle) and value added tax (VAT) =revenue 648
(b) General provisions 648
(c) Administrative provisions in the area of structural funds (Strukurfonds) and internal policies (interne Politiken) =expenditure 658
(d) Administrative provisions in the area of the common organisation of the markets (gemeinsame Marktoranisation) =expenditure 664
(e) Administrative provisions in the area of direct expenditure (Direktausgaben) 664
(f) Administrative provisions in the area of external aid (Außenhilfe) =expenditure 665
(2) Investigative powers 665
(a) Investigative powers in the area of customs duties and VAT (Zölle und MwSt.), ss. 399 et seq. AO 665
(b) Investigative powers in the area of structural funds and internal policies (Strukturfonds und interne Politiken) 667
(c) Investigative powers in the area of common market organisations (gemeinsame Marktorganisation) 670

(d) Investigative powers in the area of direct expenditure (Direktausgaben) ... 670
(3) Protection of information ... 671
(a) Tax secrecy (Steuergeheimnis) s. 30 AO ... 671
(b) Administrative secrecy (Verwaltungsgeheimnis) ... 689
(c) Data secrecy (Datengeheimnis) ... 689
(d) Official secrecy (Amtsverschwiegenheit) ... 696
(4) Investigation reports ... 699
(5) Support to the inspectors ... 700
(6) Preservation of evidence (Sicherung der Beweismittel) ... 702
g) Single measures (investigative powers) ... 703
aa. Interviewing / questioning of "persons concerned" (in relation to suspects/defendants) ... 704
bb. The taking of statements from economic operators ... 705
cc. Interviewing / questioning of witnesses ... 706
dd. Inspections ... 707
ee. Searches ... 711
ff. Digital forensic operations within inspections or on-the-spot checks ... 713
(1) General remarks ... 716
(2) Formal requirements ... 716
(3) Substantive requirements ... 717
(a) Fraud-related peculiarities ... 717
(b) Examples and precedents ... 717
gg. Investigative missions in third countries ... 718
h) National procedural rules for "checks and inspections" by the assisting national authoritiy ... 724
i) Cooperation (Amtshilfe) and mutual assistance agreements ... 724
5. Article 4 (Internal investigations) ... 727
a) References to national law, para. 8 ... 727
b) Competent authorities ... 728
6. Article 5 (Opening of investigations) ... 729
a) Competent authorities ... 729
b) National rules ... 732
7. Article 7 (Investigations procedure) ... 734
a) References to national law ... 735
b) References to national authorities, para. 3, 3a ... 738
8. Article 8 (Duty to inform the Office) ... 740
II. References to national law in the OLAF Regulation (Art. 9–17 OLAF Regulation) ... 741

1. Article 9 (Procedural guarantees) ... 741
a) Art. 9 para. 3 – remit of a national judicial authority ... 741
b) Art. 9 para. 4 – national judicial authorities ... 743
2. Article 10 (Confidentiality and data protection) ... 744
a) National rules applicable to judicial proceedings in the MS, Art. 10 para. 3 OLAF Regulation ... 744
b) Specifications ... 744
3. Article 11 (Investigation report and action to be taken following investigations) ... 745
a) References to national law ... 746
b) National authority, para. 3 ... 747
4. Article 12 (Exchange of information) ... 748
a) Art. 12 para. 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law) ... 748
b) Art. 12 para. 2 OLAF Regulation (judicial authorities of the Member State concerned) ... 749
c) Art. 12 para. 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned) ... 750
d) Art. 12 para. 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law) ... 750
5. Article 12a (Anti-fraud coordination services) ... 753
[Article 12b–12d omitted] ... 755
6. Article 12e (The Office's support to the EPPO) ... 755
[Article 12f–g omitted] ... 755
7. Article 13 (Cooperation of the Office with Eurojust and Europol) ... 756
[Article 14–16 omitted] ... 756
8. Article 17 (Director-General) ... 757
a) National law applicable to judicial proceeding and competent authorities ... 758
b) Internal advisory and control procedure: Legality check involving national law ... 760
[Article 18–21 omitted] ... 761

D. Concluding Remarks ... 761
Annex I ... 763
Exemplary Training Investigation File ... 763

A. Legal assessment of criminal liability and evidence for a reasonable suspicion of offences (ss. 170 para 1, 203 German CPC, StPO) ... 789

I. Subsidy fraud in a particularly serious case according to Section 264 para. 1 no. 1, para. 2 no. 1 of the German Criminal Code against F and to the detriment of the European Union by submitting the application 789
1. Objective facts 789
a) Subsidy (Section 264 para. 8 Sentence 1 no. 2 of the German Criminal Code) 789
b) Subsidy providers 791
c) Facts relevant to subsidies 791
aa. Definition 792
bb. Derivation of subsidy significance 792
(1) Abstract scale 792
(2) Concrete scale 793
cc. Application of the standard to the case 794
dd. Interim result 795
d) Offense: Providing false/incomplete information "for yourself or another" 795
e) Advantage "for him or the other" 796
2. Subjective elements 797
3. Absence of justifying circumstances (Rechtswidrigkeit) 797
4. Guilt as criminal liability 798
5. Result 799
II. Fraud in a particularly serious case according to Section 263 paras. 1, 3 no. 2 of the German Criminal Code against F and to the detriment of the European Union by submitting the application for financial benefits 799
III. Forgery of documents in a particularly serious case according to Section 267 para. 1 Var. 3, para. 3 no. 2 of the German Criminal Code by uploading the invoice in the portal 799
1. Objective facts 799
a) Object of the crime: Fake document 799
b) Act: Use of a false document 800
2. Subjective elements 801
3. Absence of justifying circumstances (Rechtswidrigkeit) 801
4. Blameworthiness (Schuld) 801
5. Standard example (Regelbeispiel) of Section 267 para. 3 no. 2 of the German Criminal Code 801
6. Result 802
IV. Misuse of European Union services pursuant to Section 1 of the EU Financial Strengthening Act through use for purposes other than those intended 802
1. Objective facts 802
a) Services financed from EU public funds 802

b) Restriction on use ... 803
c) Violation of usage restrictions ... 803
d) Causal disadvantage for the EU's assets ... 803
2. Subjective elements ... 804
a) Intention to cause harm (obtaining) ... 804
b) Procurement of an unlawful financial advantage ... 804
3. Absence of justifying circumstances (Rechtswidrigkeit) ... 804
4. Blameworthiness (Schuld) ... 804
5. Result ... 804
V. Breach of trust pursuant to Section 266 para. 1 of the German Criminal Code (StGB) by granting (without examination) ... 804
1. Objective facts ... 805
a) Abuse variant, Section 266 Paragraph 1 Var. 1 StGB ... 805
aa. Authority to dispose or oblige ... 805
bb. Abuse of this power ... 805
b) Breach of trust variant ... 806
c) Success ... 806
2. Subjective elements ... 807
3. Absence of justifying circumstances (Rechtswidrigkeit) and guilt ... 807
4. Section 266 para. 1 StGB in conjunction with Section 263 para. 3 StGB 807
5. Result ... 807

B. Procedural questions ... 808
I. Jurisdiction of the EPPO ... 808
1. Territorial jurisdiction, Art. 23 EPPO Regulation ... 808
2. General competence according to EPPO – territoriality ... 808
II. Jurisdiction of the EPPO centers within Germany ... 809
III. Substantive jurisdiction, Articles 22 and 23 of the EU Regulation ... 809
IV. Prosecution before national courts ... 810

C. Internal Legal Memorandum ... 811

D. Draft resolution of the EDP (Entschließung) ... 813
I. Information concerning the Person: ... 815

Annex II ... 816

Annex III ... 827

General Bibliography ... 833

Special bibliography on Art. 22 EPPO-Regulation ... 849

Special bibliography on Art. 26 EPPO-Regulation 851

Special bibliography on Art. 27, 28 EPPO-Regulation 852

Special bibliography on Art. 29, 30–33 EPPO-Regulation 853

Special bibliography on OLAF 858

Important Websites 860

Index 861

Index of Special Legislation 865

Abbreviations

AFCOS	Anti-fraud-coordination service
AG	District Court/*Amtsgericht*
AMG	Medicinal Products Act/*Arzneimittelgesetz*
AML	Anti-money laundering
AO	General Tax Code aka Fiscal Code/*Abgabenordnung*
AStBV	Guidelines for criminal tax proceedings/*Anweisungen für das Steuerstrafverfahren*
AStOK	Evaluation and analysis centers for organised crime/*Auswerte- und Analysestellen für Organisierte Kriminalität*
AW-Prax	Außenwirtschaftliche Praxis (Journal)
BAMF	Federal Office for Migration and Refugees/*Bundesamt für Migration und Flüchtlinge*
BfDI	Federal Commissioner for Data Protection and Freedom of Information/*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*
BFH	Federal Court of Finances/*Bundesfinanzhof*
BfS	Federal Central Office for Tax Matters/*Bundeszentralamt für Steuern*
BGBl.	BGBl. Bundesgesetzblatt/Federal Law Gazette (Germany)
BGH	German Federal Supreme Court/*Bundesgerichtshof*
BGHSt	Decisions of the Federal Court of Criminal Justice/*Enstscheidungen des Bundesgerichtshofs in Strafsachen*
BMF	Federal Ministry of Finance/*Bundesministerium der Finanzen*
BMI	Ministry of Interior/*Bundesministerium des Inneren*

BMJ	Federal Ministry of Justice/*Bundesjustizministerium*
BMVI	Federal Police Office Presidency/ *Bundespolizeipräsidium, Referat 44, Verwaltungsbehörde*
BRAO	Federal Lawyer Act/*Bundesrechtsanwaltsordnung*
BuStRA	Fines and Criminal Matters Office /*Bußgeld- und Strafsachenstelle*
BVerfG	Federal Constitutional Court/*Bundesverfassungsgericht*
BVerwG	Federal Administrative Court/*Bundesverwaltungsgericht*
EAW	European Arrest Warrant
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECJ/CJEU	European Court of Justice
EDP(s)	European Delegated Prosecutor(s)
EP	European Public Prosecutor
EUFinSChStG	EU Financial Protection Strengthening Act/*EU-Finanzschutzstärkungsgesetz*
EUStA/EPPO	*Europäische Staatsanwaltschaft*/European Public Prosecutor's Office
EUStAG	EPPO Adoption Act/ Act on the Implementation of the EU Regulation on the Establishment of the European Public Prosecutor's Office/*Europäisches-Staatsanwaltschaft-Gesetz vom 10. Juli 2020 (BGBl. I S. 1648)*
FG	Finanzgericht/*Financial Court*
FIU	Financial Intelligence Unit
FS	*Festschrift (für zum Geburtstag von*), *Liber Amicorum*
GG	Basic Law/*Grundgesetz*
GS	*Gedächnisschrift (zu Ehren von)*
GVG	Court Constitution Act/*Gerichtsverfassungsgesetz*
HA	Main Customs Office/*Hauptzollamt*
HGB	German Commerical Code

IBOA	Institutions, Bodies, Offices and Agencies
IRG	Law on International Legal Assistance/*Gesetz über die internationale Rechtshilfe in Strafsachen*
KHK	Kriminalhauptkommissar
KUSS	Central office for the coordination of audit measures in cross-border and cross-state VAT fraud cases/*Zentrale Stelle zur Koordinierung von Prüfungsmaßnahmen in länder- und staatenübergreifenden Umsatzsteuer-Betrugsfällen*
KWG	Banking Act/*Kreditwesengesetz*
LG	Regional Court/*Landgericht*
MiStra	Anordnung über Mitteilungen in Strafsachen
NRW	North Rhine Westphalia
OLAF	European Anti-Fraud Office
OLG	Higher Regional Court/*Oberlandesgericht*
OWiG	Act on Regulatory Offences/*Ordnungswidrigkeitengesetz*
PC	Permanent Chambers
PIF	Protection of the EU's Financial Interests
PKS	Federal Police Statistics/*Polizeiliche Kriminalstatistik*
POK	Police Commissioner/*Polizeioberkommissar*
RiStBV	Guidelines for criminal proceedings and fine proceedings*/Richtlinien für das Strafverfahren und das Bußgeldverfahren*
RiVASt	Guidelines for dealings with foreign countries in criminal cases/*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*
SIS II	Schengen Information System
StBerG	Steuerberatergesetz
SteuFa	Steuerfahndung/*Tax police*

StGB/CC	Criminal Code/*Strafgesetzbuch*
StPO/CPC	German Criminal Procedure Code/*Strafprozessordnung*
TFEU	Treaty on the Functioning of the European Union
TKÜ	Telecommunications surveillance/*Telekommunikationsüberwachung*
Urt.	Urteil/*Judgment of a German Court*
UStG	VAT Code/*Umsatzsteuergesetz*
VAT	Value Added Tax
VG	Administrative court/*Verwaltungsgericht*
WPO	Wirtschaftsprüferordnung
ZFdG	Customs Investigation Act/*Zollfahndungsdienstgesetz*
ZfZ	Zeitschrift für Zölle und Verbrauchersteuern/*Journal of Customs and Excise Duties*
ZIVED	Central Information Dissemination External Databases/*Zentrale Informationsvermittlung Externe Datenbanken*
ZPO	Civil Procedure Code/*Zivilprozessordnung*

Tables & Figures

Sources and national sections 1: Overview for Germany – Art. 26 EPPO Regulation 142

Sources and national sections 2: Overview for Germany – Art. 29 EPPO Regulation 321

Sources and national sections 3: Art. 29 EPPO Regulation (parliamentary privilege/immunity) 346

Sources and national sections 4: National provisions for Art. 30 para. 3 EPPO Reg. 442

Sources and national sections 5: Art. 31 EPPO Regulation 469

Sources and national sections 6: Art. 30 para. 1 (a) 473

Sources and national sections 7: Art. 30 para. 1 (a) & (d) 487

Sources and national sections 8: Art. 30 para. 1 (e) 502

Sources and national sections 9: Overview for Germany – Art. 3 OLAF Regulation General German Administrative Procedure Act 646

Sources and national sections 10: Overview for Germany – Art. 3 OLAF Regulation Administrative provisions for investigations in the area of internal policies expenditure 663

Sources and national sections 11: Art. 3 Interviewing and questioning witnesses during external investigations 706

Sources and national sections 12: Overview for Germany – Art. 5 OLAF Regulation (Opening of investigations) 729

Sources and national sections 13: Art. 5 OLAF Regulation – Overview for Germany 732

Sources and national sections 14: Overview for Art 7 OLAF Regulation (investigation procedures) 735

Sources and national sections 15: Overview for Germany – Art. 7 OLAF Regulation: National authorities en detail 738

Sources and national sections 16: Overview for Art. 8 OLAF Regulation (Duty to inform the Office) 740

Sources and national sections 17: Overview for Germany – Art. 11 OLAF Regulation 746

Sources and national sections 18: Overview for Art. 17 OLAF Regulation – Competent authorities and theire actions taken according to para. 4 759

Sources and national sections 19: Overview for Germany –Art. 17 OLAF Regulation: Legality check involving national law 760

Table 1: EPPO Regulation Examples concerning the Material Scope and Investigation Measures from National Case-Law 44

Table 2: OLAF Regulation: Examples concerning the Material Scope and Investigation Measures from ECJ and National Case-Law 53

Table 3: The EPPO Regional Offices in Germany 57

Table 4: National Authorities involved in PIF Investigations in Germany 58

Table 5: National Authorities listed in the notification pursuant to Art. 117 EPPO Regulation 59

Table 6: Administrative Guidelines Interactions with the EPPO (RiStBV) 79

Table 7: Secondment of Prosecutors for their Role as EDPs 86

Table 8: Internal soft law agreement of the German EDPs for jurisdiction & competence 156

Table 9: Sanctions for PIF offences in Germany 176

Table 10: Overview of Sanctions in German EPPO Proceedings (compiled from EPPO Press Releases and Public Records) 177

Table 11: Example of German Excerpt of Commercial Court Register B 213

Table 12: Competent authorities under Art. 27 paras 3 to 7 EPPO Regulation 256

Table 13: Examples for special units responsible for PIF offences in the Five Regional Country Centers of the EPPO in Germany 280

Table 14: Immunity/Statistics for the German Bundestag 343

Table 15: Art. 31 and 32 EPPO – Comparative overview of the investigative “sui-generis” scheme in Art. 31 and 32 EPPO Regulation 467

Table 16: Division of the economical criminal chambers of the German Landgericht München I 616

Table 17: Division of the Economical Criminal Chambers of the German Landgericht Frankfurt am Main 617

Table 18: Competent Authorities in a Case of Resistance (Art. 3 OLAF Reg.) 639

Table 19: Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Germany (2021–2027) 661

Figure 1: Supranational, EU-internal way of Obtaining information for the EPPO competence and the exercise of jurisdiction 145

Figure 2: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction 145

Figure 3: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction 146

Figure 4: Official Guide for the EPPO Crime Report (ECR) 150

Figure 5: Suspected Biodiesel Trade and Evasion of Duties 202

Figure 6: The offences in national law by virtue of the German PIF offences Acquis 217

Figure 7: Right of evocation/time limits/refrain taking decisions that have a precluding effect 236

Figure 8: Art. 26 para. 7 EPPO Regulation 263

Figure 9: Informing National Authorities, Art. 24 para. 7, 26 and 27 EPPO Regulation 264

Figure 10: Locations of Customs Offices and Customs Criminal Investigation Offices in Germany 277

Figure 11: Assignment of "those national authorities" in Germany, Art. 28 EPPO Regulation (Example: police) 286

Figure 12: Structure of police investigations for EDPs in the Frankfurt am Main center 287

Figure 13: Assignment of measures by handling EDP to assisting EDP (scheme) © P.H. 467

Figure 14: German Ministry of Finance: AFCOS 754

Figure 15: The Terms of "Missing Trader", "Buffer" and "Distributor" Explained.. 825

Figure 16: VAT carousel fraud acc. to LG Munich I 826

Synopsis 1: Official Text of the EPPO Adoption Act and Translation of the German EPPO Adoption Act 68

Synopsis 2: The concept of "sufficient factual indications" to establish an initial suspicion under Art. 26 EPPO Regulation 173
Synopsis 3: Provisions of the Criminal Procedure Code/Strafprozeßordnung regarding the Rights to refuse to testify (Legal Professional Privileges) 322
Synopsis 4: The right to refuse to testify in the investigation phase 328
Synopsis 5: Provisions from the Lawyer Organisation Act (BRAO) 330
Synopsis 6: Privilege against self-incrimination in German law 337
Synopsis 7: Telecommunications Surveillance 410

Case Study 1: EPPO EDP Center Frankfurt a.M. 196
Case Study 2: Fictitious Circle of Companies 197
Case Study 3: Trading in Electronic Goods 197
Case Study 4: Example for Potential Material Competence of the EPPO – Aggravated smuggling of tobacco – Tax evasion Case 199
Case Study 5: Germany EPPO EDP Center Berlin 206
Case Study 6: Fictious Case in the Area of the New Green Deal 207
Case Study 7: Excerpts of Judgments regarding the Degree of Suspicion 221
Case Study 8: Cross-Border Vehicle Smuggling and Under-Invoicing: 626
Case Study 9: Fictitious case – Detecting an Irregularity in the area of funding national authorities 642
Case Study 10: Anti-Dumping case 657
Case Study 11: Invention of a Case Study Sheet for EPPO and OLAF investigations for an EPPO/OLAF Trial Monitoring Idea (Gießen-Template draft) 816

Explanation of Symbols & Highlighting

Text passages highlighted in grey show Union law.

Text passages marked with boxes show relevant national law.

Plain Tables display either a synopsis of a foreign law text and the English translation or a summary of institutions and relevant case law.

Tables with symbols in the first row contain case studies (EPPO & OLAF cases) or relevant jurisprudence.

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 = Expert/Introduction to national law

 = Customs legislation/Customs cases

 = Examples

 = Nota bene/General note

 Case Law/Access to files

 = Tax police/tax-related matters

 = Excerpt

 = Arrest, pre-trial detention (e.g. Art. 33)

Ⓟ = Problems resulting from national law

 = (Important) National Sections

 = (criminal) police); relevant for investigators

 = Funds area (e.g maritime)

 = procurement area

 = judicial authorisation required (e.g. Art. 30)

 = urgent measures (e.g. Art. 27, 28)

Π = Plaintiff (Pi)

Δ = (Delta) Defendant

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Navigation of the CNP Volume via the Structure of an Indictment[1]

Place, date

Prosecutor's Office
European (EPPO)
Regional Center [see → A. II. 1.]
File number: Js etc. number/year number

Detention?

To the
Regional court/Jury court [see → B. II. 2. b) cc.; B. III. 6. d) bb.]
Competent chamber according to the court's schedule of responsibilities plan

Indictment

The accused person(s)
Personal details of the accused person(s)
Defence counsel / Mandatory defence

Detention details, Next detention review acc. to s. 121 para. 1 CPC
[see → B. III. 5. on detention and arrest]

is/are charged to have committed
on (date) in (place)
through

1. list of committed offences [see → B. II. 2. b) cc. PIF offences]
attempt/negligence, act/ommission [see → B. II. 2. b) cc.]
committed by one act/joinder of offences
2…
To 1.: The facts (objective and subjective circumstances of the case, value of the proceeds of crime, extent of the damage, consequences for the physically injured person, causal connections)
To 2.: The facts…

The chain of paragraphs: [cited offences]
[see → B. III. 6. d) aa.]

[1] This indictment structure is mainly used in northern Germany. The → indicates the sections in the book.

Information on the
statute of limitations, filing of criminal charges, confiscation of crime products, means and objects of crime

The evidence [resulting from the investigation]**:**
1. Testimony of the accused person(s) [see → B. II. 5. a); B. III. 1. c)]
2. Witness statements
3. Expert witness statements [see → B. III. 1. e)]
4. Documents [see → B. III. 1. b) aa., bb., d), e)]
5. Objects of inspection
[see → B II. 1. m); B. II. 4. d) and e) as well as B. III. 1. on investigation measures and evidence]

Main findings of the investigation
1. regarding the facts (leading to *hinreichender Tatverdacht*)
2. regarding the person, curriculum vitae, post-crime behaviour, criminal records
[see → B. II. 2. b) gg.]

It is requested that/to
1. the main proceedings be opened before the (competent court).
2. decide in favour of the continuation of the detention
3. issue an arrest warrant
4. join criminal cases
5…
[see → B. II. 1. k); B. III. 6. d) aa.; Annex I. D.]

Signed by EDP [see s. 200 CPC for rules on EPPO charges and drafts of indictements below]

A. General collection of material for Parts B and C

In (EU-) criminal justice, **evidence** must be obtained lawfully by "**main EU actors**"[2] protecting "protect[ing] European public goods[3]", yet it might sometimes be gathered unlawfully by national or EU actors e.g. during frequently used searches requested by the EPPO[4], invoking the exclusionary rules of evidence[5] hereby hampering the fight against PIF crimes. This can happen in the form of violations of collection prohibitions or genuine exclusionary rules set forth in the CPC or the "*fruit of the poisonous tree*" doctrine, which must be carefully avoided in some Member States[6]. There may be instances where the factual elements of a crime are absent, or where errors in calculating detention periods could influence sentencing outcomes. These issues are determined by German courts and are of vital importance for practitioners, such as those in the EPPO chambers, EDPs, national authorities and lawyers handling EPPO or OLAF cases as e.g. pointed out.[7] The compendium therefore contains references to official (state or EU) manuals such as the German Instructions for criminal and administrative fine proceedings (tax) – AStBV (St) 2023 (AStBV (St) 2023) information for EDP, SNEs of OLAF, police and tax investigators, investigating judges, arrest warrant judges, judges of commercial criminal chambers, presiding judges, appellate judges, defence lawyers and interested readers. **1**

[2] Nato et al. 2024, p. 21 et seq. on the main actors and p. 53: "The EPPO fills an institutional gap."
[3] Öberg 2023, p. 422 expressing that this ensures the "legitimacy of EU criminal law".
[4] Esser 2024, p. 52 says that the EDP Sonja Heine emphasized the importance of this particular investigation tool.
[5] Prohibition of the utilisation of evidence (*Beweisverwertungsverbot*) means that evidence may be taken into account by the court in the assessment of evidence, § 61 CPC.
[6] Fair Trials 2021, p. 12, "[…] relevant legal framework does not set standards for gathering evidence to ensure their legality and compatibility with fundamental rights and, crucially, their admissibility. […] leaving the procedures for detecting and remedying any violations of law or fundamental rights in evidence gathering process down to the national laws of Member States. P. 17 on the exclusion rules, 35 et seq. on the member states that apply this doctrine. Germany does not apply it, because according to the BGH, a breach of evidence gathering procedures shall never paralyse the entire investigation procedure. Thus indirect evidence obtained with the help of e.g. a statement of a suspect remains admissible, see BGHSt 32, 68. See → Croatian Volume A. I.
[7] See Bülte 2023 emphasizing the fact that German criminal law is shaped by EU law is often overlooked, for example the Federal Constitutional Court (BVerfG) ignored the reference to EU law in its decision on the retroactive effects of asset confiscations (decision of 10 February 2021 - 2 BvL 8/19 with note Bülte NZWiSt 2021, 203 ff.), although it had first caused a landmark stir in 2019 with the decision called "Right to be Forgotten I", since it now applies that if national law serves to implement EU law, the application of national legal provisions is primarily based on the fundamental rights of the Basic Law, and the European fundamental rights standards of the charta are the standard of review if there are concrete and sufficient indications that the Basic Law does not guarantee adequate protection of fundamental rights within the meaning of the CFR. When is that the case, possibly in the investigation proceedings of the EPPO? It is questionable when, according to Article 51, paragraph 1, sentence 1 of the Charter, the EPPO's activities are considered to constitute an "implementation of Union law"? *Åkerberg Fransson* (judgment of 26 February 2013 - 617/10) of the ECJ is still the decisive factor here. Ultimately, Bülte argues quite convincingly that "dangerous anchor effects are set in criminal proceedings and the European area of freedom, security and justice is damaged [and] such indications [such as the Union's fundamental rights] still need to become routine in public prosecutors' offices and courts." https://rsw.beck.de/zeitschriften/nzwist/editorial/2023/08/01/unbequeme-unionsgrundrechte-im-allgemeinen-strafrecht. Accessed 31 December 2024.

I. Collection of cases for OLAF and EPPO investigations

2 To assist in navigating these complexities, the following tables offer a **non-exhaustive list of exemplary cases**, which may help identify thresholds and conditions for investigations and the admissibility of evidence in either criminal or administrative investigations:[8]

1. EPPO Regulation

⚖ *Table 1: EPPO Regulation Examples concerning the Material Scope and Investigation Measures from National Case-Law*

Articles referred	Proceedings, Judgments	Content important for EPPO, ECLI etc./Ongoing Investigations
Articles 22–25, 28–33, 36– 37, 41, 42 EPPO Regulation	**Cases of the EPPO in Germany (finished and ongoing)**[9]: Landgericht Ingolstadt, Judgement of 16 December 2022: two defendant sentenced to nine years in prison for tax evasion and drug trafficking with weapons.[10] Landgericht (Regional Court of) München II, Judgement of 13.2.2023: Convictions of four suspects for VAT fraud with luxury cars, with sentences ranging from 1 year and 10 months of probation to 3 years in prison, and ordered confiscation of over €1 million.[11] Landgericht Landshut, Judgement of 28.3.2023: two defendants sentenced for VAT fraud to prison terms of 4 years and 9 months, and 2 years and 9 months, with a confiscation order of over €5 million. (requested)[12] Landgericht Osnabrück, Judgement of 22.8.2023 Three convicted of import smuggling of luxury cars and organised tax evasion: The court found one defendant guilty in 14 cases of organized and professional smuggling and nine cases of commercial smuggling, resulting in a 3.5-	

[8] Macht 1999, pp. 45 t seq., 148 et seq., 291 on the scope of an exclusion role in administrative decisions.; Peters et al. 2019, pp. 56 et seq, 60.
[9] EPPO 2022, First annual report, 24 March 2021. https://www.eppo.europa.eu/sites/default/files/2022-07/EPPO_Annual_Report_2021.pdf. EPPO 2025. https://www.eppo.europa.eu/assets/annual-report-2024/pdfs/EPPO_Annual_Report_2024_en.pdf 1 March 2025.
[10] See https://www.eppo.europa.eu/en/media/news/germany-first-conviction-vat-carousel-fraud-involving-luxury-cars =Wahl, eucrim 2021, 4/2021, 111: "In an operation in October 2021, ten suspects were arrested and afterwards indicted. It was revealed that three suspects have links to the Italian mafia organisation 'Ndrangheta. Thanks to EPPO's investigations, law enforcement authorities also prosecuted suspects for major drug trafficking offences involving Germany, Italy and Bulgaria."
[11] EPPO Press Release, 14 February 2023. online: https://www.eppo.europa.eu/en/media/news/germany-four-more-convictions-and-confiscation-eu1-million-eppo-investigation-vat. Accessed 31 December 2024.
[12] EPPO Press Release, 3 April 2023. online: https://www.eppo.europa.eu/en/media/news/germany-two-more-convictions-and-confiscation-order-eu5-million-eppo-investigation-vat. Accessed 31 December 2024.

year prison sentence. The second defendant received a suspended sentence of 1 year and 4 months for six smuggling cases. An Estonian national was sentenced to 2 years for organized smuggling in one case and facilitating smuggling in 11 cases. The judgment is not final as all three defendants have appealed.

Landgericht Düsseldorf, Judgement of 31.10.2024 (Operation Huracán), 200 pages Indictment, confessions were made, preceded by a legal discussion in which the parties to the trial had agreed on sentences of two to six and a half years in prison for the defendants (s. 257 CPC), International Scheme involving car trading, Sentences of five defendants to imprisonment ranging from 1 year and 9 months to 6 years and 2 months.[13] (requested)

Landgericht Landshut, Judgement of 21.11.2024, VAT carousel fraud scheme, Sentences of one of two individuals to 3 years and the other to one-and-a-half-year imprisonment. (requested)

EPPO Regional Office of Frankfurt am Main, Investigation into VAT carousel fraud, 26.11.2024, Leipzig Tax Investigation Office involved.

Landgericht München, Judgement of 29.11.2024, Az.: 5 KLs 504 Js 2/23 Organized VAT fraud scheme, 10 persons sentenced, 14 million carousel fraud into Covid-19 tests, Sentences to multi-years, Section 370 (1) numbers 1 and 2, para. 3 numbers 1 and 5 of the Fiscal Code, Sections 22, 23, 25 paragraph 2, 27, 49, 53 StGB were applied. (requested and obtained[14])

Landgericht Regensburg, Judgement of 4.12.2024, Ringleader of an organized crime group to 4 years imprisonment and VAT fraud scheme with earbuds, criminal money gained (confiscated) 960.000 €, 6 million VAT losses. (requested)

EPPO Regional Office Munich, Investigation into a German Bank, 6.12.2024: Allegedly founded company, fictitious business, fraudulent transactions.

Source: EPPO Press Releases till 31 December 2024.

[13] EPPO Press Releases till 31 December 2024.
[14] We analyse this judgment in terms of scheme, point of view of the defence and EDP, evidence gathered and legal implications and reasoning below within the volume chapter.

List of Cases, which we analysed and requested files for case studies:

LG München I (6. Strafkammer), Judgement of 5.4.22, Az. 6 Kls 501 Js 17/21 [indictment of EPPO 24.11.21, evocated case, dismissal of § 129 CC in opening order, VAT Connection to a group of persons who agreed to continue committing VAT evasion in the platinum coins trade, VAT carousel, platinum coins traded in exchange for gold in a circle, later transfers instead of exchange, Total custodial sentence of 3 years and 3 months, tax evasion in 10 multiple offences, confiscation of € 173.8001.21.].

LG München I (12. Wirtschaftsstrafkammer), Judgement of 06.03.2023 – 12 KLs 501 Js 2/23[15] [confirmed by BGH (1. Senat), Judgement of 16 April 2024 – 1 StR 204/23; dismissal of EPPO appeal =wistra 2024, 417[16]]. [intra-community frauds with gold coins].

LG München (EPPO Center Munich) =6 KLs 501 Js 17/21, 5.4.22 [6. Criminal Court].

Landgericht München II, Judgement of 17.4.2023, Az.: W10 KLs 501 Js 8/22, hinzuverbunden: W10 KLs 501 Js 13/22, W10 KLs 501 Js 4/21 [intra-community frauds].

→ Several Cases more have been issued in München.

LG Frankfurt (EPPO Center Frankfurt a.M. =5/29 KLs – 203 Js 8/21 (8/22) Ongoing Case since December 2022–18.2.23. Finished (rechtskräftig) as of 25.2.2023./29. Wirtschaftsstrafkammer.[17]

LG Osnabrück (EPPO Center Hamburg) =Not known. EPPO Press Release, 13.1.22.

LG Hamburg (EPPO Center Hamburg) =Az. 618 KLs 8/22 (December 2022).

LG Landshut (EPPO Center Munich) =Not known. Ongoing Case 3. Criminal Court.

[15] LG München, Judgment of 3 July 2023, 12KLS501JS2.23.0A ECLI:DE:LGMUEN1:2023:0306. 12KLS 501 JS2.23.0A.
[16] BGH, Judgement of 16.4.2024, ECLI:DE:BGH:2024:160424U1STR204.23.0; see as well NZWiSt 2025, 29 with comment by Folker Bittmann. Cited as well by BeckRS 2024, 10206, LSK 2024, 10206 (Ls.), StV 2024, 723 (Ls.).
[17] We visited the main hearing of this case. The analysis of the (VAT-)fraud scheme and the legal reasoning is presented below → under II. ee. We again focused on the evidence gathered and the typical obstacles with investigation measures.

	Landgericht Osnabrück (Center Hamburg), Zwischenverfahren, ss. 207 CPC et seq. as of January 2023), Source: EPPO Website. The latest news from 11.1.23 is that the Hamburg Office is carrying out a case in luxury cars smuggling.[18] **Art. 22–26/and PIF offences area:** LG Berlin, Judgment of 19.6.2024, File number unknown: Prosecution to the Regional Court, Section 16 EUStAG, Section 74c GVG, Economic Criminal Chamber, Judgment: two men sentenced to ten years imprisonment, one man sentenced to one and a half years imprisonment, two other defendants received five years and five months imprisonment and two years imprisonment for aiding and abetting, gang, s. 129 CC, Sections 73 CC et seq. Confiscation of several million euros each, modus operandi: EU tax system exploited, trade in luxury cars and medical masks via a complex network only as a sham in order to collect input tax, VAT carousel, 50 trial days, 3 years of investigations, Judgment not yet final, duration between indictment and Judgment: one and a half years, previous investigations: bank accounts frozen, 5.2 million confiscated, cross-border investigations Art. 31–32 EPP Regulation.[19] **Landgericht Düsseldorf, Aktzenzeichen 014 KLs 2/24** (status indictements filed) The indictement involves tax fraud (Large-scale gang-related tax evasion/*bandenmäßige Steuerhinterziehung großen Ausmaßes*), the operation is called "Huracán" (Spanish for hurricane), the first charges were filed at the time against five people from Germany, Spain, and Italy. The accused are alleged to have acted together to evade taxes on a significant scale (ss. 370 para. 1, 6 AO, 25 para. 2 CC, 129 CC, which means that the tax evasion is not only occasional or small-scale, but targeted and on a large scale, often with considerable financial losses for the state.[20]	
Comparable Cases to EPPO Investigations Supporting the Interpretation of National PIF Law and Investigative Procedures		
Art. 22–26 EPPO	BGH, Judgment of 27.08.2010 – 1 StR 217/10.	The decision concerns ss. 370, 373 AO in an anti-dumping customs fraud case.

[18] See https://www.eppo.europa.eu/en/news/eppo-hamburg-discovers-case-professional-smuggling-luxury-cars-eu35-million-lost-import-duties. Accessed 31 December 2024.

[19] See https://www.tagesspiegel.de/berlin/hochkriminelles-system-gesteuert-manner-in-berlin-wegen-millionenbetrug-mit-luxusautos-verurteilt-11863754.html. Accessed 31 December 2024.

[20] See https://www.autohaus.de/nachrichten/autohandel/verdacht-auf-umsatzsteuerbetrug-anklage-gegen-autohaendler-erhoben-3529206. Accessed 31 December 2024.

Art. 22–26 EPPO	BGH, Judgment of 29.11.2006 – 5 StR 324/06.	The case interprets a fraud scheme under ss. 370 AO a carousel fraud. It deals with sentencing, tax reduction, suspected tax office.
Art. 22–26 EPPO	FG Hamburg, Decision of 24.04.2012 – 2 V 233/11, BeckRS 2012, 95307).	s. 71 AO i. V. m. § 25 paragraph 2, § 27 StGB for the sales tax liability according to § 14c paragraph 2 UStG.
Art. 22–26 EPPO	BGH, Judgement of 17.10.2023 - 1 StR 151/23.	The case concerned the criminal liability for organized smuggling and illegal trade of gold from Liechtenstein via Austria to Germany, avoiding import VAT (*Einfuhrumsatzsteuer*). Cross-border VAT fraud with precious metals is highly organized and often uses complex supply chains with sham companies and unregistered transports.
Art. 22–26 EPPO	BVerfG, Decision 16.06.2011 – 2 BvR 542/09.	The interpretation of § 6a UStG by the BGH does not violate Art. 103 paragraph II German Baisc Law (Certainty requirement for criminal statutes, *Bestimmtheitsgebot*). Fictitious intra-community trade (bogus trade).
Art. 22–26 EPPO	FG Hessen, Decision of 22.07.2002 – 6 V 1071/02.	Report of the tax investigation (StEuFA), inclusion in the court files, suspicion of involvement in a sales tax carousel with deliveries of mobile phones.
Art. 22–26 EPPO	LG Münster, Judgment of 28.05.2019 – 20 KLs 45 Js 604/12- 5/18 =openJur 2020, 17. Similar national Case.	*General Information*: Two defendants, VAT carousel, VAT evasion by filing an incorrect annual VAT return, Input taxes from sham invoices totaling more than €2.7 million, Resale of the precious metals.
Art. 22–26 EPPO	LG Essen, Judgment of 23.01. 2017 – 35 KLs 35 Js 162/13 – 13/15. Similar national case.	Authorized management of waste in conjunction with unauthorized shipment of waste, as well as in connection with the illegal shipment of hazardous waste and because of tax evasion.

Art. 22–26 EPPO	LG Bielefeld, Judgment of30.07.2019 – 9 KLs 11/18, Mn. 126 et seq. Similar national Case.	VAT Tax Evasion, tax-free intra-community supply treated, Sales tax law according to § 4 No. 1b in conjunction with § 6a UStG), VAT was not invoiced and the defendant bought the goods at the net price. Tax Departement: Sales tax review, sales tax special audit lead to further suspicions.
Art. 22–26 EPPO	LG Duisburg, Judgment of 10.03.2014 – 34 KLs 144 Js 53/12-13/13 =openJur 2014, 22842. *Similar national Case.*	Tax Evasion Case.
Art. 22–26 EPPO	BGH, Judgment of 08.09.2011 – 1 StR 38/11 =openJur 2011, 99026.	*Mens rea* conditions, Tax Evasion Cases, s. 370 AO.
Art. 22–26 EPPO	ECJ, 03.03.2005 – C-195/0.	Customs import debt, cigarettes, introduction. Art. 217 UCC.
Art. 22–26 EPPO	Judgement, Case C-283/95, Fischer v Finanzamt Donaueschingen, ECLI:EU:C:1998:276.	Preliminary ruling: Finanzgericht Baden-Württemberg concerning Germany, here: Tax provisions, e.g. Sixth VAT Directive - Application to the organisation of unlawful games of chance and the determination of the taxable amount.
Art. 22–26 EPPO	General Advocate at the ECJ, 09.09.2021 – C-213/19.	Art. 325 TFEU, Art. 4 para. 3 TFEU, customs Union, protection of Union's financial interests
Art. 22–26 EPPO	BGH, Decision of 27.06.2018 – 1 StR 282/17.	Customs import debt, cigarettes, introduction. Art. 217 UCC, s. 370 General Tas Code (tax fraud).
Art. 22–26 EPPO	BGH, Decision of 25.10.2017 – 1 StR 339/16.	s. 264, subsidies fraud to the detriment of the EU.
Art. 22–26 EPPO	BGH, Decision of 15.05.2018 – 1 StR 159/17.	Tax Evasion Case, ss. 370 AO, UStG, ss. 13, 16, 27, 46 para. 1, 2 German CC; s. 35 GmbHG; s. 166 German Civil Code, s. 78 AktG, 168 GVG, 89 para. 1, 370 AO. Revision Appeal of

		the accused, partially successful, a conviction of aiding and abetting offender 1, attribution of knowledge, intent missing for offender 2.; Complaint by appellant hat the tax investigation report was only read out loud (principle of immediacy, s. 250 German CPC).
Art. 27, Urgen measures	**Tax area, ss. 370 AO, UStG** BGH, Decision of 15.05.2018 – 1 StR 159/17. Relevant BGH, Decision of 27. Januar 2015 – 1 StR 142/14 Rn. 38, NStZ 2015, 466–469 = There is no such right of a criminal to have the investigative authorities take (urgent) action against him in good time directly after they heard about the suspicion to bring his crime to justice.	No urgent search, No urgent arrest because of plan to use Special Investigation Tactics, tax authorities had to keep the investigations secret from Trading companies for which there were indications of inclusion in a sales tax carousel; acceptance of ongoing sales tax advance returns without objection and any sales tax credits.
Art 28 EPPO	Tax area, ss. 370 AO BGH, Decision of 15.05.2018 – 1 StR 159/17 Customs area General Fraud Offence area, ss. 263 et seq. CC	Trade in greenhouse gas emission certificates (CO2 certificates), carousel fraud case; in the end: simultaneous searches and arrests in twelve European countries. Establishment of investigative team required.
Art. 29 EPPO	No case has become public, yet that would relate to German parliamentarians.	But precedents are CJEU T-715/19, Judgment of July 17, 2020; ECJ, April 14, 2021 – C-504/20 P dealing with the immunity of parliamentarians. And see ECJ, 03/30/2004 – C-167/02 P =EuR 2004 775–784.
Art. 30 EPPO	ECJ, Case C-518/07, *Commission v Germany* ECLI:EU:C: 2010:125.	Data protection related Judgment, which is important for procedural fairness.
Art. 30 EPPO	BVerfG, Decision of 20.2.2001 – BVerfG Az. 2BVR144400 2 BvR 1444/00.	Role of the investigating judge in the German Criminal justice system, independent control organ for the actions of a prosecutor.

Art. 30 EPPO	BGH, Decision of 21. November 2012 – 1 StR 310/12 – BGHSt 58, 32–50.	Legal assistance between EU states: Applicable law on the usability of evidence acquired through legal assistance in German criminal proceedings; Prohibition of the use of evidence in the event of non-compliance with legal assistance provisions; Examination competence regarding the legality of obtaining evidence.[21]
Art. 30 EPPO	BVerfG, Decision of 16.6.2015 – 2 BvR 2718/10, 2 BvR 1849/11, 2 BvR 2808/11.	Competence of the investigating judge, Art. 13 German Basic Law, search in a house/on a premise; s. 162 CPC:
Art. 30 EPPO	LG Paderborn, Decision of 12. Juli 2021 – 02 KLs 6 Js 44/19 – 3/19 =LSK 2021, 19913 (Ls.).	Decision concerning telecommunications interception results, investigating judge, s. 162 CPC, inadmissibility of evidence?, s. 100 a Abs. 1 Nr. 2 CPC; criminal organisation, tax evasion.
Art. 30 EPPO	ECJ, Judgment, Case C-458/15, K.P. ECLI:EU:C:2019:522.	Criminal proceedings, freezing of funds. Regulation (EC) No 2580/2001 – Article 2 para. 3 terrorism combatting.
Art. 31, 32 EPPO Regulation	ECJ, C-281/22 clarifies the extent of judicial review when cross-border investigative measures are required and highlights the distinction between the "justification and adoption" of investigative measures and their "enforcement". Thus, the judges highlight that the **handling EDP is responsible for adopting and justifying an investigative measure** under the law of their Member State. This includes ensuring that the measure complies with national laws and securing judicial authorisation if needed. The role of the **assisting EDP** is **limited to the enforcement** of the assigned measure in their Member State. They are not responsible for reviewing the justifications for the measure, which should have already been assessed by the handling EDP's court. Any EPPO investigation must respect the Charter of Fundamental Rights, particularly when a measure significantly interferes with rights like privacy or property. For instance, measures like searches or asset freezes require strong safeguards, including prior judicial review in the handling EDP's Member State.	

[21] See Gehm 2017, Chapter 9 fn. 3070; and Peters 2021, Kapitel 6. G. VIII, mn. 6.265–6.270: Peters 2021, mn. 2.37 for the supremacy of EU law.

Art. 31 EPPO	AG Dortmund, Decision of 03.06.2019 – 701 Gs 1027/19 (081 AR 145/19), ECLI:DE:AGDO:2019:0603.701GS1027.19.081A.00 [investigating judge is no EAW ordering authority, s. 162 CPC].	
Art. 28, 30. 41, 42, 45	ECJ, Judgment, Sleutjes, Case C-278/16, ECLI:EU:C:2017: 757.	This decision is influential for the interpretation of Directive 2010/64/EU, which is referenced by Art. 42 EPPO Regulation. Its Article 3 enshrines the right to interpretation and translation in criminal proceedings and the translation and definition of "essential documents". It deals with a penalty order issued following a simplified unilateral procedure and imposing on the addressee a fine for a minor offence
Art. 26, 42 EPPO	BGH, Decision of 27 January 2015 – 1 StR 142/14 =NStZ 2015, 466. ECtHR, Judgment 2019, Application no. 68475/ 10 *Heinrich Josef BLEY v Germany*.	Tax evasion, Art. 6, 7, ECHR, inadmissible.
Art. 30 EPPO	ECtHR, Case of *Breyer v. Germany*, Application no. 50001/12.	Interception of telecommunications: The Court found no interference with Art. 8 of the Convention for an Identification obligation for prepaid SIM purchases.
Art. 33 EPPO	LG Aachen, Decision of 6. Decembert 2021 – 330 StVK 1055/21 =openJur 2022, 2894.	Art. 47 CFR, Extradition of a Polish national, concerns about the rule of law, Art. 2 TEU, Art. 267 preliminary questions, Art. 8 of Council Framework Decision 2008/909/JHA, Refusal, extradition warrant to Poland.
Art. 99 EPPO	LG Tübingen – Judgment of 20. Oktober 2023 – 2 KLs 42 Js 27225/22 (confirmed by BGH, Judgment of 9. January 2025 – 1 StR 54/24).	The BGH allows the use of "AnomChat" data as evidence in serious criminal cases can have several implications for the EPPO and its cooperation with U.S. departments under the WA.[22] An

[22] See https://www.eppo.europa.eu/sites/default/files/2022-07/WA%20EPPO-US-signed-EPPO.pdf. Accessed 31 December 2024.

		EDP may request the U.S. Central Authority for mutual legal assistance. Section 3 of the WA allows the U.S. Department of Justice to provide the EPPO with evidence for investigations.[23] The BGH ruling supports the principle that evidence obtained through U.S. cooperation, even under potentially controversial circumstances, can be admissible. This strengthens the EPPO's ability to rely on U.S.-sourced evidence. Lastly, the BGH acknowledged that the defendant could not directly contest third-country legal decisions, which could raise fairness issues.

Source. The authors.

2. OLAF Regulation

Table 2: OLAF Regulation: Examples concerning the Material Scope and Investigation Measures from ECJ and National Case-Law

Relates to Art.	Judgment, ECLI, etc.	Content
CJEU and national courts		
Art. 3 (right to be heard, digital evidence)	FG Kassel, Judgment of 15.04.2015 – 7 K 440/12	[anti-dumping fraud, false declarations, stainless steel, Korean criminal proceedings, mission to a non-EU country for evidence, German customs]
Art. 3 OLAF Regulation	FG Baden-Württemberg Judgment of 24.10.2017, 11 K 606/14	Third country customs duty, Art. 220 Union Customs Code, OLAF mission to third country, evidence, Indonesia, Indochina.
Art. 3 OLAF Regulation	FG Hamburg (Senat), Decision of 03.09.2021 – 4 V 65/21, BeckRS 2021, 281 42.	Anti-dumping case, Cancellation of the execution of a security without the provision of security

[23] Esser 2024, p. 52 referring to a lecture of EDP Sonja Heine, EPPO Frankfurt Regional Office saying that the contact with U.S. authorities would be "pragmatic", what supports this judgment.

Art. 3 OLAF Regulation	FG Hamburg (4. Senat), Judgment of 06.04.2022 – 4 K 128/18, BeckRS 2022, 12911.	Post-collection of Anti-dumping duties
Art. 3 OLAF Regulation	FG Düsseldorf (4. Senat), Judgment of 13.09.2021 – 4 K 3205/20 Z.	Suspected anti-dumping duties fraud, BeckRS 2021, 28225.
Art. 3 OLAF impossibility of on-site-inspection.	BVerwG 3. Senat 3 C 8/21, ECLI:DE:BVerwG:2022:070422U3C8.21.0 =NVwZ-RR 2022, 670–673.	On the concept of making an on-site inspection impossible as a prerequisite for revocation and the reclaiming of an EAFRD subsidy. Reaction and Follow-up to: Oberverwaltungsgericht für das Land Mecklenburg-Vorpommern 2. Senat, 24. Juli 2019, 2. LB 40/14, Beschluss vorgehend VG Greifswald, 21. Januar 2014, 4 A 93/13, Urteil.
Art. 4 (Internal Investigations)	ECJ, Case T-48/05, Judgment of 8 July 2008 *Franchet & Byk* 24, ECLI: EU:T:2008:257.	This case revolved around two former officials of Eurostat (the Statistical Office of the European Communities), Yves Franchet and Daniel Byk, who filed a claim for compensation against the European Commission. They argued that they had suffered material and non-material damages due to the errors allegedly committed by both the European Commission and OLAF during investigations into the Eurostat case.
Art. 9 OLAF Regulation (EC) No 1073/ 1999, No 2185/96	ECJ, Case C-591/19 P, *European Commission v Fernando De Esteban Alonso*, Judgment of the Court of 10 June 2021, ECLI:EU: C:2021:468.	The ECJ overturned the prior judgment t, which had awarded Alonso €62,000 in damages. The ECJ found that the GC's ruling was incorrect and dismissed the initial claim, ruling that the EU Commission did not violate the official's rights by forwarding the OLAF investigation results to national authorities before notifying him.

[24] See Wojahn and Butticé 2008, pp. 148 et seq.

Art. 4 OLAF Regulation	European Union Civil Service Tribunal, F-89/11, *Charles Dieter Goetz v Comité des régions de l'Union européenne,* Judgment of June 19 2013.	This is a case from OLAF's mandate, which involved issues related to staff employment rights within the EU, including disputes about performance assessments, promotions, and career development within the Committee of the Regions. OLAF suspected that eight transfer requests were irregular, and recommended that disciplinary proceedings against the applicant. The files were forwarded to the Belgian judicial authorities. ECLI:EU:F:2013:83. The action was dismissed. It aimed at a non-contractual liability and contained an action for damages.
Art. 9 (4) of Regulation No 883/2013	ECJ, T-161/17, *Marion Le Pen v European* Parliament, Judgment of the General Court (Sixth Chamber) of 28 November 2018, ECLI:EU:T:2018: 848	The decision deals with rules governing the payment of expenses and allowances to Members of the European Parliament (so-called Parliamentary assistance allowance). The recovery of sums wrongly paid is discussed. The competence of the Secretary-General and the rights of the defence are considered. The decision focuses as well on legitimate expectations, the obligation to state reasons, equal treatment, the misuse of powers, an error of fact and the general proportionality.
Art. 11 OLAF Regulation	ECJ (GC), T-377/20*, KN v European Economic and Social Committee (EESC)*, Judgment of 1 September 2021, ECLI:EU:T:2021: 528.	The decision contains notions on the rights of the defence in the case of a refusal of access to the annexes to the OLAF report as well as the disclosure of the substance of the evidence in the form of a summary.
Art. 11 OLAF Regulation	ECJ (GC), T-48/05, *Yves Franchet and Daniel Byk v European Commission*, Judgment of the General Court (Third Chamber) of 8 July 2008.	OLAF Report, burdensome effect, transfer to national authorities

Art. 11 OLAF Regulation	ECJ, F-5/05, F 7/05 *Antonello Violetti and Others and Nadine Schmit v Commission of the European Communities*, Judgment of the Civil Service Tribunal of 28 April 2009, ECLI:EU :F:2009:39.	The case deals with the relevance of an OLAF Report, the public service, officials and an act adversely affecting an official.
Art. 11 OLAF Regulation	ECJ, T-320/09, *Planet [AE Anonymi Etairia Parochis Simvouleftikon Ipiresion] v. Commission*, Judgment of the General of 22 April 2015. ECLI:EU:T: 2015:223.	The Court annulled a series of decisions of the OLAF requesting the applicant's registration in the early warning system ("EWS") put in place to protect the EU's financial interests. Further themes are the risk associated with contractors, public contracts and fundamental rights.

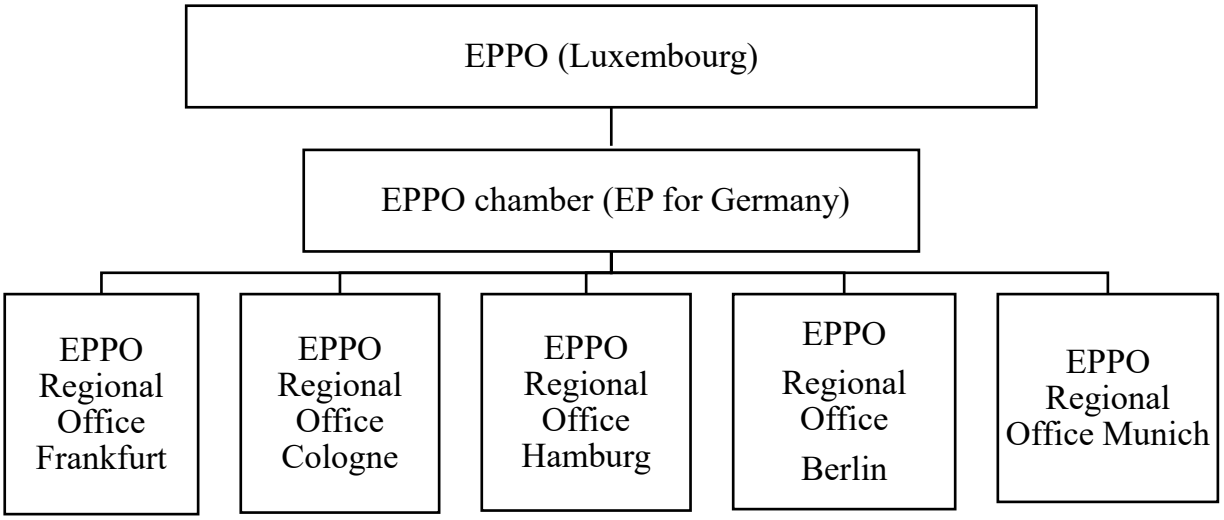
Sources: The authors.

For more EPPO/OLAF-related (national/european) jurisprudence cf. the other volumes of the CNP volumes e.g. for special jurisprudence since 1.6.2021 on actions of the EPPO in a respective Member State or recent OLAF-related judgements concerning the interpretation of the OLAF Regulation or legal questions on evidence collected by OLAF in national judicial proceedings.

II. Institutions

1. The EPPO in Germany

Table 3: The EPPO Regional Offices in Germany **3**



Former and current EDPs involve (see → Decision 19/2020, 25 November 2020 on the appointment of EDPs in the Federal Republic of Germany): **4**

- Ms Annegret Ritter-Victor **5**
- Ms Catrin Knuth, Dr Sebastian Trautmann
- Ms Friderike Busch
- Mr Harald Freyer
- Mr Jorg Schroder
- Mr Jost Horlitz
- Mr Marcus Paintinger
- Mr Tobias Lubbert

German EDPs operate under a **dual hierarchy**: they are part of the EPPO's decentralized structure and report functionally to the European Chief Prosecutor in Luxembourg through their Permanent Chambers, while at the same time they are embedded in their national prosecution offices. This means EDPs have a "double head", being accountable both to the EPPO's central authority (see Bezjak's comment on the selection status at Villa Vigoni, Jakobi and Theodorakakou, eucrim 2025, https://shorturl.at/Q8WHj). **6**

2. Organisation of the criminal justice system in Germany

7 *Table 4: National Authorities involved in PIF Investigations in Germany*

Judiciary	Federal Supreme Court (BGH), relevant for the Jurisprudence in Criminal Law and the main offences of the EPPO. Standards are binding to prosecutors, thus as well German EDPs, who need to apply harmonized national law, the so-called PIF Acquis law PIF offences in German criminal law Federal Administrative Court (BVerwG) Federal Fiscal Court (BFH) Federal Patent Court (BPG) Federal Constitutional Court (BVerfG) Regional courts [Landgerichte], special EPPO courts due to s. 74c GVG. Higher Regional Courts [*Oberlandesgerichte*]
Criminal prosecution and investigation authorities:	*See below* → Table 5: National Authorities listed in the notification pursuant to Art. 117 EPPO Regulation Federal Agency for Nature Conservation (*Bundesamt für Naturschutz BfN*) (s. 70 BNatSchG)
Important (legislative) authorities in the context of PIF investigations:	Federal Ministry of Justice (BMJ): Federal Office of Justice (Bundesamt für Justiz s. 12 Abs. 1 EU-StAG) Drafts penal i.e. criminal law legislation with regard to PIF offences Drafted the PIF Implementation law ("*federführend*") Federal Ministry of Finance Drafts EU-related legislation with regard to VAT, tax fraud, General Tax Act including Customs Supervision and Actions of the Customs Authorities Supervises several Anti-fraud actors like the Federal Central Tax Office "*Bundeszentralamt für Steuern*" Functions as an support Ministry for the Ministries of the Länder In their wording the task is: "4. EU Financial Control and Fraud Prevention: The protection of the EU's financial interests is a central concern of the Ministry of Finance (BMF). The BMF ensures the proper and efficient use of funds paid from the EU budget by taking a leading role within the federal government

	and working closely with European institutions (the European Court of Auditors, the European Commission, the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO)), and the competent authorities of the federal states."[25]

Source: The authors.

Table 5: National Authorities listed in the notification pursuant to Art. 117 EPPO Regulation **8**

Art. 24 para. 8 EPPO Reg. Art. 25 Para. 2 EPPO Reg. Art. 25 para. 3 in conjunction with Art. 34 EPPO Reg. Art. 25 para. 4 EPPO Reg. Art. 25 para. 5 EPPO Reg. Art. 25 para. 6 EPPO Reg. Art. 27 para. 3 EPPO Reg. Art. 27 para. 7 EPPO Reg. Art. 28 para. 2 EPPO Reg. Art. 39 para. 3 EPPO Reg.	Prosecutor's Offices: Public prosecution offices at the regional/district courts (LG) [Public Prosecutors Offices e.g. in Hessen are Offenbach am Main, Wetzlar, Darmstadt, Frankfurt am Main, Fulda, Gießen, Hanau, Kassel, Limburg an der Lahn, Marburg, Wiesbaden; Chief Public Prosecutor's Office in Frankfurt am Main] Public prosecutors offices at the higher regional courts (OLG) [*Generalstaatsanwaltschaften*] Federal Attorney General at the Supreme Court [Generalbundesanwalt beim BGH s. 142b Abs. 2 GVG] Tax authority, insofar as it assumes the position of a public prosecutor's office pursuant to s. 386 para. 2 AO: Main Customs Offices [*Hauptzollämter*], Tax Offices [*Finanzämter*], Federal Central Tax Office [*Bundeszentralamt für Steuern*]
Art. 24 para. 8 EPPO Reg.	- Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in Ludwigsburg [might be competent if the EU finances any Promotion of historical remembrance projects,

[25] See Bundesministerium der Finanzen 2022. online: https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Europa/europapolitische-rolle-des-bmf.html. Accessed 31 December 2024.

	memorial sites, cemeteries, and educational work against the injustices of the Nazi regime
Art. 26 para. 7 EPPO Reg.	- The otherwise responsible public prosecutor's offices (Section 12 para. 2 EUStAG) or the otherwise responsible financial authorities (Section 386 para. 2 AO) - Federal Office of Justice (Section 12 (1) EUStAG) - Competent court, clemency authority or management supervision body in probation and management supervision cases (MiStra Nr. 13) - Competent supervisory authority/professional chamber (MiStra Nr. 23 Abs. 4) in certain criminal cases against notaries and members of the legal professions (MiStra n° 23 para. 2) - Federal Financial Supervisory Authority in criminal cases in the cases of MiStra n° 25 – 25c - Juvenile court assistance (MiStra no. 32) and school (MiStra no. 33) as well as legal guardians, legal representatives and guardians ad litem (MiStra n° 34 para. 2 n° 1) in proceedings against juveniles/adolescents. - Local foreigners authority in criminal cases against foreigners (MiStra n° 42) - Management of the correctional institution/psychiatric hospital/re-educational institution in criminal cases against prisoners and detainees (MiStra n° 43) - Federal Ministry of Justice and Consumer Protection in the case of violations of the Foreign Trade and Payments Act or the War Weapons Control Act (MiStra N° 49) Other authorities according to MiStra and the MiStra Annex in individual cases, if applicable.
Art. 26 para. 7 EPPO Reg. Art. 27 para. 1 EPPO Reg.	- Federal Office of Justice (Section 12 (1) EUStAG)
Art. 28 para. 1 EPPO Reg. Art. 28 para. 2 EPPO Reg. Art. 28 Para. 4 EPPO Reg. Art. 31 para. 4 EPPO Reg.	- Police authorities (Regional Police, Federal Police, Federal Criminal Police Office) - Federal financial authorities: - main customs offices [*Hauptzollämter*], - customs investigation offices [*Zollfahndungsdienst*] (also in e.g. environmental offences, ss. 73 BNatSchG, 21 AWG), - customs criminal investigation office [*Zollkriminalamt*] - Regional tax authorities [*Landesfinanzbehörden*] (tax offices, tax investigation offices) - Forestry and Hunting Administration of the Federation

	- Forestry, Hunting and Fisheries Administrations and Mountain Offices of the Federal States - Other authorities whose employees are authorised as investigators according to the respective Federal State regulation [Landesverordnung] (s. 152 para. 2 GVG). - Control officers of the Federal Agency for Agriculture and Food in the context of fish inspection outside the coastal waters in accordance with s. 16 para. 3 SeeFischGProsecutor's Offices under Art. 24 para. 8 EPPO Reg. (*see above*)
Art. 36 para. 6 EPPO Reg.	- Competent tax authority pursuant to ss. 386 para. 1 sentence 2, 403 para. 3 AO - Competent administrative authority for administrative offences (s. 63m para. 2 OWiG, s. 11 EUStAG) - Competent court or clemency authority or management supervision body in probation and management supervision cases (MiStra Nr. 13) - Competent superior in criminal cases against persons in civil service or judges' employment; in the case of persons in civil service or judges' employment in the division of the BMVg, Federal Office of Personnel Management of the Federal Armed Forces (MiStra Nr. 15) - Authority or employment office in criminal cases against employees in the public service, in the case of persons in an employment or training relationship under private law with an office in the division of the BMVg to the Federal Office of Personnel Management of the Federal Armed Forces - Competent commander in criminal cases against soldiers (MiStra n°19) or retired or former soldiers (MiStra n° 20) - Competent higher authority in criminal cases against clergy and civil servants of public religious communities (MiStra No. 22) - Competent supervisory authority/professional chamber (MiStra no. 23 Para. 4) in criminal cases against notaries and members of the legal profession (MiStra no. 23) - Competent supervisory authority/professional chamber (MiStra no. 24 para. 4) in criminal proceedings against members of certain economic professions and experts (MiStra no. 24) - Federal Financial Supervisory Authority in the cases of MiStra nos. 25–25c - Competent authority/professional chamber in criminal proceedings against members of the medical professions (MiStra no. 26) - Competent supervisory authority in criminal cases against other members of the teaching and educational professions (MiStra no. 27) - Competent supervisory authority and supreme Federal State authority in criminal cases against operators of and employees in homes for the

	elderly, the disabled and nursing homes, outpatient nursing services and similar institutions (MiStra no. 28) - Juvenile court assistance (MiStra no. 32) and, if applicable, school (MiStra no. 33) in proceedings against juveniles/adolescents - Competent authorities in criminal cases against holders of firearms or explosives licences (MiStra No. 36) or other cases (MiStra No. 36a) - Issuing authority in criminal cases against holders of hunting licences (MiStra no. 37) - Federal Office for Migration and Refugees in (certain) criminal cases against asylum seekers (MiStra No. 42a) - Management of the prison/psychiatric hospital/prison in criminal cases against prisoners and detainees (MiStra no. 43) - Federal Ministry of Justice and Consumer Protection in offences against the Foreign Trade and Payments Act or the War Weapons Control Act (MiStra no. 49) - Federal Institute for Drugs and Medical Devices in narcotics proceedings against doctors, dentists, veterinarians (MiStra. no 52) - General Customs Directorate – Central Office for Financial Transaction Investigations in suspected cases under the Money Laundering Act (MiStra no. 52) - If necessary, in individual cases further authorities according to MiStra and MiStra Annex
Art. 39 para. 4 EPPO Reg.	- financial authorities pursuant to sections 386 (1) sentence 2, 407 para. 2 AO: Main Customs Office (*Hauptzollamt*), Tax Office (*Finanzamt*), Federal Central Tax Office Family Benefits Office (*Bundeszentralamt für Steuern und die Familienkasse*) - Competent administrative authority, if fine proceedings have been initiated (no. 275, para. 5, sentence 2 RiStBV) - President of the corporation in criminal cases against members of the legislative bodies of the Federation or of a Federal State or against members of the European Parliament; in the case of members of the German Parliament or of the European Parliament, the transmission shall be made via the Federal Ministry of Justice and Consumer Protection (section 8 EGCPC) - Investigating police authority (MiStra no. 11) - Commanding military authority in criminal cases against soldiers (MiStra no. 19) - Competent higher authority of a religious community under public law in criminal cases against clergy and officials of religious communities under public law (MiStra No. 22)

- Competent supervisory authorities and professional chambers in criminal cases against notaries and members of legal advisory professions (MiStra No. 23)
- Federal Financial Supervisory Authority in cases MiStra Nos. 25–25c
- juvenile court services (MiStra no. 32), school management (MiStra no. 33)
- Licensing or supervisory authority in proceedings against persons involved with nuclear facilities/nuclear fuels/radioactive materials (MiStra No. 40)
- Local immigration authority in criminal cases against foreigners (MiStra no. 42)
- Management of the prison/psychiatric hospital/prison in criminal cases against prisoners and detainees (MiStra No. 43)
- Federal Ministry of Justice and Consumer Protection in offences against the or the War Weapons Control Act (MiStra no. 49)
- Federal Institute for Drugs and Medical Devices in narcotics proceedings against doctors, dentists, veterinarians (MiStra no. 50)
- Competent authority in criminal cases against regulations for the protection of the environment and in case of offences against regulations for the prevention of marine pollution also the Federal Maritime and Hydrographic Agency (MiStra no. 51)
- General Customs Directorate – Central Office for Financial Transaction Investigations in suspected cases under the Money Laundering Act (MiStra no. 52) Obligation to notify in certain cases (prior issuance/execution of an arrest warrant and/or if there are findings under section 20 of the Criminal Code)
- Competent superior in criminal cases against persons in civil service or judges (if findings under section 20 of the Criminal Code have been made, MiStra no. 15 para. 3)
- Authority of the commanding officer in cases of employees/workers in the public service (if detention was to be reported, MiStra No. 16 para. 1 no. 4)
- Authority of the commander in criminal cases against soldiers (if determinations according to s. 20 StGB were made, MiStra No. 19 para. 3)
- Higher authority of a religious community under public law in criminal cases against clergy and civil servants (if imprisonment was to be reported or findings under section 20 StGB were made, MiStra no. 22 para. 2 no. 4, para. 4)
- Competent supervisory authorities and professional chambers (MiStra no. 23, para. 4) in criminal cases against notaries/ members of legal advisory professions (if imprisonment, provisional disbarment had to be notified or findings under section 20 of the Criminal Code were made) 7

	- Competent supervisory authorities and professional chambers in criminal cases against members of certain professions in economic life (if imprisonment, provisional disqualification from practising or, if applicable, driving licence measures had to be notified, MiStra no. 24) - Competent authorities/professional chambers in criminal proceedings against members of the medical professions (if imprisonment had to be notified, MiStra no. 26) - Competent supervisory authority in criminal proceedings against members of the teaching/educational professions (if detention was to be reported, MiStra no. 27) - Competent supervisory authority and supreme Land authority in criminal cases against operators of and employees in homes for the elderly, disabled and nursing homes, outpatient nursing services and similar institutions (if detention was to be reported, MiStra no. 28). - Competent authorities in criminal cases against holders of firearms or explosives licences (MiStra No. 36), if detention had to be reported or findings under Section 20 StGB were made, or in other cases (No. 36a) if findings under Section 20 StGB were made. - Issuing authority in criminal cases against holders of a hunting licence, if findings were made pursuant to section 20 of the Criminal Code (MiStra No. 37) - If necessary, in individual cases further authorities according to MiStra and MiStra Annex
Art. 104 para. 7 EPPO Reg.	- State justice administrations - Public prosecutor's Offices at the higer regional courts - Federal Office of Justice (Extraditions)

3. AFCOS – Partner of OLAF in Germany

9 See → Art. 12a OLAF Regulation in Part C.

III. Sources of law

10 The following pages present a list of the applicable sources of law.

1. National Laws

a) EPPO-investigation related codes, (Pre-)laws and documents

11 - Notification of the Government of the Federal Republic of Germany [pursuant to Article 117 of Regulation (EU) 2017/1939] to the European Public Prosecutor's Office on 18 June 2021 – Council Regulation (EU) 2017/1939 of 12 October 2017 on the Establishment of Enhanced Cooperation for the Creation of the European

Public Prosecutor's Office (EPPO) [unpublished as of August 2021]. This communication serves as Germany's formal notification to the European Public Prosecutor's Office (EPPO) in compliance with Article 117 of Council Regulation (EU) 2017/1939. The notification concerns the implementation of the Regulation within the German legal system, ensuring that Germany is aligned with the procedural and operational aspects of the EPPO, which focuses on combating crimes that affect the financial interests of the European Union.

- Administrative Agreement on the Secondment of Public Prosecutors on the Occasion of their Role as Delegated European Prosecutors for the European Public Prosecutor's Office, dated 11 August 2020, Announcement of 6 January 2021 (Brandenburg JMBl. p. 2).[26]
- Communication with the European Public Prosecutor's Office: Supplement to the Guidelines for Criminal Proceedings and Administrative Fines Proceedings (RiStBV), No. 300 "Section XIV: Communication with the European Public Prosecutor's Office", Administrative Order of the Authority for Justice and Consumer Protection No. 10/2021, dated 18 May 2021 (File No. 4208/2, 9500/120).[27]
- Joint Guidelines of the Ministers of Justice/Senators and the Ministers of the Interior/Senators of the Federal States on the Use of Informants, Trusted Persons (V-Personen), and Undercover Investigators in Criminal Prosecution, dated 21 December 1976.[28]
- Guidelines for Criminal Procedure and Administrative Offences/Richtlinien für das Strafverfahren und das Bußgeldverfahren
- (RiStBV) vom 1. Januar 1977 geändert mit Wirkung vom 1. Dezember 2018 durch Bekanntmachung vom 26. November 2018 [Fundstelle: BAnz AT 30.11.2018 B3].
- Federal Ministry of Finance, Information Sheet on Cooperation Between Authorities and Courts with Federal and Regional Financial Authorities (Customs Administration). Bundesministerium der Finanzen, Merkblatt zur Zusammenarbeit von Behörden und Gerichten mit den Finanzbehörden des Bundes (Zollverwaltung) und der Länder, IV A 4 - S 0275/13/10003 - 2013/0654840, July 2013.
- Guidelines on International Search for Persons, Including Searches via the Schengen Information System/Richtlinien über die internationale Fahndung nach

[26] See https://bravors.brandenburg.de/br2/sixcms/media.php/76/JMBl_01_2021.pdf. Accessed 31 December 2024.

[27] See Verkehr mit der Europäischen Staatsanwaltschaft Ergänzung der Richtlinien für das Strafverfahren und das Bußgeldverfahren (RiStBV), Nr. 300 "XIV. Abschnitt: Verkehr mit der Europäischen Staatsanwaltschaft ", AV der Behörde für Justiz und Verbraucherschutz Nr. 10/2021 vom 18. Mai 2021 (Az. 4208/2, 9500/120), p. 55 et seq.

[28] Gemeinsame Richtlinien der Justizminister/-senatoren und der Innenminister/-senatoren der Länder über die Inanspruchnahme von Informanten sowie über den Einsatz von Vertrauenspersonen (V-Personen) und Verdeckten Ermittlern im Rahmen der Strafverfolgung, vom 21. Dezember 1976.

Personen, einschließlich der Fahndung nach Personen im Schengener Informationssystem.
- Gesetz zur weiteren steuerlichen Förderung der Elektromobilität und zur Änderung weiterer steuerlicher Vorschriften (sog. JStG 2019) vom 12.12.2019.
- Notifications in the tax area.[29]

12 **Major reforms**:
- Draft Law Amending the Tax Code – Comprehensive Pursuit of Organised Tax Evasion, Reference: BR-Drs. 66/22(B), 11 March 2022.

aa. EU Regulations and German statutes

13
- (EU) 2021/856 Res. determining the point in time when the European Public Prosecutor's Office takes over its investigative and prosecuting tasks.
- Law Implementing Directive (EU) 2017/1371 of the European Parliament and Council of 5 July 2017 on the Criminal Law Against Fraud Affecting the Financial Interests of the Union, Date: 19 June 2019. Reference: BGBl. I p. 844/Gesetz zur Umsetzung der Richtlinie (EU) 2017/1371 des Europäischen Parlaments und des Rates vom 5. Juli 2017 über die strafrechtliche Bekämpfung von gegen die finanziellen Interessen der Union gerichtetem Betrug vom 19.06.2019 BGBl. I S. 844.
- European Public Prosecutor's Office Act of 10 July 2020. Reference: BGBl. I p. 1648/Europäische-Staatsanwaltschaft-Gesetz vom 10. Juli 2020 (BGBl. I S. 1648).
- Act on the Further Development of the Criminal Procedure Code and the Amendment of Other Provisions/ Gesetz zur Fortentwicklung der Strafprozessordnung und zur Änderung weiterer Vorschriften Vom 25. Juni 2021.[30]
- Act Amending the Criminal Procedure Code – Expansion of the Possibilities for Reopening Cases to the Detriment of the Convicted Person under § 362 StPO and the Amendment of Civil Law Limitation Periods/Gesetz zur Änderung der Strafprozessordnung – Erweiterung der Wiederaufnahmemöglichkeiten zuungunsten des Verurteilten gemäß § 362 StPO und zur Änderung der zivilrechtlichen Verjährung vom 21. Dezember 2021, BGBl I 2021, 5252.
- (EU) 2018/1805 Regulation on the mutual recognition of freezing and confiscation orders.
- Act to Improve Transparency Rules for Members of the German Bundestag and to Increase the Penalty Range under § 108e of the Criminal Code/Gesetz zur

[29] Wissenschaftlicher Dienst der Bundestages 2020, Mitteilungspflichten im Steuerstrafverfahren gegenüber anderen Behörden, WD 4 – 3000 – 189/18, WD 7 – 3000 – 258/18. online: https://www.bundestag.de/resource/blob/592658/917964d74893c1bb1857bcbe84562fff/wd-4-189-18-wd-7-258-18-pdf-data.pdf. Accessed 31 December 2024.
[30] See http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2099.pdf. Accessed 31 December 2024.

Verbesserung der Transparenzregeln für die Mitglieder des Deutschen Bundestages und zur Anhebung des Strafrahmens des § 108e des Strafgesetzbuches vom 08. Oktober 2021, BGBl I 2021, 4650.

- ZFdG Customs Investigation Service Act. **14**
- Customs Ordinance.
- ZollVG Customs Administration Act.
- ZollKostV Customs Cost Ordinance.
- HZAZustV Main Customs Office Competence Ordinance.
- Act Against the Abusive Use of Subsidies (Subsidies Act – SubvG)/Gesetz gegen mißbräuchliche Inanspruchnahme von Subventionen (Subventionsgesetz – SubvG). And on the level of the Länder see e.g. Subventionsgesetz des Landes Sachsen-Anhalt (SubvG-LSA – Landesrecht Sachsen-Anhalt).
- MiStra Order on Notifications in Criminal Matters.
- JVKostG Judicial Administration Costs Act.
- JVEG Judicial Remuneration and Compensation Act.
- Judicial Organisation Ordinance Act.
- RVG Lawyers' Compensation Act.
- Rules of Procedure of Eurojust.
- Procedural rules for the processing and protection of personal data at Eurojust
- EJG Law on Eurojust and the European Judicial Network in criminal matters (implementation of Regulation (EU) 2018/1727).
- EJKoV Eurojust Coordination Regulation.
- EJTAnV Eurojust Focal Points Regulation.
- IRG Law on International Legal Assistance in Criminal Matters.
- BKAG Federal Criminal Police Office Act.
- BKADV BKA Data Ordinance.
- BfJG Law on the establishment of the Federal Office of Justice.

bb. Decrees

- Decrees of the Federal Ministry of Justice and Consumer Protection /Erlasse des Bundesministeriums der Justiz und für Verbraucherschutz and Erlasse des Bundesministeriums der Finanzen. **15**
- AStBV (St) 2020 (BStBl I 19, 1142).
- RiVASt 2022.
- RiStBV 2021.

b) OLAF-Investigation related laws

- Federal Tax Code/Abgabenordnung. **16**

- Introduction Act to the Federal Tax Code/Einführungsgesetz zur Abgabenordnung/ EGAO.
- Umsatzsteuer-Durchführungsverordnung (UStDV)/Value Added Tax Implementation Regulation.
- Umsatzsteuergesetz (UStG)/Value Added Tax Act.
- Ordnungswidrigkeitengesetz (OWiG)/Administrative Offences Act.
- Administrative Procedures Act (VwVfG)/Administrative Procedures Act.
- Administrative Courts Procedure Act (VwGO)/Administrative Court Procedure Act.
- Verwaltungsvollstreckungsgesetz (VwVG)/Administrative Enforcement Act.
- Finanzgerichtsordnung (FGO)/Tax Court Procedure Act.
- Wertpapierhandelsgesetz/Securities Trading Act.
- Kreislaufwirtschaftsgesetz/Circular Economy Act.
- Mittelstandsförderungsgesetz/Small and Medium-Sized Enterprises Promotion Act.
- Verordnung über die Vergabe öffentlicher Aufträge (VgV)/Regulation on the Award of Public Contracts.

Nota bene: The German Federal Ministry of Finance produces official handbooks, so called **Amtliche Handbücher**, with the relevant legislation in the area of tax fraud etc.[31]

2. European Public Prosecutor's Office Act – EUStAG

17

a) Synopsis of the official text of the EPPO Adoption Act and Translation

18 *Synopsis 1: Official Text of the EPPO Adoption Act and Translation of the German EPPO Adoption Act*

Europäische-Staatsanwaltschaft-Gesetz vom 10. Juli 2020 (BGBl. I S. 1648)	**European Public Prosecutor's Office Act of 10 July 2020 (Federal Law Gazette I p. 1648)**
Das G wurde als Artikel 1 des G v. 10.7.2020 I 1648 vom Bundestag beschlossen. Es ist gem. Art. 7 dieses G am 17.7.2020 in Kraft getreten.	The law was introduced as Article 1 of the law of July 10, 2020 I 1648 decided by the German Bundestag. According to Article 7 of this law, it entered into force on July 17th, 2020.

[31] See https://www.bundesfinanzministerium.de/Web/DE/Service/Publikationen/AMTHB/amthb.html. Accessed 31 December 2024.

s. 1 Anwendungsbereich (1) Dieses Gesetz dient der Ausführung der Verordnung (EU) 2017/1939 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung der Europäischen Staatsanwaltschaft (EU-StA) (ABl. L 283 vom 31.10.2017, S. 1). (2) Dieses Gesetz gilt für Strafverfahren, in welchen das Amt der Staatsanwaltschaft gemäß s. 142b Absatz 1 des Gerichtsverfassungsgesetzes von den deutschen Delegierten Europäischen Staatsanwälten oder dem deutschen Europäischen Staatsanwalt ausgeübt wird. Bestimmungen dieses Gesetzes, die auf Delegierte Europäische Staatsanwälte Bezug nehmen, gelten entsprechend auch für den deutschen Europäischen Staatsanwalt, wenn dieser gemäß Artikel 28 Absatz 4 der Verordnung (EU) 2017/1939 das Verfahren selbst führt. (3) Die Vorschriften dieses Gesetzes sind nicht anzuwenden, soweit das Recht der Europäischen Union, im Besonderen die Verordnung (EU) 2017/1939 in der jeweils geltenden Fassung, unmittelbar gilt.	**Section 1 Scope of the law** (1) This law serves to implement Regulation (EU) 2017/1939 of the Council of October 12, 2017 on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor's Office (EPPO) (OJ L 283 of October 31, 2017, p. 1). (2) This Act applies to criminal proceedings in which the office of public prosecutor pursuant to Section 142b (1) of the Courts Constitution Act is exercised by the German Delegated European Public Prosecutors or the German European Public Prosecutor. Provisions of this law that refer to European Delegated Public Prosecutors also apply accordingly to the German European Public Prosecutor if the latter conducts the proceedings himself in accordance with Article 28 para. 4 of Regulation (EU) 2017/1939. (3) The provisions of this Act do not apply insofar as the law of the European Union, in particular Regulation (EU) 2017/1939 in the currently applicable version, applies directly.
s. 2 Verfahrensvorschriften Ist die Europäische Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig und hat sie gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen, sind die Vorschriften über das strafrechtliche Verfahren, insbesondere die Strafprozessordnung, das Gerichtsverfassungsgesetz, das Jugendgerichtsgesetz und die Abgabenordnung, anzuwenden, soweit nicht in der Verordnung (EU) 2017/1939 in der jeweils geltenden Fassung oder in diesem Gesetz etwas anderes bestimmt ist.	**Section 2 Rules of procedure** If the European Public Prosecutor's Office is competent under Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken on the prosecution under Article 25 of this Regulation, the provisions on criminal proceedings, in particular the Criminal Procedure Code, the Courts Constitution Act, the Youth Courts Act and the Tax code, to be applied, unless otherwise stipulated in Regulation (EU) 2017/1939 in the currently applicable version or in this law.

s. 3 Anwendbarkeit von Vorschriften der Strafprozessordnung über das Ermittlungsverfahren

(1) Wenn die Europäische Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat, sind die ss. 153c, 160 Absatz 1 und s. 170 Absatz 2 Satz 1 der Strafprozessordnung nicht anzuwenden.

(2) Soweit die Vorschriften der Strafprozessordnung hinsichtlich einer Ermittlungsmaßnahme eine gerichtliche Anordnung oder Bestätigung vorsehen, ist bei grenzüberschreitenden Maßnahmen, die gemäß Artikel 31 Absatz 3 der Verordnung (EU) 2017/1939 in einem anderen an der Errichtung der Europäischen Staatsanwaltschaft beteiligten Mitgliedstaat durchgeführt werden sollen, eine solche gerichtliche Anordnung oder Bestätigung bei einem deutschen Gericht nur einzuholen, wenn nach dem Recht des anderen Mitgliedstaates eine solche gerichtliche Anordnung oder Bestätigung nicht erforderlich ist.

(3) Soweit nach den Vorschriften der Strafprozessordnung die gerichtliche Zuständigkeit an den Sitz der zuständigen Staatsanwaltschaft anknüpft, gilt als Sitz der Europäischen Staatsanwaltschaft der Dienstort des gemäß Artikel 13 Absatz 1 der Verordnung (EU) 2017/1939 mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalts oder des gemäß Artikel 31 Absatz 1 Satz 2 der Verordnung (EU) 2017/1939 unterstützend tätig werdenden Delegierten Europäischen Staatsanwalts. Dies gilt auch dann, wenn der Europäische Staatsanwalt im Einklang mit Artikel 28 Absatz 4 der Verordnung (EU)

Section 3 Applicability of the provisions of the Code of Criminal Procedure on the preliminary investigation

(1) If the European Public Prosecutor's Office is responsible under Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken over the prosecution under Article 25 of this Regulation, Sections 153c, 160 (1) and Section 170 (2) sentence 1 apply of the Code of Criminal Procedure not to apply. para.

(2) Insofar as the provisions of the Code of Criminal Procedure provide for a court order or confirmation with regard to an investigative measure, in the case of cross-border measures that are carried out in another Member State involved in the establishment of the European Public Prosecutor's Office in accordance with Article 31 para. 3 of Regulation (EU) 2017/1939 should only obtain such a court order or confirmation from a German court if the law of the other member state does not require such a court order or confirmation. [! Be aware of Bundesministerium der Justiz 2024 states that this provision shall be deleted due to its problems with the ECJ Judgment concerning Art. 31 and 32 EPPO Regulation].

(3) Insofar as, according to the provisions of the Code of Criminal Procedure, jurisdiction is linked to the seat of the competent public prosecutor's office, the seat of the European Public Prosecutor's Office shall be the place of employment of the European Public Prosecutor or Delegate entrusted with the investigations in accordance with Article 13 (1) of Regulation (EU) 2017/1939 or the European Delegated Public Prosecutor providing support in accordance with Article 31 Paragraph 1 Clause 2 of Regulation (EU) 2017/1939. This also applies if the European Public Prosecutor has decided in accordance with Article 28

2017/1939 entschieden hat, die Leitung des Verfahrens selbst zu übernehmen. (4) s. 171 Satz 2 der Strafprozessordnung ist mit der Maßgabe anzuwenden, dass der Antragsteller, der zugleich Verletzter ist, über die Möglichkeiten der Anfechtung gemäß s. 172 Absatz 2 der Strafprozessordnung und gemäß Artikel 42 Absatz 3 der Verordnung (EU) 2017/1939 sowie die dafür jeweils vorgesehenen Fristen zu belehren ist. (5) Die ss. 172 bis 177 der Strafprozessordnung sind nicht anzuwenden, soweit dem Verletzten gemäß Artikel 42 Absatz 3 der Verordnung (EU) 2017/1939 der Rechtsweg zum Europäischen Gerichtshof eröffnet ist. Soweit nach Artikel 42 Absatz 1 in Verbindung mit Absatz 3 der Verordnung (EU) 2017/1939 der Rechtsweg gegen eine Entscheidung nach Artikel 39 Absatz 1 der Verordnung (EU) 2017/1939 zu den Gerichten der Mitgliedstaaten eröffnet ist, ist s. 172 Absatz 1 der Strafprozessordnung nicht anzuwenden. Im Fall des Satzes 2 ist s. 172 Absatz 2 Satz 1 der Strafprozessordnung mit der Maßgabe anzuwenden, dass der Antragsteller, der zugleich Verletzter ist, binnen eines Monats nach Bekanntgabe des Bescheides nach s. 171 der Strafprozessordnung die gerichtliche Entscheidung gegen den Einstellungsbescheid der Europäischen Staatsanwaltschaft beantragen kann.	para. 4 of Regulation (EU) 2017/1939 to take over the management of the proceedings himself. (4) Section 171 sentence 2 of the Code of Criminal Procedure shall apply with the proviso that the applicant, who is also the injured party, has the possibility of contestation pursuant to Section 172 para. 2 of the Code of Criminal Procedure and pursuant to Article 42 para. 3 of Regulation (EU) 2017/1939 and the respective deadlines are to be instructed. (5) Sections 172 to 177 of the Code of Criminal Procedure do not apply if legal recourse to the European Court of Justice is open to the injured party in accordance with Article 42 para. 3 of Regulation (EU) 2017/1939. To the extent that legal recourse against a decision under Article 39 (1) of Regulation (EU) 2017/1939 to the courts of the Member States is open according to Article 42 (1) in conjunction with para. 3 of Regulation (EU) 2017/1939, Section 172 (1) of the Code of Criminal Procedure not to apply. In the case of sentence 2, Section 172 (2) sentence 1 of the Code of Criminal Procedure shall apply with the proviso that the applicant, who is also the injured party, applies for a court decision against the notice of termination of the European Public Prosecutor's Office within one month of the notification of the decision pursuant to Section 171 of the Code of Criminal Procedure can.
s. 4 Anwendbarkeit datenschutzrechtlicher Bestimmungen (1) s. 161 Absatz 2 und die ss. 483 bis 491 der Strafprozessordnung sind auf die Verarbeitung personenbezogener Daten durch die Europäische Staatsanwaltschaft nicht anzuwenden.	**Section 4 Applicability of data protection regulations** (1) Section 161 (2) and Sections 483 to 491 of the Code of Criminal Procedure do not apply to the processing of personal data by the European Public Prosecutor's Office.

(2) s. 479 Absatz 5 Satz 2 und 3 der Strafprozessordnung ist nicht anzuwenden in Fällen, in denen die Europäische Staatsanwaltschaft Empfänger der übermittelten personenbezogenen Daten ist. (3) Die ss. 496 bis 499 der Strafprozessordnung sind nur anzuwenden, soweit die Delegierten Europäischen Staatsanwälte gemäß Artikel 45 der Verordnung (EU) 2017/1939 elektronische Akten in Datenverarbeitungsanlagen einer Bundes- oder Landesbehörde führen. (4) Die ss. 12 bis 14 und 16 bis 20 des Einführungsgesetzes zum Gerichtsverfassungsgesetz sind anzuwenden, soweit die Europäische Staatsanwaltschaft nach Maßgabe der Verordnung (EU) 2017/1939 befugt ist, die zuständigen innerstaatlichen Behörden unter Übermittlung personenbezogener Daten zu unterrichten. Die ss. 21 und 22 des Einführungsgesetzes zum Gerichtsverfassungsgesetz sind nicht anzuwenden.	(2) Section 479 para. 5 sentences 2 and 3 of the Code of Criminal Procedure do not apply in cases in which the European Public Prosecutor's Office is the recipient of the personal data transmitted. (3) Sections 496 to 499 of the Code of Criminal Procedure shall only apply if the European Delegated Public Prosecutors keep electronic files in data processing systems of a federal or state authority in accordance with Article 45 of Regulation (EU) 2017/1939. (4) Sections 12 to 14 and 16 to 20 of the Introductory Act to the Courts Constitution Act shall apply insofar as the European Public Prosecutor's Office is empowered to notify the competent national authorities by transmitting personal data in accordance with Regulation (EU) 2017/1939. Sections 21 and 22 of the Introductory Act to the Courts Constitution Act do not apply.
s. 5 Anwendbarkeit des Gerichtsverfassungsgesetzes (1) Die Delegierten Europäischen Staatsanwälte sind in dieser Eigenschaft ausschließlich den Weisungen und der Aufsicht nach Maßgabe der Verordnung (EU) 2017/1939 unterstellt. Die ss. 144 bis 147 des Gerichtsverfassungsgesetzes sind insoweit nicht anzuwenden. (2) Die ss. 198 bis 201 des Gerichtsverfassungsgesetzes sind mit der Maßgabe anzuwenden, dass ein Anspruch auf Entschädigung ausgeschlossen ist, soweit der erlittene Nachteil von der Europäischen Staatsanwaltschaft oder ihrem Personal in Ausübung ihres Amtes verursacht worden und diesen zuzurechnen ist.	**Section 5 Applicability of the Courts Constitution Act** (1) In this capacity, the European Delegated Public Prosecutors are exclusively subject to the instructions and supervision in accordance with Regulation (EU) 2017/1939. Sections 144 to 147 of the Courts Constitution Act do not apply in this respect. (2) Sections 198 to 201 of the Courts Constitution Act are to be applied with the proviso that a claim to compensation is excluded if the disadvantage suffered was caused by the European Public Prosecutor's Office or its staff in the exercise of their office and is attributable to them.

s. 6 Anwendbarkeit des Gesetzes über die internationale Rechtshilfe in Strafsachen

(1) Das Gesetz über die internationale Rechtshilfe in Strafsachen ist auf grenzüberschreitende Ermittlungen gemäß Artikel 31 der Verordnung (EU) 2017/1939 nur bei Maßnahmen nach Artikel 31 Absatz 6 dieser Verordnung anzuwenden. Auf die Stellung von Rechtshilfeersuchen durch einen Delegierten Europäischen Staatsanwalt nach Maßgabe des Artikels 31 Absatz 6 der Verordnung (EU) 2017/1939 ist s. 74 Absatz 1 und 2 des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Sofern die ersuchte ausländische Stelle die Rechtshilfe an Bedingungen knüpft oder von Zusicherungen abhängig macht, entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind. Satz 2 gilt entsprechend für Entscheidungen eines Delegierten Europäischen Staatsanwalts über eingehende Ersuchen eines Delegierten Europäischen Staatsanwalts eines anderen teilnehmenden Mitgliedstaates gemäß Artikel 31 Absatz 6 der Verordnung (EU) 2017/1939, sofern die Europäische Staatsanwaltschaft für die Leistung der Rechtshilfe zuständig ist.
(2) Auf den Erlass eines Europäischen Haftbefehls durch einen Delegierten Europäischen Staatsanwalt gemäß Artikel 33 Absatz 2 oder Artikel 105 Absatz 3 der Verordnung (EU) 2017/1939 sind s. 74 Absatz 1 und 2 und s. 83i des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Über den Erlass des Europäischen

Section 6 Applicability of the Law on International Mutual Legal Assistance in Criminal Matters

(1) The Act on International Mutual Legal Assistance in Criminal Matters shall only apply to cross-border investigations in accordance with Article 31 of Regulation (EU) 2017/1939 in the case of measures under Article 31 paragraph 6 of this Regulation. Section 74 paras. 1 and 2 of the Act on International Mutual Legal Assistance in Criminal Matters do not apply to the submission of requests for mutual assistance by a European Delegated Public Prosecutor in accordance with Article 31 para. 6 of Regulation (EU) 2017/1939. If the requested foreign authority makes mutual assistance subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor entrusted with the investigation decides on the acceptance of the conditions or the issue of assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or the Compliance with the assurances are responsible. Sentence 2 applies accordingly to decisions by a European Delegated Public Prosecutor on incoming requests from a European Delegated Public Prosecutor from another participating Member State in accordance with Article 31 para. 6 of Regulation (EU) 2017/1939, provided that the European Public Prosecutor's Office is responsible for providing mutual legal assistance.
(2) Article 74 paras. 1 and 2 and Article 83i of the Act on International Mutual Legal Assistance in Criminal Matters apply to the issue of a European arrest warrant by a European Delegated Public Prosecutor in accordance with Article 33 para. 2 or Article 105 para. 3 of Regulation (EU) 2017/1939 do not apply. The European Delegated Public Prosecutor in charge of the investigation

Haftbefehls entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt. Sofern der betroffene andere Mitgliedstaat die Überstellung der verfolgten Person an Bedingungen knüpft oder von Zusicherungen abhängig macht, entscheidet der Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind.

(3) Soweit Delegierte Europäische Staatsanwälte gemäß Artikel 104 Absatz 4 der Verordnung (EU) 2017/1939 befugt sind, nach Maßgabe einer völkerrechtlichen Vereinbarung gemäß s. 1 Absatz 3 des Gesetzes über die internationale Rechtshilfe in Strafsachen, die unmittelbar anwendbares innerstaatliches Recht geworden ist, Ersuchen um sonstige Rechtshilfe an eine ausländische Stelle zu richten, ist s. 74 Absatz 1 und 2 des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Sofern die ersuchte ausländische Stelle die Rechtshilfe an Bedingungen knüpft oder von Zusicherungen abhängig macht, entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind. Für eingehende Rechtshilfeersuchen einer ausländischen Stelle, über die ein Delegierter Europäischer Staatsanwalt nach Artikel 104 Absatz 6 der Verordnung (EU) 2017/1939 zu entscheiden hat, gilt Satz 1 entsprechend.

(4) Absatz 3 gilt entsprechend für die Stellung von Rechtshilfeersuchen nach Maßgabe

decides on the issue of the European arrest warrant. If the other Member State concerned makes the transfer of the persecuted person subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor will decide whether to accept the conditions or to give assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or compliance of the assurances are responsible.

(3) To the extent that European Delegated Public Prosecutors are authorized in accordance with Article 104 para. 4 of Regulation (EU) 2017/1939, in accordance with an international agreement pursuant to Section 1 para. 3 of the Act on International Mutual Assistance in Criminal Matters, which has become directly applicable domestic law, Requests for other legal assistance to be directed to a foreign body do not apply to Section 74 paras. 1 and 2 of the Act on International Mutual Legal Assistance in Criminal Matters. If the requested foreign body makes mutual assistance subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor entrusted with the investigation decides on the acceptance of the conditions or the issue of assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or the Compliance with the assurances are responsible. Sentence 1 applies accordingly to incoming requests for mutual legal assistance from a foreign body on which a European Delegated Public Prosecutor has to decide in accordance with Article 104 paragraph 6 of Regulation (EU) 2017/1939.

(4) Paragraph 3 shall apply mutatis mutandis to the submission of requests for mutual

des Artikels 105 Absatz 3 der Verordnung (EU) 2017/1939 an die Behörden eines nicht an der Errichtung der Europäischen Staatsanwaltschaft beteiligten Mitgliedstaates der Europäischen Union sowie für die Entscheidung über eingehende Rechtshilfeersuchen, sofern das Ersuchen auf die Übermittlung von Auskünften aus Akten der Europäischen Staatsanwaltschaft oder die Herausgabe von Gegenständen gerichtet ist, über die die Europäische Staatsanwaltschaft im Rahmen eines von ihr geführten Ermittlungsverfahrens verfügt.	assistance in accordance with Article 105 para. 3 of Regulation (EU) 2017/1939 to the authorities of a Member State of the European Union not involved in the establishment of the European Public Prosecutor's Office, as well as to the decision on incoming requests for mutual assistance if the request is aimed at the transmission of information from files of the European Public Prosecutor's Office or the surrender of objects which the European Public Prosecutor's Office has at its disposal in the course of an investigation it is conducting.
s. 7 Anwendbarkeit der Abgabenordnung (1) s. 386 Absatz 2 und 4 Satz 3 der Abgabenordnung ist nicht anzuwenden, wenn die Europäische Staatsanwaltschaft gemäß den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat. s. 386 Absatz 4 Satz 1 und 2 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass die Finanzbehörde unter den Voraussetzungen des Artikels 24 Absatz 2, 3 und 5 der Verordnung (EU) 2017/1939 die Europäische Staatsanwaltschaft von der Einleitung eines Ermittlungsverfahrens zu unterrichten hat und die Europäische Staatsanwaltschaft gemäß Artikel 27 der Verordnung (EU) 2017/1939 das Verfahren an sich ziehen kann. (2) s. 395 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass im vorbereitenden Verfahren der mit dem Ermittlungsverfahren betraute Delegierte Europäische Staatsanwalt über die Gewährung der Akteneinsicht und die Besichtigung der beschlagnahmten oder sonst sichergestellten Gegenstände entscheidet. (3) s. 397 Absatz 1 der Abgabenordnung ist nicht anzuwenden auf die Entscheidung	**Section 7 Applicability of the tax code/General Tax Code of Germany** (1) Section 386 paras. 2 and 4 sentence 3 of the Tax Code shall not apply if the European Public Prosecutor's Office is responsible in accordance with Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken on the prosecution in accordance with Article 25 of this Regulation. Section 386 para. 4 sentences 1 and 2 of the Tax Code shall apply with the proviso that the tax authority must inform the European Public Prosecutor's Office of the initiation of an investigation under the conditions of Article 24 paras. 2, 3 and 5 of Regulation (EU) 2017/1939 and the European Public Prosecutor's Office can take the proceedings under Article 27 of Regulation (EU) 2017/1939. (2) Section 395 of the Tax Code shall apply with the proviso that in the preparatory procedure the European Delegated Public Prosecutor entrusted with the preliminary investigation decides on the granting of access to the files and inspection of the confiscated or otherwise seized items. (3) Section 397 (1) of the Tax Code does not apply to the decision of a European Del-

eines Delegierten Europäischen Staatsanwalts, ein Verfahren gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 einzuleiten.	egated Public Prosecutor to initiate proceedings in accordance with Article 26 para. 1 of Regulation (EU) 2017/1939.
s. 8 Anwendbarkeit des Gesetzes über die Entschädigung für Strafverfolgungsmaßnahmen Das Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen ist nicht anzuwenden, wenn die Strafverfolgungsmaßnahme auf einer Anordnung der Europäischen Staatsanwaltschaft beruht und ihr der dadurch entstandene Schaden zuzurechnen ist. Für Strafverfolgungsmaßnahmen, die durch eine deutsche Strafverfolgungsbehörde oder ein deutsches Gericht angeordnet wurden, bleibt das Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen anwendbar.	**Section 8 Applicability of the Law on Compensation for Law Enforcement Measures** The law on compensation for prosecution measures does not apply if the prosecution measure is based on an order of the European Public Prosecutor's Office and the damage caused by it is attributable to it. For criminal prosecution measures ordered by a German law enforcement authority or a German court, the law on compensation for criminal prosecution measures remains applicable.
s. 9 Anwendbarkeit des Rechtspflegergesetzes s. 31 Absatz 1 des Rechtspflegergesetzes ist nicht anzuwenden. Der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt kann dem Rechtspfleger die in s. 31 Absatz 1 des Rechtspflegergesetzes genannten Geschäfte im Einzelfall übertragen.	**s. 9 Applicability of the Rechtspfleger Act (An Act for Officials in charge of the administration of justice)** Section 31 (1) of the Rechtspflegergesetz does not apply. The European Delegated Public Prosecutor entrusted with the investigations can delegate the transactions mentioned in Section 31 (1) of the Rechtspfleger Act to the Rechtspfleger in individual cases.
s. 10 Strafvollstreckung (1) Aufgaben der Staatsanwaltschaft im Vollstreckungsverfahren nimmt abweichend von s. 142b Absatz 1 des Gerichtsverfassungsgesetzes die Staatsanwaltschaft am Sitz des Gerichts des ersten Rechtszuges wahr. (2) Im Rahmen der Anhörung gemäß s. 453 Absatz 1 Satz 2, s. 454 Absatz 1 Satz 2 und Absatz 2 Satz 3 sowie s. 462 Absatz 2 Satz 1 der Strafprozessordnung und gemäß s. 57 Absatz 1 Satz 2, s. 58 Absatz 1 Satz 2, s. 65 Absatz 1 Satz 1, s. 87 Absatz 3 Satz 4 und s.	**Section 10 Enforcement of sentences** (1) Notwithstanding Section 142b (1) of the Courts Constitution Act, the public prosecutor's office at the seat of the court of first instance performs the tasks of the public prosecutor's office in enforcement proceedings. (2) As part of the hearing pursuant to Section 453 para. 1 sentence 2, Section 454 para. 1 sentence 2 and para. 2 sentence 3 as well as Section 462 para. 2 sentence 1 of the Code of Criminal Procedure and according to Section 57 para. 1 sentence 2, Section

88 Absatz 4 Satz 1 des Jugendgerichtsgesetzes soll die nach Absatz 1 zuständige Staatsanwaltschaft dem mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt Gelegenheit zur Stellungnahme geben.	58 para. 1 sentence 2, s. 65 paragraph 1 sentence 1, s. 87 paragraph 3 sentence 4 and s. 88 paragraph 4 sentence 1 of the Youth Courts Act, the public prosecutor's office responsible under paragraph 1 should give the European Delegated Public Prosecutor entrusted with the investigation the opportunity to comment.
s. 11 Anwendbarkeit des Gesetzes über Ordnungswidrigkeiten (1) Die Europäische Staatsanwaltschaft ist auch für die Verfolgung der Tat unter dem rechtlichen Gesichtspunkt einer Ordnungswidrigkeit gemäß s. 40 des Gesetzes über Ordnungswidrigkeiten zuständig, soweit die Ordnungswidrigkeit im Sinne des Artikels 22 Absatz 3 der Verordnung (EU) 2017/1939 untrennbar mit einer unter Artikel 22 Absatz 1 der Verordnung fallenden strafbaren Handlung verbunden ist. s. 43 Absatz 1 und s. 63 Absatz 3 des Gesetzes über Ordnungswidrigkeiten gelten entsprechend. (2) s. 30 des Gesetzes über Ordnungswidrigkeiten ist mit der Maßgabe anwendbar, dass die Europäische Staatsanwaltschaft auch für das Verfahren in Bezug auf die juristische Person oder Personenvereinigung zuständig ist, sofern die Europäische Staatsanwaltschaft ein Ermittlungsverfahren gegen eine in s. 30 Absatz 1 des Gesetzes über Ordnungswidrigkeiten bezeichnete Leitungsperson wegen einer Straftat führt, für die die Europäische Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist. (3) Für die Vollstreckung gerichtlicher Entscheidungen gemäß s. 91 des Gesetzes über Ordnungswidrigkeiten gilt s. 10 Absatz 1 entsprechend.	**Section 11 Applicability of the Administrative Offences Act** (1) The European Public Prosecutor's Office is also responsible for prosecuting the offence from the legal point of view of an administrative offence pursuant to Section 40 of the Administrative Offences Act, insofar as the regulatory offence within the meaning of Article 22 para. 3 of Regulation (EU) 2017/1939 is inseparable from an under Article 22 para. 1 of the Regulation is linked to a criminal offence. S. 43 para. 1 and s. 63 para. 3 of the Administrative Offences Act apply accordingly. (2) Section 30 of the Administrative Offences Act is applicable with the proviso that the European Public Prosecutor's Office is also responsible for the proceedings in relation to the legal person or association of persons, provided that the European Public Prosecutor's Office initiates an investigation against one of the legal entities listed in Section 30 (1) of the Act Leads the person designated as a criminal offence because of a criminal offence for which the European Public Prosecutor's Office is responsible under Articles 22 and 23 of Regulation (EU) 2017/1939. (3) For the enforcement of court decisions in accordance with Section 91 of the Administrative Offences Act, Section 10 (1) applies accordingly.

s. 12 Mitteilungspflichten des Delegierten Europäischen Staatsanwalts (1) Hat die Europäische Staatsanwaltschaft gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 ein Ermittlungsverfahren eingeleitet oder gemäß Artikel 27 Absatz 1 dieser Verordnung ihr Evokationsrecht ausgeübt, übermittelt der Delegierte Europäische Staatsanwalt die gemäß s. 492 Absatz 2 Satz 1 der Strafprozessordnung in das staatsanwaltschaftliche Verfahrensregister einzutragenden Daten an das beim Bundesamt für Justiz geführte Register. (2) Der Delegierte Europäische Staatsanwalt teilt die Einleitung des Ermittlungsverfahrens gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 der Staatsanwaltschaft mit, die nach s. 142 in Verbindung mit s. 143 des Gerichtsverfassungsgesetzes für die Verfolgung von Straftaten gemäß Artikel 22 der Verordnung (EU) 2017/1939 zuständig ist, wenn die Europäische Staatsanwaltschaft nicht die Verfolgung übernimmt.	**s. 12 Notification Obligations of the European Delegated Public Prosecutor** (1) If the European Public Prosecutor's Office has initiated an investigation in accordance with Article 26 (1) of Regulation (EU) 2017/1939 or has exercised its right of evocation in accordance with Article 27 (1) of this Regulation, the European Delegated Public Prosecutor shall transmit the information pursuant to Section 492 para. 2 sentence 1 of the Code of Criminal Procedure data to be entered in the public prosecutor's procedural register to the register kept at the Federal Office of Justice. (2) The European Delegated Public Prosecutor shall notify the public prosecutor of the initiation of the preliminary investigation pursuant to Article 26 (1) of Regulation (EU) 2017/1939, which pursuant to Section 142 in conjunction with Section 143 of the Courts Constitution Act for the prosecution of criminal offences pursuant to Article 22 of the Regulation (EU) 2017/1939 is responsible if the European Public Prosecutor's Office does not take over the prosecution.
s. 13 Amtshilfe Soweit erforderlich, können die Delegierten Europäischen Staatsanwälte die in s. 142 Absatz 1 Nummer 2 und 3 des Gerichtsverfassungsgesetzes genannten Staatsanwaltschaften um Amtshilfe bei der Durchführung einzelner Ermittlungsmaßnahmen und anderer Maßnahmen nach Artikel 30 der Verordnung (EU) 2017/1939 ersuchen.	**Section 13 Administrative Assistance** If necessary, the European Delegated Public Prosecutors can request the public prosecutor's offices named in Section 142 (1) Nos. 2 and 3 of the Courts Constitution Act for administrative assistance in carrying out individual investigative measures and other measures in accordance with Article 30 of Regulation (EU) 2017/1939.
s. 14 Gleichstellung mit Amtsträgern Für die Anwendung des Strafgesetzbuches stehen die Delegierten Europäischen Staatsanwälte und der deutsche Europäische Staatsanwalt Amtsträgern gleich, sofern sie nicht bereits als Europäische Amtsträger erfasst sind.	**Section 14 Equality with public officials** For the application of the Criminal Code, the European Delegated Public Prosecutors and the German European Public Prosecutor are equivalent to public officials, unless they are already registered as European public officials.

s. 15 Einschränkung von Grundrechten Durch dieses Gesetz werden die Grundrechte der körperlichen Unversehrtheit (Artikel 2 Absatz 2 Satz 1 des Grundgesetzes), der Freiheit der Person (Artikel 2 Absatz 2 Satz 2 des Grundgesetzes), des Brief-, Post- und Fernmeldegeheimnisses (Artikel 10 Absatz 1 des Grundgesetzes) und der Unverletzlichkeit der Wohnung (Artikel 13 des Grundgesetzes) eingeschränkt.	**Section 15 Restriction of Fundamental Rights** This law safeguards the basic rights of physical integrity (Article 2, Paragraph 2, Clause 1 of the Basic Law), freedom of the person (Article 2, Paragraph 2, Clause 2 of the Basic Law), and the secrecy of letters, mail and telecommunications (Article 10, Paragraph 1 of the Basic Law) and the inviolability of the home (Article 13 of the Basic Law).

b) Administrative guidelines for interactions with the EPPO (RiStBV)

Table 6: Administrative Guidelines Interactions with the EPPO (RiStBV)

Verkehr mit der Europäischen Staatsanwaltschaft Ergänzung der Richtlinien für das Strafverfahren und das Bußgeldverfahren (RiStBV) Allgemeine Verfügung der Behörde für Justiz und Verbraucherschutz AV Nr. 10 '/2021, Az.: 4208/2, 9500/120 vom /18.06 2021 Die Landesjustizverwaltungen und das Bundesministerium der Justiz und für Verbraucher schutz haben die nachstehende Ergänzung der Richtlinien für das Strafverfahren und das Bußgeldverfahren (Allgemeine Verfügung der Justizbehörde Nr. 30/76 vom 9. Dezember 1976, HmbJVBl. 1976, Seite 115, zuletzt geändert durch die Allgemeine Verfügung der Justizbehörde Nr. 10/2018 vom 8. November 2018, HmbJVBl. 2018, Seiten 112–113) vereinbart. Diese Ergänzung wird hiermit für die Freie und Hansestadt Hamburg in Kraft gesetzt: Nach Nummer 300 wird folgender neuer Abschnitt XIV angefügt: "**XIV. Strafsachen, die in die Zuständigkeit der Europäischen Staatsanwaltschaft fallen"**	Addition to the Guidelines for Criminal Proceedings and Fine Proceedings (RiStBV) Supplement to the Guidelines for Criminal Proceedings and Fine Proceedings (RiStBV) General Provision Authority for Justice and Consumer Protection Provision No. 10/2021, Ref. No.: 4208/2, 9500/120 Dated: 18 June 2021 The regional justice administrations and the Federal Ministry of Justice and Consumer Protection have agreed on the following supplement to the Guidelines for Criminal Proceedings and Fine Proceedings (General Provision of the Justice Authority No. 30/76 dated 9 December 1976, HmbJVBl. 1976, page 115, last amended by General Provision of the Justice Authority No. 10/2018 dated 8 November 2018, HmbJVBl. 2018, pages 112–113). This supplement is hereby enacted for the Free and Hanseatic City of Hamburg: After Number 300, the following new Section XIV is added: "**XIV. Criminal Cases Falling within the Jurisdiction of the European Public Prosecutor's Office"**

19

(1) Vorgänge, aus denen sich der Verdacht einer in die Zuständigkeit der Europäischen Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung der Europäischen Staatsanwaltschaft (EUStA-VO) fallenden Straftat ergibt, übersendet der Staatsanwalt gemäß Artikel 24 Abs. 1 oder 2 EUStA-VO mit einem Bericht unverzüglich der Europäischen Staatsanwaltschaft, sofern nach den Umständen erkennbar ist, dass der Tatzeitpunkt nach Inkrafttreten der EUStA-VO am 21. November 2017 liegt (siehe Artikel 120 Abs. 2 Unterabschnit.' I EUStA-VO) und die Europäische Staatsanwaltschaft: Verkehr mit der Europäischen Staatsawaltschaft schaft gemäß Artikel 25 Abs. 2 und 3 EUStA-VO ihre Zuständigkeit ausüben könnte. Satz I gilt auch dann, wenn zum Zeitpunkt der Unterrichtung nicht erkennbar Ist, ob die Kriterien des Artikels 25 Abs. 2 EUStA-VO erfüllt sind.
Vor Übersendung des Vorgangs nach Artikel 24 Abs. 2 EUStA-VO hat der Staatsanwalt nach Möglichkeit Kontakt mit dem zuständigen deutschen Zentrum der Delegierten Europäischen Staatsanwälte aufzunehmen, um eine zeitgerechte Entscheidung über die Evokation zu ermöglichen.

(1) Cases that raise suspicion of an offence falling under the jurisdiction of the European Public Prosecutor's Office as defined by Articles 22 and 23 of Regulation (EU) 2017/1939 of the Council of 12 October 2017 establishing enhanced cooperation for the establishment of the European Public Prosecutor's Office (EUStA Regulation) shall be promptly forwarded by the public prosecutor, along with a report, to the European Public Prosecutor's Office in accordance with Article 24 para. 1 or 2 of the EUStA Regulation, provided that the offence date is apparent to be after the entry into force of the EUStA Regulation on 21 November 2017 (see Article 120(2) of the EUStA Regulation) and that the European Public Prosecutor's Office might exercise its jurisdiction under Article 25 paras. 2 and 3 of the EUStA Regulation. This also applies if, at the time of notification, it is not apparent whether the criteria of Article 25 para. 2 of the EUStA Regulation are met.

Before forwarding the case under Article 24 para. 2 of the EUStA Regulation, the public prosecutor should, if possible, contact the relevant German centre of the European Delegated Prosecutors to enable a timely decision on the evocation.

(2) Der Bericht an die Europäische Staatsanwaltschaft enthält mindestens eine Beschreibung des Sachverhaltes einschließlich einer Bewertung des entstandenen oder voraussichtlichen Schadens, die mögliche rechtliche Würdigung und alle vorliegenden Informationen über mögliche Opfer, Verdächtige und andere Beteiligte (Artikel 24 Abs. 4 EUStA-VO) sowie die Mitteilung, ob die Meldung nach Artikel 24 Abs. I oder 2EUStA-VO erfolgt,insbesondere ob nach

(2) The report to the European Public Prosecutor's Office must include at least a description of the facts, including an assessment of the actual or anticipated damage, the possible legal evaluation, and all available information about potential victims, suspects, and other parties involved (Article 24 para. 4 of the EUStA Regulation), as well as whether the notification is made under Article 24 para. 1 or 2 of the EUStA Regulation,

deutschem Recht bereits ein Ermittlungsverfahren als eingeleitet gilt. Auf besondere Umstände (z. B. drohende Verjährung, Untersuchungshaft, erforderliche eilige richterliche Maßnahmen) ist hinzuweisen. Der Vorgang und der Bericht sind der Europäischen Staatsanwaltschaft über den Generalstaatsanwalt, in dringenden Fällen unmittelbar bei gleichzeitiger Übersendung vdn Abschriften an den Generalstaatsanwalt, zuzuleiten.
(3) Ein Bericht nach. Artikel 24 Abs. 2 EUStA-VO erfolgt auch in den Fällen des Artikel 24 Abs. 3 EUStA VO, in denen der Staatsanwalt der Auffassung ist, dass die Europäische Staatsanwaltschaft gemäß Artikel 25 Abs. 3 EUStA-VO ihre Zuständigkeit nicht ausüben könnte. In diesen Fällen ist eine Obersendung des Vorgangs in der Regel nicht erforderlich. Etwas anderes gilt dann, wenn bereits zum Zeitpunkt der Unterrichtung ein Einverständnis mit der Übernahme des Verfahrens durch die Europäische Staatsanwaltschaft gemäß Artikel 25 Abs. 4 i. V. m. Abs. 3 Buchstabe b EUStA-VO besteht. In diesem Fall ist das Einverständnis im Bericht nach Abs. 2 ausdrücklich zu erklären. Bei der Prüfung, ob ein solches Einverständnis erklärt werden soll, ist insbesondere zu berücksichtigen, ob es sich um eine Straftat handelt, die grenzüberschreitende Bezüge oder Bedeutung aufweist, an der eine kriminelle Vereinigung beteiligt ist oder die Straftat eine ernste Gefahr für die finanziellen Interessen der Union oder für die Glaubwürdigkeit ihrer Institutionen und das Vertrauen ihrer Bürger darstellen könnte (Erwägungsgrund Nr. 60 der EUStA-VO).
(4) Abs. 1 und 2 gelten auch, wenn die Europäische Staatsanwaltschaft auf anderem Weg als durch einen Bericht Kenntnis erhält, dass eine Staatsanwaltschaft bereits

particularly whether an investigation is already considered initiated under German law. Special circumstances (e.g., impending statute of limitations, pre-trial detention, urgent judicial measures) should be highlighted. The case and the report must be forwarded to the European Public Prosecutor's Office via the Attorney General, or in urgent cases, directly with copies sent simultaneously to the Attorney General.

(3) A report under Article 24 para. 2 of the EUStA Regulation must also be provided in cases under Article 24 para. 3 of the EUStA Regulation where the public prosecutor believes that the European Public Prosecutor's Office could not exercise jurisdiction under Article 25 para. 3 of the EUStA Regulation. In these cases, forwarding the case is generally not required. However, if there is already agreement at the time of notification regarding the takeover of the proceedings by the European Public Prosecutor's Office under Article 25 para. 4 in conjunction with Article 25 para. 3 lit. b of the EUStA Regulation, this agreement must be explicitly stated in the report under paragraph 2. In determining whether such an agreement should be made, it is particularly important to consider whether the offence involves cross-border aspects or significance, whether a criminal organisation is involved, or whether the offence poses a serious threat to the financial interests of the Union or to the credibility of its institutions and the trust of its citizens (Recital 60 of the EUStA Regulation).

(4) Paragraphs 1 and 2 also apply if the European Public Prosecutor's Office becomes aware of an investigation by a public prosecutor into an offence that might fall under

in Bezug auf eine Straftat Ermittlungen, für die die Europäische Staatsanwaltschaft zuständig sein könnte, durchführt und um Unterrichtung gemäß Artikel 24 Abs. 2 EUStA-Verordnung bittet (Artikel 27 Abs. 3 EUStA-VO).	the jurisdiction of the European Public Prosecutor's Office through other means than a report and requests information under Article 24 para. 2 of the EUStA Regulation (Article 27 para. 3 of the EUStA Regulation).
(5) Nach Übersendung des Vorgangs gemäß Abs. I und des Berichts gemäß Abs. 2 hat der Staatsanwalt bis zur Entscheidung der Europäischen Staatsanwaltschaft über die Einleitung eines Verfahrens (Artikel 26 Abs. I EUStA-VO) oder die Übernahme des Verfahrens (Artikel 27 Abs. I EUStA-VO) nur solche Maßnahmen vorzunehmen, die dringend erforderlich sind, um effektive Ermittlungen und eine effektive Strafverfolgung sicherzustellen. Vor solchen Amtshandlungen hat der Staatanwalt, soweit möglich, mit dem zuständigen Delegierten Europäischen Staatsanwalt Fühlung zu nehmen.	(5) After forwarding the case according to Paragraph 1 and the report according to Paragraph 2, the public prosecutor may only take measures that are urgently required to ensure effective investigations and prosecution until the European Public Prosecutor's Office decides on the initiation of proceedings (Article 26 para. 1 of the EUStA Regulation) or the takeover of the proceedings (Article 27 para. 1 of the EUStA Regulation). Before taking such official actions, the public prosecutor should, if possible, consult with the relevant European Delegated Prosecutor.
(6) Bei Beantwortung von Anfragen der Europäischen Staatsanwaltschaft nach Artikel 24 Abs. 9 EUStA-VO sind die Informationen der Europäischen Staatsanwaltschaft über den Generalstaatsanwalt, in dringenden Fällen unmittelbar bei gleichzeitiger Obersendung von Abschriften an den Generalstaatsanwalt, zuzuleiten.	(6) When responding to requests from the European Public Prosecutor's Office under Article 24 para. 9 of the EUStA Regulation, the information must be forwarded to the European Public Prosecutor's Office via the Attorney General, or in urgent cases, directly with copies sent simultaneously to the Attorney General.
(7) Der zuständige Delegierte Europäische Staatsanwalt ist unverzüglich über alle neuen Sachverhalte zu unterrichten, die die Europäische Staatsanwaltschaft dazu veranlassen könnten, ihre Entscheidung, ihre Zuständigkeit nicht auszuüben, zu überprüfen (Artikel 27 Abs. 7 EUStA-VO). Bei der Unterrichtung ist auf die Umstände hinzuweisen, die eine Übernahme des Verfahrens durch die Europäische Staatsanwaltschaft nahelegen. Abs. 2 Satz 3 gilt sinngemäß.	(7) The relevant European Delegated Prosecutor must be promptly informed of any new facts that might prompt the European Public Prosecutor's Office to reconsider its decision not to exercise jurisdiction (Article 27 para. 7 of the EUStA Regulation). The notification should highlight the circumstances that suggest the case should be taken over by the European Public Prosecutor's Office. Paragraph 2, Sentence 3 applies mutatis mutandis.

(8) Besteht Uneinigkeit darüber, ob die strafbare Handlung in den Anwendungsbereich der Artikel 22 Abs. 2 und 3 oder Artikel 25 Abs. 2 und 3 EUStA-VO fällt, leitet die Staatsanwaltschaft dem Generalbundesanwalt die Akten zusammen mit einer kurzen Stellungnahme über den Generalstaatsanwalt zur Entscheidung zu (Artikel 25 Abs. 6 EUStA-VO, s. 142b Abs. 2 Satz I GVG).
(9) Erhält der Staatsanwalt die Mitteilung, dass die Europäische Staatsanwaltschaft gemäß Artikel 26 Abs. EUStA-VO ein Verfahren eingeleitet hat (s. 12 Abs. 2 EUStAG), so prüft der Staatsanwalt, ob damit zusa menhängende Verfahren anhängig sind und unterrichtet ggf. den mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt gemäß Abs. 1 und 2.
(10) Trifft ein Staatsanwalt dringend erforderliche Maßnahmen gemäß Artikel 28 Abs. 2 EUSIA-VO, so ist der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt, unverzüglich und unmittelbar über die ergriffenen Maßnahmen bei gleichzeitiger Übersendung von Abschriften an den Generalstaatsanwalt zu unterrichten.
(11) Die Übersendung von Vorgängen und Berichten erfolgt nach Maßgabe der von den deutschen Zentren der Delegierten Europäischen Staatsanwälte herausgegebenen Richtlinien für die Kommunikation mit den nationalen Behörden und, soweit möglich, auch elektronisch. Der Staatsanwalt soll ein Aktendoppel behalten.

302 Amtshilfe bei Ermittlungsmaßnahmen der Europäischen Staatsanwaltschaft

(1) Die Staatsanwaltschaften (im Sinne des s. 142 Abs. 1 Nr. 2 und 3 GVG) leisten der Europäischen Staatsanwaltschaft nach dem

(8) In case of disagreement on whether the criminal act falls within the scope of Articles 22 paras. 2 and 3 or Articles 25 paras. 2 and 3 of the EUStA Regulation, the public prosecutor shall submit the case file, along with a brief statement, to the Attorney General for a decision (Article 25 para. 6 of the EUStA Regulation, see Section 142b para. 2, Sentence 1 of the GVG).
(9) If the public prosecutor is notified that the European Public Prosecutor's Office has initiated proceedings under Article 26 of the EUStA Regulation (see Section 12 para. 2 of the EUStAG), the public prosecutor should check whether related proceedings are pending and, if necessary, inform the European Delegated Prosecutor handling the investigation according to Paragraphs 1 and 2.

(10) If the public prosecutor takes urgently required measures under Article 28 para. 2 of the EUStA Regulation, the European Delegated Prosecutor handling the investigation must be promptly and directly informed about the measures taken, with copies sent simultaneously to the Attorney General.

(11) The forwarding of cases and reports should be done in accordance with the guidelines issued by the German centres of the European Delegated Prosecutors for communication with national authorities and, if possible, also electronically. The public prosecutor should retain a copy of the case file.

302 Assistance with Investigative Measures by the European Public Prosecutor's Office

(1) The public prosecutors (within the meaning of Section 142 para. 1 nos. 2 and 3 of the GVG) shall, in accordance with the principle

Grundsatz der loyalen Zusammenarbeit (Artikel 5 Abs. 6 EUStA-VO) auf deren Ersuchen im Wege der Amtshilfe die erforderliche Unterstützung bei Ermittlungsmaßnahmen der Europäischen Staatsanwaltschaft (s. 13 EUStAG). Dies kommt z. B. bei Durchsuchungsmaßnahmen oder wenn die Europäische Staatsanwaltschaft Unterstützung bei Vernehmungen von ortsfernen Zeugen benötigt, in Betracht. Sofern die Staatsanwaltschaft im jeweiligen Einzelfall zustimmt, kann die Europäische Staatsanwaltschaft im Wege der Amtshilfe auch auf deren Wirtschaftsreferenten zugreifen.
(2) Die Übernahme von außergewöhnlich hohen Kosten für die Amtshilfeleistung hat die Staatsanwaltschaft vorab mit dem mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt zu klären (Artikel 9.1 Abs. 6 EUStA-VO, Erwägungsgrund Nr. 112 der EUStA-VO).
(3) Die Staatsanwaltschaft unterrichtet den Generalstaatsanwalt von ihrer Entscheidung, der Europäischen Staatsanwaltschaft Amtshilfe zu leisten, und teilt dabei mit, welche Unterstützungsmaßen ahmen erfolgen werden.

303 Vollstreckungsverfahren
Räumt der Vollstreckungsstaatsanwalt dem mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt die Möglichkeit der Stellungnahme gemäß s.10 Abs. 2EUStAG ein, leitet er dem zuständigen Delegierten Europäischen Staatsanwalt den Vorgang über den Generalstaatsanwalt, in dringenden Fällen unmittelbar bei gleichzeitiger Übersendung von Abschriften an den Generalstaatsanwalt, zu.

of loyal cooperation (Article 5 para. 6 EPPO Reg.), provide the European Public Prosecutor's Office with the necessary assistance in its investigative measures (s. 13 EUStAG) upon request by way of administrative assistance. This may be considered, for example, in the case of search measures or if the European Public Prosecutor's Office requires assistance in questioning witnesses who are not locally available. If the public prosecutor's office agrees in the individual case, the European Public Prosecutor's Office may also have access to its economic advisors by way of administrative assistance.

(2) The public prosecutor must clarify the assumption of exceptionally high costs for providing assistance with the European Delegated Prosecutor handling the investigation in advance (Article 9.1 para. 6 of the EUStA Regulation, Recital 112 of the EUStA Regulation).
(3) The public prosecutor informs the Attorney General of its decision to assist the European Public Prosecutor's Office and specifies which support measures will be taken.

303 Enforcement Procedures
If the enforcement public prosecutor grants the European Delegated Prosecutor handling the investigation the opportunity to comment under Section 10 para. 2 of the EUStAG, the case file must be forwarded to the relevant European Delegated Prosecutor via the Attorney General, or in urgent cases, directly with copies sent simultaneously to the Attorney General.

304 Beteiligung der Staatsanwaltschaft durch die Europäische Staatsanwaltschaft bei Einstellung des Verfahrens qnd im vereinfachten Strafverfolgungsverfahren

(1) Konsultiert die Europäische Staatsanwaltschaft vor der Einstellung eines Ermittlungs- verfahrens gemäß Artikel 39 Abs. 3 EUStA-VO den Generalbundesanwalt, so leitet der Generalbundesanwált dieses Ersuchen über den Generalstaatsanwalt an die zuständige Staatsanwaltschaft weiter.

(2) Die Staatsanwaltschaft übermittelt ihre Stellungnahme gemäß Artikel 39 Abs. 3 EUStA-VO bzw. ihr Ersuchen nach Artikel 34 Abs. 6EUStA-VO über den Generalstaatsanwalt dem Generalbundesanwalt. Der Generalbundesanwalt leitet dem mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt die Stellungnahme zu.

(3) Konsultiert die Europäische Staatsanwaltschaft vor der Durchführung eines verein- fachten Strafverfolgungsverfahrens gemäß Artikel 40 Abs. I Unterabs. 2 EUStA-VO die Staatsanwaltschaft, so leitet diese dem mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt ihre Stellungnahme über den Generalstaatsanwalt zu.

305 Verweisung von Verfahren durch die Europäische Staatsanwaltschaft

Ersucht die Europäische Staatsanwaltschaft die ansonsten zuständige Staatsanwaltschaft um Übernahme des Ermittlungsverfahrens (Artikel 34 Abs. 1, 2 oder 3 EUStA-VO), leitet die Staatsanwaltschaft ihre Entscheidung in der Regel innerhalb von 30 Tagen über den Generalstaatsanwalt an die Europäische Staatsanwaltschaft zurück. Wenn die Entscheidung nicht innerhalb der 30-Tages-Frist bei der Europäischen Staatsanwaltschaft eingeht, bleibt sie in den Fällen deg Artikels 34 Abs. 2 und 3 EUStA-VO für

304 Involvement of the Public Prosecutor's Office by the European Public Prosecutor's Office in Case of Case Dismissal and in Simplified Criminal Proceedings

(1) If the European Public Prosecutor's Office consults the Attorney General before dismissing an investigation under Article 39 para. 3 of the EUStA Regulation, the Attorney General shall forward this request via the Attorney General to the competent public prosecutor's office.

(2) The public prosecutor shall transmit its opinion according to Article 39 para. 3 of the EUStA Regulation or its request under Article 34 para. 6 of the EUStA Regulation via the Attorney General to the Attorney General. The Attorney General shall forward the opinion to the European Delegated Prosecutor handling the investigation.

(3) If the European Public Prosecutor's Office consults the public prosecutor before conducting a simplified criminal procedure under Article 40 para. 1 of the EUStA Regulation, the public prosecutor shall forward its opinion to the European Delegated Prosecutor handling the investigation via the Attorney General.

305 Referral of Cases by the European Public Prosecutor's Office

If the European Public Prosecutor's Office requests the otherwise competent public prosecutor to take over the investigation (Article 34 paras. 1, 2, or 3 of the EUStA Regulation), the public prosecutor shall usually make its decision within 30 days and return it to the European Public Prosecutor's Office via the Attorney General. If the decision is not received by the European Public Prosecutor's Office within the 30-day period, the public prosecutor remains competent for the case in the cases of Article 34

das Verfahren zuständig (Artikel 34 Abs. 5 EUStA-VO)" II. Diese Allgemeine Verfügung tritt zu dem Zeitpunkt in Kraft, in dem die Europäische Staatsanwaltschaftdie Ermittlungs- und Strafverfolgungsaufgab en übernimmt, die ihr durch die Verordnung (EU) 2017/1939 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung der Europ äischen Staatsanwaltschaft (EUStA) (ABI. L 283 vom 31.10.2017, S. 1) übertragen sind. Der Zeitpunkt der Aufgabenübernahme Ist gemäß Artikel 120 Absatz 2 Unterabsatz 2 Satz 1der Verordnung (EU) 2017/1939 durch Beschluss der Europäischen Kommission festzulegen. Der Beschluss der Europäischen Kommission wird im Amtsblatt der Europäischen Union veröffentlicht. [...] 18.05.2021.	paras. 2 and 3 of the EUStA Regulation (Article 34 para. 5 of the EUStA Regulation). II. This General Provision shall come into force at the time when the European Public Prosecutor's Office assumes the investigative and prosecutorial tasks assigned to it by Regulation (EU) 2017/1939 of the Council of 12 October 2017 establishing enhanced cooperation for the establishment of the European Public Prosecutor's Office (EUStA) (OJ L 283 of 31 October 2017, p. 1). The time of task assumption is to be determined by a decision of the European Commission in accordance with Article 120 para. 2, second subparagraph, Sentence 1 of Regulation (EU) 2017/1939. The decision of the European Commission will be published in the Official Journal of the European Union. […] 18 May 2021.

c) Secondment of EDPs

20 *Table 7: Secondment of Prosecutors for their Role as EDPs*

Bekanntmachung der Verwaltungsvereinbarung über die Entsendung von Staatsanwältinnen und Staatsanwälten aus Anlass ihrer Tätigkeit als Delegierte Europäische Staatsanwälte für die Europäische Staatsanwaltschaft vom 6. Januar 2021 Die Vereinbarung zwischen den Ministerinnen und Ministern bzw. Senatorinnen und Senatoren der Justiz des Landes Baden-Württemberg, des Freistaats Bayern, des Landes Berlin, des Landes Brandenburg, der Freien Hansestadt Bremen, der Freien und Hansestadt Hamburg, des Landes Hessen, des Landes Mecklenburg-Vorpommern, des Landes Niedersachsen, des Landes Nordrhein-Westfalen, des Landes Rheinland-Pfalz, des Saarlandes, des Freistaats Sachsen, des Landes Sachsen-Anhalt, des Landes	**Announcement of the Administrative Agreement on the Secondment of Prosecutors for their Role as European Delegated Prosecutors for the European Public Prosecutor's Office 6 January 2021** The agreement between the Ministers and Senators of Justice of the Federal State of Baden-Württemberg, the Free State of Bavaria, the State of Berlin, the State of Brandenburg, the Free Hanseatic City of Bremen, the Free and Hanseatic City of Hamburg, the State of Hesse, the State of Mecklenburg-Western Pomerania, the State of Lower Saxony, the State of North Rhine-Westphalia, the State of Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of

Schleswig-Holstein und des Freistaats Thüringen über die Entsendung von Staatsanwältinnen und Staatsanwälten aus Anlass ihrer Tätigkeit als Delegierte Europäische Staatsanwälte für die Europäische Staatsanwaltschaft ist nach § 8 der Vereinbarung am 11. August 2020 in Kraft getreten. Die Verwaltungsvereinbarung wird nachstehend veröffentlicht.
Potsdam, den 6. Januar 2021
Die Ministerin der Justiz Susanne Hoffmann

Verwaltungsvereinbarung über die Entsendung von Staatsanwältinnen und Staatsanwälten aus Anlass ihrer Tätigkeit als Delegierte Europäische Staatsanwälte für die Europäische Staatsanwaltschaft
Das Land Baden-Württemberg, der Freistaat Bayern, das Land Berlin, das Land Brandenburg, die Freie Hansestadt Bremen, die Freie und Hansestadt Hamburg, das Land Hessen, das Land Mecklenburg-Vorpommern, das Land Niedersachsen, das Land Nordrhein-Westfalen, das Land Rheinland-Pfalz, das Saarland, der Freistaat Sachsen, das Land Sachsen-Anhalt, das Land Schleswig-Holstein und der Freistaat Thüringen treffen

– unter Bezugnahme auf die Beschlüsse der Konferenz der Justizministerinnen und Justizminister vom 9. November 2017 und15. November 2018 zur Europäischen Staatsanwaltschaft –folgende Vereinbarung:

§ 1 Gegenstand und Zweck
(1) Diese Vereinbarung regelt die Entsendung von Staatsanwältinnen und Staatsanwälten an die in Deutschland in den Ländern Bayern, Berlin, Hessen, Nordrhein-Westfalen und in der Freien und Hansestadt Hamburg (im Folgenden: Zentrumsländer) angesiedelten Zentren zur Durchführung der

Saxony-Anhalt, the State of Schleswig-Holstein, and the Free State of Thuringia concerning the secondment of prosecutors in relation to their duties as European Delegated Prosecutors for the European Public Prosecutor's Office has entered into force on 11 August 2020, as per Section 8 of the agreement. The administrative agreement is published below.
Potsdam, 6 January 2021
The Minister of Justice, Susanne Hoffmann

Administrative Agreement on the Secondment of Prosecutors for their Role as European Delegated Prosecutors for the European Public Prosecutor's Office

The Federal State of Baden-Württemberg, the Free State of Bavaria, the State of Berlin, the State of Brandenburg, the Free Hanseatic City of Bremen, the Free and Hanseatic City of Hamburg, the State of Hesse, the State of Mecklenburg-Western Pomerania, the State of Lower Saxony, the State of North Rhine-Westphalia, the State of Rhineland-Palatinate, the Saarland, the Free State of Saxony, the State of Saxony-Anhalt, the State of Schleswig-Holstein, and the Free State of Thuringia
– with reference to the resolutions of the Conference of Justice Ministers from 9 November 2017 and 15 November 2018 regarding the European Public Prosecutor's Office – agree to the following:

s. 1 Subject and Purpose
(1) This agreement regulates the secondment of prosecutors to the centres located in Germany in the states of Bavaria, Berlin, Hesse, North Rhine-Westphalia, and the Free and Hanseatic City of Hamburg (hereinafter: "centre states") for carrying out the opera-

operativen Aufgaben der Europäischen Staatsanwaltschaft durch Delegierte Europäische Staatsanwälte im Sinne der Verordnung (EU) 2017/1939 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung der Europäischen Staatsanwaltschaft (EUStA).
(2) Zweck der Vereinbarung ist es sicherzustellen, dass Staats- anwältinnen und Staatsanwälte aus Ländern, in denen keine Zentren angesiedelt sind (im Folgenden: Nichtzentrumsländer), die Möglichkeit haben, als Delegierte Europäische Staatsanwälte für die Europäische Staatsanwaltschaft tätig zu sein.

§ 2 Besetzung von Zentren für die Europäische Staatsanwaltschaft
(1) Die von der Europäischen Staatsanwaltschaft für Deutschland vorgesehenen Arbeitskraftanteile für die Delegierten Europäischen Staatsanwälte sollen – vorbehaltlich der Einigung mit dem Europäischen Generalstaatsanwalt nach Maßgabe von Artikel 13 Absatz 2 Satz 2 der Verordnung (EU) 2017/1939 – so aufgeteilt werden, dass jedes Zentrum mit mindestens zwei Personen besetzt ist.
(2) Das Zentrumsland kann die für ein Zentrum vorgesehenen Arbeitskraftanteile der Delegierten Europäischen Staatsanwälte mehrheitlich mit eigenem Personal besetzen, jedoch soll der Anteil des Zentrumslands einen Umfang von zwei Dritteln nicht übersteigen. Hinsichtlich der übrigen Arbeitskraftanteile erfolgt die Besetzung der Delegierten Europäischen Staatsanwälte durch die Nichtzentrumsländer nach Maßgabe von § 4. Fehlt es an geeigneten Staatsanwältinnen und Staatsanwälten aus

tional tasks of the European Public Prosecutor's Office by European Delegated Prosecutors as defined by Regulation (EU) 2017/1939 of the Council of 12 October 2017 establishing enhanced cooperation for the establishment of the European Public Prosecutor's Office (EUStA).

(2) The purpose of the agreement is to ensure that prosecutors from states where no centres are located (hereinafter: "non-centre states") have the opportunity to serve as European Delegated Prosecutors for the European Public Prosecutor's Office.

s. 2 Staffing of Centres for the European Public Prosecutor's Office
(1) The workforce shares allocated by the European Public Prosecutor's Office for Germany for the European Delegated Prosecutors should – subject to agreement with the European Chief Prosecutor according to Article 13(2), second sentence of Regulation (EU) 2017/1939 – be distributed so that each centre is staffed with at least two people.

(2) The centre state may staff the workforce shares of the European Delegated Prosecutors with its own personnel, but the share of the centre state should not exceed two-thirds. For the remaining workforce shares, the staffing of European Delegated Prosecutors by non-centre states shall be conducted according to § 4. If suitable prosecutors from non-centre states are not available, the staffing can also be done by the respective centre state.

den Nichtzentrumsländern, kann die Besetzung auch durch das jeweilige Zentrumsland erfolgen.
(3) Die Benennung eines Delegierten Europäischen Staatsanwalts gegenüber dem Bundesministerium der Justiz und für Verbraucherschutz erfolgt durch das Zentrumsland, in dem die betreffende Person eingesetzt werden soll.
(4) Die als Delegierte Europäische Staatsanwälte eingesetzten Staatsanwältinnen und Staatsanwälte werden im Falle ihrer Er- nennung durch das Kollegium nach Artikel 17 Absatz 1 Satz 1 der Verordnung (EU) 2017/1939 durch den jeweiligen Dienstherrn an die Europäische Staatsanwaltschaft (teil-) zugewiesen.

§ 3 Entsendung von Staatsanwältinnen und Staatsanwälten aus Nichtzentrumsländern an Zentren für die Europäische Staatsanwaltschaft
(1) Werden Staatsanwältinnen und Staatsanwälte aus Nichtzentrumsländern an die Europäische Staatsanwaltschaft teilzugewiesen, erfolgt hinsichtlich ihres nicht zugewiesenen Arbeits- kraftanteils eine Teilabordnung an das Zentrumsland.
(2) Die Teilabordnung soll nur im Falle der Ernennung der Staatsanwältin oder des Staatsanwalts zum Delegierten Europä- ischen Staatsanwalt gemäß Artikel 17 Absatz 1 der Verordnung (EU) 2017/1939 vorgenommen werden; sie soll regelmäßig mit dem Ende der Amtszeit als Delegierter Europäischer Staatsan- walt beendet werden.
(3) Das Zentrumsland leistet – bezogen auf die Teilabordnung – grundsätzlich einen Ausgleich an das Nichtzentrumsland hinsicht- lich der entstehenden Personalkosten. Das Nähere regeln Zen- trumsland und Nichtzentrumsland im jeweiligen Einzelfall.

(3) The nomination of a European Delegated Prosecutor to the Federal Ministry of Justice and Consumer Protection is carried out by the centre state where the person will be assigned.

(4) Prosecutors appointed as European Delegated Prosecutors will be assigned (partially) to the European Public Prosecutor's Office by their respective employer upon their appointment by the College according to Article 17 para. 1, first sentence of Regulation (EU) 2017/1939.

s. 3 Secondment of Prosecutors from Non-Centre States to Centres for the European Public Prosecutor's Office

(1) When prosecutors from non-centre states are partially assigned to the European Public Prosecutor's Office, a partial secondment to the centre state will be arranged concerning their non-assigned workforce share.

(2) The partial secondment should only be carried out if the prosecutor is appointed as a European Delegated Prosecutor according to Article 17 para. 1 of Regulation (EU) 2017/1939; it should generally end with the conclusion of the term as a European Delegated Prosecutor.

(3) The centre state will generally compensate the non-centre state for the personnel costs arising from the partial secondment. Details will be regulated by the centre state and the non-centre state on a case-by-case basis.

§ 4 Verfahren zur Benennung von Staatsanwältinnen und Staatsanwälten als Delegierte Europäische Staatsanwälte aus Nichtzentrumsländern

(1) Für die von den Nichtzentrumsländern zu besetzenden Arbeitskraftanteile führen die Nichtzentrumsländer Interessenbe- kundungsverfahren nach Maßgabe der dortigen landesrechtlichen Vorgaben durch.

(2) Die Auswahl einer Interessentin oder eines Interessenten erfolgt unter maßgeblicher Berücksichtigung von Eignung, Befähigung und fachlicher Leistung im Einvernehmen zwischen dem Zentrumsland und den Nichtzentrumsländern, die Interes- senten benannt haben, sowie unter Beteiligung des deutschen Europäischen Staatsanwalts. Bei mehreren Interessentinnen und Interessenten soll bei der Auswahl auch eine ausgeglichene Beteiligung der Nichtzentrumsländer bei der Besetzung der Stellen für Delegierte Europäische Staatsanwälte Berücksichtigung finden.

s. 4 Procedure for the Nomination of Prosecutors as European Delegated Prosecutors from Non-Centre States

(1) For the workforce shares to be filled by non-centre states, the non-centre states will conduct selection procedures according to their local legal requirements.

(2) The selection of candidates will be made with significant consideration of suitability, qualifications, and professional performance in agreement between the centre state and the non-centre states that have nominated candidates, as well as with the involvement of the German European Prosecutor. If multiple candidates are available, the selection should also consider a balanced participation of non-centre states in staffing the positions for European Delegated Prosecutors.

§ 5 Verwendung von abgeordneten Staatsanwälten hinsichtlich des nicht der Europäischen Staatsanwaltschaft zugewiesenen Arbeitskraftanteils

(1) Die Verwendung von abgeordneten Staatsanwältinnen und Staatsanwälten hinsichtlich ihres nicht der Europäischen Staatsanwaltschaft zugewiesenen Arbeitskraftanteils ist so zu gestalten, dass sie ihre Tätigkeit als Delegierter Europäischer Staats- anwalt in sachgerechter Weise ausüben können.

(2) Die Erstellung der Beurteilung bzw. des Beurteilungsbeitrags regeln das Zentrumsland und das Nichtzentrumsland im jeweiligen Einzelfall. Hinsichtlich des der Europäischen Staatsanwaltschaft zugew-

s. 5 Use of Seconded Prosecutors Regarding Non-Assigned Workforce Share and Assessment

(1) The use of seconded public prosecutors with regard to the portion of their working capacity not assigned to the European Public Prosecutor’s Office shall be arranged in such a way that they are able to perform their duties as European Delegated Prosecutors appropriately and effectively.

(2) The preparation of the assessment or assessment contribution will be regulated by the centre state and the non-centre state on a case-by-case basis. For the workforce share assigned to the European Public Prosecutor’s Office, an assessment contribution

iesenen Arbeitskraftanteils soll ein Beurteilungsbeitrag beim deutschen Europäischen Staatsanwalt eingeholt werden.	should be obtained from the German European Prosecutor.
§ 6 Salvatorische Klausel Sollten einzelne Bestimmungen dieser Vereinbarung unwirksam sein oder werden, so berührt dies die Wirksamkeit der übrigen Bestimmungen dieser Vereinbarung nicht.	**s. 6 Severability Clause** If individual provisions of this agreement are or become invalid, this does not affect the validity of the remaining provisions of this agreement.
§ 7 Haushaltsvorbehalt Die Vereinbarung steht unter dem Vorbehalt der Bereitstellung der erforderlichen Haushaltsmittel durch den jeweiligen Haushaltsgesetzgeber.	**s. 7 Budgetary Reserve** The agreement is subject to the availability of necessary budgetary funds by the respective budgetary legislator.
§ 8 Inkrafttreten der Vereinbarung Diese Vereinbarung tritt mit ihrer Unterzeichnung durch die Justizministerinnen und Justizminister bzw. Justizsenatorinnen und Justizsenatoren in Kraft.	**s. 8 Entry into Force of the Agreement** This agreement shall enter into force upon its signature by the Ministers of Justice and Justice Senators.

B. EPPO-Regulation

I. Special Introduction

European Delegated Prosecutor Dr *Anna-Elisabeth Krause-Ablaß*, Luxembourg/Frankfurt am Main/Bonn, and Professor Dr *Pierre Hauck* LLM (Sussex), Gießen*

1. Two years of experience with the EPPO from a German perspective

The work of the EPPO in Germany has been a success story so far. The criminal proceedings initiated since 2021 and brought to a legally binding conclusion have cleared up extremely complicated complexes of offences and contributed to a considerable extent to securing assets amounting to no less than half a billion euros. Nevertheless, much remains to be done. Improved support at the national level through adequately staffed and technically equipped tax investigation offices, up to and including a federal investigation office that has yet to be set up, or at least investigation groups at the tax investigation offices that cover more than one federal state, a concentration of jurisdiction at the regional courts at the EDP's offices and the consistent transfer of national criminal proceedings to the EPPO, which should have a model effect, are part of the catalogue of core demands. The improvement of the investigation possibilities striven for in this way is by no means at the expense of the rights of the accused and the defence. On the contrary, these rights are always guaranteed at a high level under the rule of law. **1**

2. Introduction

The list of convictions by German criminal courts based on charges brought by the EPPO is growing longer and longer.[32] Large-scale investigative complexes such as *Operation Admiral*[33] or *Operation Huracán*[34], involving **VAT fraud with electronic devices** or luxury cars, contribute to this, as do smaller proceedings such as the one that **2**

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[32] Great praise is due in particular to the Bavarian judiciary, which is apparently genuinely concerned to cooperate with academia and which has evidently not faced insurmountable obstacles in successfully processing corresponding applications for the transmission of anonymized decisions, cf. only OLG Munich, Decision of 9 May 2022 - 2 Ws 215/22 H -, juris; LG Landshut, Judgment of 5 July 2023, 3 Kls 501 Js 19/22; LG München I, Judgment of 5 April 2022, 6 KLs 501 Js 17/21; LG München II, Judgment of 13 February 2023, W10 KLs 501 Js 8/22, added: W10 KLs 501 Js 13/22, W10 KLs 501 Js 4/21.

[33] See Zydra 2022, Süddeutsche Zeitung. Karussell-Geschäft: Europa gelingt Schlag gegen Steuerbetrüger. online: https://www.sueddeutsche.de/wirtschaft/umsatzsteuerbetrug-karussellgeschaefte-eusta-1.5706610. Accessed 31 December 2024.

[34] See Diesteldorf 2023, Süddeutsche Zeitung. Europäische Staatsanwaltschaft: Ermittler decken internationales Autoschieber-Netzwerk auf. online: https://www.sueddeutsche.de/wirtschaft/eu-mehrwertsteuer-betrug-huracan-1.5933964?reduced=true. Accessed 31 December 2024.

was legally concluded by the Munich I Regional Court in a judgment of 5 April 2022[35], the one that ended before the Munich II Regional Court on 13 February 2023[36] with the conviction of four defendants for organizing a VAT carousel fraud involving luxury cars.

3 The core of the offence is often the omitted VAT declaration/pre-announcement in the case of ring or drop shipments, where, similar to so-called **VAT carousel transactions**, the first purchaser after the delivery of the goods across a national border does not make a complete declaration of the intra-Community acquisition and furthermore does not declare the **VAT liability** arising nationally from resales to the competent tax authorities. Due to the omitted declaration of VAT from further sales, traders gain financial leeway to resell the goods at favourable conditions. In order not to get caught, the firms are dissolved again after a short time and disappear. This is why they are also called "missing trader companies" . In addition to tax evasion (s. 370 para. 1 AO[37] or in particularly serious cases according to s. 370 para. 3 AO), the formation of criminal organisations (s. 129 StGB[38]), money laundering (s. 261 StGB) and forgery of documents (s. 267 StGB) are also possible charges. In addition, the measures already taken in the course of the raids or searches to secure and seize assets are of particular fiscal significance. With the legal effect of the ordered confiscation, all seized goods and cash become state property.[39] Even this brief insight makes it obvious that the EPPO obviously had to focus its activities on VAT fraud in the form of VAT carousels. Damages of tens of millions of euros and prison sentences of several years are not the exception here, but the rule, and the deployment of whole armies of investigators in often more than three EU Member States to search hundreds of properties is just as much the order of the day as the seizure or confiscation of proceeds of crime amounting to millions.

4 The EPPO is thus not only in the **midst of superlatives**. Because of these almost monstrous dimensions, it also operates consistently on the constitutional nerve of criminal procedure law. For in addition to the question of the resources and infrastructure with which such investigative work can be carried out by people at all, it is at least as clear that in an environment of such gigantic categories, the **individual rights of defence of the accused** are not easy to guarantee and the public interest in prosecution is not easy to realize, let alone to reconcile the two.

[35] LG München I, Judgment of 5 April 2022, 6 KLs 501 Js 17/21.
[36] LG München II, Judgment of 13 February 2023, W10 KLs 501 Js 8/22, added: W10 KLs 501 Js 13/22, W10 KLs 501 Js 4/21.
[37] *Abgabenordnung*, i.e. the German general tax code.
[38] *Strafgesetzbuch*, i.e. the German criminal code.
[39] See https://www.eppo.europa.eu/en/news/investigation-huracan-vat-fraud-involving-10-000-cars-uncovered. Accessed 31 December 2024.

Even if it is saddening that the incentive to make a quick buck is evidently driving thousands of people across Europe into criminal liability every day, from a scholarly point of view it is nevertheless encouraging that both the substantive illumination of tax fraud[40] on the revenue side and EU-related subsidy fraud[41] on the expenditure side, as well as the procedural question of the necessary balance between public interests and subjective rights[42], have already enjoyed a great deal of interest. **5**

Even such an **intensive theoretical flanking** can, however, by no means mean a satisfactory conclusive analysis, because legal development is already progressing daily due to the constantly new experiences, practical procedures, difficulties and problem situations, and all too often awaits a binding solution. More than ever, however, practice is dependent on a binding clarification of the legal questions that arise and the call for corresponding guidelines is growing louder.[43] Whether and how quickly it will be heard by the ECJ and academia, however, is not certain. The following remarks make it clear that many of the practical problems that arise on a daily basis are dependent on a generally binding theoretical solution. **6**

3. Legal basis of the EPPO

The establishment of the EPPO, which has been operational since 1 June 2021, is based on Regulation (EU) 2017/1939 (EPPO-Regulation)[44], which the European Council adopted on 12 October 2017 on the basis of **Art. 86 TFEU** after several years of politically complex negotiations. The jurisdiction of the new supranational public prosecutor's office with its seat in Luxembourg, in which 22 of the 27 European Member States participate, is determined by the provisions of **Article 22 of the EPPO Regulation**, which largely refer to the so-called PIF Directive[45]. According to this, the EPPO is exclusively responsible for offences that have damaged the EU budget, including subsidy fraud (Art. 22 para. 1 EPPO Regulation in conjunction with Art. 3 para. 2 PIF Directive), procurement-related expenditure fraud (Art. 22 para. 1 EPPO Regulation, Art. 3 para. 2 lit. b PIF Directive), cross-border VAT fraud with a minimum loss of EUR 10 million (Art. 22 para. 1 EPPO Regulation in conjunction with Art. 3 para. 2 lit. d PIF Directive) **7**

[40] The literature of recent years speaks volumes in the truest sense of the word: Neumüller 2023; Mehling 2022; Lämmel 2022; Klier 2022; Tsakalis 2022; Kummer 2022; Müller 2022; Nickel 2021; Kuse 2021; Heuel 2021; Reitner 2020; Kahl 2020; Hauptmeier and Schraven (eds.) 2020; Hackmann 2020; Rostalski 2019; Thoma 2019; Müller 2019; Jacobi 2019; Böhme 2018; Müller 2018; Mann 2017; Rastätter 2017; Gaede 2016; Schmidt 2016.
[41] Bellacosa and De Bellis 2023, 1, 15; Kopp 2022, p. 446; Tolksdorf and Schellhaas 2021, p. 344; Bruhn and Bülte 2021, pp. 39 ff.; Ziegler 2020; Hack 2020 both at passim.
[42] Cf. the contributions by Esser and Oehmichen 2022, pp. 241 ff., 293 ff., 345 ff. and in detail Yolaçan 2023 et passim.
[43] Cf. Ritter 2023, p. 15 ff.
[44] Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation to establish the European Public Prosecutor's Office (EPPO) (OJ 2017 L 283, 1).
[45] Directive (EU) 2017/31 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ 2017 L 198, 29, rev. OJ 2017 L 350, 50.

and for bribery and corruption (Art. 22 para. 1 EPPO Regulation in conjunction with Art. 4 para. 2 PIF Directive). The EPPO is also responsible for money laundering if the predicate offence is a PIF offence (Article 22 para. 1 of the EPPO Regulation in conjunction with Article 4 para. 1 of the PIF Directive).[46]

8 Since the PIF Directive itself does not provide for specific offences, but only for "**minimum rules** with regard to the definition of criminal offences and sanctions" (Art. 83 para. 2 sentence 1 TFEU), the participating Member States are required to apply their own criminal law provisions in the implementation. In Germany, the PIF Directive was implemented by a law of 5 July 2017,[47] which extended the criminal liability for attempted offences in Section 264 StGB as well as Section 335a StGB and introduced a new **EU Financial Protection Strengthening Act** (EUFinSChStG[48]). Further adjustments to German substantive criminal law were not necessary, as the German provisions already fulfilled the requirements of the PIF-Directive in all other respects. In terms of time, the EPPO is responsible for offences committed after 20 November 2017, the day on which the EPPO Regulation entered into force.[49]

4. Conception of the EPPO

9 The hybrid structure of the EPPO differs considerably from that of a German public prosecutor's office. In the Luxembourg headquarters of the EPPO, the College of Prosecutors, which is chaired by the **European Chief Public Prosecutor** and composed of one European Public Prosecutor (EP) from each participating Member State, takes administrative and strategic decisions. The European Public Prosecutors are also organized in the Permanent Chambers in Luxembourg, which have the task of supervising investigations. However, the investigations are not conducted from Luxembourg, but on a **decentralized basis** by the EDPs in the 22 participating Member States. The EDP each act on the basis of the EPPO Regulation and according to their national law,[50] but are exclusively subject to the instructions of the Permanent Chambers (Art. 10 EPPO Regulation) and the respective supervising EP (Art. 12 EPPO Regulation). At the request of the **Permanent Chamber**, an EDP has the task of **reporting on the progress** of the investigation to the supervising EP and the respective competent chamber. This report

[46] For details, see Brodowski 2022, § 5 marginal no. 9 ff.
[47] Act implementing Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on combating fraud affecting the financial interests of the Union by means of criminal law, Federal law gazette 2019 I 844 (=Gesetz zur Umsetzung der Richtlinie (EU) 2017/1371 des Europäischen Parlaments und des Rates vom 5.7.2017 über die strafrechtliche Bekämpfung von gegen die finanziellen Interessen der Union gerichtetem Betrug, BGBl. 2019 I 844).
[48] *EU-Finanzschutzstärkungsgesetz*.
[49] Brodowski 2021b, Art. 120 marginal no. 8. On the jurisdiction of the EPPO in general, cf. Brodowski 2022, § 5; Duesberg 2021, p. 1207; Beukelmann 2020, p. 316 (in each case with further references).
[50] On this interplay Legal 2018, pp. 189 ff.

is requested at irregular intervals by the respective competent Permanent Chamber. There are no fixed reporting periods in this respect.

In addition, the EDP is required, if necessary, to carry out or refrain from certain investigative measures on the instructions of the Permanent Chamber, also contrary to its own intention.[51] This puts the **supervisory function** on a "**European basis**", since only a Permanent Chamber can be competent, to which the European Prosecutor of the same Member State does not belong.[52] **10**

A German investigation procedure is therefore never supervised by a Permanent Chamber to which the German European Prosecutor belongs. The latter is, however, consulted as an *ad hoc* member in the Permanent Chamber's deliberations in order to explain the procedure and any **special features of national law**, but he only has a limited right to vote.[53] **11**

In practice, however, the right of the Permanent Chamber to exert influence is largely confined to the conclusion of the investigation proceedings.[54] The ongoing investigations, on the other hand, are basically designed solely according to the EDP's conception in consultation with the supervising European Prosecutor. The EDP thus **act like national public prosecutors** (double head) in the ongoing investigation proceedings. However, the EDP are completely independent of national and European (judicial) authorities. Figuratively speaking, the EDP are therefore equipped with a double hat: [55] they continue to be national prosecutors,[56] but they are exclusively obliged to the EPPO. **12**

5. Investigation procedures of the EPPO in Germany

a) Legal foundations

In terms of procedural law, the **rights and duties** of the EDP result from the EPPO Regulation as directly applicable law. These regulations were supplemented in Germany by the Act on the Implementation of the EU Regulation on the Establishment of the **13**

[51] On the significance of this hierarchical structure Chevallier-Govers 2021, pp. 75, 84 ff.
[52] Herrnfeld 2022, § 4 para. 29. Christodoulou 2021, pp. 255 ff., even sees this decentralised structure as a factor for the unification of the concept of judicial authority in the European Union.
[53] Herrnfeld 2022, § 4 marginal no. 29.
[54] See IV. 2. d) below.
[55] On the double-hatted model Wirth 2022, p. 176 ff; Hlawacz 2016, pp. 75 ff.
[56] The German EDPs continue to be state or federal civil servants in accordance with their national position (public prosecutor, senior public prosecutor, chief public prosecutor, federal public prosecutor at the Federal Supreme Court). Like all EDPs, they are employed under private law by the European Union as so-called "special advisers" according to Art. 5, 123, 124 of the Rules on Conditions of Employment of the EDP, cf. https://www.eppo.europa.eu/sites/default/files/2023-03/2020.001_2023.007_Consolidated_version_Decision_on_Conditions_of_employment_EDPs.pdf. Accessed 31 December 2024.

European Public Prosecutor's Office (EUStAG[57]) and individual amendments to the GVG[58] and the StPO[59]. In principle, the EDP have the same powers as national public prosecutors with regard to investigations, prosecution and bringing charges, Art. 13 para. 1 EPPO-Regulation. In Germany, however, their jurisdiction goes beyond that of their national colleagues in that the EDP each have nationwide investigative and prosecutorial jurisdiction.[60]

14 The **local distribution** of the total of 17 (2024: 21) German EDP to five "centers"[61] is not linked to any legal regulation of their local jurisdiction. Especially in the area of VAT carousel proceedings, the **nationwide jurisdiction** proves its worth insofar as proceedings with parties involved or crime scenes in different *Länder* can be conducted from one source without having to be divided up and partially handed over. For example, an EDP from the Cologne center can conduct proceedings that have a focus in North Rhine-Westphalia on the one hand, and on the other hand have participants in the crime in Berlin, whom he can then also charge in Berlin. The EDP's jurisdiction ends with the final conclusion of the proceedings, Art. 4 para. 2 EPPO Regulation.

b) Course of the investigation procedure

aa. Active exercise of jurisdiction

15 Within the **scope of application** of Art. 22 of the Regulation, the EPPO can exercise its jurisdiction either by initiating new investigation proceedings (→ below Art. 26 of the EPPO Regulation) or by evoking proceedings already pending before a national public prosecutor's office[62] (→ below Art. 27 of the EPPO Regulation). The Regulation assumes shared competence between national authorities and the EPPO, Art. 25 para. 1, 2.[63] Only when the EDP have exercised the EPPO's competence, the national authorities are no longer competent to investigate and prosecute.[64]

16 Pursuant to Art. 24 para. 1 of the EPPO Regulation, the national and EU authorities are obliged to inform the EPPO if they see reason to believe that there are indications of the

[57] Act on the Implementation of the EU Regulation Establishing the European Public Prosecutor's Office (European Public Prosecutor's Office Act - EUStAG) of 10 July 2020, Federal law gazette I, 1648 (=Gesetz zur Ausführung der EU-Verordnung zur Errichtung der Europäischen Staatsanwaltschaft (Europäische Staatsanwaltschaft-Gesetz – EUStAG) vom 10.07.2020, BGBl. I, 1648).
[58] *Gerichtsverfassungsgesetz*, i.e. the German code on court constitution or judicature act.
[59] *Strafprozessordnung*, i.e. the German code of criminal procedure.
[60] This provision has been codified in national law by the inclusion of a paragraph 6 in §. 143 GVG.
[61] The EPPO centers are located at the General Public Prosecutor's Offices in Berlin, Frankfurt am Main, Hamburg, Cologne and Munich.
[62] The same applies to proceedings conducted at a fine and criminal proceedings office of the tax authorities or at the main customs office.
[63] Duesberg 2021, p. 1208.
[64] For conflict problems e.g. Bachmaier Winter 2023, 515 et seq., and see in Spanish Volume; last but not least see the Croatian volume.

existence of a PIF offence in a proceeding.[65] According to Article 24 para. 2 of the EPPO Regulation, the national public prosecutors' offices have the obligation to submit to the EPPO investigations that have already been initiated and that could fall within the EPPO's jurisdiction. The German public prosecutors' offices are happy to comply with this obligation, as **VAT carousel proceedings** in particular are intensive in terms of investigations and legal assistance. In some other Member States (e.g. France and Spain), however, the national public prosecutors' offices interpret their obligation to hand over proceedings to the EPPO more restrictively,[66] so that a principle of complementarity seems to be established there *de facto* and *contra legem* (cf. Art. 86 para. 2 TFEU), according to which criminal prosecution by national authorities generally enjoys priority over the supranational level (as with the ICC), which only has to be entered subordinately and compulsorily if impunity is otherwise to be feared.[67]

However, mere **complementarity** understood in this way is certainly not the role to which a highly specialised and highly competent EU investigative authority such as the EPPO or OLAF may be reduced. For if this role is understood in this way only as a substitute, as it were as a stopgap for otherwise unwilling or incapable national authorities, it cannot even begin to fulfil its main function. This effectiveness consists of taking over complex financial criminal proceedings from the outset in order to be able to put its very own core competence and specialization into practice, and at the same time to relieve national authorities that either do not have the same concentration of competence or that are already sufficiently busy with other national matters. **17**

Unlike a German national public prosecutor's office, the EPPO is therefore not automatically entrusted with investigations. Rather, a kind of **exercise act** is required for this, which, however, is not contestable.[68] The **shared competence** does not, however, relieve the EPPO, which is also bound by the **principle of legality** (cf. Art. 26 para. 1 EPPO Regulation), from initiating preliminary proceedings if there is an **initial suspicion**.[69] **18**

Exceptions to this are regulated in Article 25 of the EPPO Regulation. In particular, according to Art. 25 para. 2 of the EPPO Regulation, the EPPO should not exercise its competence, which in principle exists under Art. 22, 23 of the EPPO Regulation, if the offence has caused or is expected to cause damage to the EU budget of less than EUR **19**

[65] Trautmann 2022, § 6 marginal no. 60.
[66] See the 2022 annual report for France. online: http://bit.ly/3LqCEDZ. Accessed 31 December 2024.
[67] In principle Satzger 2015, pp. 69 ff.; Satzger 2018, pp. 43 ff. See also Wieczorek 2016, pp. 71 ff.; Lohse 2015, pp. 165 ff.
[68] See in the Croatian volume of the series for real problems with the competence conflicts.
[69] Brodowski 2022, § 2 marginal no. 68.

10,000. This regulation pursues the goal of **not burdening the EPPO** with the prosecution of **petty crime** for which prosecution at the Union level has no added value.[70]

20 In contrast to the original initiation of pre-trial proceedings, the EDP have a **discretion** in the **evocation of proceedings** that have already been initiated, the exercise of which is reviewed by the Permanent Chamber in Luxembourg. In particular, the **guidelines**[71] drawn up by the EPPO itself are to be considered when weighing up the discretionary powers. According to these, investigation proceedings for which the EPPO offers no added value (for example, because the investigation is already far advanced or because the damage caused to the EU budget is small) should not be evoked as a matter of principle.

21 In other respects, however, an **evocation** should take place. As long as the discretionary decision is based on the criteria of the guidelines, there is usually no deviating instruction by the respective supervising Permanent Chamber. In 2022, there were only 32 instructions to initiate or evoke proceedings in 865 newly initiated proceedings given by a Permanent Chamber throughout the EPPO.[72]

22 Despite its short existence, in **2022** the EPPO was already involved in **1117 investigations across Europe** with a total damage to the EU budget of EUR 14.1 billion.[73] In Germany, the EDP have made generous use of their right of evocation, especially in the area of cross-border VAT fraud. VAT carousel and VAT chain fraud cases constitute by far the largest case volume of the German EDP.[74] Of 114 German EPPO investigations conducted in 2022 with a total damage to the EU budget of EUR 1.8 billion, 66 investigations with a total VAT damage of EUR 1.5 billion were related to these case constellations.[75]

23 Besides, the German EDP deal mainly with customs offences and subsidy fraud. The fact that the lion's share of the investigative proceedings of the German EDP is related to VAT fraud is due, on the one hand, to the fact that many of these proceedings were already pending with the national public prosecutor's offices when the operational activities of the EPPO began in June 2021, as they could not be adequately conducted with

[70] Exceptionally, however, the EPPO can also declare itself competent for minor cases, namely if the case has implications at Union level or the offence was committed by employees of the European Union, Art. 25 para. 2 lit. a and b EPPO-Reg.; Jacobi & Theodorakakou 2025 citing Head of Legal Service EPPO Luca De Matteis, who criticizes the lack of clear and workable criteria in Art. 25 para 3 EPPO Regulation for determining when multiple offences must be prosecuted together and who holds competence, wants practicality reform of the evocation deadline in greater legal certainty, transparency, and protection of defendants' rights. Jacobi & Theodorakakou 2025 citing Pressacco proposing solutions for Art. 25 para 6 in cases of conflicts of competence.
[71] Cf. → Evocation. https://bit.ly/4gCLf1z. Accessed 31 December 2024.
[72] Cf. https://bit.ly/47LiJGX, pp. 12, 68. Accessed 31 December 2024.
[73] Cf. ibid, p. 12.
[74] Cf. already the Annual Report 2022 for Germany. online: https://bit.ly/47LiXOj. as well as Jahn 2021, beck-aktuell. Grenzenlose Strafverfolgung. online: https://bit.ly/3BxwyN6. and Schmudermayer 2018, p. 227.
[75] Cf. EPPO Annuial Report, S. 33.

conventional mutual legal assistance due to the complex cross-border investigative measures. On the other hand, the nature of VAT fraud proceedings means that in the course of the investigations, further investigation complexes quickly emerge during the analysis of the supply routes and payment flows, which then lead to new investigation proceedings.

bb. Conduct of the investigation

Investigation proceedings conducted by an EDP are essentially subject to the same rules as those conducted by a German public prosecutor's office with regard to the investigative powers as such.[76] The **EDP**, as "**masters**" **of the investigation procedure**, are supported in their investigations by the respective local criminal police, customs and tax investigation offices. Especially in the case of VAT carousels and VAT fraud chains, which are usually structured across the *Länder*, it pays off that the EDP have nationwide investigative and prosecutorial powers. **24**

The usual jurisdictional disputes among German public prosecutors and the associated procedural delays do not exist in this respect. On the other hand, as a result of the nationwide jurisdiction, the EDP are confronted with the **regional differences** in the investigating authorities, which they did not have in their work as national public prosecutors, where they always cooperated with "their" locally competent authorities. The regional differences manifest themselves, among other things, in the structure of the investigative file and the level of support. While in some of the German *Länder*, for example, **extensive file notes** on the respective status of the investigation proceedings are common, the investigative work in other *Länder* is limited to **a summary of the findings** in a final report or even to the implementation of operational measures. If several investigating authorities from different regions are involved in one and the same investigation, these differences lead to **delays** in investigations. **25**

Particularly in the federally organized **tax investigation offices**, on whose support the German EDP are absolutely dependent in the VAT fraud proceedings across the *Länder*, there is a lack of a standardized IT infrastructure, so that an electronic data exchange between the tax investigation offices is problematic and virtual meetings between the investigators are often only possible using private hardware. **26**

In addition, the thin staffing in many *Länder* means that extensive VAT carousel proceedings using telecommunication surveillance measures and financial investigations can sometimes not be conducted at all or only slowly. Despite the existence of grounds for arrest, the German EDP often decide to **refrain from applying for pre-trial detention** orders, as they cannot consider the requirement to **accelerate proceedings** (cf. Art. **27**

[76] Zerbes 2023, p. 7.

2 para. 2 sentence 2, Art. 104 GG[77]; s. 121 para. 1 StPO). The establishment of the EPPO in Germany has been successful on the judicial level. At the level of the investigating authorities, however, the **necessary capacities** are **still lacking**. While some tax administrations have prepared for the EPPO in good time and have created investigation capacities for it, others are still overburdened with the new judicial authority in terms of infrastructure. The improvement in criminal prosecution and the seizure of criminal assets sought with the EPPO cannot yet be achieved as desired, at least in Germany.

28 The **investigative measures** available to the EDP result from Article 30 paras. 1 and 4 of the EPPO Regulation, which ultimately refers to the existing national investigative measures. The German EDP thus have all investigative powers from the StPO at their disposal.[78] The competent investigating judge in each case is the investigating judge at the seat of the EDP's place of employment, section 3 para. 3 EUStAG.

29 For **appeals against the judge's decisions**, the competent regional court (*Landgericht*) is appointed, ss. 73 para. 1, 76 GVG.

30 The EDP keep the investigation files in German as an e-file with the file software "e2A", which is common in North Rhine-Westphalia. However, until the introduction of the e-file at the respective competent courts (by 1 January 2026 at the latest)[79], the files are additionally kept in paper form. To enable the members of the Permanent Chamber at the Luxembourg headquarters to fulfil their supervisory duty, **the German-language electronic file** is also stored in the EPPO's internal case management system, which has a high-quality electronic translation tool. This tool works amazingly well, even in legalese. Although, for reasons of best possible objectivity, a Permanent Chamber of which the German EP is a member may never supervise German EPPO proceedings, it is thus sufficiently ensured that the Permanent Chambers can fully comprehend and review the German investigation files.

c) Cross-border cooperation of the EDPs

31 If the national investigative competence of an EDP thus corresponds predominantly to that of a national public prosecutor, it clearly exceeds it in the area of cross-border investigative possibilities. A central provision of the EPPO Regulation for the EDP in this respect is **Art. 31 EPPO Regulation**, with the help of which it is possible without traditional mutual legal assistance to have investigative measures (such as telecommunications surveillance measures, searches or the execution of arrest warrants) carried out

[77] *Grundgesetz*, i.e. the German constitution.
[78] Article 30 (1) of the EPPO Regulation establishes a uniform basic set of classic investigative powers for EPPO procedures, whereby these are minimum powers in each case. Insofar as the national investigative powers go beyond these minimum powers, the EDPs can also fall back on these national investigative powers due to Art. 30 para. 4 EPPO Regulation.
[79] Bundestag Printed Paper 18/9416, p. 42; Köhler 2023, § 32 marginal no. 1.

in another participating Member State by another EDP.[80] This "**assisting**" **EDP** then carries out the measure as if he had ordered it himself. An example: A German EDP conducts a VAT fraud procedure in which company premises in France are to be searched in order to obtain evidence. He applies for a search warrant with the German investigating judge responsible for him and sends this warrant with a so-called assisting request via the EPPO internal case management system to a French EDP, who implements the search with the support of national French investigating authorities. The evidence obtained in France via Art. 31 of the EPPO Regulation is transmitted to the German EDP in charge (handling EDP) and can be used directly in its proceedings (Art. 37 para. 1 of the EPPO Regulation).[81]

32 It is possible, via Art. 31 EPPO Regulation to implement investigation measures in several Member States at the same time with little lead time. Due to the personal contact between the EDPs, the cooperation is **much more efficient** than with traditional mutual legal assistance, where the requesting public prosecutor usually has no contact with the executing authority abroad. Any **agreements** between the EDP are documented in the EPPO's internal case management system. When preparing and implementing the cross-border measures, the EDP are supported, if necessary, by **Case Support Officers (CSO)** from the Luxembourg headquarters, who have been recruited by national investigating authorities from the participating 22 Member States.

33 On the one hand, the **CSOs** represent the **link between the EDP** involved on the one hand and between the **respective national investigating authorities** on the other hand by establishing contact between them in the run-up to the measure and by arranging and moderating joint meetings.

34 In the case of a search measure, the Case Support Officers can also be used as a reporting head, where the information from the respective (sometimes Europe-wide) search locations converges. In addition, the Case Support Officers can analyse payment flows in ongoing investigations and work out connections (e.g. supply relationships, personal interconnections of the traffickers, etc.) between procedural complexes from different participating Member States. In this way, connections in large cross-border VAT carousel fraud proceedings can be revealed. Fraudulent supply or invoice chains and payment flows, which at the national level can only be determined up to the respective national border or at best with costly mutual legal assistance, can thus be further analysed at the EPPO in a **simple way** across borders. Investigation strands from different Member

[80] However, he can only entrust the assisting EDP with measures that are permissible under his national law in the specific case. In some participating Member States, for example, the so-called Source Telecommunications Surveillance is not permissible (see, for example, section 100a (1) sen. 2, 3 German StPO), see Zerbes 2023, p. 13.
[81] Jacobi/Theodorakakou 2025 citing Caianello and Rezende regarding Art. 37 as "being outdated and not sufficiently proactive", favoruing a comphrensivge approach for rules governing *ex ante* judicial authorisation, defence and admissibility of evidence.

States can be put together like pieces of a jigsaw puzzle and lead to a stringent criminal prosecution.

35 One argument is that if the requested measure is subject to judicial review in the executing state, the assisting EDP is required to obtain a judicial order from a court in his Member State.[82] The court in the executing state is then also, if necessary, the legal protection court for a person affected by the measure.[83] However, on the other hand the other argument concerns the question of which standard to be applied by the court, which is contested. Is the court in the executing Member State authorized to carry out a comprehensive legal review, including the substantive concerns that justify the measure in the first place (attainment of the necessary level of suspicion, suitability for obtaining the evidence sought, subsidiarity of the measure), or is it limited to reviewing only the procedural aspects related to the implementation of the investigative measure? The EPPO Regulation is silent on this central legal question in cross-border investigative measures.

36 However, this question has already been submitted to the **ECJ** for a preliminary ruling.[84] In her opinion of 22 June 2023, the Advocate General proposed to limit the competence of the court in the executing state to a purely formal review. A substantive review would make EPPO investigations more cumbersome than those under the **European Investigation Order**. According to the Advocate General, the protection of the fundamental rights of the person concerned is sufficiently considered by the EPPO Regulation.[85] The decision of the ECJ was still pending at the time of writing.

d) Closure of the investigation

37 Once the investigation has been completed, the EDP submits a proposal for the termination of the proceedings to the Permanent Chamber responsible for the **supervision of the case**, Art. 35 EPPO Regulation. The Permanent Chamber is not bound by the EDP's proposed decision.[86] On the contrary, it may instruct the EDP to continue the proceedings or otherwise terminate them, Art. 35 para. 2 EPPO Regulation.

[82] It is true that the EPPO Regulation has introduced the principle of "Single Judicial Authorization" , according to which, even in the case of cross-border measures, a judicial decision only has to be obtained in the Member State of the assisting EDP if the legal systems of both Member States require a judicial order, Art. 31 para. 3 EPPO Regulation. In practice, however, judicial authorization is nevertheless also obtained in the issuing state in order to ensure the greatest possible legal certainty.
[83] On this Wahl 2020, pp. 85, 95.
[84] ECJ, C-281/22; for an analysis emphasizing and argumenting for a broad scope of judicial review see Ahlbrecht 2025, pp. 185–204.
[85] Opinion of AG Ćapeta. online: https://curia.europa.eu/juris/document/document.jsf?text=&docid=274882&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=242480. Accessed 31 December 2024.
[86] Herrnfeld 2021, Art. 36 marginal note 11.

However, at least in German EPPO cases the Permanent Chambers have not made use of this power so far. The EPPO Regulation provides for four **final types of termination** of proceedings: referral and transfer of proceedings to national authorities (**Art. 34** EPPO Regulation), prosecution before national courts (**Art. 36** EPPO Regulation), termination of proceedings (**Art. 39** EPPO Regulation) and simplified prosecution proceedings (**Art. 40** EPPO Regulation). These types of termination of proceedings mentioned in the EPPO Regulation take precedence over the national provisions, but the latter are applicable in addition.[87] In particular, the question of when proceedings are ready for termination is not answered by the EPPO Regulation and is thus governed by national substantive criminal law and criminal procedure law.[88] The supplementary application of national law also leaves the possibility of suspending or provisionally discontinuing proceedings.[89] **38**

If there is **sufficient suspicion** within the meaning of section 170 para. 1 StPO, the German EDP usually votes in favour of bringing charges or filing an application for a penalty order with the respective nationally competent court.[90] If the Permanent Chamber agrees with the proposal, the EDP signs the indictment or the application for a penalty order and sends the files to the respective competent national court. Although the Permanent Chamber is not bound by the EDP's proposal, according to Art. 36 para. 1 sentence 2 EPPO Regulation, it cannot decide to discontinue the proceedings if the EDP's vote is to indict or to apply for a penalty order. **39**

The **interlocutory and main proceedings** follow the rules of the StPO and the GVG, with the special feature that only the EDP and no national prosecutors are authorized to represent the accusation in court. The representation at hearings does not differ from that of national German public prosecutors except for the fact that the EDP, as a result of the nationwide competence to represent at hearings, must familiarize themselves with different regional practices of the courts, just like defence lawyers working nationwide. The appeal proceedings are conducted by an EDP located at the seat of the Federal Public Prosecutor General (*Bundesanwaltschaft*), section 142b para. 1 sentence 2 GVG. **40**

At the Federal Public Prosecutor's Office, a position was therefore created specifically for an EDP, who is also a Federal Public Prosecutor, to handle all appeals in German EPPO proceedings. In the short and medium term, one EDP exclusively responsible for the appeal proceedings is sufficient, But should there be a massive increase in appeal procedures in the long term, it may be necessary to consider increasing the number of staff. **41**

[87] Gut 2022, § 9 marginal note 4.
[88] Gut 2022, § 9 marginal note 6.
[89] Herrnfeld 2021, Art. 35 marginal note 9.
[90] See IV. 2. d) below.

42 The **jurisdiction of the EPPO** ends with the final conclusion of the proceedings, Art. 4 EPPO Regulation. Pursuant to Article 10 para. 1 EUStAG, the execution of the sentence is then carried out by the German public prosecutor's office at the seat of the court of first instance. As the EPPO has already obtained several (partially) **final court sentences**, the transfer of proceedings to the respective national public prosecutors' offices for the initiation and execution of sentence enforcement has already proven itself.[91] It is true, that an outsourcing of the execution of sentences limits the EDP's workload. However, it has the disadvantage that the national public prosecutor's office has no knowledge of the proceedings when it is entrusted with the execution of sentences. In particular, applications and statements on the suspension of the remaining sentence are thus made without the convicted person's conduct in the preliminary, interlocutory and main proceedings being able to be adequately taken into account.

43 If, on the other hand, prosecution is "no longer possible" (Art. 39 EPPO Regulation), the EDP has to propose to the Permanent Chamber to dismiss the proceedings. However, the decision of the Permanent Chamber does not have direct legal effect, so that in the case of dismissal, the EDP is still required to file a formal dismissal order..[92] The grounds for dismissal are directly regulated in Art. 39 of the EPPO Regulation and supersede Section 170 para. 2 StPO, which is therefore also expressly declared inapplicable by Section 3 para. 1 of the EUStAG.[93] It is true that the reasons to dismiss the case listed in Article 39 para. 1 of the EPPO Regulation correspond to those of s. 170 para. 2 StPO insofar as they concern procedural obstacles that cannot be removed.

44 However, the EDP cannot base the dismissal of the case immediately on Article 39 of the EPPO Regulation, but must then file a formal dismissal order according to Section 170 para. 2 StPO without reference to Article 39 of the EPPO Regulation, despite the provision of Section 3 para. 1 EUStAG.

45 The **majority of the German EPPO proceedings**, however, lead to an indictment or an application for a penalty order. The comparatively low rate of dismissals is on the one hand due to the fact that the EPPO does not deal with minor cases. On the other hand, at least in VAT proceedings, there is generally no procedural obstacle of the statute of limitations, since the EPPO can only process proceedings involving offences committed after 27 November 2017 and a 10 or 15-year statute of limitations applies to those cases.

[91] See, for example, LG München II, Judgment of 13 Februar y 2023, W10 Kls 501 Js 8/22; LG Frankfurt am Main, Judgment of 15 February 2023, 5/29 Kls 203 Js 8/21; LG Landshut, Judgment of 5 July 2023, 3 Kls 501 Js 19/22.
[92] Gut 2022, § 9 marginal no. 66.
[93] The grounds for discontinuance in Art. 39 para. 1 lit. a to g EPPO-Regulation concern death, incapacity, amnesty, immunity, statute of limitations, prohibition of double jeopardy and lack of evidence.

The **termination of proceedings against conditions**, which is often practiced in white-collar criminal proceedings – in German law according to s. 153a para. 1 StPO – is also provided for by the EPPO Regulation in Art. 40, as long as the Permanent Chamber agrees.[94] There is a debate going on whether terminating a case according to ss. 153 para. 1, 154, 154a StPO or s. 398 AO[95] is also permissible in EPPO proceedings, since the list of grounds for dismissal in Art. 39 para. 1 EPPO Regulation is intended to be exhaustive according to recital number 81 sentence 2 EPPO Regulation.[96] Article 39 para. 1 of the EPPO Regulation exclusively regulates the termination by the EPPO itself, so that a dismissal or limitation of proceedings by the court in the interlocutory or the main proceedings with the consent of the EPPO is definitely still possible.[97] **46**

A different understanding would mean a breach of the **principle of conferral**. The dogmatic aspect that Article 39 para. 1 of the EPPO Regulation only mentions grounds for a dismissal leading to a *final* conclusion of the proceedings indicates that a termination or limitation of proceedings according to ss. 153 para. 1, 154, 154a StPO or according to s. 398 AO can also be carried out directly by the EPPO. **47**

However, ss. 153 para. 1, 154, 154a StPO, § 398 AO do not have this *final* legal effect.[98] Furthermore, it is contrary to procedural economy that the EPPO must first bring an indictment (which imposes a lot of work) in order to then have the case discontinued or limited by the court at a later stage.[99] Especially **white-collar criminal proceedings**, which regularly consist of many procedural offences, cannot be handled without applying a procedural restriction according to ss. 154, 154a StPO already before bringing charges.[100] Without such a possibility to limit the offences, EPPO proceedings would thus be more cumbersome than proceedings conducted by a national public prosecutor's office for no comprehensible reason. The added value in prosecution desired through the creation of the EPPO would thus be thwarted. **48**

[94] Gut 2022, § 9 marginal no. 104.
[95] *Abgabenordnung*, i.e. the German general tax code.
[96] Cf. also Bundestag printed paper 19/17963, p. 34.
[97] This is explicitly stated in the German explanatory memorandum to the law, Bundestag printed paper 19/17963, p. 34.
[98] Bundestag printed paper 19/17963, p. 34; Gut 2022, § 9 marginal no. 80.
[99] Bundestag printed paper 19/17963, p. 34.
[100] Cf. only Niemeyer and Grube 2021, 11.139: "Particularly in white-collar criminal proceedings with a large number of allegations of offences [...] considerable importance" , as the "restriction of the subject matter of the proceedings to the essentials [... contributes considerably to the acceleration of the proceedings" (="Gerade in Wirtschaftsstrafverfahren mit einer Vielzahl von Tatvorwürfen […] erhebliche Bedeutung" , da die "Beschränkung des Verfahrensstoffes auf das Wesentliche [… erheblich zur Beschleunigung des Verfahrens bei[trägt]").

6. Defence in "German" EPPO proceedings

49 Defence lawyers argue that a "**European defence**" must be established, since the rights of the accused and the defence in EPPO proceedings were at a low level of protection.[101] This concern cannot be shared insofar as the rights of the accused are not lower than in proceedings conducted by a German national public prosecutor's office. Art. 42 EPPO Regulation stipulates that the investigative activities of the EDP are subject to control by the national courts.[102] In Germany, legal protection in preliminary proceedings is therefore governed in particular by sections 98 para. 2 sentence 2, 101 para. 7 StPO.[103]

50 The **defence lawyer's right of access to the files** extends to all parts of the file, including the measures pursuant to Art. 31 of the EPPO Regulation and the decisions of the Permanent Chambers, insofar as they have external effect. Only internal communication between the Permanent Chamber and the EDP is excluded from the right of access to the files. In this respect, however, the same applies as in a proceeding conducted by a national public prosecutor's office, where internal communication is also not subject to the file inspection.[104]

51 There is also **no forum shopping**, which is also feared by defence lawyers. Article 26 para. 4 sentence 1 of the EPPO Regulation stipulates that the proceedings are "as a rule" conducted by an EDP from the Member State with jurisdiction "in which the focus of the criminal activity is" or – in the case of several related offences – "where the bulk of the offences has been committed". In deviation from this, Art. 26 para. 4 sentence 2 of the EPPO Regulation opens up the possibility of conducting proceedings in another Member State with jurisdiction if this is "duly justified taking into account" certain criteria. However, no use has yet been made of this exception as it is only of a theoretical nature and furthermore far from practice. Conducting proceedings entirely (and in extreme cases up to appeal proceedings) in a Member State where there is not the main focus of the offence already fails because the national investigating authorities, who must adhere to their rules of jurisdiction would refrain from supporting the investigation. However, proceedings cannot be conducted without the support of investigating authorities.

52 The possibility for the Permanent Chamber, provided for by Article 26 para. 5 of the EPPO Regulation, to either **reassign the proceedings to an EDP** in another Member State or to merge or split cases and to choose the EDP competent to deal with each case,

[101] Duesberg 2022, 596; Petrasch 2021, 126 (132).
[102] However, Christodoulou, Le parquet européen: prémices d'une autorité judiciaire de l'Union européenne, 2021, p. 343 ff, is misssing uniformity in judicial review of the acts of the EPPO.
[103] Brodowski 2022, § 22 marginal no. 79.
[104] Cf. no. 186 para. 3 sentence 1 RiStBV (=Guidelines for Criminal Proceedings and Fines, Richtlinien für das Straf- und Bußgeldverfahren) as well as Jahn 2021, section 147 marginal no. 32; Schmitt 2023, section 147 marginal no. 13 with reference to Kleinknecht 1977, p. 721.

provided that such decisions are in the general interest of justice, also does not have the potential danger that defence lawyers want to see here to the detriment of the accused's rights. In particular, with regard to the indeterminate legal concept of the general interest of justice, it is feared that this would create an – not even justiciable – arbitrary discretionary instrument that would place public interests above those of the accused.[105]

Moreover, in the **defence lawyers' view**, it was unacceptable that the European Prosecutors and/or EDP had to be heard before such a decision, but not the accused concerned himself.[106] However, the "general interest of justice" does not only include the interests of the prosecution authorities, but also those of the accused.[107] Furthermore, a transfer of the investigative competence to an EDP of another participating Member State is again only possible within the framework of the criteria of Art. 26 para. 4 EPPO Regulation, and thus not arbitrarily. The assignment to an EDP in another Member State is thus only justified if the **main focus of the criminal offence** lies in this country or the majority of the offences were committed there. **53**

Defence lawyers also argue that a further grievance was that the investigative measures of the EDP are always attributable to the EU,[108] so that their actions lie outside the scope of the ECHR according to the case law of the ECtHR and in particular the ***Boivin*** **decision**[109]. The EDP would thus have complete control over their actions and the investigative process, but in return would not be subject to any power-limiting liability according to the standards of the ECHR.[110] This objection must be countered with the fact that the EDP and the national investigating authorities have to observe the principles of the European Constitution, including the Charter of Fundamental Rights of the European **54**

[105] Oehmichen 2022, § 14 marginal no. 47.
[106] Oehmichen 2022, § 14 marginal no. 43.
[107] Herrnfeld 2021, Art. 26 marginal no. 26 with further references.
[108] Cf. Art. 8 (1) EPPO Regulation: "The EPPO shall be an indivisible Union body operating as one single Office with a decentralised structure." Cf. recital 32: "The European Delegated Prosecutors should be an integral part of the EPPO and as such, when investigating and prosecuting offences within the competence of the EPPO, they should act exclusively on behalf and in the name of the EPPO on the territory of their respective Member State. This should entail granting them under this Regulation a functionally and legally independent status which is different from any status under national law."
[109] ECtHR, *Boivin v France et Belgique* and 32 other Member States, no 73250/01, decision of 9 September 2008: "The Court emphasized that the contested decision had been taken by an international tribunal beyond the jurisdiction of the defendant States, in the context of an industrial dispute which fell entirely within the internal legal order of Eurocontrol, an international organisation with a legal personality distinct from that of its member States. It found that at no time did France or Belgium intervene, directly or indirectly, in the dispute, and did not identify in the present case any action or omission by those States or their authorities which might give rise to liability under the Convention." (»Or la Cour souligne que la décision litigieuse a été prise par un tribunal international échappant à la juridiction des Etats défendeurs, dans le cadre d'un conflit du travail qui s'inscrit entièrement dans l'ordre juridique interne d'Eurocontrol, organisation internationale possédant une personnalité juridique distincte de celle de ses Etats membres. Elle constate qu'à aucun moment la France ou la Belgique ne sont intervenues, directement ou indirectement, dans ce litige, et ne relève en l'espèce aucune action ou omission de ces Etats ou de leurs autorités qui serait de nature à engager leur responsabilité au regard de la Convention. »)
[110] Callewaert 2021, p. 24; Zwiers 2011, pp. 460 ff.

Union, according to Article 5 of the EPPO Regulation.[111] It is true that the EDP are not formally bound by the ECHR and the case law of the ECtHR. However, Art. 52 para. 3 of the Charter means that the ECHR and the case law of the ECtHR also apply in EPPO proceedings.[112]

55 The cited imbalance between the defence and the EPPO is rather the other way round. The ever-increasing number of defence lawyers in Europe who specialise in economic and fiscal criminal law is contrasted by a significantly smaller number of EDP in terms of personnel. Moreover, the only 17 EDPs in Germany so far cannot even fall back on a substructure available at a national public prosecutor's office [especially judicial officers (*Rechtspfleger*)[113], economic officers (*Wirtschaftsreferenten*)].

56 In theory, the EDP are to be supported by judicial officers of the national public prosecutor's offices. However, due to the fact that there are already **far too few judicial officers** at the national public prosecutor's offices, they are not in a position to "lend" their judicial officers to the EPPO. As a result, the EDP are often entrusted with the execution of asset recovery measures themselves, which also limits the investigative capacities in terms of time. Another problem is the nationwide representation in court, which the EDP can only carry out themselves in EPPO proceedings and cannot delegate to colleagues at the local public prosecutor's offices. Thus, one of the 17 EDP must be available for each main hearing (*Sitzungsvertretung*), even for short ones, which leads to considerable travel and thus costs and time expenditure. This problem could be countered by the possibility of having national public prosecutors perform at least part of the representation in court.

7. Conclusion and outlook

57 It remains to be said that the EPPO has already proven in the first two years of its operational activity that its establishment was and is a sensible investment in criminal prosecution at the European level. Extensive preliminary proceedings with a foreign connection can now be conducted much **more effectively** (efficiency principle). In particular, due to the possibility of cross-border investigations created by Article 31 of the EPPO Regulation, it is now possible at all to **obtain evidence** from other European Member States in a timely, uncomplicated and legally secure manner while maintaining a level of legal protection that is in accordance with the rule of law and thus usable in court.

[111] Giuffrida 2021, pp. 341, 343; Herrnfeld 2021, Art. 5 marginal no. 5.
[112] Herrnfeld 2021, Art. 5 marginal no. 7.
[113] Pursuant to section 9 sentence 1 EUStAG, section 31 (1) Judicial Officers Act (=*Rechtspflegergesetz*) is not applicable.

The concern that the EPPO has created a disproportionate cost apparatus can be countered by the fact that the **assets secured in the amount of EUR 359 million in 2022** alone exceed the budget of the EPPO sevenfold.[114] For 2021, the refinancing ratio was still threefold.[115] However, the EPPO can only continue to live up to its claim of being a new milestone in the field of criminal prosecution in Europe if the necessary structures are in place at national level. In Germany, it is particularly necessary to **increase the personnel and technical capacities** of the tax investigation offices. **58**

In addition, it would be desirable to establish a nationally competent tax investigation office parallel to the nationally competent EDP as a counterpart to the Federal Criminal Police Office for all German EPPO procedures, so that the investigative work of the EDP is not hindered by the federal structural differences in the tax administrations, but instead a uniform quality standard is guaranteed throughout Germany, combined with a uniform approach to investigations. **59**

Regrettably, the federal authority currently being planned for the creation of a financial crime investigation unit is not intended for the area of tax investigation. Should a federal tax investigation unit not be on the political agenda in the short term, at least firmly established **cross-*Länder* investigation groups** should be set up at the tax investigation offices, which are exclusively responsible for EPPO proceedings. **60**

In addition, consideration should be given to **concentrating jurisdiction at the regional courts seated at the EDP's offices** in order to keep the time and costs of representing the accusation in court within limits. At the European level, it must be ensured that in all participating Member States the offences that fall within the EDP's catalogue of competences are also prosecuted by the EDP. The sometimes-restrictive filing practices of national prosecution authorities in some participating Member States must change so that the cross-border prosecution intended with the establishment of the EPPO sets new standards throughout Europe and does not bleed out. **61**

[114] EPPO Annual Report 2022, p. 64: "In total, the EPPO requested the seizure of more than €516 million and ordered the seizure of more than € 359 million. This amount is seven times the budget of the EPPO in 2022" , cf. https://www.eppo.europa.eu/sites/default/files/2023-05/FINAL%20PRINT%20EPPO%202022%20Annual%20Report%20EN_DE%20WEB.pdf. Accessed 31 December 2024.

[115] EPPO Annual Report 2021, p. 62: "the seizure of more than EUR 147 million was ordered. This amount is more than three times the EPPO's budget in 2021", cf. https://www.eppo.europa.eu/sites/default/files/2022-08/_EPPO-Annual-Report-2021-DE_1.pdf. Accessed 31 December 2024.

II. General introduction

Hauck, Schneider, Laird, Karakocaoğlu Justus-Liebig University of Gießen

"So there is still a lot to be done in the coming years. Only the future will show whether the European Public Prosecutor's Office is actually capable of prosecuting financial fraud against the European Union more effectively. Or whether the application of the different national legal systems represents an obstacle that may even weaken the rights of the accused. Then it will become clear to what extent the European Public Prosecutor's Office could possibly also be a model for European criminal prosecution in other areas. Proposals are already on the table."[116]

62 This part focuses on criminal investigations according to the EPPO Regulation based on national law (measures) in Germany: Review, assessment of the *status quo* in the legislative area and outlook for the law enforcement actions of EDPs in Germany are explored, whereby for any clarification the Internal Rules and College Decisions apply.[117]

1. General remarks

63 Germany has been asking for and investing in studies and many policy considerations on how to protect the EU budget in the past[118] and therefore it celebrated the EPPO being set-up as a true European success in 2021. Recently a lot of good ideas have been proposed for the EPPO, not-yet implemented: The EPPO has been described by *Seiler* "as a potential **driver for the creation of standardised** substantive and **procedural criminal law in the EU**" as she emphasised that federalism does not mean the hierarchy of a centralised system, but rather the fair distribution of competences between the EU and national levels.[119] *Christodoulou* has rightly proposed that the notion of "judicial authority" within the EU needs to be harmonized even more, so that the EPPO can be respected throughout all Member States and wished for a criminal procedure specific to the EPPO mechanism.[120] The **general structure of the EPPO** and its function can be

[116] Fiebig 2021 Deutschlandfunk. Kampf gegen Finanzbetrug. Wie die Europäische Staatsanwaltschaft arbeitet: "Es muss sich also noch einiges zurechtruckeln in den kommenden Jahren. Erst die Zukunft wird zeigen, ob die Europäische Staatsanwaltschaft tatsächlich geeignet ist, finanziellen Betrug zu Lasten der Europäischen Union effektiver zu verfolgen. Oder, ob die Anwendung der verschiedenen nationalen Rechtsordnungen doch ein Hindernis darstellt, das vielleicht sogar die Rechte von Beschuldigten schwächt. Dann wird sich auch zeigen, inwieweit die Europäische Staatsanwaltschaft möglicherweise auch ein Modell für eine europäische Strafverfolgung in anderen Bereichen sein könnte. Vorschläge dafür liegen bereits auf dem Tisch"

[117] EPPO, Access to documents, https://www.eppo.europa.eu/en/documents/documents.

[118] See e.g. Vogel 1993, pp. 170–187 and see Möhrenschlager 1993, pp. 162–169; Wirth 2022, p. 166 et seq.

[119] Seiler 2021, p. 721 et seq. seconly putting the emphasis on the fact that the EPPO must safeguard the rights of the accused and ensure effective judicial control. This is particularly relevant for cross-border cases, where suspects are often in a particularly vulnerable position.

[120] Christodoulou 2021, pp. 411, 412 emphasizing the need for access to the EPPO file in the investigation stage and the establishment of an effective judicial control of the EPPO and last but not least foster again the idea of a "European penal Code" for PIF offences, a prerequisite for a criminal chamber at the ECJ and see mn. 330 et seq., 335 et seq. for fundamental rights.

deduced from the Regulation and its first part (Art. 1–22).[121] In Germany there are currently **16 European delegated public prosecutors** (05/2023)[122] (but many more are planned, **up to 21 in 2023–2026**) in local (city and country) centers (*Länderzentren*) and also having special jurisdictions according to internal administrative agreements (*Verwaltungsvereinbarungen*).[123]

a) Current state of affairs, the EPPO in Germany and the idea of a federal "Financial" criminal state office (*Bundesfinanzkriminalamt*)

Already at the end of May 2022 roughly 65 investigation proceedings had been under way and several indictments had been filed.[124] German and European newspapers started writing about the EPPO and the newspapers in whole Europe slowly started citing and referencing the "**New Kid on the Block**"[125]. One EDP from the Frankfort office reported that investigations together with the *Guardia di Finanza* were conducted in 2021 by virtue of Art. 31 EPPO Regulation quite frequently.[126] A current debate evolved around the specialised police, and tax as well as customs staff (*Ermittlungspersonen*) that work for and with the EDPs.[127] *Christian Lindner*, the current German Federal Minister of Finance, presented in August 2022 **an idea to set up a Federal "Financial" Criminal State Office** (*Bundesfinanzkriminalamt*), whereby it remains open if this could help the EPPO investigations and if it really could combat AML offences in connection with PIF money more effectively. As of 2025 in North-Rhine Westphalia a special country-based system is active operating as a Financial and Tax Budget Control Center (*Landesamt für Bekämpfung der Finanzkriminalität*), a centralized new institution operating for the national as well as the European taxpayers, conducting investigations and hereby helping the EPPO's Regional Center in Cologne.[128] **64**

[121] With a focus on the function and structure Brodowski 2017, pp. 684–692.
[122] They can be easily contacted see Centrum Berlin, https://www.berlin.de/strafverfolgungsbehoerden/europaeische-staatsanwaltschaft/ (Accessed 31 December 2024). Europäische Staatsanwaltschaft; Annegret Ritter-Victor Delegierte Europäische Staatsanwältin; Tobias Lübbert Delegierter Europäischer Staatsanwalt Zentrum Berlin, Turmstraße 22, 10559 Berlin. Tel.: +49 30 9014-3538; Tel.: +49 30 9014-3536; Fax: +49 211 87565-2713; E-Mail <Zentrum-Berlin@d-eusta.de>; Postanschrift Zentrum Berlin; Turmstraße 91, 10559 Berlin.
[123] Landeshaushaltsplan Schleswig-Holstein, Einzelplan 09 Ministerium für Justiz, Europa und Verbraucherschutz, Haushaltsjahr 2021, p. 80. online: https://www.schleswig-hol-stein.de/DE/fachinhalte/H/haushalt_landeshaushalt/Downloads/HH2021/ep09.pdf?__blob=publicationFile&v=1. Accessed 31 December 2024.
[124] See Krause-Ablaß 2022 Der Criminal Compliance Podcast. Einblicke in die Praxis der Europäischen Staatsanwaltschaft (EUStA). online: https://criminal-compliance.podigee.io/102-cr. Accessed 31 December 2024.
[125] Salles 2019, ECA Journal. New kid on the block: the European Public Prosecutor's Office. European Court of Auditors; some opt for enlarging the competence to fight customs fraud and the circumvention of war sanctions Seebon 2024, p. 431 et seq.; see EPPO, Single Programming Document 2024–2026, showcasting the EPPO's multiannual goals in human resources, internal procedures and strategies, https://shorturl.at/P2cKy.
[126] See again Krause-Ablaß 2022 Der Criminal Compliance Podcast. Einblicke in die Praxis der Europäischen Staatsanwaltschaft (EUStA). online: https://criminal-compliance.podigee.io/102-cr. Accessed 31 December 2024.
[127] See Soiné 2022, V. 1, XI. 3et seq. explaining the EPPO to police staff in his book.
[128] See LFB NRW. online: https://www.finanzverwaltung.nrw.de/uebersicht-rubrik-aktuelles-und-presse/pressemitteilungen/landesamt-zur-bekaempfung-der; https://www.finanzverwaltung.nrw.de/uebersicht-ru

b) Integration of the EPPO into the German judicial system

65 The European Public Prosecutor's Office was (well) received in Germany and integrated into the structure of the national judicial system[129], which required long political and legislative debates in 2020 and prior to the final year, in which the EPPO Adoption law entered into force.[130] In comparison to the French Adoption Law the German legislator did not need to deal with an investigating judge and its role in the Criminal Justice System as the institution alike to the still existing French one, the "*Untersuchungsrichter*" was abolished in the German system in 1975 (for the new system in France cf. → in this Compendium).[131]

66 The **German Federal Ministry of Finance** had contacted various stakeholders and finally decided to issue a single, special EPPO law instead of a real integration of the EPPO into the national CPC and Courts Constitution Act. A year after the start of operational work, it was already evident that the system worked on the average and brought more money into the budget than it costs the (Union) taxpayers. [132] To be able to tackle VAT fraud effectively and now to fight it across borders is a great, valuable advantage that other non-European countries do not have. The overriding advantage is that sums are recovered into the European budget by consistently bringing the confiscation of illegally obtained assets to an end, thereby enabling new projects to be initiated at the level of, for example, the fight against climate change.[133]

aa. The tasks of the EDPs

67 The EDPs must decide on investigations. Next, it may be a task to file an indictment in a court in Germany (Art. 36 et seq. EPPO Regulation, see Annex I), a dismissal or an

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brik-aktuelles-und-presse/pressemitteilungen/mit-vernetzung-gegen-finanzkriminalitaet (Accessed 31 December 2024); Dr. Marcus Optendrenk and Markus Füracker had a look on 4th September 2024 and Bavaria was quite interested to see what Germany's most populated Bundesland had installed within its capacity on its own. The new institution is located in Düsseldorf and has roughly a staff number of 1000 officials counteracting financial crimes, see https://www.finanzverwaltung.nrw.de/uebersicht-rubrik-aktuelles-und-presse/pressemitteilungen/aufbau-des landesamtes-zur-bekaempfung. Accessed 31 December 2024.

[129] See already Heger 2020, p. 115 et seq.; Herrnfeld and Esser 2022; explaining the German system in general see Fisher 2021; as well as Huber 2008, pp. 269–372.

[130] Schneider 2020, pp. 12–19.

[131] And see Christodoulou and Schneider 2021 RSC, p. 593 et seq.

[132] See Maurer 2022 Frankfurter Rundschau. EU-Betrugsermittler: "Wir bringen mehr Geld ein, als wir kosten" . online: https://www.fr.de/politik/eu-betrugsermittler-wir-bringen-mehr-geld-ein-als-wir-kosten-91629984.html. Accessed 31 December 2024; Lang 2022, Frankfurter Allgemeine. "Wir bringen mehr Geld ein, als wir kosten" . online: https://www.faz.net/aktuell/wirtschaft/europaeische-staatsanwaltschaft-ermittelt-in-frankfurt-zu-straftaten -zulasten-des-eu-haushalts-18489274.html. Accessed 31 December 2024.

[133] See Maurer 2022 Frankfurter Rundschau. EU-Betrugsermittler: "Wir bringen mehr Geld ein, als wir kosten" . online: https://www.fr.de/politik/eu-betrugsermittler-wir-bringen-mehr-geld-ein-als-wir-kosten-91629984.html. (Accessed 31 December 2024): "Das sind keine Zahlen, die man sich wirklich vorstellen kann. Aber wenn man sich ausmalt, was man mit dem Geld machen könnte: Die Qualifizierung von Langzeitarbeitslosen oder Maßnahmen gegen den Klimawandel beispielsweise – mit den Summen aus zwei, drei unserer Fällen könnte man eine Fülle solcher oder anderer Projekte finanzieren. Wir sind nicht nur hinter den großen Zahlen her. Was wir tun, hat eine ganz praktische Bedeutung und wendet einen hohen gesellschaftlichen Schaden ab"

accelerated procedure (Art. 40). To do this, they must write an expert opinion on the substantive legal situation or at least carry out an analysis of the behaviour of an accused and communicate with the Chamber.

bb. First successful cases

Initial successes were recorded, for example, several successful customs actions with Nordic countries, e.g. Estonia, were carried out in and by the Hamburg center and even a judgment was obtained in Munich in April 2022. Searches are frequently carried out by the authorities that work closely together with the EPPO in Germany by virtue of Art. 28 EPPO Regulation. In 2023 several investigations continue and some processes start e.g. at the country courts in Hamburg, Frankfurt, Landshut and Osnabrück – all related to VAT offences apparently. **68**

cc. An investigation into "organized Crime/illegal gang operations"

One of the latest cases was reported in the media in May 2022: The *Landeskriminalamt Berlin* investigated together with prosecutors from Berlin City center and *Land Brandenburg* in a case of suspected "illegal gang operations". The suspected gang shall have by using at least eight companies throughout Germany abusively requested 'roughly calculated 9,5 € of KfW Quick Loans 2020/*KfW Schnellkredite*'". The money obtained could have been invested in fraudulent sales i.e. tax carousel deals, which stipulated the competence of the EPPO, thus the Berlin center of EDPs.[134] The internal perspective including remarks on optimizing the fight against corruption and anti-money laundering of the EDPs in Germany has already been described in journals, although the EPPO regularly does not adopt these perspectives as representative for its own perspective, which is determined by the European Chief Prosecutor.[135] **69**

[134] Gemeinsame Pressemitteilung mit der Polizei Berlin: Gemeinsamer Ermittlungskomplex mit der Europäischen Staatsanwaltschaft – Vollstreckung von Durchsuchungsbeschlüssen wegen bandenmäßigen Betruges, Pressemitteilung vom 12.05.2022: "Heute Morgen vollstreckten gut 30 Ermittlerinnen und Ermittler des Landeskriminalamtes Berlin im Auftrag der Staatsanwaltschaft Berlin zehn Durchsuchungsbeschlüsse in Wohn- und Geschäftsräumen in Berlin Charlottenburg-Wilmersdorf, Tempelhof-Schöneberg und in Brandenburg. Den fünf tatverdächtigen Männern im Alter von 37 bis 75 Jahren wird vorgeworfen, im Zeitraum zwischen Februar und September 2021 als aus Berlin operierende Bande unter Nutzung von mindestens acht Gesellschaften im gesamten Bundesgebiet missbräuchlich "KfW-Schnellkredite 2020" beantragt zu haben. Die so erlangten Gelder – bislang 9,5 Mio. Euro – sollen dann zu keinem Zeitpunkt für den vorgesehenen Förderzweck, nämlich die Überwindung von vorübergehenden Finanzierungschwierigkeiten im Zusammenhang mit der Corona-Krise, eingesetzt, sondern für eigene Zwecke verwendet worden sein. Einen Teil des Geldes soll die Gruppierung in betrügerische sogenannte Umsatzsteuerkarussellgeschäfte investiert haben. Diese Steuerstraftaten sind Teil eines Ermittlungskomplexes der Europäischen Staatsanwaltschaft, weshalb die Durchsuchungen gemeinsam und in enger Kooperation mit dieser geführt werden. Die Durchsuchungen führten zum Auffinden von umfangreichen Beweismitteln wie Geschäftsunterlagen und Speichermedien. Zudem wurden Vermögensarrestbeschlüsse in Höhe von insgesamt 7.560.819 Euro vollzogen. Die Ermittlungen dauern an"

[135] Krause-Ablaß 2021, pp. 155–158.

c) German judicature on the EPPO's activities

70 There is currently **no specific judicature in Germany that relates only to the actions of the EPPO** in Germany.[136] Nevertheless, the respective provisions of national law (e.g. s. 152 para. 2 CPC) can be applied in connection with comparable national cases and the fraud fields (the so-called EU fraud typology) as well as the usual jurisprudence relating to the actions of the prosecutor in the investigation phase (see below → protection of the core area of fundamental rights of the suspect and accused, Art. 30 EPPO Regulation, mn. 1). Two legal decision-making areas come into question: the ordinary courts, in this case the criminal jurisdiction with the Federal Court of Justice as the appellate instance, and the administrative jurisdiction for OLAF investigations, whereby it must be noted that, if necessary, the fiscal administration also acts and thus the fiscal court code, which is outsourced in the German system, applies.

71 For example in the area of the criminal case law, researching the (German) legal databases already provides a picture of the investigative area of the EDPs and EDP centers in Germany.[137] The investigations and the possibilities are not limitless, but, like national investigations, they are also the subject of controversial debates on legal terms, e.g. the initial suspicion or the scope of the investigative powers, the severity of the interference with personal data etc. The German Federal Commissioner for Data Protection and Freedom of Information is already aware of the scope of investigative powers and the rights of suspects or suspects.[138]

72 As in national criminal proceedings, communication with the public also takes place via the press offices of the courts (*Pressemitteilungen*) and the European Public Prosecutor's Office itself, which both publishes on its website and manages lively exchanges with the European community of citizens via Twitter. However, due to recent events regarding Twitter, it is not certain that this medium will last, so other channels that are in the public domain and open to the public may be sought.

[136] A first decision, which was published was issued by the OLG München to a measure according to Art. 33 EPPO Regulation in May 2022.
[137] Krause-Ablaß 2022.
[138] BfDi. online: https://www.bfdi.bund.de/DE/Buerger/Inhalte/Polizei-Strafjustiz/International/Europäische_Einrichtungen_zur_Strafverfolgung.html. Accessed 31 December 2024.

d) Local EDP Centers

The representation of the local EDP centers in Germany is somehow still not particularly informative.[139] Even the EPPO's homepage on the national centers is limited to the possibility of uploading accusations and criminal complaints and the presentation of the names of the EDPs. **73**

Summarizing the first year it can be concluded that the investigations work if optimizations continue to be looked for[140] and the involvement of national authorities such as the police, customs and financial authorities can certainly still be better coordinated and trained[141]. Eventually it can be remarked that the German Judicial School in Trier has not yet offered any further training for national judges and prosecutors on the European Public Prosecutor's Office – what is problematic as EDPs and national authorities report the need for such advanced trainings.[142] **74**

e) Who do the German EDPs work with?

German judges and prosecutors can due to their status in Art. 97 German Basic Law not easily be obliged to take training sessions in law ("*Fortbildungen*") on the job. Still the Judicial Academies of the Länder, ERA and the Federal University (*Bundeshochschule*) **75**

[139] See e.g. Hesse. online: https://staatskanzlei.hessen.de/Berlin-Europa-und-die-Welt/Hessen-in-Europa/Europaeische-Institutionen-in-Hessen/Europaeische-Staatsanwaltschaft. Accessed 31 December 2024.

[140] At the beginning EDPs in Berlin reported that they had problems with the IT systems (they worked on three, different, not really connected systems at the beginning – especially because of data protection issues), see – Oehmichen and Röth 2022, Rechtsanwaltssozietät Liebert & Röth. Die Europäische Staatsanwaltschaft – Gespräch in Berlin. On a dark desert highway: mit viel "European spirit". online: https://www.liebert-roeth.de/de/rechtsgebiete/strafrecht/240-die-europaeische-staatsanwaltschaft-gespraech-in-berlin. Accessed 31 December 2024.

[141] Berlin based EDPs reported that some authorities – especially administrative ones – had not really recognized that the EPPO now really exists and the flow & transfer of information was therefore low: "Aber viele haben noch nicht mitbekommen, dass es uns gibt. Es gibt unzählige Behörden, die da in Betracht kommen; z. B. hat jedes Bezirksamt, jede Universität mit EU-Subventionen zu tun. Daneben sind die Staatsanwaltschaften zur Vorlage von Ermittlungsverfahren verpflichtet, die in den Zuständigkeitsbereich der EUStA fallen können", see Oehmichen and Röth 2022, Rechtsanwaltssozietät Liebert & Röth. Die Europäische Staatsanwaltschaft – Gespräch in Berlin. On a dark desert highway: mit viel "European spirit", online: https://www.liebert-roeth.de/de/rechtsgebiete/strafrecht/240-die-europaeische-staatsanwaltschaft-gespraech-in-berlin. Accessed 31 December 2024.

[142] Krause-Ablaß 2021, pp. 155–158: "Bei der Kriminalpolizei setzen Beförderungen oftmals eine größtmögliche "Verwendungsbreite" voraus, die für an Wirtschaftsstrafrecht interessierte Polizeibeamte keinerlei Anreiz bietet, sich längerfristig mit dieser Materie auseinanderzusetzen. Zum anderen fehlt es in den meisten Bundesländern an spezifischen Ausbildungswegen und angemessen besoldeten Einstiegsmöglichkeiten für wirtschaftsstrafrechtlich interessierte Anwärter. [...] Nur selten begleitet ein Staatsanwalt ein jahrelang dauerndes Umfangsverfahren von der Verfahrenseinleitung bis zum Urteil erster Instanz. Stattdessen werden Umfangsverfahren von Dezernent zu Dezernent weiter "vererbt" , was zur Folge hat, dass die Ermittlungen nicht zielgerichtet, sondern schleppend vorangehen. Bei den Gerichten bleiben solche Verfahren wegen der spiegelbildlich gleichen personellen Situation dann wiederum Jahre liegen, bis über die Anklage entschieden wird, sofern nicht die Haft eines Angeschuldigten ein schnelleres Handeln erfordert. Auch viele Richter scheuen die Tätigkeit in einer Wirtschaftsstrafkammer, da ihnen die hierfür nötigen fachspezifischen Kenntnisse fehlen und mehrtätige Hauptverhandlungen samt Vor-und Nachbereitung zusätzlich zur Dezernatsarbeit sehr zeitintensiv sind und eine andere Erledigungsquote bringen als z. B. Betäubungsmittelstrafverfahren. [...] Doch kann die EUStA auch nationale Missstände im Bereich der Korruptions- und Geldwäschebekämpfung beseitigen? Die Antwort heißt: Jein",[scil. "*Jein*" means not "yes" not "no"].

offer further workshops. Besides that the chairs of Criminal Law organize their own workshops for prosecutors and additional staff. The customs police is well organized.[143] The police schools have taken up the subject sparsely. It is known that police, customs and tax authorities did not focus on further special training but used the well-known structures investigating in similar national economic affairs and offences. Thus trained investigators in the specific areas of fraud are used as support. The **professions that support the EDPs** are therefore **very diverse**. The counties like NRW e.g. have now realized that the structure could be optimized and want to talk to the Federal Politics and make changes on their level of the Länder.[144] The German tax police (*Steuerfahndung*) is now a cornerstone and authority to present information to the EPPO. One could say that **the success of the EPPO depends on the national authorities** like the German (NRW-based or Bavaria based) tax police, which can pre-investigate VAT fraud cases and then notify the EPPO of any suspicion into fraud detrimental to the Union.[145]

f) Budget of the EDPs in Germany

76 The budget of the state of Berlin calculates the **costs for the EDPs** and the local center for the coming years[146]:

[143] See GwP, Gruppe Zoll/Bundespolizei/Bezirksgrupen. Online: https://www.gdp.de/gdp/gdpbupo.nsf/id/dg_13_bzg_zoll_home. Accessed 31 December 2024.

[144] See Finanzministerkonferenz; Gemeinsamer Kampf gegen den Steuerbetrug, https://www.land.nrw/pressemitteilung/gemeinsamer-kampf-gegen-den-steuerbetrug (Accessed 31 December 2024) invited Laura Kodruta Kövesi in 2023 to share her views and position. The Minister of NRW said: "North Rhine-Westphalia expressly welcomes the establishment of the European Public Prosecutor's Office," emphasizes Minister Dr. Optendrenk. With it, an important building block was created in order to be able to cooperatively and transnationally identify large cases of VAT evasion with massive damage. "The North Rhine-Westphalian tax investigation offices work together with the local European public prosecutors in a spirit of trust. There are now various investigations that are being conducted successfully in close cooperation," says Dr. Optendrenk.
In general, the prosecution of tax evasion is a priority concern of the North Rhine-Westphalian state government. Work processes, organisational structures and technical equipment of the tax investigation are constantly checked and adapted to new criminal procedures. Personnel developments are also continuously monitored and personnel requirements are adjusted accordingly. The Ministry of Finance and the Higher Finance Directorate of North Rhine-Westphalia are in ongoing dialogue with their colleagues in the tax offices for criminal tax law and tax investigation. "In addition, I will make the fight against tax crime and money laundering the main topic of this year's annual conference of finance ministers in Münster," announces Minister Dr. Optendrenk on" It remains to be seen if this words persist in reality and praxis in the next years to come.

[145] See European Times 2023, EU-Untersuchung wegen grenzüberschreitendem Mehrwertsteuerbetrug in Höhe von ca. 32 Millionen Euro in 10 Ländern. online: https://www.europeantimes.news/de/2023/01/eu-untersuchung-wegen-grenz%C3%BCberschreitendem-mehrwertsteuerbetrug-in-h%C3%B6he-von-ca.-32-millionen-euro-in-10-l%C3%A4ndern/ (Accessed 31 December 2024): "The investigation into the intra-community fraud scheme involving missing traders began in 2021, shortly after the EPPO became operational. This is the third day of action in the investigation and it is the first time suspects have been arrested. AirPods worth 5.2 million euros were secured on the first two days of the campaign. The goal is to collect evidence and uncover more information about the organized criminal group that trades small electronic devices from Germany and sells them across Europe via so-called missing traders.
This action would not have been possible without the support of the German tax investigators in Chemnitz, Würzburg, Nuremberg and Berlin"

[146] Haushaltsplan von Berlin 2022/2023, Band 6 Einzelplan 06 Justiz, Verbraucherschutz und Antidiskriminierung, Vorabdruck zur Beratung im Abgeordnetenhaus, pp. 99–102, 359.

"General explanation A. General and budget planning focal points/priorities In the Berlin Centre of the EPPO, the European Delegated Prosecutors conduct decentralised investigations and prosecutorial measures at the national level on behalf of and in the name of the European Public Prosecutor's Office to protect the financial interests of the European Union. For this purpose, national authorities provide the European Delegated Prosecutors with the resources and equipment necessary for performing their duties and ensuring full integration into the national prosecutorial authorities. The general working conditions and the work environment of the European Delegated Prosecutors fall under the responsibility of the competent national justice authorities.

Budgetary note

Sums in EURO

Titel	Fkt	Definition	Ansatz 2022	Ansatz 2023	Ansatz 2021	Ist (Rest/R) 2020
		Revenue				
11979 (neu)	**051**	**Miscellaneous revenue**	**4.000**	**4.000**		
23211 (neu)	**051**	**Reimbursement of expenditures by the federal states**	**466.000**	**569.000**		

Ersatz aus anderen Bundesländern, die dem Zentrumsland Berlin zugeordnet sind, für Auslagen im Ermittlungsverfahren. Hier Personalausgaben für angestellte Wirtschaftreferent*innen der Staatsanwaltschaft Berlin, die im Wege der Amtshilfe für die EUStA tätig werden.[147]

		Total Revenue	**470.000**	**573.000**	**—**	
		Percentage change	**—**	**21,9 %**		
		Expenditure				
42201 (neu)	**051**	**Salaries of regular civil servants**	**244.000**	**298.000**		
42801 (neu)	**051**	**Remuneration of regular salaried employees under collective agreements**	**138.000**	**192.000**		
44100 (neu)	**051**	**Allowances for staff**	**1.000**	**1.000**		
44379 (neu)	**051**	**Other welfare benefits for staff**	**1.000**	**1.000**		

[147] Substitute from other federal states, which are assigned to the central state of Berlin, for expenses in the investigation process. Here personnel expenses for employed business officers of the public prosecutor's office in Berlin, who work for the EUStA by way of administrative assistance.

Sicherheitsmaßnahmen für Dienstkräfte im Rahmen der gesetzlichen Fürsorgepflicht; ärztliche Untersuchungen von Dienstkräften sowie vertragliche Vereinbarung mit der Charité zum Arbeitsschutz- und Arbeitssicherheitsgesetz. [148]

51101 (neu)	**051**	**Office supplies**	**10.000**	**10.000**	

Schreib- und Bürobedarf inkl. Papierkosten	9.000 €
Bücher, Zeitschriften[149]	1.000 €
	10.000 €

51140 (neu)	**051**	**Devices, furnishings, and operational equipment**	**5.000**	**5.000**	

Neu- und Ersatzbeschaffung, Wartung und Instandsetzung von Geräten, technischen Einrichtungen und Ausstattungen[150]

51925 (neu)	**051**	**User-specific incidental costs within the scope of facility management**	**40.000**	**40.000**	

Sicherheitstechnische Ertüchtigung der Räume und Aktenlager der EUStA über die Haushaltsjahre 2022 und 2023[151]

Costs for the creation of secure storage facilities	20.000 €
Costs for construction measures to implement security requirements	20.000 €
	40.000 €

52501 (neu)	**051**	**Initial and continuing training**	**5.000**	**5.000**	

The activities at the European Public Prosecutor's Office require ongoing training in European legal issues. Furthermore, all employees must have a good knowledge of English, the working language of the European Public Prosecutor's Office.

Beträge in EURO

Titel	Fkt	Bezeichnung	Ansatz 2022	Ansatz 2023	Ansatz 2021	Ist (Rest/R) 2020
52601 (neu)	**051**	**Gerichts- und ähnliche Kosten**	**20.000**	**20.000**		

Auslagen nach dem Gesetz über die Entschädigung von Zeugen und Sachverständigen und sonstige Verfahrensausgaben, insbesondere Kosten für Gutachten und Maßnahmen der Telefonüberwachung.[152]

[148] Security measures for employees within the framework of the statutory duty of care; Medical examinations of employees and contractual agreement with the Charité on the Occupational Health and Safety Act.
[149] Writing and office supplies including paper costs, Books and magazines.
[150] New and replacement procurement, maintenance and repair of devices, technical facilities and equipment.
[151] Security upgrade of the rooms and file storage of the EUStA over the budget years 2022 and 2023.
[152] Expenses according to the law on the compensation of witnesses and experts and other procedural expenses, in particular costs for expert opinions and telephone surveillance measures.

52703 051 (neu)	**Dienstreisen**	**20.000**	**20.000**	

Die Delegierten der EUStA müssen zur Wahrnehmung von Sitzungsvertretungen bei Amtsgerichten und Landgerichten sowie zur Teilnahme an Ermittlungshandlungen im In- und Ausland und zur Kontaktpflege mit Ermittlungsdienststellen in einem erheblichen Umfang reisen.[153]

1.	Bahncard 200 für 2 Personen	8.000 €
2.	anderweitige Verkehrsmittel, Übernachtungen, Tagespauschalen[154]	12.000 €
		20.000 €

54079 051 (neu)	**Verschiedene Ausgaben**	**5.000**	**5.000**	

63201 051 (neu)	**Ersatz von Verwaltungsausgaben an Länder**	**4.000**	**4.000**	

Erstattung der Aufwände für IT-Dienstleistungen gegenüber NRW gemäß der Verwaltungsvereinbarung über die Errichtung und Unterhaltung der IT-Dienstleistungen auf nationaler Ebene für die in Deutschland tätigen Delegierten Europäischen Staatsanwälte.[155]

68124 051 (neu)	**Belohnungen**	**1.000**	**1.000**	

Gemäß der Gemeinsamen Allgemeinen Verfügung über die Aussetzung von Belohnungen für die Mitwirkung von Privatpersonen bei der Aufklärung strafbarer Handlungen oder der Ergreifung flüchtiger Straftäterinnen und Straftäter können Belohnungen ausgelobt werden.[156]

[153] The delegates of the EPPO have to travel to a considerable extent to represent them at meetings of local and regional courts, to take part in investigations at home and abroad and to maintain contact with investigative services.
[154] Bahncard 200 for 2 people; other means of transport, overnight stays, daily flat rates.
[155] Reimbursement of expenses for IT services to NRW in accordance with the administrative agreement on the establishment and maintenance of IT services at national level for the European Delegated Prosecutors working in Germany.
[156] According to the joint general decree on the suspension of rewards for the cooperation of private individuals in the investigation of criminal offences or the apprehension of absconders, rewards can be offered.

Gesamtausgaben 494.000 602.000 — Prozentuale Veränderung — 21,9 %

	Closure of Chapter 0614				
		4.000	**4.000**		
111-186	Administrative revenue, revenue from debt service and similar sources			—	—
211-299	Revenue from allocations and grants, excluding those for investments	**466.000**	**569.000**	—	—
	Total revenue	**470.000**	**573.000**	—	
411-462	Personnel expenses	**384.000**	**492.000**	—	—
511-549	Material administrative expenses	**105.000**	**105.000**	—	—
611-699	Expenditure for allocations and grants, excluding investment-related grants	**5.000**	**5.000**	—	—
	Total Expenditure	**494.000**	**602.000**	—	
	Surplus ( ) / Deficit (-)	**-24.000**	**-29.000**	—	

77 Both budget invoices for 2022 and 2023 still show significant deficits for the establishment of the EPPO in Berlin. However, these should be closed in 2023, since numerous EPPO proceedings in Germany are already pending at the regional courts in Germany. For a selection of procedures see → "Art. 26 Frauds" below. There are **five EPPO Regional Offices in Germany**. If calculating the sum to almost 600.00 euros per regional facility in a central country, the total expenditure for the EPPO in Germany must almost be (roughly calculated) 3.000.000 million euros.[157] The EPPO would have to bring in more than 3 million in Germany, at least according to the current, rough estimate, in order not to underperform.

g) Supranational law enforcement

78 However, it must not be forgotten that the EPPO as a **supranational law enforcement agency** that operates across Europe, **cannot be measured purely by the costs in a country**, which is why, strictly speaking, the calculation made is out of the question, because it is about spending much more than 3 million euros on maintaining law enforcement. It is about maintaining a **values- & norms-based Europe** that is strong in investigating violations of EU frauds, the **PIF Acquis area**, and also capable of strong enforcement of criminal prosecutions following successful criminal proceedings where within the framework of the establishing the truth it turns out that the accused is actually

[157] If one compares the actions of the EPPO with the European dunning procedure and the costs incurred for this, the expenses for the EPPO can still be classified as low, see State Budget Plan Berlin, 2022/23, p. 166 et seq.

guilty. In addition, the most recent actions of the Regional offices in Germany give a very good outlook and show that the EPPO in Germany already does secure **millions (in two cases alone) in revenue in prospect** with **financially heavy VAT fraud proceedings**.

h) Expenses and remuneration of German EDPs

Last but not least this introduction shall take a look at the expenses for a single EDP alone, so his/her remuneration. The Berlin State Budget even calculates the costs and **remunerations for the EDPs** and herewith creates transparency: **79**

0614 – 2022/2023 European Public Prosecutor's Office

	Remuneration		Staffing/Beschäftigungspositionen			
Designation Remuneration Group	2022	Vermerke	2023	Vermerke	2021	Vermerke
42201 – Remuneration of Regular Civil Servants (EDPs) Teilplan A						
Senior Public Prosecutor **R3**	1,000		1,000			0,000
Senior Public Prosecutor **R2**	1,000		1,000			0,000
Chief Administrative Inspector	**A9S**	**0,000**		**1,000**	**1,000** *(0140)*	**0,000**
Senior Judicial Officer	A6S	1,000	1,000 *(0327)*	1,000	1,000 *(0327)*	0,000
Subtotal:		3,000		4,000		0,000
Partial Total (Subsection A):		3,000		4,000		0,000
Total:		3,000		4,000		0,000

Position Notes:
0140 – Position may also be filled by personnel from the "mid-level judicial service" or the "mid-level administrative service in correctional facilities".
0327 – Position includes allowance under Footnote 6 to Salary Group A6 BBesO, transitional version Berlin.

42801 – Salaries of Regular Public Sector Employees
Subsection A

Public Sector Employee	E9A	1,500	1,500	0,000
Public Sector Employee	E6	1,000	2,000	0,000
Public Sector Employee in Service Units (Court/Public Prosecutor's Office)				
Subtotal:		2,500	3,500	0,000
Partial Total (Subsection A)		2,500	3,500	0,000

The calculation of costs is also part of the centrum countries in Germany: **80**

State Budget Plan Schleswig-Holstein, Fiscal Year 2021 Section 09 – Ministry of Justice, European Affairs and Consumer Protection 9 Reimbursement of Costs for Delegated European Prosecutors (DEUStA) €150,000 €150,000 €0

81 Explanatory Notes: "Budgeted here are the proportional personnel costs for prosecutors from Schleswig-Holstein who are assigned to these EPPO central offices and, in part, seconded to the respective state justice administrations. The personnel costs corresponding to this secondment portion are to be reimbursed to the respective central state by Schleswig-Holstein at a rate of 50%."[158]

i) Short outlook: Europe, EPPO and Germany 2030

82 This clearly shows the **Länder and their finance ministries** are the ones to address if the EPPO and its Chief Prosecutors want to change or amend the situation regarding investigations in one of the regional, **Länder based centers in Germany**. Only these ministries can communicate with the justice ministers and the ministers of interior politics, e.g. police related matters. All in all the money for the actions by the EPPO will be granted by policy and budget considerations of the financial ministers.

83 Business officers (*Wirtschaftsreferenten*) and interpreters can be involved in EPPO procedures in Germany. Judicial officers are also involved (e.g. in the case of measures pursuant to Section 31 of the Judicial Officers Act and Art. 20 para. 1 (d) of the EPPO Ordinance "Freezing of Assets"). In this area there is still room for improvements.

84 Both interpreters, business consultants and lay judges (honorary judges) can assert claims for compensation for their activities (in EPPO criminal proceedings, see JVEG below → Art. 30 para. 1 (c)). The 2022/23 budget of the State of Berlin shows, as shown (below → III. "Sources of Law") in an excerpt from the original, that the **federal states** (depending on whether they are central or non-central EPPO countries) **in Germany are responsible for the working conditions of the EDPs**. A country's judiciary expenditure should therefore continue to look very closely at the activities of the EPPO in Germany, because according to the current situation, the EPPO "brings in more cash" than it costs (see → FAZ, 11/25/22).

[158] According to Regulation (EU) No. 2017/1939, the European Public Prosecutor's Office (EUStA) is to start work in the central states of Bavaria, Berlin, Hamburg, Hesse and North Rhine-Westphalia in 2020. Estimated are the pro rata personnel expenses of the state for public prosecutors from Schleswig-Holstein, who are assigned to the planned centers of the EUStA and are also seconded proportionately to the state judiciary administrations. Half of the personnel expenses corresponding to this part of the secondment are to be reimbursed to the respective central state of Schleswig-Holstein.

j) Typical structure of proceedings of an EPPO Investigation in Germany and Guide of tasks for EDPs, judges, defence lawyers

Note to Readers, such as EDPs, investigating judge, remand judge, presiding judge of the Economic Criminal Chamber, court-appointed defence counsel, privately retained defence counsel, investigative personnel pursuant to s. 152 para. 2 Courts Constitution Act. This preliminary note on the volume provides a concise overview of the structure and topics within this volume, helping to efficiently locate relevant sections, understand the **procedural flow of an EPPO investigation in Germany**, and access essential legal references with ease & by indicating where to read more below (shown by this symbol →).

Any EPPO investigation, led by one of the more than twenty German **EDPs**, who have to handle various **procedural tasks**[159], in one of the five regional centres, begins with **sufficient factual indications** of the possible commission of a **criminal PIF offence** against someone (see below → PIF offences B. 2. B) cc.), which do not yet have to be directed against a specific individual (*Beschuldigter*) or company but only a simple unknown natural person or legal person. This requires the **assignment of an EPPO Case Number** (for new proceedings, designated in Germany with prefixes such as Js or UJs). **85**

For example, based on **criminal investigation experience**, it may be determined that e.g. "Tax Investigator (Witness P) established that the company 'T4' was economically completely inactive at the time and had no employees".[160] This assessment by a tax **86**

[159] The criminal procedural work obligations/tasks placed on the EDP by supranational law, national law, Union soft law e.g. by Internal Rules of Procedure or Chamber Rules from the initiation of proceedings, through orders (*Verfügungen*) issued using the procedural style typical for Germany (*Verfügungstechnik,*, normally EDPs are senior prosecutors and will know this, but in case, see Solbach and Auchter-mainz 2022, p. 28 et seq. with many examples), the cooperation with the registry (*Geschäftsstelle/Serviceeinheit*), investigative personnel and the courts, up to the final order concluding each case (*Abschlussverfügung*) at the outset are extensive: duties of registration in the EPPO's Case Management System, creation of national case files, communication with investigative authorities, authority to order measures, oversight of enforcement actions, concurrent trial duties, conducting interviews, initiation of new proceedings, etc.: [Typical steps in the EPPO investigation phase] **1.** Initial suspicion/indications of PIF offences, **2.** Notification by customs, tax investigation authorities, police, OLAF, or other competent bodies, **3.** Examination of EPPO jurisdiction pursuant to Articles 22 et seq. of the EPPO Regulation, **4.** Distinction between EPPO and national jurisdiction, **5.** Decision to accept or reject the case, **6.** Formal initiation of investigation by the EDP (below → Article 26 EPPO Regulation), **7.** Entry into the EPPO Case Management System, **8.** Registration of suspects and the facts giving rise to suspicion, **9.** Ordering and conducting investigative measures in accordance with German CPC, **10.** Witness interviews, searches and seizures, telecommunications surveillance, asset seizure (see below → Art. 30 EPPO Regulation), **11.** Cooperation with police, tax investigators, and customs authorities, **12.** Information exchange with other EDPs via the central EPPO office in Luxembourg, **13.** Issuance of a European Arrest Warrant where applicable (→ Article 33 EPPO Regulation), **14.** Mutual legal assistance within the EU via EPPO channels, **15.** Coordination of cross-border investigations through the central office, **16.** Decision to indict or discontinue the case (Article 39 EPPO Regulation), **17.** Drafting the indictment under German law (§ 170 para 1 CPC), **18.** Submission to the competent Regional Court, **19**. Representation of the prosecution by the EDP at trial, **20.** Application of national substantive and procedural criminal law, **21.** Application for confiscation of instrumentalities or proceeds of crime, **22.** Cooperation with asset recovery bodies, **23.** Responsibility for lodging or responding to appeals, **24.** Participation in appellate or review proceedings.

[160] Regional Court [LG] Münster, 7th Criminal Division, judgment of 7 March 2008 – 44 Js 1032/02 (6/06), margin no. 88).

police offer may than lead to **notification** obligations, **reporting obligations acc. to the EPPO Regulation** (see below → 2. a) on competence and 2. b) PIF crime indications); and cf. EPPO Crime Reports) or e.g. pursuant to e.g. section 141 of the General Administrative Regulation for Tax Police and Public Prosecutors (AStBV) (see below →).

87 Additional **indicators for PIF crimes**, e.g. **VAT fraud carousels** may include:

e.g. contradictory witness statements, *de facto* management of a trade structure e.g. with electronic goods by several individuals[161], the presence of typically easily shiftable goods (formerly cars, now smaller items such as Apple AirPods, face masks, electronic certificates[162]), the failure of a purported company to pay social security contributions (a so-called **missing trader**), sale of goods after midnight, involvement of multiple 'straw men', etc.

88 At the **beginning** of an **EPPO investigation**, measures must be taken to **secure** the criminal **proceedings** for the enforcement of the state's potential criminal claim (*Strafanspruch*, cf. BVerfG 20, 45 (49)), i.e. measures aimed at the witness or even against suspects, which may be achieved by arrest or securing the suspect (for the term "suspect", see mn. 96). This may include an application for an **arrest warrant** pursuant to ss. 112 et seq. CPC, **or**, in cases where the suspect is located in another EU Member State – e.g. in the case of a VAT carousel – a **European Arrest Warrant** (EAW) pursuant to Article 33 para. 2 EPPO Regulation (see below → Art. 33) in conjunction with s. 83a para. 1, Nos. 3 and 5 of the Law on International Legal Assistance (IRG), and Article 8 lit. d and e of the Framework Decision 2002/584/JHA of the European Council[163]. Prosecutors are required to **use the standard forms** stored in the system or obtainable via the registry (for the defence provision in this EPPO phase, see below → B. 6.).

89 In cases of suspected VAT carousel fraud, **extradition** is often successful[164]. An arrest warrant under Section 112 CPC may be issued if:

1 There is **strong suspicion of an offence**, e.g. pursuant to Section 370 of the Fiscal Code (AO) and Section 27 of the Criminal Code (StGB) for involvement in a VAT carousel;

[161] LG Regensburg, 6 KLs 505 Js 6/24 (**an EPPO case**), which, we could analyse by obtaining the judgment, and which dealt with organised VAT evasion involving Apple AirPods and questions concerning *de facto* management (*faktische Geschäftsführung*), as addressed by the Bavarian Higher Regional Court (cf. BayObLG NJW 1997, 1936), which held that six out of eight criteria must be met to establish *de facto* managerial responsibility. These include determining company policy, hiring employees, shaping business relations with contractual partners, negotiating with lenders, setting salary levels, making decisions on tax matters, and controlling accounting. In this case, these elements were identified based on chat transcripts.
[162] See above → A. I. for the full list of recent EPPO cases in Germany.
[163] Cf. OJ 2002, L 190, p. 1.
[164] Higher Regional Court [KG] decision of 15 March 2016 – (4) 151 AuslA 4-16 (23/16) relating to a carousel involving IT goods, BeckRS 2016, 9285.

2 A **ground for detention** exists, e.g. the suspect has no fixed residence in Germany (e.g. residing in Morocco) and is suspected of absconding; and
3 Detention is **proportionate**.

90 If the suspect's whereabouts i.e. **location** are **known** (1), a person search for arrest (*Ausschreibung zur Festnahme*) must be initiated under s. 131 CPC e.g. in the EPPO's VAT carousel and PIF offences cases, provided the **conditions for an arrest warrant** are met. If the suspect's "**whereabouts**" are **unknown** (2), a search to determine the place of residence under s. 131a CPC (*Ausschreibung zur Aufenthaltermittlung*) must be initiated – this also requires the individual to qualify as a suspect.

91 Investigators involved in the case (police, tax officers, customs officials, depending on the PIF offence) typically initiate questioning pursuant to ss. 133 et seq. and 136 CPC. As EDP one is involved in these measures, as they have the authority to order such actions (*Anordnungskompetenz*) under ss. 112, 131, 131a and 133 CPC if the EPPO has competence under Articles 22 ff. EPPO Regulation.[165]

92 The suspect may apply for suspension of detention (*Haftverschonung*), though appeals in tax-related offences are rarely successful.[166] During questioning, the suspect's procedural rights apply, especially the **right to remain silent**. In relation to the filing of annual VAT returns, courts have ruled:

> "While the obligation to submit the 2011 annual VAT return was suspended following the initiation of tax criminal proceedings – based on the principle that no one is obliged to incriminate themselves (*nemo tenetur se ipsum accusare*) – this principle does not justify committing a new offence by submitting a false return mirroring previous preliminary returns" (cf. OLG Frankfurt, decision of 11 July 2005 – 1 Ws 11/04)."[167]

93 Given the **substantial tax losses** determined by EDPs from 2021 to 31 December 2024 in VAT **carousel cases**, EDPs must consider contacting Asset Recovery partners (*Vermögensabschöpfungsstellen*[168]), **immediate action** to secure from the suspect obtained money, things or rights from PIF crimes under ss. 111b–111d CPC[169] and s. 111e CPC – either **seizure of movable property** (*Beschlagnahme*) for the purpose of securing confiscation or rendering instruments/proceeds of crime unusable, or a freezing order (*Vermögensarrest*) to secure **value-based confiscation** under ss. 73c, 74c CC after

[165] Schmitt 2024, § 131, 131a CPC, mn.4, 3.
[166] OLG decision of 18 August 2003 – 3 Ws 232/03, ECLI:DE:OLGD:2003:0818.III3WS232.03.00.
[167] LG Münster, judgment of 28 May 2019 – 20 KLs 45 Js 604/12–5/18, BeckRS 2019, 34550, margin no. 346.
[168] See Zentralstelle Geldwäschebekämpfung und Vermögensabschöpfung Bayern (ZGV), which provides Administrative assistance (*Amtshilfe*) acc. to §. 9 para 2 EUStAG for the Regionaal Office in Munich.
[169] If the item, which was secured for the criminal process is no longer needed, the EDP must according to § 111n CPC ensure that any movable item is disclosed to the former suspect or holder of possession (*Gewahrsamsinhaber*).

the main hearing.[170] According to s. 111b CPC, **confiscable assets** may include both movable and immovable **property**, **rights**, **securities** and **virtual currencies** such as bitcoins.[171] If an item may also serve as evidence, seizure under Section 94 CPC takes precedence. The prerequisite for a freezing order is the existence of a claim to secure. There must be suspicion that a confiscation under ss. 73 et seq. CC will be ordered and that the items in question are in need of securing.

94 **Objections** may be lodged **against a freezing order**, but these are rarely successful – even in the **event of pauses in investigations** – provided the **reason for** such **delay** is documented in the file.[172] As the EDP must state a reasoning, which could read:

> "There is strong suspicion that the defendant, Al. …, committed organised criminal offences which led to unlawful financial advantages amounting to EUR 4,393,561.02 – well above the freezing amount. The cross-border and functionally divided structure of the 'VAT carousel', solely aimed at obtaining unjustified tax benefits and the likely use of sham invoices, demonstrate high criminal intent. Due to Al. …'s suspected role as *de facto* managing director during the relevant period, the defendant must be held accountable. There is also a high investigative burden on the tax authority E.. The case is complex, involving multiple investigating authorities and numerous suspects, including those abroad. Due to the organised structure of the VAT carousel, the investigations are interdependent, requiring constant coordination between tax investigators from Dresden and Stuttgart in the joint investigation team "Donner", as well as cross-border mutual legal assistance."[173]

95 A preliminary professional ban (*Vorläufiges Berufsverbot*) may also be considered in PIF cases. This requires a judicial decision based on **urgent grounds** and a **high probability** that the trial **court will impose** such a **ban** under s. 70 CC due to a specific risk to public interests.[174]

96 If a **member of parliament** is suspected of a PIF crime, EDPs need to be aware of s. 152a CPC, which may apply due to **procedural immunity**.[175] The EDP may have to

[170] See Bittmann et al. 2022 discovering inconsistencies in the asset recovery laws and refeering to the evolution of these lawsa and past issues creating new issues for the judicial interpretation. Nowadays Directive (EU) 2024/1260 (23.11.2026) concentrates on a more coherent system (https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=legissum:4757305); see Saliger 2025 on recent changes https://www.lto.de/recht/hintergruende/h/straftaten-vermoegensabschoepfung-reform-eu-richtlinie-einziehung-beweislast-stv. (Accessed 31 December 2024), p. 181 et seq. concerning § 111e CPC; p. 488 et seq. for proposed changes *de lege ferenda*, which uses quite useful examples from practice, see e.g. p. 323 to the academic and practical problem of asset recovery via a court verdict order (*Strafbefehl*).

[171] For a VAT carousel involving platinum coins, see LG Hamburg, 8th Criminal Division, 19 May 2023, case number: 608 KLs 3/21.

[172] LG Lübeck, decision of 6 July 2023 – 6 QS 6/23 =NZWiSt 2024, 465 (465).

[173] Ibid, p. 465.

[174] Eidam 2025, § 132a CPC, mn. 5–7.

[175] Schmitt 2024, §152a, mn. 2.

request a **decision from the parliament**, requiring authorisation of it under Article 46 para. 2 of the Basic Law (*Grundgesetz*, GG), taking into account Article 29 EPPO Regulation (/see below → Art. 29 EPPO Regulation) and Article 46 GG. As soon as an interrogation of a suspect (*Vernehmung*) – on the basis of the EPPO file[176] – in relation to a PIF offence needs to take place pursuant to s. 136 CPC[177], following a formal summons under s. 133 CPC – and in any case before the conclusion of the investigation under s. 169a CPC, as required by law pursuant to s. 163a para. 1 CPC (typically conducted orally in VAT carousel cases, as these are generally complex matters) – the **rights of the accused** apply. At this stage, there are numerous mandatory instructions and notices that must be given. These are precisely set out both in the **AStBV** (for investigative officers) and the **RiStBV** (for EDPs). In this context, the limits established by case law must also be observed to avoid unnecessary evidentiary exclusions. For any defence related matters in this regard see below → B. 6.

97 The accused in a PIF offence case is obliged to **provide at least personal details**[178], but not to make any statement on the facts of the case[179]. The **right to remain silent** arises from s. 163a paras. 3 and 4 CPC. Information obtained from administrative procedures – e.g. by OLAF – may be admissible[180], whereas statements made during customs inspections may be problematic. In any case, there is no duty of active factual disclosure, and this also applies to witnesses in EPPO proceedings.[181]

98 Special legal considerations may arise during arrest.[182] The transmission of findings from procedures involving statutory cooperation duties to EDPs is not prohibited.[183] There is no protection against **unconscious self-incrimination**; however, if trust-based relationships are exploited (e.g. through **covert investigators**), such scenarios may present legal difficulties in EPPO proceedings. For example, the use of **undercover officers** (**n.o.e.P.**) may give rise to coercion issues. The ECHR is also applicable[184], and the

[176] The EDP must be familiar with the case file. The following types of files are distinguished: main case files, offender files, photographic identification albums, telephone surveillance (wiretap) files, evidence and seized items files, as well as other formats such as witness and offence registries, and, where applicable, coordinate systems or electronic files. Furthermore, EPPO file management requirements must be observed. There will be a main EPPO case file, which is arranged chronologically and contains key information such as personal details, records of interviews, applications, orders, arrest warrants, etc. Additional files may exist for evidence, special records, or supplementary volumes. The electronic case management system used in EPPO proceedings remains unique so far –even though the electronic file (*E-Akte*) has been piloted in Darmstadt (Hesse) since 2025.
[177] A formal record (*Protokoll*) must be prepared in accordance with §§ 168a and 168b CPC.
[178] Cf. Köhler 2024, § 163 mn. 36.
[179] Köhler 2024, § 163a mn. 4.
[180] Generally Schlothauer 2008, pp. 267–289.
[181] Schmitt 2024, Einl. mn. 29ad, § 55 mn. 1, § 136 mn. 7, § 243 mn. 19.
[182] Schmitt 2024, § 136 mn. 20c, 25.
[183] BGH, BeckRS 2019, 33989, mn. 10: "Insofar as the defendant disclosed the files that were the subject of criminal and disciplinary investigations in fulfilment of his statutory duty to produce them, this does not give rise to an exclusion of evidence."
[184] Radtke 2020, pp. 470–749.

professional privilege of EPPO defence counsel is protected[185]. Psychological pressure to compel statements is prohibited[186], irrespective of the suspect's willingness, including the use of informants or undercover agents.

99 For any investigative measure, the competence to order it must be reviewed, and the principle of proportionality must be upheld at all times (see below → Art. 30 EPPO Regulation). A fundamental distinction must be made between **judicial** and **non-judicial investigative measures**. Judicial measures are to be requested only where specific legal grounds exist (cf. No. 10 of the Guidelines for Criminal Proceedings and the Imposition of Penalties, RiStBV). Examples include:

- Application for the issuance of a search or seizure warrant (cf. Solbach/Auchter et al., p. 44),
- Application for the issuance of an arrest warrant against an absconding suspect (cf. pp. 49–50),
- Complaint against the refusal to issue an arrest warrant (cf. pp. 52–53).

100 The objective is regularly to issue a **final procedural order** (*Abschlussverfügung*[187]). As an EDP, the **principle of procedural opportunity** may be applied where the conditions for discontinuation of proceedings are met, in accordance with the EUStAG (see above; this is always referenced in the compendium below).

101 Where there is **sufficient suspicion** (*hinreichender Tatverdacht*), the aim after concluding the investigation is to seek **admission of the indictment** for trial, which is achieved through the intermediate proceedings (*Zwischenverfahren*)[188] and the opening decision in EPPO cases (*Eröffnungsbeschluss*), pursuant to ss. 170 para. 1 and 203 CPC. The Economic Criminal Chamber may, where applicable, decide to open proceedings differently, to sever charges, or to discontinue the case.

102 The EDP is responsible for **preparing the EPPO main hearing** pursuant to ss. 213 and 124 CPC, including gathering the evidence. When submitting the indictment, the EDP must comply with s. 200 CPC in conjunction with No. 110 of the RiStBV, which will be discussed in further detail below.

[185] NJW 2020, 3507 concerning seizure of electronic data in a Law Firm.
[186] Cf. NStZ 2023, 560. "It is likewise incompatible with the principle of the privilege against self-incrimination to elicit incriminating statements on the facts of the case from a defendant who has exercised their right to remain silent, through targeted, interrogation-like questioning initiated by the investigative authorities without disclosing their intent to prosecute. It is also impermissible to pressure the defendant into making self-incriminating statements or to deceive them in a manner tantamount to psychological coercion, cf. Federal Court of Justice (BGH), judgment of 15 February 2023 – 2 StR 270/22 (Regional Court Erfurt).
[187] Cf. Weitner and Schuster 2014, pp. 295–301.
[188] From the intermediate proceedings onwards, the *Beschuldigter* (suspect) is referred to as the *Angeschuldigter* (accused), and during the main hearing, as the *Angeklagter* (defendant).

k) Drafting of charges to the trial of an EPPO investigation: Objective and legal basis of EPPO investigations in PIF offences

The aim of investigations conducted by an EDP in PIF offence proceedings is to gather legally admissible evidence to support the filing of an **indictment** (*Anklage*) before a German Economic Criminal Chamber or, in cases of tax offences, through a **penal order** e.g. in tax matters (*Strafbefehl)* before the locally competent District Court.[189] Such an indictment must be justified pursuant to s. 152 para. 2 CPC, which permits prosecution only if, based on the case file, a conviction appears more likely than an acquittal (Ss. 170 para. 1, 203 CPC). Should the evidence be insufficient to substantiate the offence, the proceedings must be discontinued under s. 170 para. 2 CPC, taking into account any specific procedural conditions. **103**

aa. Rules on drafting indictments

The EPPO indictment i.e. charges must be based on the procedural act as defined in s. 264 CPC and assessed using the "**five-point test**" established by the German Federal Court of Justice. A subsequent limitation of prosecution within the procedural act is possible under s. 154a CPC, or in cases of multiple offences committed separately, a discontinuation under s. 154 CPC may be considered. Further grounds for discontinuation are provided in ss. 154a et seq. CPC. **104**

bb. EPPO's progress reports

To maintain procedural economy, all investigative measures must be fully utilised, and the Chambers are to be kept informed via **progress reports**.[190] The **admissibility of the collected evidence** is of importance for the success of a prosecution. In particular, evidence must not have been obtained in violation of any rules on the collection of evidence, which would render it inadmissible in court **105**

[189] On the penal summary order see → Article 26 mn. 145 et seq.

[190] See College Decision 028/2024 Decision of the College of the European Public Prosecutor's Office of 15 May 2024 amending the decision on the functions and procedures of the Permanent Chambers: "After the Legal Support Staff has verified that the EPPO's competence has been correctly exercised, and without prejudice to the provisions of Article 28(1) of the EPPO Regulation and Article 45(4) of the IRP, the Administrative Support Staff shall request the handling EDP by email, keeping the supervising EP in copy, to submit a first progress report within four months from the initiation of the investigation or the evocation of the case. The Administrative Support Staff shall also create a corresponding *ad hoc* request for the handling EDP in the CMS." Disclaimer: Please check for new updates and new templates for the progress report within the CMS after publication of this compendium on the EPPO's webpage. online: https://www.eppo.europa.eu/sites/default/files/2024-05/2024.028%20Decision%20amending%20%20Functions%20and%20Procedures%20of%20PCs.pdf. Accessed 31 October 2025.

l) Thoughts on prosecutorial actions of EDPs in Germany: Our methodology of analysis based on final judgments from German EPPO regional offices

106 Analysis of finalised court decisions from proceedings conducted by EPPO Regional Centres in Germany reveals that in VAT fraud carousel cases, the evidentiary tools regularly consist of the reading out of extensive documentation and the examination of expert witnesses. These include officials from the tax administration, the FIU, foreign witnesses from Member States involved, witnesses to searches, and police officers (ranks POK and KHK). It is also common to encounter witnesses with legal privilege not to testify, particularly in familial networks involved in the fraud. The following examples illustrate the basis on which courts have assessed and evaluated the evidence.

m) Investigation and evidence collection measures

107 The fundamental question at the outset and throughout the investigation up to the conclusion under s. 169a CPC is whether an object is suitable to serve as evidence in EPPO proceedings concerning PIF offences. According to German procedural law, a distinction is made between material and personal evidence, and formal evidentiary procedures (ss. 52 et seq. CPC, s. 243 CPC) apply. The court is required to base its decision solely on evidence presented during the main hearing (s. 261 CPC).

aa. Conclusion of the investigation

108 After the conclusion of the investigation (s. 169a CPC), the accused and their defence counsel are entitled to inspect the case file. Requests for the taking of evidence can also be submitted during the main hearing. Like the prosecution, the court is bound to base its judgment exclusively on admissible evidence, recorded after the trial in s. III of a judgment document. Rarely do judgments elaborate on the inadmissibility of evidence, since such references could render the judgment vulnerable to appeal (*Revisionsverfahren der EUStA*[191]). Nevertheless, such issues may arise.

109 The decisive basis for **assessing procedural steps** prior to the charges – which may also be recorded in writing in advance, in the form of a **B-style legal opinion** (*in praxi* not used often, but called *B-Gutachten*), and referenced in an accompanying procedural order – includes considerations such as the surrender of items, duration of pre-trial detention, and mandatory notifications under MiStra (*Mitteilungen in Strafsachen*) in EPPO cases. Taking the example of (extended) confiscation (ss. 73 et se., 11 et seq.) it is substantive law in nature and must be decided by the court, but the EDP can still request it and usually he/she informs the judge that, in his/her view, their conditions are met, noting this at the end of the indictement (see Kilching 2023, Kilching 2025, pp. 55 et seq.).

[191] There has been one published decision, which is the EPPO's Platin Coin Case, which we highlight under our collection of cases. The BGH confirmed the judgment of the Landgericht München I.

Such **notifications to other bodies (MiStra)**, which EDPs need to issue, include e.g.: **110**
– if public officials are involved, Nos. 15 and 22,
– if notaries are involved in VAT carousel schemes, No. 23,
– to the police pursuant to s. 482 CPC, No. 11,
– if individuals working in the private sector (e.g. tax advisers, auditors) are involved, No. 24,
– in the case of owners of financial institutions, No. 25,
– where lawyers are involved, No. 29,
– in the case of pre-trial detention, No. 43,
– for money laundering involving EU funds, No. 52,
– notifications to the German Bundestag under s. 8 Introductory Act to the CPC (EGStPO), Nos. 191 et seq. of the RiStBV.
In addition:
– extradition procedures are governed by the RiVASt,
– corruption cases involving tax law fall under s. 4 para. 5 sentence 1 of the Income Tax Act (EStG).

bb. Opening of the main Proceedings

Before opening the main proceedings, the court examines whether any procedural obstacles exist with respect to the EPPO indictment, including limitation periods (Article 12 PIF Directive, S. 78 German Criminal Code), criminal responsibility, *ne bis in idem*, requirement of a criminal complaint (if necessary in PIF cases), and local and subject-matter jurisdiction. The subsequent main hearing is governed by national procedural provisions. **111**

The goal is to ensure the judgment can withstand appellate scrutiny. Therefore, the trial record must be properly maintained in accordance with ss. 273 and 274 CPC. In EPPO main hearings, evidentiary rules under ss. 249, 250, 251, 252, and 256 CPC are particularly relevant. For interruptions during trial, ss. 228 and 229 CPC apply. The principle of expedition must be observed. In EPPO proceedings, the same problems as in national proceedings may arise.[192] **112**

[192] Enormous duration and length of court sessions, the reading of telecommunications surveillance (TKÜ) protocols, numerous witnesses, absence of the defendant (cf. s. 231 CPC – unauthorised absence), absence of the public prosecutor during a significant part of the main hearing (cf. s. 338 para 1 No. 5 CPC), lack of an interpreter, failure to provide a translation of the indictment, failure to observe mandatory defence provisions (cf. s. 140 CPC). For this, reference can be made to the standard commentary by Meyer-Goßner as well as all other standard legal commentaries such as Herrnfeld/Browodski/Burchard, EPPO Regulation, 2nd edition, forthcoming August 2025, concerning special questions with regard to the EPPO Regulation in general. Specific features of EPPO proceedings may be familiar from national main hearings in cases of VAT, customs, or subsidy fraud. Relevant case law of the Federal Court of Justice (BGH) exists in this regard. This also applies to digital evidence: https://www.ferner-alsdorf.de/darstellung-von-chatnachrichten-im-urteil/. Accessed 31 December 2024. See also BGH, 14.06.2022 – 6 StR 228/22. See in-depth Rückert 2023 on digital evidence in the main trial.

cc. Judgments in EPPO cases

113 The judgment must adhere to the general rules set out in ss. 261 et seq. CPC. It must comply with the format prescribed in s. 267 CPC, and the judgment must be pronounced in accordance with s. 268 CPC. The issuance of the written judgment is governed by s. 275 CPC. The operative part of the judgment in EPPO criminal proceedings should refer to the relevant headings of legal provisions: ss. 263, 264, 331, 332, 333, 334, 335, 108 German Criminal Code, s. 370 German Fiscal Code, and customs regulations. Under part V of the judgment, the sentencing must reproduce the statutory penalty ranges, with individual penalties clearly reasoned, particularly in cases where the aggregate sentence is formed under s. 54 German Criminal Code. The prohibition on double counting (s. 46 para. 2 German Criminal Code) must be observed. For custodial sentences under two years, the possibility of suspension must be considered under ss. 56 et seq. of the German Criminal Code. This has been frequently applied in the analysed EPPO judgments.

114 Settlement procedures in EPPO cases (so-called "**EPPO deals**" form a distinct area. They refer to the case law and practices under s. 257 CPC, and must be properly documented in the trial record (following the national "margin of appreciation" doctrine).

n) If an EPPO indictment is filed and what is typical EPPO evidence?

115 The indictment must be filed when the evidence is sufficient to prove the offence. What evidence is relevant? (see Annex I). Any assessment of a case by an EDP will need to follow the following definition: "Evidence comprises any item which, directly or indirectly, is capable of proving the commission of the offence or its circumstances, or which is of evidentiary value in relation to sentencing."[193]

aa. Findings regarding VAT fraud carousels

116 The following quotations from judgments issued by German EPPO regional centres, which we requested under ss. 476 CPC demonstrate the central importance of reading documentary evidence into the record and of witness testimony:

"The findings under B. II. to IV. are based on the credible confessions of the defendants, which were supplemented and confirmed by the testimony of the investigating officers [...] and the witness [...], as well as the read-out protocols of witness statements and numerous documents, in particular chat logs and invoices of the involved companies."[194]

[193] OLG Munich, NJW 1978, p. 601.
[194] See above LG München, Judgement of 25.11.2024, 5 KLs 504 Js 2/23 and Case-law table, EPPO Judgments.

"As regards the invoices of the [...] in [foreign language], the court had the recurring terms translated during the hearing by a publicly certified interpreter known to the court."[195]

bb. Confessions and expert testimony

Voluntary statements by the accused often form the backbone of evidentiary assessments, complemented by expert findings: **117**

"The findings under B. III. 1. are based on the confessions of the accused [...] and are supported and confirmed by the statements of witnesses [...], who gave detailed reports of their investigations, and by numerous documents, particularly invoices issued by [...] to [...]."[196]

"In addition, the report of the [foreign] financial investigator [...] dated 23/09/2024 confirmed that nearly all deliveries to the]foreign] tax authorities were declared as intra-Community supplies, including those to [...]."[197]

cc. Witness testimony

"The findings regarding business activities in [...] are based on the statements of the accused [...] and the testimony of the witness [...]. Both defendants consistently stated that [...] also supplied [foreign] pharmacies beyond the transactions under review."[198] **118**

"The witness [...] confirmed that this had been substantiated during the investigation."[199] **119**

dd. Searches, seizures, and digital chats

The legal basis for measures such as searches and seizures includes ss. 94, 100a, 100b, and 100j CPC.[200] The **examination of digital devices** is strictly regulated: **120**

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[195] See above LG München, Judgement of 25.11.2024, 5 KLs 504 Js 2/23 and Case-law table, EPPO Judgments.
[196] See above Case-law table, EPPO Judgments.
[197] Ibid.
[198] Ibid.
[199] Ibid.
[200] See Deutscher Bundestag 2020. online: https://www.bundestag.de/resource/blob/796960/502f104acf21e11c88bf054cda3e0b32/WD-7-096-20-pdf-data.pdf. Accessed 31 December 2024. WhatsApp messages and other social messaging services are becoming increasingly important. During an investigation, access via telecommunications surveillance of an ongoing process is possible pursuant to s. 100a CPC. After the conclusion of telecommunications monitoring, measures such as seizure or confiscation under s. 94 CPC, the collection of subscriber data under s. 100j CPC, and, where appropriate, online searches under s. 100b CPC may be considered. Deutscher Bundestag 2020, p. 4: "During the search of a residence (§§ 102, 103 CPC), law enforcement authorities may discover various (potential) items of evidence, such as data carriers and digital devices. These are examined on-site or, after provisional seizure, reviewed by the public prosecutor or their investigators under the procedure outlined in s. 110 CPC to assess their evidentiary value"
Limitations: *"A review under s. 110 CPC is impermissible with regard to items that are clearly covered by a seizure prohibition pursuant to s. 97 CPC"* (BVerfG, Decision of 27 June 2018, Ref. 2 BvR 1405/17, 2 BvR 1780/17, NJW 2018, 2385, 2388 para. 80).

"During a residential search (ss. 102, 103 CPC), law enforcement may locate various potential items of evidence, such as data carriers and digital devices. These may be reviewed on site or, following provisional seizure, examined under s. 110 CPC by the public prosecutor or their investigators for evidentiary value."[201]

"An inspection under s. 110 CPC is impermissible if the item is clearly protected by a prohibition on seizure pursuant to s. 97 CPC."[202]

ee. Importance of chat messages as evidence in EPPO proceedings

121 The following examples from major judgment underscore the **evidentiary value of chat messages**:

"The witness [...] reported that she was primarily responsible for analysing chat messages during the investigation. Mobile phones of the defendants were seized during the searches."[203]

"The secured chat messages were made available for analysis using two software tools."[204]

"The messages revealed, among other things, that [...] instructed [...] on where to source the goods."[205]

"This allocation of roles was confirmed by chats between [...] and [...] during the relevant period."[206]

"Assets worth approximately one million euros were seized from the couple [...], including a house in [...]."[207]

ff. Admissibility of EPPO evidence in court

122 "Primarily, the data may be introduced into court proceedings as visual evidence by displaying them to the parties. Printed messages may also be introduced as documentary evidence or presented to a communication partner during their testimony."[208]

Members of Parliament [special case]: s. 97(4) CPC applies, see Higher Regional Court Düsseldorf, Judgment of 21 January 2020 – I-21 U 34/19 (WhatsApp chat), i.e. seizure is only permissible when a Member of Parliament is under investigation as a suspect, subject to the conditions set out in Article 29 of the EPPO Regulation regarding the lifting of immunity.

[201] See LG München, Judgement of 25.11.2024, 5 KLs 504 Js 2/23.
[202] Ibid.
[203] Ibid.
[204] Ibid.
[205] Ibid.
[206] Ibid.
[207] Ibid.
[208] Ibid.

o) Call for legislative reform and outlook

Discussions continue regarding the appropriateness of current statutory provisions such as s. 94 CPC. Legal practitioners are raising concerns: "Are ss. 94 CPC [seizure provisions] still fit for purpose [and the future]?"[209] **123**

The **current EU debate** on protecting the Union's financial interests is marked by a structural "overhaul" of its anti-fraud framework, initiated by the 2025 White Paper on the **Anti-Fraud Architecture Review**, which calls for legislative proposals in 2026 to strengthen cooperation between OLAF, EPPO, AMLA and a potential EU Customs Authority.[210] Refering to this, the PIF Report 2025 stresses persistent gaps in fraud reporting and recovery, the need for better digital tools and highlights the growing role of **artificial intelligence** and **data interoperability** in EU-level anti-fraud systems[211]. **124**

The Joint Communication on Combating Corruption complements these initiatives by mapping high-risk sectors and launching the EU Anti-Corruption Network as a platform for prevention and harmonised enforcement.[212] Parallel legislative work continues on **Directive (EU) 2024/1260**, which must be implemented by end-2026 and broadens EU confiscation powers, and on **Regulation (EU) 2024/1624**, which establishes AMLA as a central actor for anti-money-laundering oversight.[213] The **E-Evidence Regulation** could add faster digital evidence-collection tools essential for transnational fraud prosecutions (see Regulation (EU) 2023/1543). **125**

At Member-State level Germany's **IRG reform draft** aims to modernise international cooperation and align with CJEU and EPPO case law[214], while the national debate on confiscation law reflects EU pressure to reinforce asset recovery.[215] Pending, is *Giftrans SRL/Giurgiuman vs Commission* questioning the the interaction between OLAF and the EPPO regarding the protection of fundamental rights. Pending, too notably **C-407/25** *Tersten* could clarify the consequences of **failing to notify the EPPO** under Articles 24–27 of Regulation 2017/1939.[216] The important discussions at Villa Vigoni suggested alreay that **upcoming reform** of the EPPO Regulation should address competence conflicts, judicial review and defence rights – the **EPPO zone** is thus **not finalized**.[217] **126**

[209] See https://anwaltsblatt.anwaltverein.de/de/themen/kanzlei-praxis/beschlagnahme-von-handys-laptops. Accessed 31 December 2024. See as well Rückert 2023, Digitale Daten im Strafprozess, Mohr Siebeck.
[210] EU Commission, White Paper COM(2025) 546 final, 16.7.2025.
[211] PIF Report 2025 – 36th Annual Report on PIF, 25.7.2025.
[212] JOIN(2023) 12 final, 3.5.2023.
[213] See Directive (EU) 2024/1260; Regulation (EU) 2024/1624.
[214] IRG Referentenentwurf BMJ, 29.9.2025.
[215] BRAK Newsletter 24.7.2025, Stellungnahme Nr. 21 http://bit.ly/4n9V7SA; Busch wistra 5/2025, Strafrecht im neuen Koalitionsvertrag, https://www.wistra-online.com/97336.htm.
[216] ECJ, C-407/25, 19.6.2025, pending. ECJ EPPO-cases will become more and more important in the next years.
[217]Jakobi/Theodorakakou, eucrim 1/2025, pp 57–61.

SECTION 1
Rules on investigations

2. Article 26 Initiation of investigations and allocation of competences

a) EPPO crime report, verification and relevant sources of the indications for a criminal offence falling within the competence of the EPPO 144
aa. Determination of the competent European Public Prosecutor 146
(1) The Union standards 146
(a) Transfer of information 1: Crime reports by national administrative authorities 147
(b) Transfer of information 2: Obligation to issue crime reports for national tax authorities 148
(c) Transfer of information 3: Customs authorities may issue reports to FIU & EPPO 153
(2) Competence of the EPPO, Art. 22, 23, Art. 26 para. 4 154
bb. Jurisdiction of the EDPs in Germany 154
cc. Internal agreement on jurisdiction of the regional office of the EPPO in Germany 156
b) Initial suspicion for a PIF offence within the competence of the EPPO 165
aa. Initiation of an investigation 165
(1) Applicable provisions 166
(2) Non-applicable provisions due to the national adaption law for the EPPO 170
bb. The concept of "sufficient factual indications" in general .. 173
cc. PIF offences in German criminal law 175
(1) Methods of investigation, collecting information and documenting the initiation of an investigation for an indictment 185
(a) Pecularieties differentiated by PIF offences (typologies of EU frauds) 185
(b) Fraud 186
(aa) Revenue frauds and case studies .. 187
(bb) VAT fraud cases as example for

heavy revenue frauds 187
(cc) Customs duty cases.....201
(dd) Example of "T 1 Customs Certificate Document".....205
(ee) Expenditure Frauds – Case Study 205
(c) Corruption offences 208
(d) Money laundering with PIF crimes 208
(aa) Suspicious transaction report FIU Germany.....209
(bb) Suspicious transaction report: Example from the FIU 211
(f) Criminal organisation (PIF "Mafia clause") 212
(2) Special national databases and registers for (detecting) PIF offences and identifying potential suspects 212
(3) Digital investigations 213
dd. Overview of judgments for sufficient factual indications for the PIF offences in German criminal law.....217
(1) Fraud (-related peculiarities in general) 217
(2) More examples and precedents:.....219
(a) In national case-law 219
(b) In the case law of ECtHR and ECJ 220
ee. The level of sufficiency 220
ff. Objective and subjective standards and perspectives.....220
gg. Other degrees of suspicion.....221
hh. Excerpts and information from selected judgments decided by German courts in the PIF-Crimes Area 221
c) Consequences to the "Decision to open a case" – fsteps: investigate, discontinue or prosecute.....225
d) Actions if "Decision to open Art. 26 para. 7 EPPO Regulation / not open a case, Art. 24 para. 7, 27 para. 7 EPPO Regulation" 229
e) Justiciability and appeals 229
f) Excursus: Procedure for summary penalty orders (*Verfahren bei Strafbefehlen)* 230

1. Where, **in accordance with the applicable national law,** there are **reasonable grounds to believe that** an offence within the competence of the EPPO is being or has been committed, a European Delegated Prosecutor in a Member State which **according to its national law** has jurisdiction over the offence shall, without prejudice to the rules set out in Article 25 paras. 2 and 3, initiate an investigation and note this in the case management system.
2. Where upon verification in accordance with Article 24 para. 6, the EPPO decides to initiate an investigation, it shall without undue delay inform the authority that reported the criminal conduct in accordance with Article 24 para. 1 or 2.
3. Where no investigation has been initiated by a European Delegated Prosecutor, the Permanent Chamber to which the case has been allocated shall, under the conditions set out in paragraph 1, instruct a European Delegated Prosecutor to initiate an investigation.
4. A case shall as a rule be initiated and handled by a European Delegated Prosecutor from the Member State where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the Member State where the bulk of the offences has been committed. A European Delegated Prosecutor of a different Member State that has jurisdiction for the case may only initiate or be instructed by the competent Permanent Chamber to initiate an investigation where a deviation from the rule set out in the previous sentence is duly justified, taking into account the following criteria, in order of priority:
(a) the place of the suspect's or accused person's habitual residence;
(b) the nationality of the suspect or accused person;
(c) the place where the main financial damage has occurred.
5. Until a decision to prosecute under Article 36 is taken, the competent Permanent Chamber may, in a case concerning the jurisdiction of more than one Member State and after consultation with the European Prosecutors and/or European Delegated Prosecutors concerned, decide to:
(a) reallocate the case to a European Delegated Prosecutor in another Member State;
(b) merge or split cases and, for each case choose the European Delegated Prosecutor handling it,
if such decisions are in the general interest of justice and in accordance with the criteria for the choice of the handling European Delegated Prosecutor in accordance with paragraph 4 of this Article.
6. Whenever the Permanent Chamber is taking a decision to reallocate, merge or split a case, it shall take due account of the current state of the investigations.
7. The EPPO shall inform the **competent national authorities** without undue delay of any decision to initiate an investigation.

The role of prosecutors in Germany is it to foster a functioning criminal justice (*Gewährleistung der Funktionsfähigkeit der Strafrechtspflege*). Paradoxically, the **role and importance of the public prosecutors** is frequently emphasized in breach of official duty cases (ss. 839 para. 1 BGB [German Civil Code] in connection with Art. 34 GG [German Basic Law]. Art. 26 EPPO Regulation contains the Union's own **legality principle** and *de facto* a **principle of mandatory prosecution**.[218] The present court's remarks can be prefaced here to introduce the following chapter on Art. 26 EPPO Reg.: **1**

"In the opinion of the Senate, however, the special position and task of the public prosecutor's office and also – as is also pointed out by Prof. Dr. O. (loc. cit.) – the necessity of a functioning administration of criminal justice require a view according to which the careful exercise by the public prosecutor's office of the aforementioned scope for the assessment of legal issues is in accordance with its duty and therefore, at least as a rule, does not first render culpability null and void, but is not in itself capable of constituting a breach of official duty. **2**

According to the case law of the Federal Supreme Court, the public prosecutor is an organ of the administration of justice on a par with the court (BGHSt 24, 170, 171). As such, he is called upon to **examine whether criminal conduct has occurred** and, in accordance with the principle of legality, is obliged to initiate preliminary proceedings if he comes to this conclusion. It is disputed to what extent the public prosecutor's office is bound by a fixed application of the law by the highest court (SK-Weßlau, StPO, § 152 Rz. 22). However, this binding is only discussed with regard to the question of whether the public prosecutor is obligated to file charges if conduct is deemed punishable according to fixed supreme court case law, but he himself does not consider it to be punishable due to his own interpretation of the law. On the other hand, **it is generally accepted that the public prosecutor is not prevented from bringing charges if he even considers conduct to be punishable contrary to the case law of the highest courts** (Meyer-Goßner, StPO, 47. Auflage 2004, Vor § 141 GVG Rz. 11; KK-Schmid, StPO, 5th edition 2003, § 170 Rz. 7; LR-Graalmann-Scheerer, 25th edition 2004, § 17 Rz. 25; Roxin, Zur Rechtsstellung der Staatsanwaltschaft damals und heute, DRiZ 1997, 109, 114). This is also **indispensable in the sense of a functioning administration of criminal justice**, because only then can a further development of the law already be initiated from the basis. It would be contrary to this if, in retrospect, the preliminary proceedings and the indictment in such a case were to be regarded as contrary to official duty merely because the court holds a different conviction in legal terms and refuses to change the case law. A fortiori, in view of this, the initiation of preliminary proceedings and the bringing of charges cannot be regarded as contrary to official duty if it is a matter of legal evaluations that have not been conclusively decided by the supreme court." (see **3**

[218] See Alexandrova 2015, pp. 11, 17 et seq.; Krauß 2022, § 142b GVG mn. 17; see → **no. 26 AStBV**.

OLG Düsseldorf, Judgment of 27.04.2005 – I-15 U 98/03 =openJur 2011, 36303, Margin Numbers 71–72).

4 Preparatory actions for investigations (*Vorfeldermittlungen*), which first serve to obtain indications for investigations, are to be distinguished from real preliminary investigations (*Vorermittlungen*), which serve to determine whether the official initiation of investigation proceedings (*Ermittlungsverfahrenseröffnung*) should be initiated on the basis of existing facts (see → **No. 12, 13 AStBV**). Preparatory (tax area related) actions aiming at investigations, e.g. to uncover tax evasion or PIF-related (VAT-fraud) tax crimes (see → **No. 16–18, 19, 21 AStBV**), may be permissible, see 208 para. 1 s. 3 no. AO. The use of so-called '**flank protection investigators'**, i.e. officers deployed during **external audits or tax audits**, is problematic as this violates the *nemo tenetur* principle because the boundaries between taxation and criminal proceedings are blurred.[219]

5 However, "normal" **PIF offences** generally require the existence of a genuine initial suspicion (*Anfangsverdacht*) in accordance with s. 152 para. 2 CPC in conjunction with Art. 22 EPPO Regulation if there are reasonable grounds for initiating such investigations.[220]

6 The main information required for the EDPs are the offences that determine their competence (→ material competence, 22 EPPO Reg., PIF Directive). Thus they shall be presented in advance in a short overview box. The text that follows below takes a more detailed look on the requesites of Art. 26 EPPO Regulation:

7 *Sources and national sections 1: Overview for Germany – Art. 26 EPPO Regulation*

Overview Box for Germany	
Relevant national law	Sources: *Strafprozessordnung*, the German Criminal Procedure Code; *Strafgesetzbuch*, the German Criminal Code; the *Gerichtsverfassungsgesetz*, the German Court Constitutions Act; the EUStAG, the German law executing the EPPO Regulation
"An offence within the competence of the EPPO"	For the text of the offences that are mentioned by Art 26 EPPO Regulation "an offence within…" cf. already the EU Fraud Commentary[221] ss. 1 (Misuse of European Union financial services distributed via public funds), 2 (Unlawful reduction of

[219] Schmitt 2024, § 152 StPO mn. 3b.
[220] Schmitt 2024, § 152 StPO mn. 3c.
[221] Hauck 2026b, The EPPO Regulation: A Commentary on the Rules on Investigations and Investigation Measures in Relation to the Fight Against Fraud (Art. 26–33), Edward Elgar Publishing (Elgar Commentaries in Transnational and EU Criminal Law series), Cheltenham 2026.

	revenues of the European Union), 3 (Bribery and bribery related to the financial interests of the European Union) *EU-Finanzschutzstärkungsgesetz* – EUFinSchStG. ss. 108e, 129, 260 (eg tobacco products, see OLAF investigations Art. 3 below[222]), 261 (AML/customs offences), 263 *Betrug* (fraud), 263a *Computerbetrug* (computer fraud), 264 *Subventionsbetrug* (subsidy fraud) in connection with ss. 2, 6 *Subventionsgesetz*, 266 *Untreue* (embezzlement), 267 *Urkundenfälschung* (Forgery of documents), 271, 274 (inextricably linked offences might as well be: 298, 299, 331, 332, 333, 334), corruption offences: 335, 335a., 353, 353a, 355 CC, see on that see Jakobi & Theodorakakou 2025 citing EDP C. Soriano saying Art. 22 para 4 is problematic). ss. 369 tax crimes indicating that customs offences (*Zollstraftaten*) are tax crimes as well, 370 tax evasion with s. 3 para. 3 AO (*Steuerhinterziehung*), 370a (repealed), 371 Self-disclosure for tax evasion, 372 breach of a ban, 373 Commercial, violent gang smuggling, 374 receiving of untaxed goods (*Steuerhehlerei*) Federal Tax Code/*Abgabenordnung* in conncetion with the Union Customs Code. *Nota bene*: The Act to Combat Clandestine Employment through the Act against Illegal Employment and Social Security Abuse of July 11, 2019 (Federal Law Gazette I p. 1066) does not fall into the competence of the EPPO but might be an inextricably linked Code with special offences.
"[Competence of] a European Delegated Prosecutor in [Germany]"	Cf. ss. 142b *Gerichtsverfassungsgesetz*, short: GVG (Court Constitutions Act), 152 (*Ermittlungspersonen*) GVG.
"Jurisdiction"	Cf. Sections 3 of the German *Strafgesetzbuch*, the Criminal Code and cf. Art. 11 of the PIF Directive (Hauck 2025a, PIF Commentary).

[222] See Böse and Kober 2023, pp. 227–289, see 5.2.3 for the legal frameworks and 5.4. for penalties and sanctions and 5.6. for the investigative frameworks; for jurisdictional matters see 5.7: "Criminal jurisdiction over ITTP-related offences follow the general rules (Article 1 EGStGB). Accordingly, German criminal law applies to offences that are wholly or in part committed within Germany (territorial jurisdiction, Section 3 StGB). The same applies to regulatory offences (Section 5 OWiG)."

	ss. 3 (According to § 3 German applies Criminal law for acts that are at least partially committed domestically), 4 (territory), 5 (passive personality) § 5 n° 15 lit. a, b (ss. 333–337 [bribery offences] CC) n° 16 lit. a alternative 2, § 6 n° 8 StGB (s. 264 CC [subsidy fraud]), and see Article 2 § 3 IntBestG, § 370 para. 6 and 7 Fiscal Code; and see § 35 Market Organisation Act and § 7 Paragraph 2 Number 1 StGB, 6 (universality principle), 7 para. 1 (passive personality), 7 para. 2 n°1 (active personality if the person is of German nationality in cases of ss. 261 CC (AML) 263CC (fraud), 266 CC (embezzlement) CC and the new ss. 1, 2 EUFinSchStG), 7 para. 2 n°2 *aut dedere aut judicare*), ss. 9 et seq. CC; ss. 6, 7, 9 OwiG in connection with § 11 para. 1 and 2 EUStAG.

Source: The authors.

a) EPPO crime report, verification and relevant sources of the indications for a criminal offence falling within the competence of the EPPO

8 In an interview from 2022 *Andrés Ritter*, the German EP, reminded the public of a prominent fact after one year of operation, which is that: "Only about 12 % of all crime reports stem from EU institutions and about 87 % come from the Member States"[223], thus two important numbers are overtop the other numbers of the Annual Report of the EPPO[224].

9 As soon as the **EDP becomes aware** of the suspicion of a PIF offence, he has a **duty to assess** the facts of the case, see 160 para. 2 CPC, which included inculpatory and exculpatory details of potential conduct (**truth-finding objective**, see → **No. 5 AStBV**, **No. 1–109 RiStBV**, e.g. EDPs need to have cost awareness acc. to no. 5a RiStBV). According to Art. 24 para. 6 EPPO Regulation the EDPs will need to assess and verify the information that are submitted to them via at least three different ways:

[223] See Maurer 2022 Frankfurter Rundschau. EU-Betrugsermittler: "Wir bringen mehr Geld ein, als wir kosten", Frankfurter Rundschau. online: https://www.fr.de/politik/eu-betrugsermittler-wir-bringen-mehr-geld-ein-als-wir-kosten-91629984.html (Accessed 31 December 2024): "4006 criminal charges registered and manalysed criminal charges, 929 investigations initiated and 259 million euros in seizures - what is the most important realisation for you after one year? year? The figures speak for themselves. However, two figures stand out. If you the structure of our investigations, where the reports and information come from information comes from, it is striking: Only a good twelve per cent come from EU institutions. The rest, over 87 per cent, comes from the member states."
[224] Beizsley 2023, 525 (530) on the quality of these annual reports by assessing the topics of the first ever annual report. There is still room for improvement.

Figure 1: Supranational, EU-internal way of Obtaining information for the EPPO competence and the exercise of jurisdiction[225]

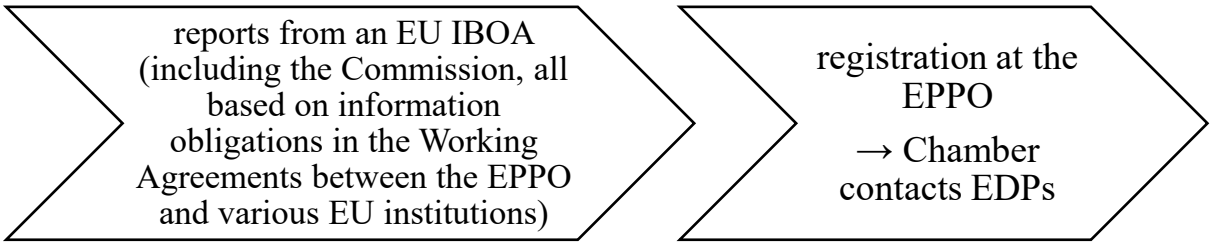
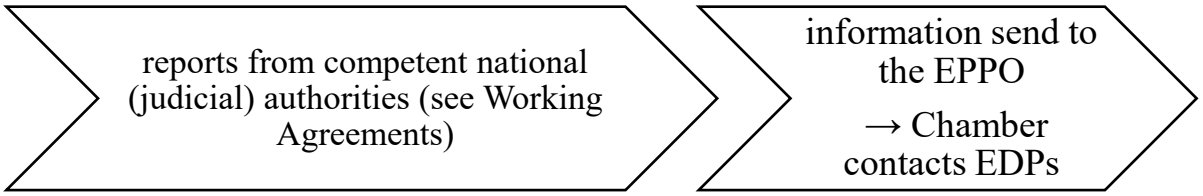


Figure 2: National (indirect way of) Obtaining information for the EPPO competence and the exercise of jurisdiction



Art. 24 para. 8:[226] Public prosecution offices: Public prosecution offices at the Regional Courts, the Public Prosecutor's Offices at the Higher Regional Courts, Federal Public Prosecutor General, Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in Ludwigsburg – Tax authorities, insofar as they assume the position of a public prosecutor's office pursuant to s. 386 para. 2 AO. assumes the position of a public prosecutor's office: Main customs offices, tax offices, Federal Central Tax Office for taxes: **10**

Example: The relevant sales tax authority might carry out an audit and discover an irregularity. It must then decide what to do. If it conducts the audit it may ask for document and papers of the operator.

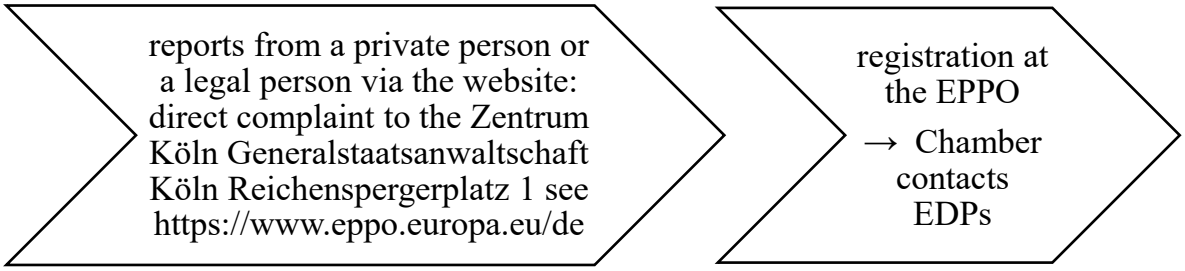
Section 18d Submission of document
The financial authorities are required to fulfil the information obligation under Council Regulation (EU) No. 904/2010 of October 7, 2010 on administrative cooperation and **combating fraud in the field of value added tax** (OJ L 268 of October 12, 2010, p. 1) **entitled to require entrepreneurs to submit the necessary books, records, business papers and other documents for inspection and examination**. S. 97 paragraph 2 of the tax code applies accordingly. The entrepreneur has to submit the documents referred to in sentence 1 at the request of the tax authority.

If this audit leads to a criminal suspicion, the sales tax authority department needs to inform according to n. 140 of the Tax Decreee (AStBV 2023) the EPPO. Decisions on new filings, ECRs, reports and submissions must be made promptly – depending on the

[225] See Brodowski 2021a, pp. 61–65; see Krause-Ablaß, pp. 231–232.
[226] See https://www.eppo.europa.eu/sites/default/files/2021-11/12-DE.pdf. Accessed 31 December 2024.

status of investigations by the police, tax officials or OLAF, etc (see → **8–11 AStBV**; **No. 6–15**, **44–45** (interrogation of suspect), **88–105 RiStBV**).

11 *Figure 3: Supranational (direct way of) Obtaining information for the EPPO competence and the exercise of jurisdiction*



aa. Determination of the competent European Public Prosecutor

12 First of all, it must be determined whether the German EDPs are competent at all as the jurisdiction of the public prosecutor's office can constitute a procedural obstacle.[227] This depends on the criteria of the Regulation (see → Art. 22, 23). In addition, there are rules issued by the EPPO Chamber (e.g. for Art. 27: Right of evocation).

(1) The Union standards

13 The material competence of the EPPO is defined in Article 22 EPPO Regulation and covers criminal offences affecting the financial interests of the European Union (PIF offences), in particular fraud, corruption, and cross-border VAT fraud where the total damage exceeds €10 million. The territorial and personal competence is laid down in Article 23 EPPO Regulation, covering offences committed in whole or in part on the territory of participating Member States or by their nationals.

14 The transfer of information to the competent European Delegated Prosecutor (EDP) or the Permanent Chamber of the EPPO is primarily governed by Article 24 EPPO Regulation. This provision ensures that national authorities promptly communicate relevant information to the EPPO in accordance with Union law. In Germany, this obligation has been made explicit through the EPPO Adoption Act (EuStAG), which details the procedure for transmitting information to the EPPO to ensure compliance with the supranational framework established by Articles 22 to 24 EPPO Regulation.

15 The **transfer of information** that could establish an **initial suspicion** for a PIF offence depends on the suspected concrete offence. The transfer of information is based upon

[227] Krauß 2022, § 142b GVG mn. 13–15 rcecalling that the EPPO relies on its EDPs working as special expert staff according to Art. 96 EPPO Regulation. The EPPO must be competent in personal, territorial and competent *ratione temporis*. Accordingly, under § 9 of the German Criminal Code (StGB), damage to the EU budget is deemed to occur at the seat of the EU in Brussels. However, pursuant to §§ 3 to 7 para 2 sent. 1 of the German Criminal Code, the modified active personality principle may also apply if the perpetrator is a national (as in the Kaili case).

the competence of authorities that could exercise the PIF offences if the EPPO did not exist (status before 2021).

Thus for e.g. (VAT) tax frauds the VAT Departments (located within the tax offices, *Finanzämter*) including the authorities of the fiscal organisation in the Federal Republic of Germany must be taken into account. They can equally be made aware of an offence by virtue of s. 116 General Tax Code.[228] For all other PIF offences (see below → p. 175, Mn. 54) the prosecution offices of the German Federal *Länder* within their jurisdiction based on the sections of the CPC and the Court Constitutions Act are relevant. The sources can **help to understand the transfer of information are listed here**: **16**

(a) Transfer of information 1: Crime reports by national administrative authorities

Criminal prosecution offices, managing and payment authorities (eg in the area of structural funds) are possible reporters of suspected criminal conduct. **17**

- Notification of the Federal Government of 18 June 2021 by virtue of Art. 117 EPPO Regulation[229] (see below → p. 144, mn. 145). **18**
- Administrative authorities (*Verwaltungsbehörden*) in the area of structural funds may report conduct if they have indications that the conduct cannot be regarded as a matter of an administrative fine or penalty:

Section 41 AO[230] Transfer to the Public Prosecutor's Office **19**
(1) The administrative authority shall hand over the case to the public prosecutor's office if there are indications that the act is a criminal offence.
(2) If the public prosecutor's office refrains from initiating criminal proceedings, it shall return the case to the administrative authority.

[228] **§ 116 Anzeige von Steuerstraftaten AO** (1) Gerichte und die Behörden von Bund, Ländern und kommunalen Trägern der öffentlichen Verwaltung, die nicht Finanzbehörden sind, haben Tatsachen, die sie dienstlich erfahren und die auf eine Steuerstraftat schließen lassen, dem Bundeszentralamt für Steuern oder, soweit bekannt, den für das Steuerstrafverfahren zuständigen Finanzbehörden mitzuteilen. Soweit die für das Steuerstrafverfahren zuständigen Finanzbehörden nicht bereits erkennbar unmittelbar informiert worden sind, teilt das Bundeszentralamt für Steuern ihnen diese Tatsachen mit. Die für das Steuerstrafverfahren zuständigen Finanzbehörden, ausgenommen die Behörden der Bundeszollverwaltung, übermitteln die Mitteilung an das Bundeszentralamt für Steuern, soweit dieses nicht bereits erkennbar unmittelbar in Kenntnis gesetzt worden ist.
(2) § 105 Abs. 2 gilt entsprechend.

[229] From the point-of-view of Brodowski 2021b, Art. 117 EPPO is only an indication for PIF implementation laws and has no legal validity character.

[230] **§ 41 Abgabe an die Staatsanwaltschaft OWiG** (1) Die Verwaltungsbehörde gibt die Sache an die Staatsanwaltschaft ab, wenn Anhaltspunkte dafür vorhanden sind, daß die Tat eine Straftat ist.
(2) Sieht die Staatsanwaltschaft davon ab, ein Strafverfahren einzuleiten, so gibt sie die Sache an die Verwaltungsbehörde zurück.

(b) Transfer of information 2: Obligation to issue crime reports for national tax authorities

20 The Federal Ministry of Finance, which contains the national anti-fraud coordination office, has issued information for all (criminal) tax authorities in Germany in 2022 i.e. the instructions for criminal and fine proceedings (tax) – AStBV (St) 2022 (Federal Tax Gazette Part I, 2022, No. 6, pp. 251 (287)).

N°140a[231] EPPO Guidelines on criminal tax matters and investigations
(1) EPPO shall have jurisdiction under Regulation (EU) 2017/1939 (EPPO-Reg) in respect of certain offences affecting the financial interests of the European Union. The jurisdiction of the European Union Prosecution Authority is derived from Article 22 paras. 1 to 3 of the EPPO Regulation and essentially covers offences against the financial interests of the Union, which are defined in Directive (EU) 2017/1371 (PIF Directive) as transposed into national law. For offences which, according to Article 22 para. 1, second sentence, of the EPPO Regulation, are defined in Article 3 para. 2 lit. d of the PIF Directive as transposed into national law, the EPPO is only competent if the

[231] **N°140a Europäische Staatsanwaltschaft AStBV** (1) Die Europäische Staatsanwaltschaft (EUStA) ist nach der Verordnung (EU) 2017/1939 (EUStA-VO) zuständig bei bestimmten Straftaten zum Nachteil der finanziellen Interessen der Europäischen Union. Die Zuständigkeit der EUStA ergibt sich aus Artikel 22 Abs. 1 bis 3 EUStA-VO und umfasst im Wesentlichen Straftaten zumNachteil der finanziellen Interessen der Union, die in der Richtlinie (EU) 2017/1371 (PIF-RL) in ihrer Umsetzung innationales Recht festgelegt sind. Für Straftaten, diegemäß Artikel 22 Abs. 1 Satz 2 EUStA-VO in Artikel 3Abs. 2 Buchstabe d der PIF-RL in ihrer Umsetzung innationales Recht festgelegt sind, ist die EUStA nur zustän-dig, wenn die vorsätzlichen Handlungen oder Unterlas-sungen nach dieser Bestimmung mit dem Hoheitsgebietvon zwei oder mehr Mitgliedstaaten verbunden sind undder zu erwartende Gesamtschaden mindestens 10 Mio. €umfasst.
(2) Gemäß Artikel 24 Abs. 1 EUStA-VO haben die nach nationalem Recht zuständigen Behörden der Mitgliedstaaten der EUStA unverzüglich jede Straftat zu melden,für die die EUStA ihre Zuständigkeit gemäß Artikel 22,25 Abs. 2 und 3 EUStA-VO ausüben könnte. Leitet eineStrafverfolgungsbehörde wegen einer solchen Straftat einErmittlungsverfahren ein oder bestehen Anhaltspunkte, dass nach Einleitung des Ermittlungsverfahrens eine Zuständigkeit der EUStA gegeben sein könnte, unterrichtet sie die EUStA gemäß Artikel 24 Abs. 2 EUStA-VO unver-züglich. Für bereits anhängige Ermittlungsverfahren gilt dies, soweit die Straftaten nach dem 20. November 2017 begangen wurden.
(3) Der Bericht an die EUStA hat mindestens eine Beschreibung des Sachverhalts einschließlich einer Bewertung des entstandenen oder voraussichtlichen Schadens, die mögliche rechtliche Würdigung und alle vorliegenden Informationen über mögliche:Opfer, Verdächtige und andere Beteiligte zu enthalten (vgl. Artikel 24Abs.4 EUStA-VO). Die EUStA stellt hierzu ein Formular (EPPO Crime Report — ECR) zur Verfügung, welches über die Geschäftsstellen der Zentren der Delegierten Europäischen Staatsanwälte in Deutschland angefordert werden kann.
(4) Grundsätzlich kann jede nationale Behörde unmittelbar mit der EUStA Kontakt aufnehmen. Dabei steht esgrundsätzlich im Ermessen der nationalen Behörde, ob sie sich an die Zentrale der EUStA in Luxemburg oderunmittelbar die jeweiligen nationalen Delegierten Europäischen Staatsanwältinnen und Staatsanwälte (DEStAs) wendet; allerdings sollte zur Vereinfachung und Beschleunigung eine Meldung bzw. Unterrichtung an die zuständigen deutschen DEStAs in den Zentren Berlin, Frankfurt, Hamburg, Köln oder München gerichtet werden.Bei Bestehen einer Meldepflicht nach Artikel 24 Abs. 1EUStA-VO sollte frühzeitig mit dem zuständigen deutschen Zentrum der Delegierten Europäischen Staats-anwälte das weitere Vorgehen abgestimmt werden.
(5) Sobald die EUStA ein Ermittlungsverfahren eingeleitet oder ein bereits eingeleitetes Verfahren übernommen hat, findet die Kommunikation direkt und ausschließlich mit den zuständigen deutschen DEStAs statt.
(6) Zur Förderung der Zusammenarbeit mit der EUStA empfehlen sich regelmäßige Kontaktgespräche mit denDEStAs des jeweils zuständigen Zentrums.
(7) Länderspezifische Regelungen sind zu beachten.

intentional acts or omissions under this provision are connected with the territory of two or more Member States and the expected total damage amounts to at least EUR 10 million.
(2) Pursuant to Article 24 para. 1 of the EPPO Regulation, the competent authorities of the Member States under national law *shall notify the EPPO without delay of any offence in respect of which the EPPO could exercise its competence* pursuant to Articles 22, 25 paras. 2 and 3 of the EPPO Regulation. If a criminal prosecution authority initiates an investigation into such an offence or if there are indications that the EPPO could have jurisdiction after the initiation of the investigation, *it shall inform the EPPO immediately in accordance with Article 24 para. 2* of the EPPO Regulation. This shall apply to investigation proceedings already pending insofar as the offences were committed after 20 November 2017.
(3) The report to the EPPO shall contain at least *a description of the facts including an assessment of the damage caused or likely to be caused*, the possible legal assessment and all available information on possible victims, suspects and other parties involved (cf. Article 24(4) EPPO Regulation). For this purpose, the EPPO provides a form (*EPPO Crime Report – ECR*), which can be *requested via the offices of the Centres of Delegated European Public Prosecutors in Germany*.
(4) In principle, each national authority can contact the EPPO directly. In principle, it is at the discretion of the national authority whether it contacts the EPPO headquarters in Luxembourg or directly the respective national Delegated European Public Prosecutors (DEStAs). In the event of a reporting obligation pursuant to Article 24 para. 1 of the EPPO Regulation, the further procedure should be coordinated with the competent German centre of the Delegated European Public Prosecutors at an early stage.
(5) As soon as the EPPO has initiated an investigation procedure or taken over an already initiated procedure, communication takes place directly and exclusively with the competent German DEStAs.
(6) In order to promote cooperation with the EPPO, regular contact meetings with the DEStAs of the respective competent centre are recommended.
(7) Country-specific regulations must be observed.

Figure 4: Official Guide for the EPPO Crime Report (ECR)

EPPO Crime Report (ECR): Quick Guide

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

The EPPO Crime Report (ECR) will be used for reporting information about potential offences to the EPPO. This Quick Guide intends to assist in completing the ECR form.

The information reported via this form will be processed in the EPPO's Case Management System.

Indicate the reported information accurately and comprehensively to facilitate its efficient processing by the EPPO. The form cannot be saved unless all fields marked as mandatory are completed.

To the extent possible, use English to fill out the form.

I – REPORTING ENTITY

Reporting Entity			
Name of public institution or authority *	Please fill in the name of your entity		
Country/HQ *	Please choose from the drop-down menu where your entity is based		
Address *			
Tel.		Email	
Contact Person	Please fill in the contact details of your entity		
Name *		Designation *	
Tel. *		Email *	

Please indicate the person we may contact for possible follow-up questions

II – CRIMINAL INVESTIGATION ALREADY INITIATED BY NATIONAL AUTHORITIES.

Criminal investigation already initiated by national authorities ? *	◯ Yes ◯ No / Don't know
Case reference number *	
Date when national investigation started	

Fill in ***only*** if you are a judicial or law enforcement authority that has started a criminal investigation for which the EPPO could exercise its competence. If that is case, please provide the case reference number and the date when the national investigation started.

Please leave blank otherwise (i.e. if you are an EU IBOA, etc.).

III – IS THERE A EUROPEAN DELEGATED PROSECUTOR (EDP) LINKED TO THE CASE?

Is there an EDP linked to the case ?	◯ Yes ◯ No
EDP name	

If you are aware that the information reported via this form should be allocated to a specific EDP in accordance with EPPO's internal rules (i.e. regional competence, case discussed with the respective EDP), please state their name.

Please leave blank otherwise.

IV – FACTUAL CIRCUMSTANCES

Please select from the drop-down menu

Factual Circumstances	
Country where criminal acts were committed *	
2nd country where criminal acts were committed (if applicable)	
3rd country where criminal acts were committed (if applicable)	

If applicable, indicate first the country where the focus of the criminal activity is, then the second and the third country where criminal acts were committed. If more than three countries were involved, please indicate the other ones in the section *Information about other offences, suspect, victims or other relevant information* at the end of the ECR.

NB: If you are not sure or do not know, chose the country you think has the strongest link/ relationship. You cannot leave this field blank, as it is essential for determining the competence of the EPPO.

Country where the damage took place

Please select from the drop-down menu

Country where the damage against the Union's financial interest took place *	
2nd country where the damage against the Union's financial interest took place (if applicable)	

If applicable, choose the second country. If more than two countries are involved, please indicate the other ones in the section *Information about other offences, suspect, victims or other relevant information*.

Amount of estimated damage

Amount of estimated damage *	€

Please provide your best estimate, as per the information available. The value of the damages must be expressed in EUR. You cannot leave this field blank, as it is essential for determining the competence of the EPPO.

Privileges and immunities apply to potential suspects	◯ Yes ◯ No

Please **only** select yes if you are aware of such circumstances. Where the investigations of the EPPO involve persons protected by a privilege or immunity, the European Chief Prosecutor may make a reasoned written request for its lifting

V – REPORTED CRIMINAL OFFENCE

Reported criminal offence
Brief description of facts (please indicate: where, who, what, how) *

Please fill in information for each offence separately. If you wish to report more than three linked offences, please indicate the other ones in the section *Information about other offences, suspect, victims or other relevant information* If the offences are not linked however, please submit a separate ECR.

Brief description of facts: Summarise the facts concerning the alleged offence(s). Include all relevant information and details on who did what, how the alleged offence was committed, and against whom; sequence of events and the roles and actions of all parties involved; place(s) where the specific act(s) happened, especially if they took place in several locations (countries).

Type of Offences	
Subtype of Offences	

Type of offences: Please select from the drop down list the type of offence as prescribed by the Directive (EU) 2017/137 corresponding to the facts reported under the previous section (do NOT indicate the national legal qualification).

Subtype of offences: If you selected *Non-procurement fraud*, *Procurement fraud*, *Fraud (non-VAT revenue)*, *Fraud (VAT revenue)*, *Corruption* or *Inextricably linked offence* as the type of offence you are reporting, please select from the dropdown list the relevant subcategory.

VI – POTENTIAL SUSPECT[1]

Potential suspect			
	◯ Natural Person	◯ Legal Entity	

Please indicate the person you believe may be involved under the previous section, based on the information available.

Leave blank if you do not know or are unsure. If you only know certain categories of information, leave the other fields blank (do NOT use the word 'unknown' or similar terms).

If you wish to report information about more than three potential suspects, please indicate the other ones in the section *Information about other offences, suspect, victims or other relevant information*.

NB: This does not allocate a formal status or the individual, but should be seen in the colloquial sense, and is merely an indication to the EPPO.

1 'Potential suspect' corresponds to a category of data subjects processed in the EPPO's Case Management System in accordance with the Commission Delegated Regulation ((EU) 2020/2153, C (2020) 6797/F1) and is analogue to the concept of 'person concerned' or 'alleged perpetrator', as used in the practice of other institutions/authorities. Filling in this section only means that information with regard to this person and the alleged circumstances is submitted. The EPPO will examine allegations, as per its mandate, but this does neither impair the presumption of innocence, nor imply any attribution of criminal responsibility. The EPPO will verify the information received in order to decide whether or not to initiate an investigation. During the investigation, all inculpatory and exculpatory evidence will be carefully analysed and those concerned will have the rights available in the criminal procedure.

If *Natural Person* is selected

Potential suspect			
	◯ Natural Person	◯ Legal Entity	
Surname		Maiden Name	
Given Name		Alias	
Date of Birth		Place of Birth	
Sex	◯ M ◯ F	Nationality	
Identification Number(e.g. Personal N° or Registration N°)			
Occupation			
Suspects member of criminal organization ?		◯ Yes ◯ No	
Place of residence (country, city, address)			
Do the documents in the Annex contain personal data related to this individual revealing the racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic and biometric data, concerning a person's health, sex life or sexual orientation?		◯ Yes ◯ No	
Please indicate which document in the Annex and what special category of personal data and the reason therefore			

Surname, Maiden Name, Given Name, Alias:

Please enter the details, including hyphens (-) and apostrophes ('), but no dots (.).

Please insert full surname and maiden name in ALL CAPITAL LETTERS. For the given name only capitalize the first letter.

NB: If it is not known which part of the name is the given name and which is the surname, please insert the full name in the *Alias* field.

NB: If a field is unknown, please leave it blank.

Examples of entering names:
John Silver – **Name**: John – **Surname**: SILVER
John K. Silver – **Name**: John K *(without dot)* – **Surname**: Silver
Silver – **Name**: *(leave blank)* – **Surname**: *(leave blank)* – **Alias**: SILVER

Sex: Please select one of the two given options. If unknown or 'other', leave blank.

Nationality: Please select from the drop-down list. If unknown, leave blank.

Identification Number: If known, please enter the number that can help to uniquely identify the person, for instance the national personal number (called differently in different countries, e.g. in Belgium it is the *National Number*). The information should be inserted without spaces or special characters. For example, "AD 12546845-U" should be inserted as "AD12546845U". If you do not know or do not have one, please leave the field blank.

Occupation: If known please mention the employer and in which function the individual is working.

Suspected member of criminal organization: If known indicate whether the potential suspect is member of a criminal organization (in any capacity). If not known, or not sure, leave blank.

Place of residence: Please, if available, provide the full address, respecting the national format. Please do not translate the street names and their indications (e.g. Street, Boulevard, Alley, Square) into English. Where possible, names of towns or cities should be anglicised, e.g. Wien becomes Vienna. If not known, leave blank

Special categories of operational personal data: The inclusion of the type of data mentioned in this field should only take place if strictly necessary. Please indicate using the two given options if any of the documents attached to the report contain special categories of operational personal data. If you selected yes, the completion of the explanatory box below is mandatory.

If *Legal Entity*[2] is selected

Potential suspect		
	◯ Natural Person	◯ Legal Entity

Please use field – *Name* – for entering the name of the legal entity. Symbols (hyphens, apostrophes, dots) that are part of the name should be included, e.g. *1-2-3 Taxis*; *A.B.C. Internazionale SpA*; *Smith, Jones and White LLP*.

The entity type must only be written in its abbreviated form and without dots, commas, or spaces between letters, e.g. *Sp zoo*, *BV*, *Ltd*, *GmbH*. The entity type must also be after the name, so *AB Ruffel & Båg* must be entered as *Ruffel & Båg AB*. The entity type must NOT be anglicized (*EOOD*, *UAB*, *Sp zoo*, *Sprl*, *BV* and so on must NOT become LTD)

Please use the field – *Nationality* – for indicating in which country the legal entity is registered.

Please use the field – *Place of residence* – for indicating the full address where the legal entity is registered. Please respect the notes provided above in relation to address.

Please use field – *Identification Number* – for indicating the number that can help to uniquely identify the legal entity (e.g. company number, VAT number, registration number).

VII – VICTIM(S) (OTHER THAN THE EU)

Victim(s) (other than the EU)		
	◯ Natural Person	◯ Legal Entity

If information is available on victims other than European Union, please provide the details in the form. Please chose options and fill in fields in this section as described above for the section *Potential suspect*. Also here, information on any special categories of personal data should be provided only if strictly necessary in your view, and the reasons / explanation provided in the explanatory box.

2 Please report the information of the legal person as available. If unavailable, report the available information on the business or undertaking.

VIII – INFORMATION ABOUT OTHER OFFENCES, SUSPECTS, VICTIMS OR OTHER RELEVANT INFORMATION

Information about other offences, suspects, victims (if applicable) or other relevant information

Please provide information about **other offences, suspects, victims, etc**. if the space provided for in the form is not sufficient.

You can also add here any additional information that doesn't fit the previous sections and you believe the EPPO should be aware of during the verification process (e.g. internal reference number of e.g. EU agencies' own cases, stage of the administrative procedure)

IX – ANNEXES

Annexes (for large documents please include a table of contents)
Do the documents in the Annex contain personal data related to individuals **other than those indicated above** revealing the racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic and biometric data, concerning a person's health, sex life or sexual orientation? ◯ **Yes** ◯ **No**
Please indicate which document in the Annex and what special category of personal data and the reason therefore

Please provide details about each of the documents that are attached to the form. State clearly which documents, if any, include special categories of personal data, and provide the explanation therefore.

If you have further questions on how to complete this form please contact: xxx

This is how the **EPPO Crime Reports** should look like if filed by tax, customs or other German and all other bodies in the EU if informing the EPPO. **21**

(c) Transfer of information 3: Customs authorities may issue reports to FIU & EPPO

German customs regularly (rotationally) carry out administrative controls and audits in companies, for example in companies that export and import a lot, since customs law in this area prescribes so-called local-audits by the customs audit service. A suspicion of tax offences and customs offences could arise here (→ Art. 12e OLAF Regulation does not apply in case of a direct criminal suspicion). This is how one EPPO case was described by a Press Release in October 2021: **22**

> The auditing service of the main customs office in Munich (*Hauptzollamt*) identified possible tax evasion in the seven-digit euro range as part of a local, so-called administrative Main Audit. The EPPO investigates.
>
> **[The suspected Case]**
>
> According to the information available so far, used mobile phones from the Arab world were brought to Bulgaria and Hungary via Germany. The shipment took place as part of the intra-Community delivery. With this procedure, when the goods are imported with a planned forwarding through Germany to another EU member state, the import duties are not levied in Germany, but only in the country of destination. During the test, it was not possible to finally clarify whether the mobile phones actually arrived at their destination.
>
> **[How the Reporting was done…]**
>
> After the audit service reported suspicious activity to the Financial Intelligence Unit (FIU[232]), the operational EPPO, based in Luxembourg, took over the criminal prosecution. The Munich Customs Investigation Office was commissioned to carry out the investigation.[233]

If the EDPs have verified these Reports (see the three examples above this section) the EPPO must decide on the exercise of its competence. **23**

- Article 25, which regulates the Exercise of its competence by the EPPO applies.

[232] See Meldeportal https://goaml.fiu.bund.de/Home. (Accessed 31 December 2024). Newest Developments (possible EPPO Competence in the Light of Russian War against Ukraine) https://www.bundesregierung.de/breg-de/aktuelles/sanktionsdurchsetzungsgesetz-2-2133904. (Accessed 31 December 2024) and see official Document of the FIU Germany: https://www.formulare-bfinv.de/ffw/content.do. (Accessed 31 December 2024).
[233] Zoll Pressemitteilungen 2021 Europaweite Steuerhinterziehung aufgedeckt, Europaweite Steuerhinterziehung aufgedeckt. online: https://polit-x.de/de/documents/6396180/. Accessed 31 December 2024.

(2) Competence of the EPPO, Art. 22, 23, Art. 26 para. 4

24 The EPPO is competent if there is an existing suspicion for a PIF offence (see below → 1. b.) and if the territorial and personal competence are valid. Art. 23 EPPO Regulation reads as follows:

- the criminal offences were committed, in whole or in part, on the territory of one or more participating EU Member States;
- the criminal offences were committed by a national of a participating EU Member State,
- the criminal offences were committed by a person subject to the Staff Regulations or rules applicable to EU officials.

25 In case of several investigations Art. 26 para. 4 EPPO Regulation applies and will guide to solutions.

bb. Jurisdiction of the EDPs in Germany

26

Section 160 Obligation to clarify facts
(1) As soon as the public prosecution office obtains knowledge of a suspected offence, either through a report of an offence or by other means, it shall investigate the facts in order to decide whether public charges are to be preferred.
(2) The public prosecution office shall ascertain **both incriminating and exonerating circumstances** and shall ensure that evidence the loss of which is to be feared is taken.
(3) The public prosecution office shall also **investigate** those **circumstances** which are important for the determination of the legal consequences of the act. To that end, it may avail itself of the services of the court assistance (agency).
(4) A measure shall be inadmissible if special provisions regulating its application, being provisions under federal law or under the corresponding *Land* law, present an obstacle thereto.[234]

27 Next, it has to be considered that if an investigation according to s. 152 para. 2 et seq German CPC has started to concentrate on one individual, the so-called **individual suspect** ("*individuell* **Beschuldigter**") – the term is not prescribed by the German criminal (procedure) law, but the tax code (*Abgabenordnung*[235]) contains a section in its criminal

[234] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch. Cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1327. Accessed 31 December 2024.

[235] **§ 397 Einleitung des Strafverfahrens AO** (1) Das Strafverfahren ist eingeleitet, sobald die Finanzbehörde, die Polizei, die Staatsanwaltschaft, eine ihrer Ermittlungspersonen oder der Strafrichter eine Maßnahme trifft, die erkennbar darauf abzielt, gegen jemanden wegen einer Steuerstraftat strafrechtlich vorzugehen.
(2) Die Maßnahme ist unter Angabe des Zeitpunkts unverzüglich in den Akten zu vermerken.
(3) Die Einleitung des Strafverfahrens ist dem Beschuldigten spätestens mitzuteilen, wenn er dazu aufgefordert wird, Tatsachen darzulegen oder Unterlagen vorzulegen, die im Zusammenhang mit der Straftat stehen, derer er verdächtig ist.

provisions that includes at least a rough definition of the individually accused person, called "*Beschuldigter*"– the **EDP needs to officially open the investigation** and investigate those circumstances which are important for the determination of the legal consequences of the PIF offence, e.g. VAT fraud (for securing evidence, see below → Art. 28 EPPO Regulation; see above "structure of an EPPO investigation"→ B. II. 1. j)).[236]

28

Section 397 Initiating criminal proceedings German Tax Code (Abgabenordnung)
(1) Criminal proceedings shall be deemed to have been initiated as soon as the revenue authority, the police, the public prosecutor's office, one of its investigators or the judge in a criminal court adopts a measure, the purpose of which is identifiably to institute criminal action against somebody for a tax crime.
(2) The measure and the time at which it was taken shall be entered in the records without undue delay.
(3) The accused shall be informed of the initiation of criminal proceedings at the latest when he is called upon to reveal facts or supply documents which are related to the crime of which he is suspected.[237]

29

There is a general rule on local competence in purely national cases:

Section 143 [of the German Court Constitutions Act]
(1) The local competence of the public prosecution office shall be determined by the local jurisdiction of the court at which the public prosecution office exists. If venue cannot be established in any court within the territorial scope of this Act, or if such court cannot be ascertained, the public prosecution office first seized of the matter shall be competent. If in the cases referred to in sentence 2 the jurisdiction of a court is established, the proceedings shall be referred to the public prosecution office competent pursuant to sentence 1 as soon as all necessary measures have been taken to secure the proceedings and the state of the proceedings permits an orderly referral. Sentence 3 shall apply mutatis mutandis where the competence of one public prosecution office has ceased to exist and another public prosecution office has become competent."[238]

[236] Köhler 2022 § 160 StPO, mn. 1a emphasizing that § 160 para 1 does not apply in EPPO proceedings as Art. 26 supersedes this paragraph.
[237] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here: https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p2790. Accessed 31 December 2024.
[238] "Gerichtsverfassungsgesetz (GVG) § 143 (1) Die örtliche Zuständigkeit der Staatsanwaltschaft bestimmt sich nach der örtlichen Zuständigkeit des Gerichts, bei dem die Staatsanwaltschaft besteht. Fehlt es im Geltungsbereich dieses Gesetzes an einem zuständigen Gericht oder ist dieses nicht ermittelt, ist die zuerst mit der Sache befasste Staatsanwaltschaft zuständig. Ergibt sich in den Fällen des Satzes 2 die Zuständigkeit eines Gerichts, ist das Verfahren an die nach Satz 1 zuständige Staatsanwaltschaft abzugeben, sobald alle notwendigen verfahrenssichernden Maßnahmen ergriffen worden sind und der Verfahrensstand eine geordnete Abgabe zulässt. Satz 3 gilt entsprechend, wenn die Zuständigkeit einer Staatsanwaltschaft entfallen ist und eine andere Staatsanwaltschaft zuständig geworden ist", cf. here https://www.gesetze-im-internet.de/gvg/__143.html. Accessed 31 December 2024. Translation provided by Kathleen Müller-Rostin, cf. here https://www.gesetze-im-internet.de/englisch_gvg/index.html. Accessed 31 December 2024.

30 This rule has been superseded by special internal regulations for the regional offices of the EPPO in Germany.

cc. Internal agreement on jurisdiction of the regional office of the EPPO in Germany

Table 8: Internal soft law agreement of the German EDPs for jurisdiction & competence

European Public Prosecutor Germany business allocation - Centers of Delegated European Prosecutors – 2021 (Status 01.06.2021 Ref.: 3271 – 1.2) Central postal address: European Public Prosecutor Delegated European Public Prosecutors – Center Köln Reichenspergerplatz 1 D-50670 Keln E-mail. verwaltung@d-eu-sta.de; poststelle@d-eu-sta.de Center Berlin (Dept. 10) Postal address: Tower penalty 91	**Center of Frankfurt am Main** (dept. 20) postal address: clo Attorney General Line 42. 60313 Frankfurt am Main Email: zentrum-frankfurt@d-eu-sta.de Responsibilities of the Center Frankfurt am Main: 1. Criminal offences pursuant to Article 22 Paragraphs 1 to 3 EUStA-VO in conjunction with Article 3 Paragraph 2 a) to c), 4 Paragraphs 1 to 3 2 Directive (EU) 2017/1371 according to Number 1–3, 5–7 of the annex, in the case of subsidy fraud the domicile or place of residence of	**Hamburg center (Dept. 30)** Postal address: c/o Hamburg Public Prosecutor's Office PO Box 30 52 61 20316 Hamburg Email: zentrum-hamburg@d-eu-sta.de Responsibilities of the Center Hamburg: 1. Criminal offences pursuant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2a to c), 4 Para. 1 to 3 Directive (EU) 2017/1371 according to Sections 1–3, 5–7 of the Annex, if the crime scene, in the case of subsidy fraud the seat or the place of residence of the	**Cologne center (Dept. 40)** Postal address: c/o General Public Prosecutor Cologne Reichenspergerplatz 1 50670 Cologne Email: zentrum-koeln@d-eu-sta.de Fax: +49 (0)211 87565 2714 Responsibilities of the Cologne center: 1. Criminal offences pursuant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 para. Attachment if the place of residence of the subsidy recipient is in NRW. 2. Penalties according to Art. 22 Paragraph 1 Regulation in conjunction with Article 3	**Munich Center (department** 50) c/o General Public Prosecutors Office Munich Seidlstraße 21 80335 München Responsibilities of the Cologne center: 1. Criminal offences pursu-ant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 para. Attachment if the place of residence of the subsidy recipient is in Bavaria or Saxony. 2. Penalties according to Art. 22 Paragraph 1 Regulation in conjunction with Article 3 Paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) ac-

c/o Public Prosecutor Berlin D-10559 Berlin Email: zentrum-berlin@d-eusta.de Responsibilities of the Berlin center: 1. Criminal offences in accordance with Art. 22 para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 Para. 1 to 3 Directive (EU) 2017/1371 according to Sections 1–3, 5–7 of the Annex, as far as the crime scene, in the case of subsidy fraud the domicile or place of residence of the subsidy recipient in the states of Berlin, Brandenburg, Saxony-Anhalt or Thüringen is located. A 2. Criminal offences according to Art.22	the subsidy recipient in the states of Baden-Württemberg, Hesse, Rhine- | state-Palatinate or Saarland. Criminal offences in accordance with Article 22 paras. 1 to 3 EUStA-VO in conjunction with Article 3 Paragraph 2 d) Directive (EU) | 3017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the | authority has its registered office in one of the countries mentioned in Section 1. | 3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 in conjunction with s. 11 paras. 1 and 2 EU-StAG, insofar as the crime scene is in one of the countries mentioned in Item 1. 4, Enforcement of assigned measures in accordance with	subsidy recipient is in the states of Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony or Schleswig-Holstein. 2. Criminal offences pursuant to Article 22 Paragraphs 1 to 3 EPPO Regulation in conjunction with Article 3 Paragraph 2 d) PIF Directive (sales tax fraud) in accordance with Section 4 of the Annex, insofar as the authority submitting the case is based in one of the countries mentioned in Section 1 Has. 3. Administrative offences according to Art. 6, 9 PIF Directive in conjunction with Section 11 paras. 1 and 2 EPPO Adoption Law, insofar as the crime scene is in one of the	Paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority submitting the process has its registered office in North Rhine-Westphalia. 3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 EU-StAG, insofar as the crime scene is in North Rhine-Westphalia. 4. Execution of assigned measures according to Art. 31 ara. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in North Rhine-Westphalia. 5. Contacts for Delegated European Public Prosecutors from the Member States of	cording to Section 4 of the Annex, insofar as the authority submitting the process has its registered office in North Rhine-Westphalia. 3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 EU-StAG, insofar as the crime scene is in North Rhine-Westphalia. 4. Execution of assigned measures according to Art. 31 Para. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in North Rhine-Westphalia. 5. Contacts for Delegated European Public Prosecutors from the Member States of Croatia, Austria, Slovakia, Malta, Spain,

Para.1 to 3 EU-StA-VO i.V.im. Art.3 paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority submitting the transaction has its registered office in one of the countries mentioned in Section 1. 3. Administrative offences according to Articles 6, 9 of Directive (EU) 2017/1371 in conjunction with Section 11 paras. 1 and 2 EPPO Adoption Act, if the crime scene is in one of the countries mentioned in Section 1. 4. Enforcement of assigned measures pursuant to Art. 31 Para. 1, 32 EPPO Regulation as far as the location of	Art. 31 Para. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in the countries mentioned in No. 1. 5. Contacts for Delegated European Public Prosecutors from the Member States Bulgaria, Italy, Luxembourg and Slovenia as well as the law enforcement authorities from Ireland 6. Procedure after individual assignment by the national European Public Prosecutor and the standing chamber. 7. Contacts for authorities from the countries named in Section 1. 8. Contact person for the Federal Criminal Police Office and the customs investigation offices in Frankfurt am Main	countries mentioned in Section 1. 4. Execution of assigned measures from Art. 31 and 32 EPPO Regulation, insofar as the location of the investigative measure is in a country from paragraph 1. 5. Point of contact for European Delegated Prosecutors from the Member States of Finland, Estonia, Latvia and Lithuania as well as the criminal prosecution authorities in Denmark and Sweden. 6. Procedure according to individual allocation by the national ED and the Permanent Chamber. 7. Contacts for authorities from the areas listed in Section 1 mentioned countries and the customs investigation offices:	Belgium, the Netherlands, Portugal and Romania. 6. Process according to individual allocation by the Permanent Chamber. 7. Contact for authorities from North Rhine-Westphalia. 8. Contact person of the Customs Criminal Police Office and the Customs Investigation Office in Essen. 9. Inside the center: according to rotation.	Czech Republic and Hungary. 6. Process according to individual allocation by the Permanent Chamber. 7. Contact person of the Customs Criminal Police Office and the Customs Investigation Office in the afore-mentioned countries and the Customs Investigation Service in Bavaria and Dresden. 8. Inside the center: according to rotation.

the investigative measure to be carried out is in the countries mentioned in No. 1. 5. Contact for EDPs from Greece, France and Cyprus as well as for law enforcement authorities in Poland. 6. Procedure after individual allocation by the national EP and the permanent chamber. 7. Contact person for authorities from the Zoff. 1 countries mentioned and the customs investigation office Berlin-Brandenburg. 8. Inside the center: according to rotation.	and Stuttgart. 9. Inside the center: according to rotation.	Hamburg and Hanover. 8. Inside the center: according to rotation.		

31

"**European Public Prosecutor Germany business allocation** – Centers of Delegated European Prosecutors – 2021 (Status 01.06.2021 Ref.: 3271 – 1.2)" Central postal address: European Public Prosecutor Delegated European Public Prosecutors – Center Köln, Reichenspergerplatz 1, D-50670 Köln, E-mail. verwaltung@d-eusta.de; poststelle@d-eusta.de

Center Berlin (Dept. 10), Postal address: Tower penalty 91 c/o Public Prosecutor Berlin D-10559 Berlin, Email: zentrum-berlin@d-eusta.de

Responsibilities of the Berlin center:
1. Criminal offences in accordance with Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 Para. 1 to 3 Directive (EU) 2017/1371 according to Sections 1–3, 5–7 of the Annex, as far as the crime scene, in the case of subsidy fraud the domicile or place of residence of the subsidy recipient in the states of Berlin, Brandenburg, Saxony-Anhalt or Thüringen is located. A
2. Criminal offences according to Art.22 Para.1 to 3 EUStA-VO i.V.im. Art.3 paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority submitting the transaction has its registered office in one of the countries mentioned in Section 1.
3. Administrative offences according to Articles 6, 9 of Directive (EU) 2017/1371 in conjunction with Section 11 paras. 1 and 2 EPPO Adoption Act, if the crime scene is in one of the countries mentioned in Section 1.
4. Enforcement of assigned measures pursuant to Art. 31 Para. 1, 32 EPPO Regulation as far as the location of the investigative measure to be carried out is in the countries mentioned in No. 1.
5. Contact for EDPs from Greece, France and Cyprus as well as for law enforcement authorities in Poland.
6. Procedure after individual allocation by the national EP and the permanent chamber.
7. Contact person for authorities from the Zoff. 1 countries mentioned and the customs investigation office Berlin-Brandenburg.
8. Inside the center: according to rotation.

Center of Frankfurt am Main (dept. 20) postal address: clo Attorney General
Line 42, 60313 Frankfurt am Main, Email: zentrum-frankfurt@d-eusta.de, Responsibilities of the Center Frankfurt am Main:
1. Criminal offences pursuant to Article 22 Paragraphs 1 to 3 EUStA-VO in conjunction with Article 3 Paragraph 2 a) to c), 4 Paragraphs 1 to 3 2 Directive (EU) 2017/1371 according to Number 1–3, 5–7 of the annex, in the case of subsidy fraud the domicile or place of residence of the subsidy recipient in the states of Baden-Württemberg, Hesse, Rhine-state-Palatinate or Saarland.
Criminal offences in accordance with Article 22 Paragraph 1 to 3 EUStA-VO in conjunction with Article 3 Paragraph 2 d) Directive (EU) | 3017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority has its registered office in one of the countries mentioned in Section 1. | 3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 in conjunction with § 11 Paragraph 1 and 2 EUStAG, insofar as the crime scene is in one of the countries mentioned in Item 1.
4, Enforcement of assigned measures in accordance with Art. 31 Para. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in the countries mentioned in No. 1.
5. Contacts for Delegated European Public Prosecutors from the Member States Bulgaria, Italy, Luxembourg and Slovenia as well as the law enforcement authorities from Ireland

6. Procedure after individual assignment by the national European Public Prosecutor and the standing chamber.
7. Contacts for authorities from the countries named in Section 1.
8. Contact person for the Federal Criminal Police Office and the customs investigation offices in Frankfurt am Main
and Stuttgart.
9. Inside the center: according to rotation.

Hamburg center (Dept. 30) Postal address: c/o Hamburg Public Prosecutor's Office PO Box 30 52 61 20316 Hamburg, Email: zentrum-hamburg@d-eusta.de
Responsibilities of the Center Hamburg:
1. Criminal offences pursuant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2a to c), 4 Para. 1 to 3
Directive (EU) 2017/1371 according to Sections 1–3, 5–7 of the Annex,
if the crime scene, in the case of subsidy fraud the seat or the place of residence of the subsidy recipient is in the states of Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony or Schleswig-Holstein.
2. Criminal offences pursuant to Article 22 Paragraphs 1 to 3 EPPO Regulation in conjunction with Article 3 Paragraph 2 d) PIF Directive (sales tax fraud) in accordance with Section 4 of the Annex, insofar as the authority submitting the case is based in one of the countries mentioned in Section 1 Has.
3. Administrative offences according to Art. 6, 9 PIF Directive in conjunction with Section 11 paras. 1 and 2 EPPO Adoption Law, insofar as the crime scene is in one of the countries mentioned in Section 1.
4. Execution of assigned measures from Art. 31 and 32 EPPO Regulation, insofar as the location of the investigative measure is in a country from paragraph 1.
5. Point of contact for European Delegated Prosecutors from the Member States of Finland, Estonia, Latvia and Lithuania as well as the criminal prosecution authorities in Denmark and Sweden.
6. Procedure according to individual allocation by the national ED and the
Permanent Chamber.
7. Contacts for authorities from the areas listed in Section 1
mentioned countries and the customs investigation offices: Hamburg and Hanover.
8. Inside the center: according to rotation.

Cologne center (Dept. 40) Postal address: c/o General Public Prosecutor Cologne Reichenspergerplatz 1 50670 Cologne, Email: zentrum-koeln@d-eusta.de Fax: +49 (0)211 87565 2714
Responsibilities of the Cologne center:
1. Criminal offences pursuant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 para. Attachment if the place of residence of the subsidy recipient is in NRW.

2. Penalties according to Art. 22 Paragraph 1 Regulation in conjunction with Article 3 Paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority submitting the process has its registered office in North Rhine-Westphalia.
3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 EUStAG, insofar as the crime scene is in North Rhine-Westphalia.
4. Execution of assigned measures according to Art. 31 Para. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in North Rhine-Westphalia.
5. Contacts for Delegated European Public Prosecutors from the Member States of Belgium, the Netherlands, Portugal and Romania.
6. Process according to individual allocation by the
Permanent Chamber.
7. Contact for authorities from North Rhine-Westphalia.
8. Contact person of the Customs Criminal Police Office and the Customs Investigation Office in Essen.
9. Inside the center: according to rotation.

Munich Center (department 50) c/o General Public Prosecutors Office Munich Seidlstraße 21 80335 München Responsibilities of the Cologne center:
1. Criminal offences pursuant to Art. 22 Para. 1 to 3 EUStA-VO in conjunction with Art. 3 Para. 2 a) to c), 4 para. Attachment if the place of residence of the subsidy recipient is in Bavaria or Saxony.
2. Penalties according to Art. 22 Paragraph 1 Regulation in conjunction with Article 3 Paragraph 2 d) Directive (EU) 2017/1371 (VAT fraud) according to Section 4 of the Annex, insofar as the authority submitting the process has its registered office in North Rhine-Westphalia.
3. Administrative offences according to Art. 6, 9 Directive (EU) 2017/1371 EUStAG, insofar as the crime scene is in North Rhine-Westphalia.
4. Execution of assigned measures according to Art. 31 Para. 1, 32 EUStA-VO, insofar as the location of the investigative measure to be carried out is in North Rhine-Westphalia.
5. Contacts for Delegated European Public Prosecutors from the Member States of Croatia, Austria, Slovakia, Malta, Spain, Czech Republic and Hungary.
6. Process according to individual allocation by the
Permanent Chamber.
7. Contact person of the Customs Criminal Police Office and the Customs Investigation Office in the afore-mentioned countries and the Customs Investigation Service in Bavaria and Dresden.
8. Inside the center: according to rotation.

Annex to the Organisation of the jurisdiction towards PIF Aquis offences between the regional German offices of the EPPO: **32**

Offences to the detriment of the financial interests of the EU under Directive (EU) 2017/1371

1. on expenses that are not related to the award of the contract within the meaning of Art. 101 (EU, Euratom) 966/2012 (Art. 3 (2a) RL (EU) 2017/1371):

Subsidy fraud according to § 264 StGB:

2. Expenditure in connection with the award of contracts within the meaning of Euratom) 966/2012, Art. 3 Para. 2b) Directive (EU) 2017/1371):

Fraud according to § 263 StGB,

Infidelity/Misappropriation according to § 266 StGB,

Criminal offences from the new FinSchStG

3. on receipts (traditional own resources) which are receipts from VAT funds (Art. 22 para. 1 in connection with the PIF Directive, Art. 3):

- Tax evasion according to Section 370 Para 1 No. 1 and 2 AO, in conjunction with Sections 3, 153 paras. 2 and 3 of the Fiscal Code.
- Art. 23 Para. 2 VO (EU) No. 952/2013, § 25 Para. 2 StGB.
- Illegal reduction of EU revenues according to § 2 EU-FinschG.

4. on revenue from the EU's own VAT resources if the total damage is at least EUR 10 million and two or more Member States are affected (Art. 3 d

Directive (EU) 2017/1371):

- Section 370 paragraphs 1 and 2 AO, Section 25 paragraph 2 StGB.

5. Money laundering insofar as the act relates to items covered by Directive (EU) 2017/1371) (Art. 4 Para. 1 Directive (EU) 2017/1371):

- Money laundering according to § 261 StGB

6. Crimes of wilful corruption and bribery of public officials to the detriment of the financial interests of the EU (Art. 4 para. 2 and 4 Directive (EU) 2017/1372):

- Bribery of elected officials according to § 108e in conjunction. 11 paragraph 1 number 2, 2a StGB.
- Bribery and corruptibility according to §§ 332, 334, 335a in connection with Section 11 paragraph 1 number 2, 2a StGB StGB.
- Bribery of foreign MPs in connection with international business transactions according to Article 2 § 2 IntBestGesetz iVm. 11 paragraph 1 number 2, 2a StGB.
- Corruption and bribery related to the financial interests of the EU according to Section 3EUFinSchsStG.

7. Criminal offences of intentional misuse of the EU by public officials (Art. 4 para. 3 PIF).

- Infidelity/Misappropriation according to Section 266 StGB.

8. Criminal offences pursuant to Article 22 Paragraph 2 EUStA-VO regarding participation in a criminal organisation pursuant to RB 2008/841/JI if the focus is on committing criminal offences pursuant to Sections 1.–7. located.

9. Criminal offences in accordance with Article 22 Paragraph 3 in conjunction with Article 25 Paragraph 3 EPPO Regulation
mentioned criminal acts are inextricably linked.
10. Prosecution of the offences from the point of view of an administrative offence insofar as these are inseparably connected with the criminal act falling under Article 22 para. 1 EPPO Regulation in accordance with Section 11 para. 1 EUStAG.
11. Proceedings against legal persons or associations of persons in accordance with Art. 6 Directive 2017/1371, Section 11 para. 2 EUStAG in conjunction with Sections 9, 30, 130 OWiG, if the EUStA conducts preliminary proceedings against a manager within the meaning of s. 30 para. 1 OWiG.

33 As we recognized that s. 130 OwiG was not listed in the official document, we add it here for the sake of consistency in the area of substantive PIF laws, which could be applied by the EPPO:

34 **Section 130 Administrative Offences Act (OWiG)**
(1) Any person who, as the owner of a business or enterprise, wilfully or negligently fails to take the supervisory measures necessary to prevent infringements of obligations incumbent on the owner in the business or enterprise, the breach of which is punishable by a penalty or fine, shall be deemed to have committed an administrative offence if such an infringement is committed which would have been prevented or made considerably more difficult by proper supervision. The necessary supervisory measures also include the appointment, careful selection and monitoring of supervisors.
(2) An establishment or company within the meaning of paragraph 1 is also a public company.
(3) The administrative offence may be punished with a fine of up to one million euros if the breach of duty is punishable by law. § Section 30 paragraph 2 sentence 3 shall apply. If the breach of duty is punishable by a fine, the maximum fine for the breach of supervisory duty shall be determined by the maximum fine threatened for the breach of duty. Sentence 3 shall also apply in the event of a breach of duty that is simultaneously punishable by a penalty and a fine if the maximum fine threatened for the breach of duty exceeds the maximum fine under sentence 1.

Franz summarised the relevance of this breach-of-duty provision[239]: **35**

This provision establishes administrative liability for business owners or managers when company-related obligations are violated, which could have been prevented or mitigated through proper supervision. It serves as the **central criminal compliance** provision."[240]

b) Initial suspicion for a PIF offence within the competence of the EPPO

The **initial suspicion** (*Anfangsverdacht*) must relate to one of the criminal offences within the EPPO's competence and it must fall into the competence of a regional office in Germany. The national criminal offences harmonized by the PIF Directive apply for the question of competence in combination with Art. 23 EPPO Regulation, as specified in the → Short Overview Box above. **36**

aa. Initiation of an investigation

First of all it needs to be determined, which provisions of national law apply in regard to the initiation of an investigation falling into the EPPO's competence. **37**

If one of the Public Prosecutor's Office in one of the German *Länder* or one special "branch" of the European Public Prosecutor's Office in Germany (*Zweigstelle der EUStA in Deutschland*)[241] wants to initiate an investigation it needs to proof that there are sufficient factual indications ("*hinreichende tatsächliche Anhaltspunkte*").[242] Some say the proof needs to be according to s. 152 para. 2 German CPC, some regard the reference to national law in Art. 26 para. 1 EPPO Regulation as reference to the substantive criminal law i.e. the PIF Aquis law only.[243] This argument seems a bit far-fetched and is not valid from the point-of-view of the Regulation as Art. 22 in connection with the PIF Directive is reserved for the substantive criminal law i.e. the PIF Aquis legal area. Thus the legislator could have easily referred to Art. 22 EPPO Regulation instead of making a reference to the applicable national law of the Member State concerned. And equally **38**

[239] See Oberlandesgericht Düsseldorf, VI-2 Kart 9/08 OWi.
[240] Franz 2023 § 43 V mn. 566. And see Dr. Julia Standke, LL.M, who spoke about the relevance for the EDPs, visiting the Umsatzsteuerkonferenz 2024. online: https://ivcc.de/sites/default/files/gallery/Flyer_Umsatzsteuerkonferenz%202024.pdf. Accessed 31 December 2024.
[241] *Nota bene*: For the purpose of locating the offices of the European delegated public prosecutors, Germany opted for a *center vs. non-center* system. The decision to do so was made at the Justice Ministers' Conference 2018 in North Rhine-Westphalia. Accordingly, the delegated public prosecutors are now working at a regional court (*Landgericht*), which is marked by the central states as an external / service office.
[242] See recently Ricker 2021.
[243] Jähnke 2020, p. 243 with a different opinion: "I. Wenn das Legalitätsprinzip eine übergreifende, zwin- gende europäische Maxime ist, dann stellt sich die Frage, welche Bedeutung die Verweisung auf das "anwendbare nationale Recht" in Art. 26 Abs. 1 EUStA-VO hat. Als Bezugnahme auf das nationale Legalitätsprinzip (§ 152 Abs. 2 StPO), wie der Referentenentwurf annimmt, wäre sie unrichtig, weil die rechtliche Quelle der Verfolgungspflicht der EUStA das europäische Recht ist. Eine Ermächtigung zu nationaler Ausgestaltung des Prinzips kann sie, wie dargelegt, nicht enthalten. Aber überflüssig ist sie auch nicht. Richtig verstanden, ist mit dem "anwendbaren nationalen Recht" nicht das Verfahrensrecht, sondern das nationale materielle Recht gemeint"

it seems evident that the Regulation – in its current mode – refers to national law frequently, which is often the CPC of the Member State concerned.

39 That makes sense here too, because even if one postulates a common **European maxim of initial suspicion** including the **principle of legality**, this maxim only **results from the individual case-related rules** of the Member States, i.e. this common ground, the common denominator in this respect can only then be regarded as a common European maxim mechanism if one has previously considered the individual rules. And those are also the ones that link to the individual, harmonized criminal offences adapted by the PIF Directive. This interpretation also does not prevent the direct applicability or the legal nature of the Regulation, which still pretends that this condition exists and thus represents fully enforceable EU law. Conflicting national provisions may not be applied in this regard in the area of the PIF Aquis.

40 These **centers of the EPPO in Germany**, which must act according to supranational and national law are

- Center Munich
- Center Hamburg
- Center Frankfurt am Main
- Center Cologne
- Center Berlin (for the hierarchy see above → Institutions).

41 They must assess according to s. 152 para. 2 Code of criminal procedure (*Strafprozessordnung*) and the European, supranational legality principle of Art. 26 para. 1 EPPO Regulation if there is an initial suspicion for a criminal offence falling within the competence of the EPPO. But first the competence of the EPPO must be assessed according to Art. 24 para. 6 EPPO Regulation.

(1) Applicable provisions

42

Sections of the German Criminal Procedure Code

Section 152 CPC[244] **Indicting authority; principle of mandatory prosecution**

(1) The public prosecution office shall be authorised to prefer public charges.

(2) Except as otherwise provided by law, t**he public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences**, provided there are ***sufficient factual indications***.[245]

[244] **s. 152 StPO Anklagebehörde; Legalitätsgrundsatz**
(1) Zur Erhebung der öffentlichen Klage ist die Staatsanwaltschaft berufen.
(2) Sie ist, soweit nicht gesetzlich ein anderes bestimmt ist, verpflichtet, wegen aller verfolgbaren Straftaten einzuschreiten, sofern zureichende tatsächliche Anhaltspunkte vorliegen"

[245] The English Original translation is provided by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch [as retrieved 03.05.2021, cf. here https://www.gesetze-im-internet.de/englisch_CPC/index.html. Accessed 31 December 2024.]

Section 161 CPC Public prosecution office's general investigatory powers
(1) For the purpose indicated in section 160 paras. 1 to 3, the public prosecution office shall be entitled to request information from all the authorities and to make investigations of any kind, either itself or through the police authorities and police officers, provided there are no other statutory provisions specifically regulating their powers. The police authorities and police officers shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all the authorities.
(2) If measures under this statute are admissible only if the commission of particular offences is suspected, personal data which have been obtained as a result of a corresponding measure taken pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to investigate one of the offences in respect of which such a measure could have been ordered to investigate the offence pursuant to this statute. Section 100e para. 6 no. 3 shall remain unaffected.
(3) Personal data obtained on or from private premises by technical means for the purpose of personal protection during covert investigations under police law may be used as evidence, having regard to the principle of proportionality (Article 13 para. 5 of the Basic Law) only after determination of the lawfulness of the measure by the local court (section 162 para. 1) in whose district the authority making the order is located; in exigent circumstances, a judicial decision is to be sought without delay."[246]

[246] The English Original translation is provided by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch [as retrieved 03.05.2021, cf. here https://www.gesetze-im-internet.de/englisch_CPC/index.htmlAccessed 31 December 2024.]**§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft *befugt*, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle *befugt*, von allen Behörden Auskunft zu verlangen.
(2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist § 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden.
(3) Ist eine Maßnahme nach diesem Gesetz nur bei Verdacht bestimmter Straftaten zulässig, so dürfen die auf Grund einer entsprechenden Maßnahme nach anderen Gesetzen erlangten personenbezogenen Daten ohne Einwilligung der von der Maßnahme betroffenen Personen zu Beweiszwecken im Strafverfahren nur zur Aufklärung solcher Straftaten verwendet werden, zu deren Aufklärung eine solche Maßnahme nach diesem Gesetz hätte *angeordnet werden* dürfen. § 100e Absatz 6 Nummer 3 bleibt unberührt.
(4) In oder aus einer Wohnung erlangte personenbezogene Daten aus einem Einsatz technischer Mittel zur Eigensicherung im Zuge nicht offener Ermittlungen auf polizeirechtlicher Grundlage dürfen unter Beachtung des Grundsatzes der Verhältnismäßigkeit zu Beweiszwecken nur verwendet werden (Artikel 13 Abs. 5 des Grundgesetzes), wenn das Amtsgericht (§ 162 Abs. 1), in dessen Bezirk die anordnende Stelle ihren Sitz hat, die Rechtmäßigkeit der Maßnahme festgestellt hat; bei Gefahr im Verzug ist die richterliche Entscheidung unverzüglich nachzuholen

43 The competent national authorities in Germany that relate to para. 7 of Art. 26 of the EPPO Regulation can be found by consulting the following provisions that are indicated by the German law executing the EPPO Regulation, the EUStAG:[247]

44 **Section 12 EUStAG[248] Notification obligations of the [German] EDP**
(1) If the European Public Prosecutor's Office has initiated preliminary proceedings pursuant to Article 26 Paragraph 1 of Regulation (EU) 2017/1939 or has exercised its right of evocation pursuant to Article 27 Paragraph 1 of this Regulation, the European Delegated Public Prosecutor shall transmit the Section 492 para. 2 sentence 1 of the Code of Criminal Procedure to be entered in the public prosecutor's register of proceedings to the register kept at the Federal Office of Justice.
(2) The European Delegated Prosecutor shall notify the public prosecutor's office of the initiation of the investigation pursuant to Article 26 para. 1 of Regulation (EU) 2017/1939, which pursuant to Section 142 in conjunction with Section 143 of the Courts Act for the prosecution of criminal offences pursuant to Article 22 of the Regulation (EU) 2017/1939 is responsible if the European Public Prosecutor's Office does not take over the prosecution

45 **Section 143 German Court Constitutions Act**[249]
(1) The local competence of the public prosecution office shall be determined by the local jurisdiction of the court at which the public prosecution office exists. If venue cannot be established in any court within the territorial scope of this Act, or if such court cannot be ascertained, the public prosecution office first seized of the matter shall be competent. If in the cases referred to in sentence 2 the jurisdiction of a court is estab-

[247] Cf. above for a synopsis of the entire German EPPO Regulation execution law.

[248] "**§ 12 Mitteilungspflichten des Delegierten Europäischen Staatsanwalt**
(1) Hat die Europäische Staatsanwaltschaft gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 ein Ermittlungsverfahren eingeleitet oder gemäß Artikel 27 Absatz 1 dieser Verordnung ihr Evokationsrecht ausgeübt, übermittelt der Delegierte Europäische Staatsanwalt die gemäß § 492 Absatz 2 Satz 1 der Strafprozessordnung in das staatsanwaltschaftliche Verfahrensregister einzutragenden Daten an das beim Bundesamt für Justiz geführte Register.
(2) Der Delegierte Europäische Staatsanwalt teilt die Einleitung des Ermittlungsverfahrens gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 der Staatsanwaltschaft mit, die nach § 142 in Verbindung mit § 143 des Gerichtsverfassungsgesetzes für die Verfolgung von Straftaten gemäß Artikel 22 der Verordnung (EU) 2017/1939 zuständig ist, wenn die Europäische Staatsanwaltschaft nicht die Verfolgung übernimmt"

[249] **§ 143 Gerichtsverfassungsgesetz (GVG)**
(1) Die örtliche Zuständigkeit der Staatsanwaltschaft bestimmt sich nach der örtlichen Zuständigkeit des Gerichts, bei dem die Staatsanwaltschaft besteht. Fehlt es im Geltungsbereich dieses Gesetzes an einem zuständigen Gericht oder ist dieses nicht ermittelt, ist die zuerst mit der Sache befasste Staatsanwaltschaft zuständig. Ergibt sich in den Fällen des Satzes 2 die Zuständigkeit eines Gerichts, ist das Verfahren an die nach Satz 1 zuständige Staatsanwaltschaft abzugeben, sobald alle notwendigen verfahrenssichernden Maßnahmen ergriffen worden sind und der Verfahrensstand eine geordnete Abgabe zulässt. Satz 3 gilt entsprechend, wenn die Zuständigkeit einer Staatsanwaltschaft entfallen ist und eine andere Staatsanwaltschaft zuständig geworden ist. Cf. here https://www.gesetze-im-internet.de/gvg/__143.html. Accessed 31 December 2024.

lished, the proceedings shall be referred to the public prosecution office competent pursuant to sentence 1 as soon as all necessary measures have been taken to secure the proceedings and the state of the proceedings permits an orderly referral. Sentence 3 shall apply mutatis mutandis where the competence of one public prosecution office has ceased to exist and another public prosecution office has become competent.[250]

Section 152 German Court Constitutions Act[251]

(1) The investigative personnel of the public prosecution office shall be obliged in this capacity to comply with the orders of the public prosecution office of their district and the orders of the officials superior thereto.

(2) The *Land* governments shall be authorised to issue statutory instruments designating the groups of civil servants and salaried staff who are to be subject to this provision. The salaried staff must be public service employees, must have attained the age of 21 and must have been employed in the designated groups of civil servants or salaried staff for at least two years. The *Land* governments may issue statutory instruments transferring this authorisation to the *Land* departments of justice.[252]

Sections of the German Tax Act **46**

Section 402 German Tax Act[253] **General rights and obligations of the revenue authority**

(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399 para. 2, second sentence.

[250] Translation provided by Kathleen Müller-Rostin, cf. here https://www.gesetze-im-internet.de/englisch_gvg/index.html. Accessed 31 December 2024.

[251] **§ 152 [Gerichtsverfassungsgesetz]**
(1) Die Ermittlungspersonen der Staatsanwaltschaft sind in dieser Eigenschaft verpflichtet, den Anordnungen der Staatsanwaltschaft ihres Bezirks und der dieser vorgesetzten Beamten Folge zu leisten.
(2) Die Landesregierungen werden ermächtigt, durch Rechtsverordnung diejenigen Beamten- und Angestelltengruppen zu bezeichnen, auf die diese Vorschrift anzuwenden ist. Die Angestellten müssen im öffentlichen Dienst stehen, das 21. Lebensjahr vollendet haben und mindestens zwei Jahre in den bezeichneten Beamten- oder Angestelltengruppen tätig gewesen sein. Die Landesregierungen können die Ermächtigung durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen"

[252] Translation provided by Kathleen Müller-Rostin.

[253] **§ 402 Allgemeine Rechte und Pflichten der Finanzbehörde [Abgabenordnung]**
(1) Führt die Staatsanwaltschaft das Ermittlungsverfahren durch, so hat die sonst zuständige Finanzbehörde dieselben Rechte und Pflichten wie die Behörden des Polizeidienstes nach der Strafprozessordnung sowie die Befugnisse nach § 399 Abs. 2 Satz 2.
(2) Ist einer Finanzbehörde nach § 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so gilt Absatz 1 für jede dieser Finanzbehörden.

(2) Where a revenue authority has been transferred pursuant to section 387 para. 2 jurisdiction for an area covered by several revenue authorities, para. 1 above shall apply for each of these revenue authorities.[254]

Section 404 German Tax Act[255] Tax and customs investigation
The Customs Investigation Offices and the agencies of Land revenue authorities which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399 para. 2, second sentence, as well as the power to examine the papers of those affected by the search (section 110 para. 1 of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.[256]

47 For an explanation of the **initial suspicion** (*Anfangsverdacht*) cf. below 2) and then cf. afterwards below → a) The concept of "**sufficient factual indications**" (*zureichende tatsächliche Anhaltspunkte*) in general.

(2) Non-applicable provisions due to the national adaption law for the EPPO

See amendment laws are printed above this Section → A.III.2. European Public Prosecutor's Office Act – EUStAG.).

48 The general rules of the German Code of Criminal Procedure as presented under 1) a) may apply (cf. above → Mn. 1, p. 141) – but only as long as they are not declared "inapplicable" by the German legislator and the so-called EPPO Adoption Act.

49 Cf. **EPPO Act of 10 July 2020** (Federal Law Gazette I p. 1648).[257]

Section 3 EUStAG Applicability of the CPC on the preliminary investigation
(1) If the European Public Prosecutor's Office is responsible under Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken over the prosecution under Article 25 of

[254] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.
[255] **§ 404 Steuer- und Zollfahndung [Abgabenordnung]**
Die Behörden des Zollfahndungsdienstes und die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden sowie ihre Beamten haben im Strafverfahren wegen Steuerstraftaten dieselben Rechte und Pflichten wie die Behörden und Beamten des Polizeidienstes nach den Vorschriften der Strafprozessordnung. Die in Satz 1 bezeichneten Stellen haben die Befugnisse nach § 399 Abs. 2 Satz 2 sowie die Befugnis zur Durchsicht der Papiere des von der Durchsuchung Betroffenen (§ 110 Abs. 1 der Strafprozessordnung); ihre Beamten sind Ermittlungspersonen der Staatsanwaltschaft.
[256] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.
[257] Cf. Europäische-Staatsanwaltschaft-Gesetz vom 10. Juli 2020 (BGBl. I S. 1648): Das G wurde als Artikel 1 des G v. 10.7.2020 I 1648 vom Bundestag beschlossen. Es ist gem. Art. 7 dieses G am 17.7.2020 in Kraft getreten, cf. already for the full text, above.

this Regulation, Sections 153c, 160 para. 1 and Section 170 para. 2 sentence 1 of the Code of Criminal Procedure shall not apply.

Section 160 CPC[258] **Obligation to clarify facts**
(1) As soon as the public prosecution office obtains knowledge of a suspected offence, either through a report of an offence or by other means, it shall investigate the facts in order to decide whether public charges are to be preferred. […][259]
! Inapplicable, see → A.III.2 European Public Prosecutor's Office Act – EUStAG

Section 3
(1) If the European Public Prosecutor's Office is competent in accordance with Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken over the prosecution in accordance with Article 25 of that Regulation, ss. 153c, 160 para. 1 and s. 170 para. 2, first sentence, of the Code of Criminal Procedure shall not apply.

In Germany, s. 161 CPC governs the **general investigatory powers**. Under this provision, the EPPO, which acts under Art. 26, 5 para 3 EPPO Regulation may request information and assistance from all public authorities and may direct the police to carry out specific investigative acts. The procedure remains largely discretionary (inquisitorial principle), yet interferences with fundamental rights must comply with constitutional and EU law constraints. **50**

In practice, investigators frequently encounter **objections based on professional secrecy** or confidentiality laws for e.g. members of the *Bundestag* (see → Art. 29 below), including banking secrecy, which is not absolute as public banks may have broader disclosure obligations than private institutions; tax secrecy under s. 30 Fiscal Code (AO), disclosure requires either a statutory exception or the consent of the data subject; and last but not least social data protection governed by ss. 35 SGB I, 67 et seq. SGB X, limiting access to welfare-related information by the Youth Court Assistance Service (*Jugendgerichtshilfe*). Such protections must be balanced against the EPPO's mandate **51**

[258] Original German text: "**§ 160 Pflicht zur Sachverhaltsaufklärung CPC**
(1) Sobald die Staatsanwaltschaft durch eine Anzeige oder auf anderem Wege von dem Verdacht einer Straftat Kenntnis erhält, hat sie zu ihrer Entschließung darüber, ob die öffentliche Klage zu erheben ist, den Sachverhalt zu erforschen.
(2) Die Staatsanwaltschaft hat nicht nur die zur Belastung, sondern auch die zur Entlastung dienenden Umstände zu ermitteln und für die Erhebung der Beweise Sorge zu tragen, deren Verlust zu besorgen ist.
(3) Die Ermittlungen der Staatsanwaltschaft sollen sich auch auf die Umstände erstrecken, die für die Bestimmung der Rechtsfolgen der Tat von Bedeutung sind. Dazu kann sie sich der Gerichtshilfe bedienen.
(4) Eine Maßnahme ist unzulässig, soweit besondere bundesgesetzliche oder entsprechende landesgesetzliche Verwendungsregelungen entgegenstehen"
[259] The English Original translation is provided by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch [as retrieved 03.05.2021, cf. here https://www.gesetze-im-internet.de/englisch_CPC/index.html. Accessed 31 December 2024].

to protect the Union's financial interests, especially in cases involving misuse of EU funds. Youth offenders and the application of juvenile law in EPPO investigations against juveniles and young adults (under 21) are within the EPPO's scope where serious offences against the EU budget are concerned, e.g. COVID-19 subsidy fraud. According to s. 2 para Juvenile Court Act , the CPC applies subsidiarily, subject to youth-specific provisions (e.g. ss. 67 et seq. JGG on procedural safeguards, youth-appropriate sanctions).[260]

52 In legally or factually complex or significant (e.g. VAT) cases, the EDP is alike to the national public prosecutor expected to potentially personally **conduct the investigation from the start**, including visiting the crime scene and interviewing key witnesses and the accused (see RiStBV Nr. 3 para 1). Even when delegating investigative tasks to police authorities or other bodies, the prosecutor remains responsible for directing the investigation, determining its scope and focus, and may issue specific instructions regarding individual investigative acts (see RiStBV Nr. 3 para 2). Informal oral discussions with complainants, suspects, or other parties must comply with applicable procedural safeguards, and the outcome of such discussions must be recorded in writing (RiStBV Nr. 3 para 3, see → Annex III).[261]

53 During investigations, the **handling EDP** must maintain an **electronic case file** in the Case Management System (Art. 43 para 3), ensure access to non-digital evidence for the supervising EP and the Permanent Chamber (Art. 43 para 4), draw up and update a progress report with main developments and investigative steps (Art. 44 para 1), store this report in the CMS to trigger notifications (Art. 44 para 2), provide information on request to the supervising European Prosecutor or Permanent Chamber (Art. 45 para 3), comply with instructions and report on their execution when required (Art. 46 paras 1–2), request review of instructions conflicting with Union or national law (Art. 47 paras 1–2), submit written observations during internal review procedures (Art. 48 para 2), respond to proposals for reallocation of the case to another EDP (Art. 49), participate in reallocation decisions across Member States including submitting observations (Art. 50 paras 1–2), propose or respond to case merging or splitting and indicate a preferred EDP assignment (Art. 51 paras 1, 5), assign measures to assisting EDPs in other Member States with necessary details and deadlines (Art. 53 paras 1–2), resolve delays in execution with the assisting EDP (Art. 53 para 3), and request financial support for exceptionally costly investigative measures with justification (Art. 54 paras 1–2).[262]

[260] European Justice Portal, Infoblatt DE, "Meine Rechte während des Ermittlungsverfahrens" https://e-justice.europa.eu/topics/your-rights/defendants-criminal-proceedings/1-my-rights-during-investigation/de_de. Accessed 31 May 2025. See Meier, in Meier, Bannenberg, Höffler, § 13, mn. 32 et seq. on special juvenile proceedings.
[261] Yolacan 2023, pp. 46, 49–52.
[262] Access the full wording here https://www.eppo.europa.eu/sites/default/files/2020-12/2020.003%20IRP%20-%20final.pdf and see theother volumes especially the CZ Volume within the volume series on more information.

bb. The concept of "sufficient factual indications" in general

Synopsis 2: The concept of "sufficient factual indications" to establish an initial suspicion under Art. 26 EPPO Regulation

German Criminal Procedure Code **Section 152 Indicting authority; principle of mandatory prosecution** (1) […] (2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.[263]	**§ 152 Anklagebehörde; Legalitätsgrundsatz** (1) […] (2) Sie ist, soweit nicht gesetzlich ein anderes bestimmt ist, verpflichtet, wegen aller verfolgbaren Straftaten einzuschreiten, sofern zureichende tatsächliche Anhaltspunkte vorliegen.
Section 161 **Public prosecution office's general investigatory powers** (1) For the purpose indicated in section 160 paras. 1 to 3, the public prosecution office is entitled to request information from all the authorities and to make investigations of any kind, either itself or through the police authorities and police officers, provided there are no other statutory provisions specifically regulating their powers. The police authorities and police officers are obliged to comply with the request or order of the public prosecution office and are entitled, in such cases, to request information from all the authorities. (2) Insofar as this statute expressly stipulates that personal data must be deleted, section 58 para. 3 of the Federal Data Protection Act does not apply.	**§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft** (1) Zu dem in s. 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft befugt, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle befugt, von allen Behörden Auskunft zu verlangen. (2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist s. 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden.

[263] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch. Cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1327. Accessed 31 December 2024.

(3) If measures under this statute are admissible only if the commission of particular offences is suspected, personal data which have been obtained as a result of a corresponding measure taken pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to investigate one of the offences in respect of which such a measure could have been ordered to investigate the offence pursuant to this statute. Section 100e para. 6 no. 3 remains unaffected.	(3) Ist eine Maßnahme nach diesem Gesetz nur bei Verdacht bestimmter Straftaten zulässig, so dürfen die auf Grund einer entsprechenden Maßnahme nach anderen Gesetzen erlangten personenbezogenen Daten ohne Einwilligung der von der Maßnahme betroffenen Personen zu Beweiszwecken im Strafverfahren nur zur Aufklärung solcher Straftaten verwendet werden, zu deren Aufklärung eine solche Maßnahme nach diesem Gesetz hätte angeordnet werden dürfen. s. 100e Absatz 6 Nummer 3 bleibt unberührt.
(4) Personal data obtained on or from private premises by technical means for the purpose of personal protection during covert investigations under police law may be used as evidence, having regard to the principle of proportionality (Article 13 para. 5 of the Basic Law), only after determination of the lawfulness of the measure by the local court (section 162 para. 1) in whose district the authority making the order is located; in exigent circumstances, a judicial decision is to be sought without delay.	(4) In oder aus einer Wohnung erlangte personenbezogene Daten aus einem Einsatz technischer Mittel zur Eigensicherung im Zuge nicht offener Ermittlungen auf polizeirechtlicher Grundlage dürfen unter Beachtung des Grundsatzes der Verhältnismäßigkeit zu Beweiszwecken nur verwendet werden (Artikel 13 Abs. 5 des Grundgesetzes), wenn das Amtsgericht (s. 162 Abs. 1), in dessen Bezirk die anordnende Stelle ihren Sitz hat, die Rechtmäßigkeit der Maßnahme festgestellt hat; bei Gefahr im Verzug ist die richterliche Entscheidung unverzüglich nachzuholen.

54 The **initial suspicion** serves solely to justify the initiation of criminal PIF proceedings; it does not require a comprehensive evidentiary basis, but merely a **plausible indication** of a potential offense (see → Annex I, A Assessement, Annex III).

55 The way in which the public prosecutor's office learns, for example, of the suspicion of subsidy fraud in accordance with s. 264 German CC or an offence detrimental to the Union's financial interests according to the European Financial Interests Protection Strengthening Act (EUFinSchStG), is not addressed by s. 152 para. 2 German CPC, but by Union law and the communication with the national authorities (see above → 1. a).

cc. PIF offences in German criminal law

The PIF offences in full length can be either read online or in the EU Frauds Commentary (see → Art. 1 PIF et seq.).[264] The "reasonable grounds to believe that an offence […] is being or has been committed" must be determined pursuant to the special offences in question: **56**

- ss. 1 (Misuse of European Union financial services distributed via public funds), 2 (Unlawful reduction of revenues of the European Union), 3 (Bribery and bribery related to the financial interests of the European Union) EU-Finanzschutzstärkungsgesetz – EUFinSchStG[265] **57**
- ss. 108e, 129, 260, 261 StGB (e.g. with money derived from smuggling tobacco products, see OLAF investigations Art. 3 below) AML/customs offences,
- ss. 263 StGB *Betrug* (General fraud), 263a StGB Computerbeturg (computer fraud),
- ss. 264 StGB *Subventionsbetrug* (subsidy fraud) in conncetion with ss. 2, 6 Subventionsgesetz, 266 Untreue (embezzlement),
- ss. 267 StGB et seq. *Urkundenfälschung* (Forgery of documents), 271, 274 (inextricably linked offences might as well be: 298, 299, 331, 332, 333, 334),
- ss. corruption offences: 335, 335a, 353, 353a, 355 CC
- ss. 369 AO tax crimes indicating that customs offences (*Zollstraftaten*) are tax crimes as well,
- 370 AO tax evasion in conncetion with s. 3 para. 3 AO (*Steuerhinzerziehung*)[266], 371 Self-disclosure for tax evasion, 372 breach of a ban, 373 Commercial, violent gang smuggling, 374 receiving of untaxed goods (*Steuerhehlerei*) Federal Tax Code/Abgabenordnung in conncetion with the Union Customs Codex
- Commercial or gang-related damage to sales tax revenue (§§ 26a Para. 1, 26c UStG/Sales Tax Act)
- Linked offences: ss. 14 et seq. UStG (Sales Tax Act), 374, 380 AO, 259 StGB

To all these provisions ss. 25 para. 1 (indirect perpetrators by another) and 2 (participation by accomplice), Inciting another to an act (s. 26) and aiding & abetting (i.e. helpers) to another offence (s. 27). Rules on intent in ss. 15, 16 as well as the punishment point of view in ss. 46 et seq. The statutes of limitation in s. 78. are important for the indictment and determination. This can also result in the permissible period for investigations. These provisions are partly standardized by Art. 12 PIF. Next ss. 12 para. 1, 22 and 23 **58**

[264] For an academic assessemet study see Engelhart 2020, p. 77 et seq.
[265] See Satzger 2021, Mn. 1 et seq.
[266] See Zapater 1993, pp. 146–161 explaining how the law was changed in ordert o protect the EU interests in the past; see Hauck 2025b, Vol. 1 Art. 1 PIF.

regulate attempts. In the case of PIF crimes (e.g. s. 370 para. 2 AO, the attempt is expressly punished. With s. 264 (Subsidy fraud), it is just as decisive as with s. 263 of the Criminal Code. These general rules must be observed.

59 *Table 9: Sanctions for PIF offences in Germany*

Offence Category under the PIF Directive	**Relevant Provisions**	**Sanctions**	**Typical Aggravating Circumstances (for more severe penalties)**
Fraud in the expenditure area (excluding procurement)	s. 263 StGB (Fraud), s. 264 StGB (Subsidy fraud), s. 266 (Embezzlement) s. 370 AO (Tax evasion)	Up to 5 years' imprisonment or a fine; in serious cases 6 months to 10 years	Acting in a gang, abuse of official position, high financial damage
Fraud in the expenditure area (including procurement)	ss. 263, 264, 267 StGB (Document forgery)	Up to 10 years' imprisonment	Use of forged documents, offences committed as part of a gang
Fraud affecting revenue (non-VAT)	s. 370 AO (Tax evasion), s. 378 AO (Negligent tax reduction)	Up to 5 years' imprisonment or fine; up to EUR 50,000 fine for negligence as administrative sanction	Large-scale damage, false statements under obligation
VAT-related fraud (cross-border carousel fraud)	s. 370 AO para. 6 in connection with ss. 13 et seq. UStG	Up to 10 years' imprisonment	Cross-border VAT evasion, gang or organised offences
Money laundering related to PIF offences	s. 261 StGB (Money laundering)	Up to 10 years' imprisonment	Organised concealment of criminal proceeds
Corruption of public officials (bribery and corruption)	ss. 331–335 StGB, s. 3 EUStGB	In serious cases: 1 to 10 years' imprisonment	Large-scale advantages, repeated acceptance of bribes, abuse of office

Misuse of EU funds	ss. 1–2 EUStGB	Up to 5 years' imprisonment or a fine	Intentional misuse of EU financial resources contrary to their designated purpose

Source: The authors.

For the overview in table 8, which compiles data from EPPO press releases, annual reports from the years 2022 to 2024, which can be accessed online and are cited above, see → A. I. Finally we conducted a database research of the major legal judicature databases and we included information on research requests and submitted Judgments obtained from German courts and the EPPO itself. A lot of cases relate to VAT fraud and related crimes adjudicated in Germany under the EPPO's Regional Centre's remit. Each row[267] identifies the court decision, relevant legal provisions, nature of the offence, and the concrete sanctions imposed by the court: **60**

Table 10: Overview of Sanctions in German EPPO Proceedings (compiled from EPPO Press Releases and Public Records) **61**

Court / Date	Case Summary	Offence / Legal Provisions	Sanction	Sanction Type
Landgericht Landshut, 18 Mar 2025[268]	Midas – VAT fraud via fraudulent invoices for face masks (€5m loss)	Organised VAT fraud (ss. 370, 267 StGB; Art. 3 para. 2 lit. a, d PIF Directive)	1× 5 years prison, 1× 3 years 6 months, €5m confiscated	Freiheitsstrafe (prison sentence), Einziehung (recovery)
LG Hagen, 10 Apr 2025[269]	Simulated export of used cars (€24m VAT loss)	VAT fraud, criminal organisation (ss. 370 AO, 129, 267 StGB; Art. 3 para. 2 lit. d PIF Directive)	1× 5 years 9 months, 1× 3 years 9 months, 1× 1 year 9 months	Freiheitsstrafe

[267] Abbreviations: StGB =Strafgesetzbuch (German Criminal Code); § 56 StGB Probation for custodial sentences up to 2 years; § 153a StPO Termination of proceedings upon fulfilment of conditions (e.g. fines); Einziehung Confiscation of criminal proceeds; Freiheitsstrafe =Imprisonment; Geldstrafe / Geldauflage =Fine / Monetary condition.
[268] Information from the EPPO Press Release.
[269] LG Hagen, Az. 71 KLs 12/24 (402 Js 6/22 (die to information of the judge it will be available on NRWE).

LG Landshut, 8 Apr 2025[270]	Cuba VoIP VAT fraud (€7.3m)	VAT fraud (ss. 370 AO, 267 StGB), organised fraud	2 years prison (probation), €7.3m confiscated	s. 56 StGB (probation), Einziehung
LG Düsseldorf, 28 Mar 2025[271]	Goliath VAT carousel with AirPods (€26m VAT loss)	VAT fraud, criminal organisation (ss. 370 AO, 129 StGB)	1× 5y2m, 1× 5y9m, 1× fine (€75k, § 153a StPO)	s. 153a CPC, Freiheitsstrafe, Geldauflage
LG Regensburg, 4 Dec 2024[272]	Wireless earbuds fraud via missing traders (€6m loss)	VAT fraud (s. 370 AO)	4 years prison, €960k recovery	Freiheitsstrafe, Einziehung
LG München I, 29 Nov 2024[273]	COVID-19 tests carousel fraud (€14m loss)	VAT fraud (s. 370 AO)	Leader: 6 years prison, others (unspecified)	Freiheitsstrafe
LG Landshut, 20 Nov 2024[274]	Electronics VAT fraud (€3.7m)	Organised VAT fraud (ss. 370 AO, 129 StGB)	1× 3 years, 1× 1 year 6 months (probation)	Freiheitsstrafe, s. 56 StGB
LG Düsseldorf, 30 Oct 2024[275]	Huracán car VAT fraud (€53.7m)	VAT fraud, aiding fraud (ss. 370 AO, 27 StGB)	5 accused: 6y2m – 1y9m	Freiheitsstrafe
LG Berlin, 19 Jun 2024[276]	VAT fraud + document forgery (€52m)	Serious VAT fraud, ss. 370 AO, 267 StGB	3× 10y/8y6m, 1× 5y6m, 1× 2y €27.4 million confiscated	Freiheitsstrafe, Einziehung (€27.4m)

[270] Requested, but not obtained, Information from the EPPO Press Release.
[271] Requested, but not obtained, Information from the EPPO Press Release.
[272] LG Regensburg,Judgement of 4 December 2024, Az.: 6 KLs 505 Js 6/24.
[273] LG München, Judgement of 29 November 2024, Az.: 5 KLs 504 Js 2/23.
[274] LG Landshut, Judgement of 20 November, Az.: 7 KLs 501 Js 8/23.
[275] LG Düsseldorf, Judgegemnt of 30 October 2024, Az. 014 KLs 2/24.
[276] Landgericht Berlin, Judgement of 19 June 2024, (536 KLs) 102 Js 1/21 (6/23).

LG Berlin, Feb & Apr 2024[277]	Forgery, laundering (notary & accomplice)	Forgery (s. 267 StGB), Money Laundering	Notary: 2y (probation), Accomplice: 1y4m (probation), €50k confiscated	S. 56 StGB, Geldauflage, Einziehung
LG Frankfurt, 15 Feb 2023[278]	VoIP VAT fraud (€33m)	VAT fraud (ss. 370 AO, 267 StGB)	1× 5y9m, 1× 2y	Freiheitsstrafe
LG Landshut, 28 Mar 2023[279]	Car VAT fraud (€5m)		1× 4y9m, 1× 2y9m, €5m confiscated	Freiheitsstrafe, Einziehung

Source: The authors. (*Nota bene:* Be aware that further judgments were analysed and are presented within the volume within case studies or were not included if they seemed not representative.)

In a suspicious case, which is investigated by the customs since 2021 (main customs office) Munich, the following was said about inextricably linked offences: "According to the first findings, violations of social security law and the protection of intellectual property (trademark law) were also identified" **62**

S. 263 CC General Fraud
I. Fact
1. Objective facts
a) deception
b) thereby error of the deceived
c) thereby disposal of assets
d) pecuniary loss
e) causality + objective attribution
2. Subjective facts
a) Intent – dolus eventualis
b) Intention to enrich
c) Intent regarding unlawful enrichment
II. Unlawfulness/Justifications
III. Guilt and Culpability
IV. §§ 247, 248a StGB
V. Result

S. 264 CC Subsidy Fraud
1 Objective facts
a) Existence of a subsidy
a) Subsidy
b) act
(1) s. 264 para. 1 No.1: incorrect information
(2) s. 264 para. 1 No. 2: Violation of usage restrictions
(3) s. 264 para. 1 No. 3: ignorance
(4) s. 264 para. 1 No. 4: fake certificate
2 Subjective facts

[277] LG Berlin, Judgement of 19.6.202
[278] LG Frankfurt, Judgement of 15 February, Az. 5/29 KLs – 203 Js 8/21 (8/22).
[279] LG Landshut, Judgement of. 28 March 2023,

Intent – dolus eventualis
II. Unlawfulness/Justifications
III. Guilt and culpability
IV. Active repentance, if applicable, in accordance with Section 264 para. 5 of the Criminal Code
V. Sentencing
1 Particularly serious case, s. 264 para. 2 StGB
VI. Qualification, ss. 264 para. 3 in conjunction with 263
VII. Careless inspection, s. 264 para. 1 No. 1–3 according to s. 264 para. 4

s. 370 AO Tax Evasion/Tax Fraud
1 Objective facts
1) Acts s. 370 para. 1 No. 1–3 AO
a) Providing incorrect or incomplete information about tax
significant facts to the financial or other authorities paragraph 1 no. 1
aa) tax returns
e.g. sales tax return and annual sales tax return according to ss. 14c, 18 UStG,
Problem: carousel fraud
Problem: BGH judgment of 07/13/2017, Az. 1 StR 536/16
In connection with paragraphs 5 and 6 (EU is covered).
bb) Advertisements
cc) tax benefits
b) breach of duty by leaving the tax authorities ignorant of tax-related facts
c) non-compliance with the use of control marks or tax stamps
2) Consequences of crime, s. 370 para. 4
a) Tax reduction
or
b) Unjustified tax advantages according to ss. 370 para. 1 and para. 4 sentences 1 and 2 AO
2 Subjective facts, ss. 8, 9, 15 et seq. StGB
Intent – dolus eventualis
II. Unlawfulness/Justifications
III. Guilt and culpability
IV. Particularly serious cases, 370 para. 3
a) No. 1 on a large scale
b) No. 2 Powers or his position as an official or European official
c) exploits with the help of a public official or European public official
d) a member of a gang who has joined forces to continue committing offences under paragraph 1, reduced sales or consumption taxes or obtained unjustified sales or consumption tax benefits
e) No. 3 gangs and commercial activity
According to paragraph 2, the attempt is punishable.

As seen from the presentation above, under German criminal law the *Tatbestand* (statutory elements of the offence) is extracted through a systematic structure that applies to all offences including PIF offences. This structure follows the classic **three-step analysis** in German criminal law, which is used to assess whether a person is criminally liable. It applies equally to national offences and to EU-related fraud crimes (such as subsidy fraud under s. 264 StGB/CC or fraud under s. 263 StGB/CC). **63**

If the *Tatbestand* is (objectively and subjectively) fulfilled, unlawfulness is presumed unless justifications (*Rechtfertigungsgründe*) apply (e.g., self-defence, necessity). In practice, these rarely play a role in financial offences, but must always be ruled out. Only after the guilt (*Schuld*) is established in the third step does the court turn to the penalty assessment (*Strafzumessung*). **64**

According to ss. 18 et seq. the **VAT (Sales) Tax Act** the Economic Operator has **various duties** that he needs to fulfil in order not to create a tax debt at the expense of the Union.[280] The Sales Tax Act holds special rules that become important in VAT fraud cases: **65**

66

Section 18a VAT Act Summary Report

(1) The entrepreneur within the meaning of Section 2 must report to the Federal Central Tax Office (summary report) according to the officially prescribed data set by remote data transmission, in which he has to provide the information according to para. 7 sentence 1 numbers 1, 2, 2a and 4. If the sum of the assessment bases for intra-Community deliveries of goods and for deliveries within the meaning of Section 25b para. 2 is not more than 50,000 euros for the current calendar quarter or for one of the four preceding calendar quarters, the summary report can be submitted up to the 25th day after the end of the be transmitted every calendar quarter. If the sum of the basis of assessment for intra-Community deliveries of goods and for deliveries within the meaning of Section 25b para. 2 in the course of a calendar quarter exceeds 50,000 euros, the entrepreneur has up to the 25th day after the end of the calendar month in which this amount is exceeded, a summary report for this calendar month and the already expired calendar months of this calendar quarter. If the entrepreneur does not make use of the provision contained in sentence 2, he must report this to the Federal Central Tax Office. From July 1, 2010 to December 31, 2011, sentences 2 and 3 apply with the proviso that the amount of 50,000 euros is replaced by the amount of 100,000 euros.

(2) The entrepreneur within the meaning of Section 2 has up to the 25th day after the end of each calendar quarter (reporting period) in which he has other taxable services within the meaning of Section 3a para. 2 in the rest of the community for which the recipient of the service resident in another Member State owes the tax there, to send the Federal Central Tax Office a summary report according to the officially prescribed data

[280] Heuel 2021, p. 190 et seq.

set by remote data transmission, in which he has to provide the information in accordance with para. 7 sentence 1 no. 3. Insofar as the entrepreneur is already obliged to submit a monthly summary report in accordance with paragraph 1, he must provide the information within the meaning of sentence 1 in the summary report for the last month of the calendar quarter.
(3) If the entrepreneur within the meaning of Section 2 submits the summary report in accordance with Paragraph 1 by the 25th day after the end of each calendar month, he can include the information provided for in para. 2 in the report for the respective reporting period. If the entrepreneur makes use of the provision contained in sentence 1, he must report this to the Federal Central Tax Office.
(4) Paragraphs 1 to 3 do not apply to entrepreneurs who apply Section 19 para. 1.
(5) Upon request, the tax office may waive electronic transmission in order to avoid undue hardship; in this case, the entrepreneur must submit a report using the officially prescribed form. s. 150 paragraph 8 of the tax code applies accordingly. Insofar as the tax office has waived electronic transmission of the pre-registration in accordance with Section 18 Paragraph 1 Sentence 2, this also applies to the summary report. For the application of this provision, non-independent legal persons within the meaning of Section 2 para. 2 number 2 are also considered entrepreneurs. Section 18 paragraph 4f applies accordingly. The state financial authorities transmit the necessary information to the Federal Central Tax Office to determine the entrepreneurs who are obliged to submit the summary report in accordance with paras. 1 and 2. This information may only be processed to ensure the submission of the recapitulative statement. The Federal Central Tax Office transmits the information from the summary reports to the state tax authorities, insofar as this is required for tax controls.
(6) An intra-Community delivery of goods within the meaning of this provision
1. an intra-community delivery within the meaning of s. 6a para. 1 with the exception of deliveries of new vehicles to customers without a sales tax identification number;
2. an intra-community delivery within the meaning of s. 6a para. 2;
3. a transport or dispatch within the meaning of s. 6b paras. 1 or 4 or a change of purchaser according to s. 6b para. 5.
(7) The recapitulative statement must contain the following information:
1. for intra-Community deliveries of goods within the meaning of para. 6 number 1:
a) the sales tax identification number of each acquirer, which was issued to him in another Member State and under which the intra-Community deliveries of goods to him were carried out, and
b) for each purchaser, the sum of the assessment bases for the intra-Community deliveries of goods made to him;
2. for intra-Community deliveries of goods within the meaning of para. 6 number 2.
a) the trader's VAT identification number in the Member States to which he has transferred goods, and

b) the resulting sum of the assessment bases;
2a. for transport or dispatch or a change of purchaser within the meaning of para. 6 number 3:
a) in the cases of s. 6b para. 1, the sales tax identification number of the purchaser within the meaning of s. 6b para. 1 number 1 and 3,
b) in the cases of s. 6b para. 4, the sales tax identification number of the originally intended purchaser within the meaning of s. 6b para. 1 number 1 and 3 or
c) in the cases of s. 6b para. 5, the sales tax identification number of the originally intended purchaser within the meaning of s. 6b para. 1 number 1 and 3 as well as that of the new purchaser;
3. for other taxable services within the meaning of Section 3a para. 2 carried out in the rest of the community for which the recipient of the service resident in another Member State owes the tax there:
a) the VAT identification number of each recipient of the service, which was issued to him in another Member State and under which the other taxable services were rendered to him,
b) for each recipient of the service, the sum of the assessment bases for the other taxable services provided to him and
c) an indication of the existence of another taxable service within the meaning of Section 3a para. 2 carried out in the rest of the community for which the recipient of the service resident in another Member State owes the tax there;
4. for deliveries within the meaning of Section 25b Para. 2:
a) the sales tax identification number of each final customer, which was issued to them in the Member State in which the dispatch or transport ended,
b) for each final customer, the sum of the assessment bases for the deliveries made to him and
c) an indication of the existence of an intra-Community triangular transaction.
s. 16 para. 6 and s. 17 are to be applied accordingly.
(8) The information pursuant to para. 7 sentence 1 numbers 1 and 2 must be provided for the reporting period in which the invoice for the intra-Community delivery of goods is issued, but at the latest for the reporting period in which the month following the execution of the intra-Community delivery of goods ends. The information pursuant to para. 7 sentence 1 numbers 3 and 4 are to be made for the reporting period in which the other service subject to tax in the rest of the community within the meaning of Section 3a para. 2, for which the recipient of the service resident in another Member State owes the tax there, and the deliveries have been made in accordance with Section 25b para. 2.
(9) If the tax office has exempted the entrepreneur from the obligation to submit the advance notifications and pay the advance payments (section 18 para. 2 sentence 3), he can, in deviation from paras. 1 and 2, submit the summary report by the 25th day after

the end of each calendar year deliver, in which he has carried out intra-Community deliveries of goods or has carried out other taxable services within the meaning of s. 3a para. 2 in the rest of the Community area, for which the recipient of the service resident in another Member State owes the tax there if
1. the sum of his deliveries and other services in the previous calendar year did not exceed EUR 200,000 and is not expected to exceed in the current calendar year,
2. the total of his intra-Community deliveries of goods or taxable services carried out in the rest of the Community area within the meaning of s. 3a para. 2, for which the recipient of the service resident in another Member State owes the tax there, did not exceed EUR 15,000 in the previous calendar year and is not expected to exceed in the current calendar year will and
3. the deliveries of goods referred to in number 2 are not deliveries of new vehicles to customers with a sales tax identification number.
Para. 8 applies accordingly.
(10) If the entrepreneur subsequently realizes that a summary report submitted by him is incorrect or incomplete, he is obliged to correct the original summary report within one month.
(11) With the exception of Section 152 of the Fiscal Code, the provisions of the Fiscal Code applicable to tax returns shall also be applied to the summary report.
(12) In order to facilitate and simplify the submission and processing of the summary report, the Federal Ministry of Finance can determine by ordinance with the consent of the Bundesrat that the summary report can be transmitted on machine-readable data carriers or by remote data transmission. In particular, the following can be regulated:
1. the conditions for applying the procedure;
2. details of the form, content, processing and security of the data to be transmitted;
3. the manner in which the data is transmitted;
4. the responsibility for receiving the data to be transmitted;
5. the obligations of third parties to cooperate in the processing of the data;
6. the scope and form of the entrepreneur's special declaration obligations required for this procedure.
In order to regulate the data transmission, reference can be made in the ordinance to publications by expert bodies; the date of publication, the source of supply and a place where the publication is securely archived must be specified.

67 The following provisions of the VAT Act are also particularly important:

68

Section 18j VAT Act (UStG)
Special taxation procedure for intra-Community distance selling, for deliveries within a Member State via an electronic interface and for other services provided by entrepreneurs resident in the Community, but not in the Member State of consumption

Section 26c VAT Act Criminal Provisions
Any person who, in the cases referred to in Section 26a para. 1, acts commercially or as a member of a gang which has formed for the continued commission of such acts shall be punished with imprisonment of up to five years or a fine.

Section 27b regulates on sales tax review. **69**

(1) Methods of investigation, collecting information and documenting the initiation of an investigation for an indictment

(a) Pecularieties differentiated by PIF offences (typologies of EU frauds)

Recent studies have analysed and frequently analyse the peculiarities and typologies of (EU-)frauds quite extensively and is therefore highly important for EDPs[281] and their knowledge about the structures of this crime area (criminological insights)[282]: **70**

[281] For EDPs and furture EDPs as well as students of criminal law we recommend still – especially in the highy important area of VAT fraud –to read in their free-time for a self-training *A.A. Aronowitz/D.C.G. Laagland/G. Paulides*, Value-added Tax-Fraud in the European Union, [Case Studies], Studies on Crime and Justice, A Series from the Dutch Research and Documentation Centre (WODC), Kugler Publications, Amsterdam/New York, 1996, which contains over 30-case studies i.e. cases that would today possibly mainly fall under the scope of the EPPO in the particpating countries.
We visited a court proceeding of the local EDP in Frankfurt in 2022–2023 and saw that the VAT fraud investigations area is of particular concern for the EDPs. The book contains a similar case, cf. p. 61 et seq. On p. 35 et seq. the role of the prosecutor in these kind of fraud cases is explained. ***Our Ideas and Comment***: The current situation in German is as follows: The prosecutor of the EPPO has to draw the indictement in the end of the investigations. This means he/she has to assemble it. It must be assembled from the existing tax investigation investigations and reports. To do this, the actual facts of the case must be structured, whereby the structure of the file under national law must be observed, since the national criminal division of the court receives the same structure of the indictment from the EPPO as in purely national cases. This means that the structure of the indictment can already be foreseen when examining the recording of the investigation via the structure of the investigation file. Since the evidence is sometimes enormous, constructing the indictment takes a lot of time. Compared to Italy, the EDPs in Germany are not provided with any extra people for this work, although it could make sense to use e.g. scientific employees on the basis of an employment contract or as employees of the respective country with a regional EPPO center (sub-sub contractors for the EPPO's work), for example to search for literature and research. Legal clerks are not trained for this job. In addition, national police, tax investigators and customs should be required to provide classified, pre-evaluated and analyzable data and material from the investigation. Regulations, guidelines or internal rules could be modified for this purpose. In terms of training, the police schools, the federal finance administration, the federal university and customs are responsible for their training to accept the existence of the EPPO. A central office for processing EPPO-relevant information on each of the three levels and a main central office derived from this for the EPPO, e.g. in the Federal Office of Justice would be groundbreaking and very helpful.
[282] Liebl 2020 presening valuable critique when he says that the information about fraud typologies in the EU is still low for the general public. See Genç 2012, p. 154 et seq.; But see recently Constantinescu and Jurma 2021, pp. 191–196; and more extensively Malan et al. 2022; See as well the internal conferences in this regard "Annual Forum on Combating Fraud in the EU 2022, Special toolkits of investigation techniques to better protect the EU financial interests" established under the new Anti-fraud programme. But see Wirth 2022, p. 50: "Erstaunlicherweise bestehen hinsichtlich des grenzüberschreitenden Elements von PIF Delikten keine validen empirisch-kriminologischen Aussagen"

National level: Federal Corruption Situation Report[283], Federal Situation Report on Economic Crime [284], Police Crime Statistics (PCS)[285], Criminal Prosecution Statistics [286], Statistics on Case Dispositions by Public Prosecution Offices [287], Criminal Court Statistics[288], FIU Annual Reports[289], Regular Report of the Federal Ministry of Finance (Monthly Reports)[290], Federal-State Reports on the Cohesion Fund[291], Annual Customs Reports (Customs Activities), Annual Customs Reports (Customs Activities)[292], Reports of the Public Prosecutors General of the Federal States.

EU-level: PIF Reports, Rule of law Report, "Impact of Organised Crime on the EU's Financial Interests".[293]

Nota bene: The Anti-Fraud Knowledge Centre hosted by the EU Commission provides information on fraud patterns, prevention tools and case studies.

(b) Fraud

71 The **offence of fraud in continental European legislation** has a long history dating back to Roman and Greek times. In a Maltese Judgment it was highlighted that "Fraud, as a crime, is the worst form of unlawful theft and is what was known in schools and in Roman legislation as '**stellionat'** and corresponds exactly to the swindle of the Codice Sardo, the fraud in the Tuscan Code, *engano* or *estafa* in Spanish, *burla* in Portuguese, and *esroquerie* in the French Code [...] Components of this fraud offence are [regularly]: [...] A. [Means obtained] by unlawful means through the use of false names or false qualifications, or through the use of other deceptions."[294]

[283] See BKA, Lagebild Korruption https://bit.ly/3N1qEXb. Accessed 31 December 2024.
[284] See BKA, Lagebild Wirtschaftskriminalität https://bit.ly/3TMY6EF. Accessed 31 December 2024.
[285] See BKA, PKS https://bit.ly/4ewGRzC. Accessed 31 December 2024.
[286] See Destatis. online: https://www.destatis.de/DE/Presse/Pressemitteilungen/2021/08/PD21_408_2421.html. (Accessed 31 Decemeber 2024). *Nota bene*: It does at the moment not contain any special registered offences for the EUFinSchG.
[287] See Destatis 2020 Staatsanwaltschaften - Fachserie 10 Reihe 2.6.
[288] Destatis 2021 Strafgerichte - Fachserie 10 Reihe 2.3.
[289] See Zoll, Jahresberichte.
[290] See BFM Monatsberichte. online: https://bit.ly/3ZCzZwh. Accessed 31 December 2024.
[291] See BWM Kohäsionsfonds. online: https://bit.ly/3BlJfuA. Accessed 31 December 2024.
[292] See Broschüre Zollverwaltung. online: https://bit.ly/4epUhgX. Accessed 31 December 2024.
[293] Impact of Organised Crime on the EU's Financial Interests 2022. online: https://bit.ly/4gIg8Sd. Accessed 31 December 2024.
[294] Magistrates' Court as a Criminal Court, The Police v. Michael Cohen, 1170/2021, p. 9; further see Hauck 2025a "stellionat".

(aa) Revenue frauds and case studies

Revenue frauds are manifold.[295] First, the scheme should be identified: Does the case deal with Anti-Dumping Measures[296], VAT that may have been evaded or other duties that should have been paid by the Economic Operator? For this, it is worthwhile to compare the suspected behaviour with known behaviour patterns. From a legal as well as a police point of view, the overview of crime patterns is useful. Especially in Covid-times there has been an increase in these characteristics as control rates were low(er than usual). For example, many on-the-spot checks on operating premises were cancelled because the mask requirement could not be complied with or the like were brought forward. **72**

(bb) VAT fraud cases as example for heavy revenue frauds

In the recent past, judges have commented on the dullness and burden of the judiciary through proceedings before the white collar crime chambers, including today's President of the German Association of Judges, Jens Gnisa, who in 2017 wrote in his book "**The End of Justice - A judge triggers the red button**" warned that sales tax carousel proceedings were too heavy for the courts and the justice system in the long run, since the indictments are sometimes 850 pages long, the facts are complex and the large-scale proceedings paralyze the courts.[297] **73**

The case that he described involved **CO^2-Certificates**.[298] These were imported tax-free from abroad to Germany and resold afterwards. At the same time, the seller applied at the tax office for a refund, which, however, had not been paid ever. In the end, these certificates were repeatedly sold to Deutsche Bank.[299] **74**

VAT fraud cases in Germany thus included carousels with **ecosystem certificates**[300] and other forms of carousels.[301] **75**

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[295] E.g. Customs fraud might occur, see EUBAM 2022; Vordermayer et al. 2022b, para. 1 et seq complaining in Mn. 16 et seq. that the criminal tax law literature is made available by the state justice administrations with kid gloves to prosecutors, which is a very bad sign.

[296] One of the last measures of the Commission was e.g. the enaction of the Delegated Regulation (EU) 2022/433; OJ L 88 of 16 March 2022, p. 24 introducing a definitive anti-subsidy measures on imports of cold-rolled stainless steel flat products originating in India and Indonesia, which amends the anti-dumping duties.

[297] Gnisa 2017, p. 166 et seq.

[298] Adick et al. 2016, Chap. 3 Mn. 73 et seq. Massive proceedings at the Regional Court of Francfort against 170 accused persons in 2011. Today this would be probably in the competence of the EPPO.

[299] Gnisa 2017, p. 167 et seq.

[300] See Liebl 2020, p. 7; Slavi-Schulz 2020, pp. 113–125, 172 et seq; for solutions see 181 et seq.

[301] BGH, 17.2.1998, 5 StR 624/97 =NStZ-RR 1998, 185 [*mens rea* in tax avasion cases]; BGH, 27.11.2002 - 5 StR 127/02 =openJur 2010, 8897; BGH, 22.07.2004 - 5 StR 241/04 =openJur 2012, 56627; BGH, 01.02.2007 - 5 StR 372/06 =NJW 2007, 1294 (smuggled cigarettes); BGH, 08.02.2011 - 1 StR 24/10=StV 2011, 485; BGH, 15.01.2014 - 1 StR 648/13 =openJur 2014, 11198 [Tax evasion, bogus invoices]; OLG Karlsruhe, Judgment of 16.03.2015 - 1 (4) Ss 560/14; 1 (4) Ss 560/14 - AK 206/14 =openJur 2015, 9070; BGH, 27.06.2018 - 1 StR 282/17

The VAT tax evasion cases deal nowadays with almost **any kind of goods** shipped in the Union territory. The **import of goods from non-European countries** is particularly sensitive. What the cases have in common is that several companies act in constructs that "pretend" to do real business with each other, but only give the appearance of doing so by means of **stooges and bogus companies**. This is where the potential fraudster comes in, in order not to pay the actually incurred sales tax (*Umsatzsteuer*).

76 Since sales tax is one of the Union's revenues within the scope of tax revenue, it is not "the state" that is being damaged here, as defenders wrongly mention, but the **budget of the European Union**, i.e. the *sui generis* association of states (*Staatenverbund*).[302]

77 Heuel[303] describes how sales tax evasion[304] works in the context of s. 370 AO and analyses cross-border evasion of sales tax (pp. 183 et seq.), where he deals with **intra-Community deliveries** and addresses the susceptibility to fraud. This is relevant for the present description and the study and can be reproduced analogously, whereby the EDPs in Germany can also be expressly advised to order these and similar studies from the libraries of the regional court for their own further training purposes.

78 The work is divided into six parts and is dedicated to sales tax evasion against the background of paragraph s. 370 AO, which in German law in the tax code represents an offence close to fraud. The second part deals with the aspects of cross-border tax obligations. In the third part, the author deals with the damage to sales tax revenue according to **s. 26c UStG**. In a separate section, the statute of limitations for prosecuting evasion of sales tax is then discussed before the fifth part deals with the treatment of evasion of sales tax under criminal procedural law. Finally, the self-disclosure follows in the context of VAT evasion and the summary of the results.

=NStZ 2019, 158; BGH, 24.09.2019 - 1 StR 346/18 [*mens rea* in tax avasion cases, § 16 German CC]; Kaligin, 2022, 531 et seq; Heuel 2021, p. 190 explaining that VAT is prone to fraud as it is *de facto* an all-phase-netto-sales-tax with an input tax deduction. Some scholars have regarded the Common Market as a catalyst for VAT fraud. Still this argument can be challended as there are VAT frauds as well in a post-Brexit Britain, in the U.S., India or even China. See Heuel 2021, p. 190 et seq. explaining the historic dimension and the main arguments to combat VAT fraud more effectively still.

[302] See § 370 AO para 6: " (6) Paragraphs 1 to 5 shall also apply if the offence relates to *import or export duties* which are *administered by* another Member State of the European Union or *which are due* to a Member State of the European Free Trade Association or a state associated with it. The *same applies* if the offence relates to sales taxes or to the provisions of Article 1 Paragraph 1 of Council Directive 2008/118/EC of December 16, 2008 on the general system of excise duty and repealing Directive 92/12/EEC (OJ L 9 of January 14th, 2009, p. 12) referred to harmonized excise duties, which are administered by another member state of the European Union" Heuel 2021, p. 190 referencing Art. 113 TFEU, which stipulates VAT as a harmonized tax of the EU. There is currently still a dispute at federal and state level in Germany as to which state is entitled to the funds collected by the EPPO (frozen assts etc.), i.e. who may initially dispose of them - before a part of it flows into the budget of the Union, cf. Oehmichen and Röth 2022, p. 157.

[303] See within a monography Heuel 2021; Quedenfeld et al. 2016 Mn. 357 et seq. explaining classical tax evasion cases, explaining the investigations 892 et seq. but mainly focusing on the defence perspective.

[304] Article 3 para 2 (a) and (c) of Directive 2017/1371 asks tax evasion tob e punished by criminal sanctions.

Sales tax is an **all-phase net tax** with the **right to deduct**.[305] The **entrepreneur** acts as a "compulsory tax collector", so to speak, as an **extended arm of the state**.[306] It is a tax based on Union law and specific national law, which goes back to the VAT Directive in 1967.[307] Sales tax applies to the following transactions: **79**

Section 1 VAT Act Taxable sales
(1) The following transactions are subject to sales tax:
1. the deliveries and other services that an entrepreneur carries out in Germany for a fee as part of his company. Taxability does not lapse if the turnover is carried out on the basis of a legal or official order or is deemed to have been carried out according to legal regulations;
2.–3. […]
4. the import of items domestically or in the Austrian areas of Jungholz and Mittelberg (import sales tax);
5. the intra-Community acquisition in Germany for a fee.
It must be determined who is the entrepreneur and who delivers and who receives goods. According to Section 1 a para. 2 of the UStG, intra-community transfer of an object of the company from the rest of the community territory to Germany takes place for a fee. Vehicles used in motorized traffic are specifically regulated in Section 1b UStG, which have also been the subject of numerous cases of fraud in the past. The definition of delivery is based on the concept of procuring the power of disposal to the customer (see 3 para. 1 UStG). The place of intra-Community acquisition is the territory of the Member State to which the delivery is effected, i.e. the place where the item is located at the end of the transport or dispatch.

Basically, the input tax is the sales tax that an entrepreneur charges another entrepreneur as part of his services.[308] Only the end consumer is charged sales tax and the business partner of the entrepreneur[309] who receives the delivery can have the sales tax paid reimbursed as input tax by his tax office (*Finanzamt, Festsetzungsamt*). Fraudulent actions of perpetrators e.g. from organized crime are now aimed at ***simulating*** **both the purchaser and the supplying entrepreneur** in order to suggest to the state authorities that the applicant has made a delivery to the tax office and is entitled to demand a deduction **80**

[305] Heuel 2021, pp. 10, 12; Adick 2016, Chap. 3, Mn. 6 et seq.
[306] Heuel 2021, pp. 8, 10-11 referencing ECJ, C-271/06, ECLI:EU:C:2008:105.
[307] Heuel 2021, p. 8.
[308] Heuel 2021, p. 15 this prerequistes that the the performer of the delivery (intracommunity e.g.) must be an entrepreneur. For this reason alone, fraud can occur. For example, because the person supplied is not an entrepreneur at all and is therefore not entitled to deduct input tax and reimbursement from the tax office. See ECJ, v. 20.6.2013, C-653-11, ECLI:EU:C:2013:409.
[309] Heuel 2021, p. 26.

of the input tax, i.e. to get a sum reimbursed. [310] For the public prosecutor's office and the EDP Center it is important to get to the access to e.g. the basis of the **contractual obligations** in the event of suspicion. For example, a search objective in an investigation into suspicion of a sales tax carousel or comparable activities in customs law can be: to get the contracts of the entrepreneurs in order to gain insight into who the performing entrepreneur is. The German Federal Criminal Court has set conditions regarding this circumstance that relate to a so-called **missing trader in a VAT fraud carousel** it must be asked whether this suspected person is also a supplier within the meaning of the VAT Act.[311] According to Heuel, it is important that straw men are also checked and then asked whether they are also service and goods providers within the meaning of the UStG., the German VAT Act.[312]

81 The input tax deduction is specified by the norms of national law:

Section 15 UStG Input tax deduction
(1) The entrepreneur can deduct the following input tax amounts:
1. the legally owed tax for deliveries and other services that have been carried out by another entrepreneur for his company. The exercise of input tax deduction presupposes that the entrepreneur has an invoice issued according to ss. 14, 14a. Insofar as the separately shown tax amount is due to a payment made before these transactions are carried out, it can already be deducted when the invoice is available and the payment has been made;
2. the resulting import sales tax for items that have been imported for his company according to s. 1 para. 1 number 4;
3. the tax for the intra-community acquisition of objects for his company if the intra-community acquisition is effected in Germany in accordance with s. 3d sentence 1;
4. the tax for services within the meaning of s. 13b para. 1 and 2, which have been carried out for his company. Insofar as the tax is due on a payment made before the performance of these services, it can be deducted when the payment has been made;
5. the tax owed according to s. 13a para. 1 no. 6 for sales that have been carried out for his company.

82 The delivery, importation or intra-community acquisition of an object that the entrepreneur uses for his company to a lesser than 10 percent extent is not deemed to have been carried out for the company.

[310] Heuel 2021, pp. 10, 11 pointing at § 14c UStG; Adick, Höink, Kurt 2016, Chap. 3, Mn. 20 et seq. explainign the role of the "Prüfungsdienst" as a secondary help for the tax police, Mn. 37 regarding the establishment of a suspicion (Steuerstraftatverdacht).
[311] Heuel 2021, p 15 and BGHZ v. 12.10.2016 – 1 StR 210/16.
[312] Heuel 2021, p. 16 citing BGH v. 5.2.2014 – 1 StR 422/13 =NStZ 2014 335 (336).

The **application for reimbursement** and the notifications must be made to the responsible tax assessment office, whereby deadlines must be observed (see s. 18 UStG). **83**

It is important to emphasize that input tax deduction, especially in combination with intra-community supplies, is susceptible to fraudulent activity.[313] In principle, deliveries can relate to a large number of **goods and types of goods**. This ranges from deliveries for resources such as natural Gas, oil, medical products, pharmaceuticals, building materials, cars, but also increasingly electronic products. A case of the EPPO at the **District Court of Frankfurt a.M.** had accused such a case in which a convicted person claimed input tax although he was not entitled to have input tax reimbursed by several tax offices.[314] **84**

Section 4b Tax Act Tax exemption for the intra-Community acquisition of objects
Intra-community acquisitions are tax-free
1. the items referred to in Section 4 No. 8 Letter e and No. 17 Letter a and in Section 8 Paragraph 1 Nos. 1 and 2;
2. of the items specified in Section 4 Nos. 4 to 4b and No. 8 letters b and i as well as in Section 8 Para. 2 Nos. 1 and 2 under the conditions specified in these provisions;
3. the objects whose import (s. 1 para. 1 No. 4) would be tax-free according to the regulations applicable to import sales tax;
4. of items that are used to carry out sales for which the exclusion from input tax deduction according to Section 15 para. 3 does not apply.

The entrepreneur has numerous obligations when deducting input tax. Above all, he must correct the invoices and keep the invoices (see s. 14 Tax Act). **85**

Items that are affected by the intra-community exception according to s. 4b Tax Act are: **86**

- the turnover in the business with securities and the brokerage of these turnovers, with the exception of the safekeeping and administration of securities,
- the supply of human organs, human blood and human milk,
- 4. the supply of gold to central banks;
- 4a. the following transactions:
- the deliveries of the items specified in Appendix 1 to an entrepreneur for his company if the item of delivery is stored in connection with the delivery in a VAT warehouse or is located in a VAT warehouse.,
- services directly related to the storage, preservation, improvement of presentation and commercial quality or preparation for distribution or resale of the stored items. This

[313] Heuel 2021,pp. 24 et seq., 190 et seq. Commenting that the Common Market enabled a lot of VAT fraud scenarios.
[314] See below in the case study.

does not apply if the Services prepare the items in such a way that they are suitable for delivery at the retail level.
- 4b. the delivery of items preceding an import, if the buyer or his agent imports the item of the delivery. This applies accordingly to deliveries that preceded the deliveries mentioned in sentence 1. The conditions for the tax exemption must be clearly and easily verifiable demonstrated by the entrepreneur;
- 8. b) sales and brokerage of sales of legal tender. This does not apply if the means of payment are sold because of their metal content or their collector's value,
- 8. i) Sales of official postage stamps valid in Germany at the printed value.

87 The **fraudulent activities with sales tax** are regulated by the German Tax Code, the Abgabenordnung, which contains s. 370 as mentioned above. This special section contains *de facto* the German Tax Fraud Offence even if it is strictly speaking called "Tax evasion" (*Hinterziehung der jeweiligen Steuer*). It functions as a wide, general provision encompassing many taxes of the State and the EU. But the main tax, which is a real damage to the EU for a long term is the Sales Tax (*Mehrwert- oder Umsatzssteuer*). The group of perpetrators gives an idea of who belongs to the investigative group (*Täterkreis*) of the **EPPO and its material competence** (in the PIF Aquis, cf. → Art. 22 EPPO Regulation in combination with the German PIF offences)and in which area of criminals the investigation has to be or is being carried out.[315] Since tax evasion is a successful crime, the evasion of sales tax also depends on the occurrence of a success, see 370 AO. Strictly speaking, VAT evasion results in a reduction in the tax, with academic literature and judicial practice see different i.e. why they are at odds. [316] For the occurrence of success, the refunds or the actions aimed at the refunds are decisive. Actions that do not achieve success may fall under the attempt of tax evasion e.g. fraudulent tax evasion (s. 370 para. 2 AO)[317].

88 **Degrees of suspicion** can arise if an entrepreneur suddenly makes exorbitantly high reimbursement requests, does not submit any advance notifications, appears as a company on the market for the first time, has a strange name, unknown and unsearchable people are behind it.[318] In addition, when deadlines are not met, customs are not recognized or tax consultants become suspicious. Particular attention should be paid to the so-called ban on compensation, which should also apply to intra-community services.[319] In addition, bogus invoices are problematic.[320] *Heuel* argues that a blanket solution for

[315] Heuel 2021, p. 158 et seq; Müller 2010, pp. 69 et seq.
[316] Heuel 2021, pp. 36 et seq.
[317] Heuel 2021, pp. 30, 36 et seq.
[318] Heuel 2021, pp. 30, 36 et seq.
[319] Heuel 2021, p. 70.
[320] Heuel 2021, pp. 80, 94 with examples.

determining the success of the crime is not permitted.[321] Actions in relation to the obligations of ss. 14 UStG come into question for the factual behaviour: Proper invoice, legitimate deduction?, Reimbursement request?[322] The subjective facts, which must be determined immediately in order to establish the intent, are of particular importance. [323]

In the EU and part of the EPPO investigations, there are mainly **sales tax carousels**, which are not new either, but have been going on since the 1970s. [324] The penalties and the assessment of sentences for VAT evasion have therefore been developed by the courts for a long time.[325] Large cases of sales tax evasion are covered by Section 26c UStG.[326] **89**

In this area, there are **numerous obligations of the entrepreneur** under the Value Added Tax Act:[327]

- the correct filling in, creating invoices that show the correct sales tax amounts.
- storing invoices and documents for up to 10 years,
- the disclosure of goods documents,
- the cataloguing of inventories,
- the correct summation,
- the correct naming of the trading partners involved and so on.

These are violations within the meaning of the **ss. 14 et seq. Sales Tax Act of the Federal Republic of Germany**. Major EPPO Cases in Germany **Case Notification 2023**[328]: The EPPO in Germany investigated and prosecuted at least three such (VAT-fraud related) cases involving bogus companies and forged, or non-existent invoices in 2021–2023: **90**

LG München (EPPO Center Munich) =6 KLs 501 Ja 17/21, 5.4.22 [6. Criminal Court, LG München]. Several Cases more have been issued in München.
LG Frankfurt (EPPO Center Frankfurt a.M. =5/29 KLs – 203 Js 8/21 (8/22) Ongoing Case since December 2022-18.2.23. Finished (*rechtskräftig*) as of 25.2.2023./29. Wirtschaftsstrafkammer.
LG Osnabrück (EPPO Center Hamburg) =Not known. EPPO Press Release, 13.1.22.
LG Hamburg (EPPO Center Hamburg) =Az. 618 KLs 8/22 (December 2022).

[321] Heuel 2021, pp. 110 et seq.
[322] Heuel 2021, pp. 120 et seq., 134.
[323] Heuel 2021, p. 136.
[324] Heuel 2021, pp. 189 et seq.
[325] Heuel 2021, pp. 394 et seq.
[326] Heuel 2021, pp. 335 et seq.
[327] See Kaligin 2022, pp. 531 et seq.
[328] We either obtained the relevant judgments for academic analysis or visited the Court proceedings.

LG Landshut (EPPO Center Munich) =Not known. Ongoing Case 3. Criminal Court.[329]

91 As early as 1993, at a meeting of the ERA, *Gerhard Rieger* correctly differentiated **which taxes are also revenues** of today's European Union (then European Community). These include: "Customs duties, levies, compensatory amounts, co-responsibility taxes. Fraud in this area is characterized typologically by **evasion of taxes**. For example, it occurs when goods are imported.

92 The following **Sales Tax Fraud Typologies** can exist:

- failure to register goods that shall be imported,
- False declaration of the quantity of the goods by number and weight,
- Mentioning the wrong class of goods,
- Incorrect designation of the country of origin."[330]

93 In combination with fraudulent behaviour, false, falsified or fraudulent documents are used.

94 On the other hand, it can then happen that subsidies are scammed when exporting (however, this belongs in the area of expenditure fraud → see below bb.).

95 The **tax investigation police** (*Steuerfahndung*) will most likely produce an **Assessement Report** if it becomes aware of a suspicion for a VAT carousel.[331] The **German Finanzämter** deal with these cases for a long time. Already in 1999 the *Steuerfahndung* could explain in one of its Assessement reports and processes, which was presented in court, how the carousel was set up:

96 "1. [T]he investigation report initially describes the economic course of events in a **"sales tax carousel" in abstract terms**. This means that the goods would be returned from a member state of the European Community to the country and from there back to the original supplier in close temporal relation. In this case, **input tax refunds would be claimed and the sales tax would not be paid by a member of the carousel** who is

[329] See Moritz 2022 Süddeutsche Zeitung. Fiskus um 22 Millionen Euro betrogen. online: https://bit.ly/3XGyPNE (Accessed 31 December 2024) "The case deals with] a sales tax fraud scheme with vehicle deliveries to bogus companies in Italy and Germany. Report of the tax investigation (StEuFA), inclusion in the court files, suspicion of involvement in a sales tax carousel with deliveries of mobile phones, The vehicles were selected on online platforms such as Autoscout or mobile.de. The front companies then made offers for sale, while the suspects acquired the vehicles and arranged for them to be exported to Italy. The receipts were then issued in a way that not only avoided sales tax, but also increased profits for the organisation. In this way, the prosecutor explained, the group had gained a competitive advantage over reputable dealers. It went like this: One of the defendants did not write the invoices directly to the customer, but –with reference to a tax-free delivery - to one of the dummy companies with registered offices in Italy, Bulgaria, Hungary, Latvia and Malta.
Both men are accused of 23 individual offences with a tax loss of over 8.5 million euros"

[330] See Rieger 1993, pp. 52 et seq. with more details and examples. Actually the situation regarding the typology from 30 years ago has not changed much.

[331] There is room for improvement here, as confirmed by several experts, p. Introduction to the actions of the 2023 finance ministers' conference GER.

referred to as a **"bogus entrepreneur" or "missing trader"**. It is not intended to provide the power of disposal to an end user. The goods would be resold below cost price. In addition to the "missing trader", "buffer firms" appear to cover up the carousel. For a small surcharge, they would submit proper tax returns and make the criminal activities inscrutable for individual investigating authorities. The hallmark of a **"buffer firm"** is the explosive increase in sales in addition to normal day-to-day business. At the end of the carousel there would be a "distributor" who would make a tax-free intra-Community delivery to a "missing trader" or another carousel and claim the input tax deduction from deliveries made by the "buffer".
Tax conclusions are drawn as follows: The **"missing trader" is not an entrepreneur because he only creates courtesy invoices** for services not rendered. Consequently, input tax deduction from invoices of the "missing trader" by the "buffer firm" is not possible. He lacks a delivery to the customer because the power of disposal is not transferred. The companies involved do not act like entrepreneurs in general economic transactions, they are "in a way externally controlled and no longer to be regarded as independent traders". Therefore the "**missing trader**" **owes the sales tax** according to § 14 paragraph 3 UStG. The other **"buffer firms"** are also not entitled to input tax deductions from the upstream supplier due to a lack of delivery and they owe the sales tax according to § 14 paragraph 3 UStG. In addition, the amount of the surcharge on the invoice is a hidden payment for the creation of the "paper works" as a different service that is also taxable.
2. These characteristics, which speak in abstract terms for a "sales tax carousel", are also present in the case at hand and led to the applicant's refusal to deduct input tax from invoices from companies A4, A5, A2 and to a charge for the sales tax shown separately in the outgoing invoices in accordance with § 14 paragraph 3 UStG. In addition, the creation of "paperwork's" was recognized as other taxable services according to § 3 paragraph 9 UStG in the amount of the difference between incoming and outgoing invoices."[332]

We visited[333] another tax-evasion case and the subsequent **Court Proceeding in the Regional Country Court of Frankfurt** (Landgericht FR a.M. (LG) 2022–2023), which will be dealt with in Part 2 of the Compendium more closely, which contains an analysis of Cases by the EPPO and OLAF in addition to the Case References made within the Country Chapters. Nevertheless, the state of affairs and the *modus operandi* of the now **97**

[332] FG Hessen, Beschluss vom 22.07.2002 – 6 V 1071/02, ECLI:DE:FGHE:2002:0722.6V1071.02.0A.
[333] The team of the Criminal Chair and the drafters visited the proceedings in Frankfurt *in persona*. The indictement was brought in 2022 by the local EDP. The final decision, two convictions (*Urteil*) against two accused persons was decided in February 2023. The team of the study was present during the presentation of evidence 3-times (mainly *Steuerfahndungspersonal*, tax police) and it was in court when the judgment was read out loud by the 29. Economic Criminal Chamber. See below → Part. II. 5 on Provision in PIF Defense Matters and the Competence of Economic Criminal Chambers based on the Courts Constitution Act.

completed court procedure can already be referenced here through our own perception. Court visits show only a part of the reality and also only a part of the work of the EDPs. In this respect, they are helpful for future EDPs because they narrow down the fraud typology and thus the scope of investigation thematically and materially in legal terms on the basis of examples:

Case Study 1: EPPO EDP Center Frankfurt a.M.

Regional Court Frankfurt: Tax Evasion Case: Fraudulent and Bogus Trading in Voice over Internet Protocol (VoIP) services and Electronic Goods in the EU (Loss: 33€ Million)

The Detection and Initiation of the Case

The suspicion in the case came from German Tax Controls. Tax Controls were conducted on a regular basis by the taxation and assessment tax offices (*Besteuerungsämter* und *Festsetzungssteuerämter*). These Offices act in this stage on their own as there is regularly no criminal suspicion in the first instance, but if the tax control itself proves a suspicion the normal tax offices notify the Tax Police Offices (*Steuerfahndungsstellen*; For an Explanation of the German Peculiarity see below → 4.aapara. 2(b) Tax Investigators (Steuerfahndung) Art. 28 in the Compendium). In legal terms the case dealt with tax evasion, ss. 370 AO in connection with the relevant bogus and fraudulent conduct i.e. not issuing invoices s. 13b UStG, German Sales Tax Act. And the Telecommunications Act in connection with the Sales Tax Act.

The Steps and Investigative Aspects of the Case

If the suspicion is solidified, the tax investigation office passes on its information to the public prosecutor's office on the basis of the tax code. The case ended up with a German national public prosecutor's office. When the EPPO became law on June 1st, 2021, the EDPs received so-called back-log cases from the national public prosecutor's offices so that the responsible EDPs of the regional offices could decide whether to take the case to the European level (evoke, see → Art 27 below). This is where your own investigation begins.

Summary and Comment

Leaving aside this fact, the case involved two sets of crimes: 1. Trading in electronic goods and 2. Trading in telecommunications units (Voice-over-IP). The suspicion of sales tax evasion at the expense of the European Union was substantiated and could be credibly proven in the process for the chamber, since sales tax had to be paid on the traded or non-traded goods, although this was not paid, but a refund was requested from the tax office and the gain could not be explained.

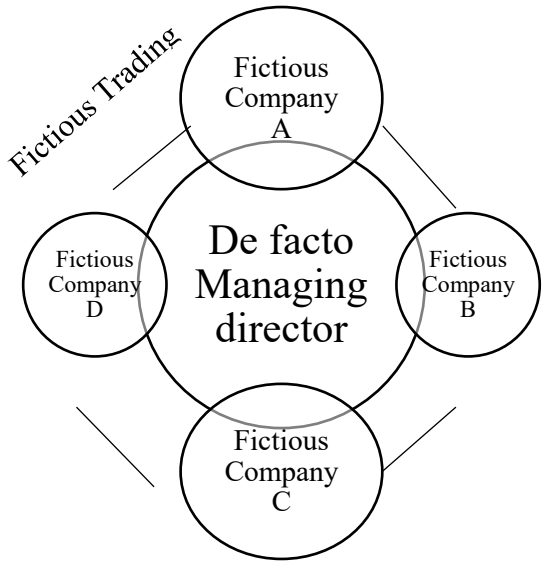
Even if the defence and the main convict had explanations for many actions, the tax factually significant explanations, such as mens rea in relation to tax evasion, could not be refuted, since confiscated and evaluated chat logs proved the opposite. In crime com-

plex 1, sales of goods were spread all over Germany (Berlin, Leipzig, Frankfurt, Hamburg, North Rhine-Westphalia), which also reached Poland, a kind of "circle", operated like a carousel, in order to cover up the sales. In crime complex 2, contingents of Voice-Over IP telephone minutes were sold, whereby these services were also subject to sales tax and it was concealed even more strongly that no invoices were correctly issued, the invoicing was concealed in a systematic way: employment of a manager.

The second convict was the managing director of a company and acted as a straw man for cover (at least knowing about the actions) so that he too was jointly responsible for the main case as having full responsibility for the rules of the HGB and the tax laws. The investigations were extraordinarily extensive, with the tax investigation offices still showing potential for improvement in the information they send to the EPPO. In this respect we refer to No. 140 of the AStBV, which is printed in the Compendium above, but must also be carried out.

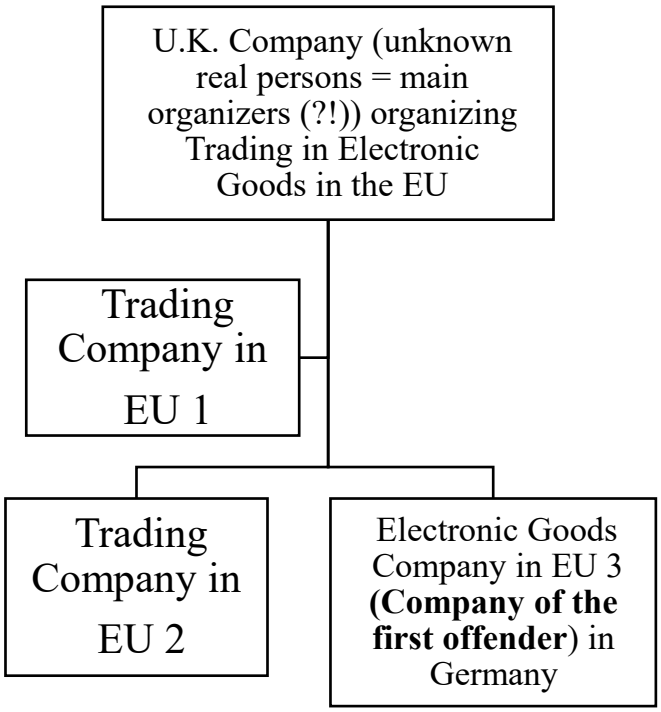
The case can be **visualised** again in a simple scheme: **98**

Case Study 2: Fictitious Circle of Companies



"The companies' sole purpose was to issue invoices enabling the recipient of the invoices – another fictitious company – to claim input tax from the tax authorities, without justification."

Case Study 3: Trading in Electronic Goods



"Between April 2018 and March 2021, the de facto managing director neither declared nor paid taxes on the listed transactions from his electronic goods company."

99 However, assessment can also be based on known cases and the professional groups suspected there, such as in the **Wirecard or Cum-ex cases**, which aims at national and European budgets alike:

Since the Wirecard scandal and the legal reappraisal, auditors and their professional position have been the focus of discussion and sometimes also in a bad light.
A distinction must be made between ordinary qualified accountants and those who are sworn accountants. In Germany they act by virtue of the Act on a Professional Code of Conduct for Auditors" (*Wirtschaftsprüferordnung*, WPO). Another Act that is applicable in consultation cases, which may lead to suspicion of frauds is the **Tax Consultancy Act** (*Steuerberatergesetz*, StBerG).

In the Cum-ex scandal and the criminal justice investigation, lawyers and law firms are not in a good position either, as they have been investigated as possible aids and abettors of the VAT frauds, "**Umsatzsteuerkaruselle**". Actually, lawyers do not perform an investigative function, but they usually stand for integrity and professional ethics as well as a solid defence on lawful ground. The question was whether legal advice should have been sought earlier about the possible illegality of these transactions. Especially the mens rea side was and is of great interest.

100 Possible offences; Crimes of omission, instigation and aiding and abetting as well as even complicity in fraud s. 263 et seq. CC, tax evasion, s. 370 AO or money laundering, s. 261 CC are possible.

101 In the area of **customs duties fraud** many cases evolve in relation to **tobacco smuggling**.[334] In some cases (see Art. 30 EPPO Reg., below) "*V-persons*", police servants acting under a pseudonym were used but even accused because of their own conduct[335]. Even police staff has been suspected of these kinds of fraud and tax officials have testified in accompanying trials[336]. It is quite important to mention that e.g. the use of an *agent provocateur* **in fraud cases** must obey the same rules as in other areas and it must therefore follow the limitations of this special construct for investigations[337].

[334] BGH, Decision dated 01.02.2001 - 5 StR 127/02.
[335] BGH, judgment of February 21, 2001 - 5 StR 368/00 =openJur 2010, 4963.
[336] LG Dresden, 12.12.1997 - 8 Ns 101 Js 44995/95 =NJW 1998, 3509.
[337] BGH, Decision of 19.04.2000 - 5 StR 644/99; BGH, 18.11.1999 - 1 StR 221/99 =BGHSt 45, 321.

Case Study 4 Example for Potential Material Competence of the EPPO – Aggravated smuggling of tobacco – Tax evasion Case **102**



Case of aggravated smuggling including tobacco stuff[338]

Offences; tax evasion, s. 370 AO, smuggling s. 373 AO, s. 25 subs. 2 CC (complicity), Art. 40, Art. 4 Nr. 19 Union Customs Code

"According to the findings, in 16 cases the defendant had untaxed and undeclared cigarettes transported in containers from Cyprus via the Federal Republic of Germany to the Czech Republic without declaring them for a customs procedure or paying import duties for transport through the territory of the European Union.

For this purpose, the defendant had cigarettes, which he had previously declared for export there, packed in containers in Cyprus with other goods, such as clothing or shoes, which had also been declared for export, under the supervision of the Cypriot customs authorities.

In all these cases, after sealing the containers, Customs confirmed the stowage of the declared goods and issued the loading permits necessary for shipment to Germany, authorizing the shipping company involved in the transport to take the containers with the said goods on board. In the bill of lading required for shipment and transport by sea and in the cargo customs declaration, the defendant subsequently had only the other goods loaded (clothing, etc.) included, but not the cigarettes. In doing so, he took advantage of the fact that the Cypriot customs authorities did not compare the customs declarations with the loading permits in which the cigarettes were still listed (UA p. 18). After reloading in the port of Antwerp, the containers were unloaded either in the free port of Bremerhaven or in the free port of Hamburg. As intended by the defendant, the drivers commissioned by him, who were to transport the containers from there to the Czech Republic by truck, received exemption certificates for the goods designated therein from the respective port operating company upon presentation of the bills of lading, the contents of which were incorrect. On the basis of these documents – and thus again without taking the cigarettes into account – forwarding companies engaged by the defendant drew up T1 transit declarations for the transport of the goods to the Czech Republic under the external Community

[338] BGH, Decision dated 01.02.2001 - 5 StR 127/02; for a simliar case see BGH, Decision of 01.02.2007 - 5 StR 372/06; BFH, decision of 21.08.2014 - VII B 191/13 (=openJur 2014, 26688, Subsequent collection of additional duty for the import of canned mandarin oranges, § 370 AO); BGH, judgment of 27.06.2018 - 1 StR 282/17 =NStZ 2019, 158 with relevance to the importation of a total of 45,000 cartons of duty unpaid and untaxed cigarettes into the European Union); BGH, Decision dated 14.10.2015 - 1 StR 521/14 (case of omission, § 370 (1) no. 2 of the German Fiscal Code (AO), § 25 (2) of the German Criminal Code (StGB), § 27 CC);

transit procedure (hereinafter: T1 transit procedure). At the instigation of the defendant, the drivers in charge of the transport presented the containers to the customs offices of departure in each case and submitted the prepared transit declarations together with the exemption certificates for the opening of T1 transit procedures. In all cases, customs affixed a customs seal as an identity assurance and cleared the containers for T1 transit to the Czech Republic. After transit through Germany, the containers – and thus all cigarettes – were exported to the Czech Republic. In the process, the respective customs office of exit merely checked the integrity of the identification, certified the export of the container and returned the return receipt of the shipping documents to the customs office of departure to complete the T1 shipping procedure. There was no verification of the container contents by the customs authorities in any of the cases – neither at the customs office of departure nor at the customs office of exit. The cigarettes transported in the containers were subject to import duties of between DM 1.4 and 1.7 million per shipment, totalling more than DM 26 million."[339]

103 The following pages show an **example of documents** that might be part of investigations and document submitted to EDPs if intra-community sales with cars are investigated. The Federal Administration Body for Sales taxes (*Bundeszentralamt für Steuern*) issues these documents and stores these information. The Investigation Body might have the chance to obtain documents submitted here to start own investigations on the basis of Art. 26 EPPO Regulation.

[339] BGH, Decision dated 01.02.2001 – 5 StR 127/02.

Example of a VAT Sales Document: Notification form for intra-community deliveries of new vehicles to buyers without a sales tax identification number (Vehicle Delivery Registration Ordinance – FzgLiefgMeldV – of March 18, 2009, BStBl I p. 472).



Bundeszentralamt für Steuern

Meldung

innergemeinschaftlicher Lieferungen neuer Fahrzeuge an Abnehmer ohne Umsatzsteuer-Identifikationsnummer

(Fahrzeuglieferungs-Meldepflichtverordnung - FzgLiefgMeldV - vom 18. März 2009, BStBl I S. 472)

Bundeszentralamt für Steuern
- Dienstsitz Saarlouis -
66738 Saarlouis

Meldezeitraum: **Quartal** * _____ **Jahr** * _____ **Berichtigung** (falls ja, bitte ankreuzen) ☐

Angaben zum Unternehmer / Fahrzeuglieferer

Name, Vorname bzw. Firma *

Straße * **Hausnummer** *

PLZ * **Wohnort / Firmensitz** *

Telefon

E-Mail-Adresse

Zuständiges Finanzamt * - bei Organgesellschaften Finanzamt des Organträgers

Steuernummer * - bei Organgesellschaften Steuernummer des Organträgers

Identifikationsnummer - nur bei natürlichen Personen

DE

Umsatzsteuer-IdNr. (soweit vorhanden) **Anzahl der Anlagebögen**

Hinweis:
Wer vorsätzlich oder leichtfertig entgegen seinen Verpflichtungen aus der Fahrzeuglieferungs-Meldepflicht-verordnung eine Meldung nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig abgibt, handelt ordnungswidrig. Die Ordnungswidrigkeit kann mit einer Geldbuße bis zu 5000 Euro geahndet werden (§ 4 FzgLiefgMeldV).

Datum * **Unterschrift**

Hinweis nach den Vorschriften der Datenschutzgesetze:
Die mit der Meldung angeforderten Daten werden aufgrund der FzgLiefgMeldV und § 18c Umsatzsteuergesetz (UStG) erhoben. Die Angabe der Telefonnummer und der E-Mail-Adresse sind freiwillig.

***Pflichtfeld**

010099 - Meldung innergemeinschaftlicher Lieferungen neuer Fahrzeuge an Abnehmer ohne USt-IdNr. - 12/2010 **Seite 1 von 4**

(cc) Customs duty cases

The evasion of customs duties might fall in the scope of s. 370 AO, which we explored above citing cases of the German EDP centers as well as cases from the past when the EPPO was still only a rough idea by the *Corpus Juris*-Project. OLAF investigates a lot of irregularities in the Customs Sector (anti-dumping duties mainly) and the EPPO **104**

might be involved, if it e.g. is informed through Art. 12e OLAF Regulation of a suspicion for certain conduct that constitutes customs and tax offence. In this Case the German Customs Criminal Service might inform the EPPO as well of indications for fraud and the EDP herself/himself might explore this area more closely. The EDP Center Munich has like the EDP Center Frankfurt and the EDP Center Berlin or Hamburg the same nationwide competence, so they might still concentrate on local phenomena. The Hamburg Office might judge by prognosis deal more often with Customs Cases as the Port of Hamburg is prone to fraud scenarios (like other Countries with big ports in the south of Europe show – see Malta, Italy, Spain and France but see as well Belgium and mainly the Netherlands, "Rotterdam" Cases in the Dutch volume).

105 In another case that lead to a preliminary question to the ECJ in 2022 the EDP Center of Munich investigated against companies that traded in biodiesel and were suspected of having evaded customs duties.[340]

Figure 5: Suspected Biodiesel Trade and Evasion of Duties

Suspected Biodiesel Trade and Evasion of Duties

The case can be re-established by the warrants under judicial decision by the ECJ in relation to a preliminary ruling:



X used allegedly old cooking oil (imported from U.S.) and produced biodiesel, which it subsequently imported with a T1 Document (real, but with forged information) by land via Croatia and Austria to Germany, where it was recognized in the Dresden Customs Office.

"The European Public Prosecutor's Office, through its European Delegated Prosecutor in Germany, is conducting criminal investigation proceedings into 1.000080/2021 on suspicion of continued tax evasion on a large scale and membership of a criminal organisation aimed at tax evasion pursuant to s. 370 para. 1 no. 1,

[340] "The European Public Prosecutor's Office, represented by the European Delegated Prosecutor in the Federal Republic of Germany (Munich) handling the case, is conducting preliminary investigations, inter alia, against G. K., S. L. and the B. O. D. GmbH on the grounds of Article 3(2)(a) and (c) of Directive 2017/1371; Paragraph 370(1) no. 1, (2) no. 3 and Paragraph 373 paras. 1 and 2 no. 3 of the Abgabenordnung (German General Tax Code, 'the German AO'); Paragraph 129 of the Strafgesetzbuch (German Criminal Code, 'the German StGB'). The accused are suspected of having circumvented customs provisions by making false declarations when importing biodiesel (of US origin) into the European Union and, in doing so, causing a loss totalling approximately EUR 1,295,000" See Request for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 25 April 2022 – G.K., B.O.D. GmbH, S.L. (Case C-281/22), here: https://bit.ly/3XYE2Bz. Accessed 31 December 2024.

para. 2 no. 3 and s. 373 paras. 1 and 2 no. 3 of the German AO as well as s. 129 of the German StGB. According to the suspicious circumstances known to date, an organised criminal organisation has set up a **broad system for importing biodiesel** *from Bosnia and Herzegovina to the EU*, which was **allegedly produced from used cooking oil of the local company** S. E. D.O.O. This 'used cooking oil' was allegedly previously imported from the US to Bosnia and Herzegovina. In reality, this biodiesel had already been produced in the US without any intermediate processing or production steps in Bosnia and Herzegovina. In many cases (see below), companies of the B. O. Group entered into contractual relationships with S. E. D.O.O. for the purchase and import of biodiesel 'produced in Bosnia and Herzegovina', and that group boasted on its website of its European-wide business activities, including the collection and trade of used cooking oil throughout Europe and the production and trade of biodiesel.

In at least 40 cases, a total of approximately 1,000 tonnes of this fuel, allegedly produced in Bosnia and Herzegovina, was then transported **by land via Croatia and Austria to Germany using the T1 transit procedure** and presented for customs declaration in Dresden in order to be handed over to the local company B. S. GmbH (managing director R. R. M.) on behalf of the Austrian company B. O. D. GmbH (managing directors S. L. and G. K.), which was the contractual partner of the exporter S. E. D.O.O. In 62 further cases, a total of approximately 1,500 tonnes of the same biodiesel was transported by land via Croatia to Austria and **presented for customs declaration in Spielfeld, Austria,** in order to be delivered to the local company B. O. D. GmbH, established in M., Austria, under the direction of its managing director, S. L. The **Incoterms selected for both deliveries** and the underlying contracts were **'DAR (Delivered at Place)'**, which means that a **delivery was to be made** in **Germany/Austria** by S. E., while the import procedure, including customs declarations, was the responsibility of B. O. D. GmbH, which is why this company was the responsible taxable person under Article 77 of the Union Customs Code despite using the services of a specialised transport company (Article 77 para. 3).
However, as the customs declaration in question incorrectly referred to a non-preferential origin in Bosnia and Herzegovina and a TARIC code, **which would have exempted the biofuel from anti-dumping duties and countervailing duties** even if its true place of production (USA) had been accurately declared, the competent customs authority levied solely VAT on the import. This resulted in a loss of at least EUR 1,295,151.11 (EUR 445,151.11 in **uncollected duties** in Germany and EUR 850,000 in Austria). A 25% share of the company B. S. GmbH is owned by the Slovakian company B. O. D. s.r.o. & co KS (managing director S. L., an Austrian national), which is also the parent company of the Austrian company B. O. D. GmbH

106 (management director also S. L. as well as the Austrian national, G. K.). B. O. D. s.r.o. & co KS was sometimes represented by G. K. even though his official role was only with B. O. D. GmbH. B. O. D. GmbH itself was both the contractual partner of the alleged manufacturing company S. E. D.O.O. in Bosnia and Herzegovina and responsible for the customs declaration in Dresden as well as the recipient of some of the goods that were declared in Dresden, although they had to be transported back to Austria afterwards in order to reach the consignee. Furthermore, there are indications that the same type of arrangement was also in place with other recipient companies in Germany and B. O. D. GmbH was the ultimate recipient of these deliveries declared in Austria. The managing director of B. S. GmbH (recipient in most cases where biodiesel was cleared for customs in Dresden/Germany), R. R. M., was the original founder and sole owner of the company in question, which was to produce biodiesel and was subsidised with EU funds. Ultimately, due to market developments, this had become commercially non-viable, which led M. to participate in a scheme that exploited differences between national tax laws to produce mineral diesel and sell it as 'lubricant' to Eastern European recipients, thus evading energy tax and VAT amounting to approximately EUR 73 million (indictment of the Public Prosecutor's Office in Frankfurt/Main, file number 7550 Js 216177/15 of 31 July 2018)."[341]

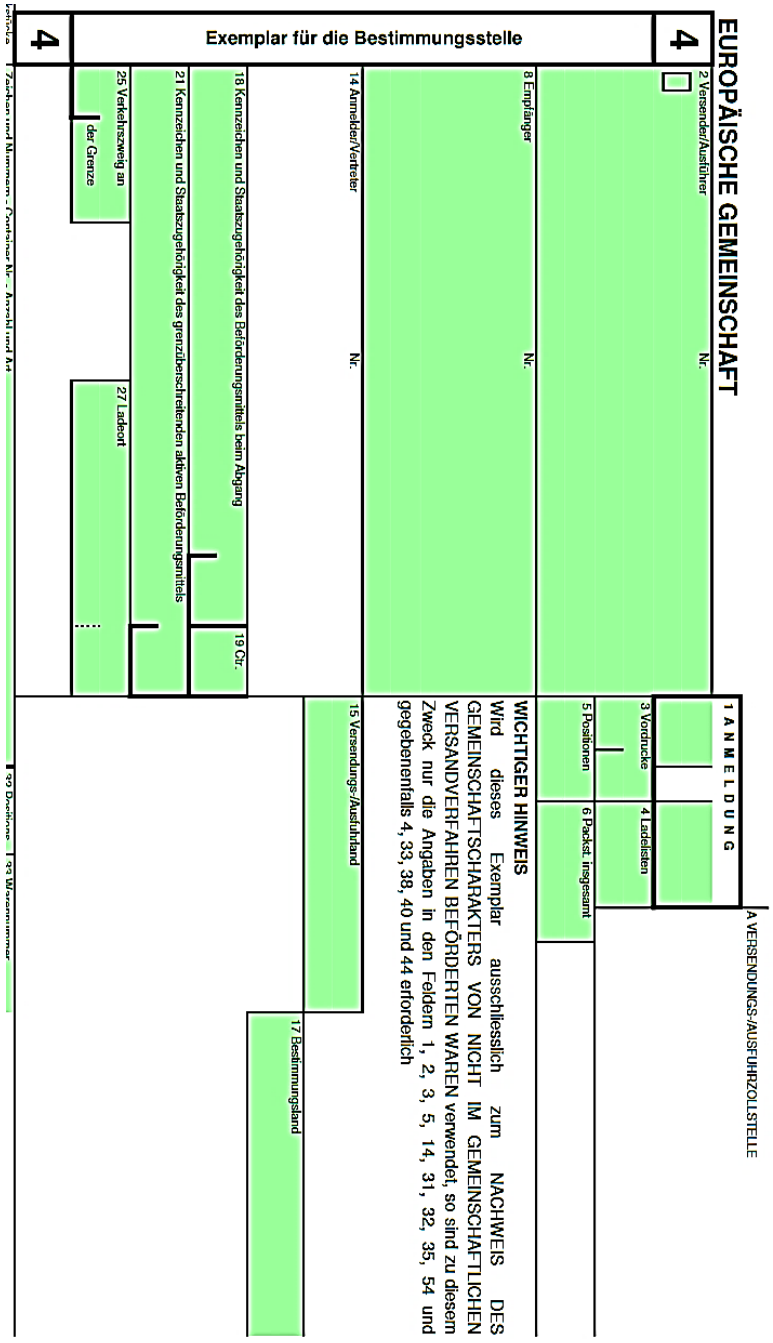
107 Union transit and common transit prcoedures facilitate the movements of goods within the Union and identify goods that are imported into the Union to be transported between the contracting parties to the Convention on a common transit procedure without being subject to import duties. The T1 procedures pertains to the transportation of non-Union goods, i.e. goods that are subject to cvustoms supervision due to their non-compliance with the criteria established for Union goods. This category includes goods from third countries subject to a special customs procedures, as well as goods that have been obtained through the joint processing or working of Union and non-Union goods.[342] It follows an example of the customs document, one alike to the one mentioned in the case.

[341] Request for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 25 April 2022 – G.K., B.O.D. GmbH, S.L. (Case C-281/22), here: https://curia.europa.eu/juris/showPdf.jsf;jsessionid=4F9CD1AE3D93FE95E98D3A8AE44C3FF5?text=&docid=261521&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3947847. Accessed 31 December 2024.

[342] Zoll, Unterschied zwischen Unionsversandverfahren und gemeinsamen Versandverfahren, see https://www.zoll.de/DE/Fachthemen/Zoelle/Zollverfahren/Versandverfahren/Unions-gemeinsames-Versandverfahren/Unterscheidung/unterscheidung_node.html. Accessed 31 December 2024.

(dd) Example of "T1 Customs Certificate Document"

108



(ee) Expenditure Frauds – Case Study

Expenditure frauds are a different area of investigation and it therefore requires different authorities (see below → Art. 28 EPPO Regulation) e.g. Refunds on Exports may diminish and harm the EU budget as they are paid as expenses and therefore belong to the expenditure frauds[343]. The Annual Report 2021 of the EPPO mentioned the construction 109

[343] This was already the case in 1993 as Smeets 1993, pp. 188-197 shows.

and funding – especially the subsidies area. And yet, this overall comparative analysis is true for Germany, too:

110 *Case Study 5: Germany EPPO EDP Center Berlin*



KfW- Schnellkredite"/German Credit Institute for Reconstruction- 'Quick-Loans'

The fast-track loans[344] offered were intended to help entrepreneurs weakened by the pandemic to foster their work economically.
In one case, which took place in the area of the regional office of the EPPO in Berlin, a group was suspected of being a criminal organisation in the sense of s. 129 CC. It, if proved, probably tried to apply for fast loans and to use the money gained from the loans to set up an illegal trade with cars.

111 Thus in this area, tax officials, administrative paying agents, tax advisors and others in the field of distribution of these funds may come under the light of investigative authorities. There are acquittals[345] and convictions[346] as well as recent judgments that can be analysed and used for future investigations:

112
- BVerfG, 10.01.2018 – 2 BvR 2993/14 [Initial Suspicion; Principle of Proportionality; Priority of Investigative Measures that Protect Fundamental Rights; s. 102, 105, 161 para. 1 CPC, 24c Abs. 3 Nr. 2 KWG].
- LG Augsburg, Decision of 02.11.2020 – 10 Qs 1054/20 =openJur 2020, 77635 [Lawful search in connection with Corona subsidies, s. 98 para. 2 sentence 2 CPC; The search may not be used to justify an initial suspicion.]; equal case: LG Koblenz (Regional Court), decision dated May 25, 2021 – 10 Qs 30/21.

113 In this area s. 264 CC has a certain relevance as subsidies are expenditure and these kind of EU funding has been prone to fraud in the past.[347]

114 Another example for expenditure frauds is the area of agriculture, fisheries and forest harvesting. These area are massively financed under the **New Green Deal** (2021–2029) by the EU and criminals become more and more aware of this fact.

[344] Bea and Dressler 2022, pp. 249 et seq.
[345] BGH, 07.09.2017 - 2 StR 24/16 =BGHSt 62, 288 with relevance to investment allowance decisions and of the duties of senior tax officials to look after assets.
[346] The transfer and illegal disposal of waste often triggers embezzlement penalties, cf. LG Essen, Judgment of 21.12.2016 - 35 KLs 35 Js 162/13 - 26/16 =openJur 2019, 13810 [Disposal and trade of mercury as well as the processing of waste containing mercury; Recycling company; Defendant C: §§ 263 para. 1, para. 2, para. 3 no. 1 + 2, 265b para. 1 no. 1, 266 para. 1 + para. 2, 326 para. 1 + para. 2 n. F., 330 para. 1 no. 4, 22, 23, 52, 53 StGB (German Criminal Code), §§ 18a para. 1 no. 1, para. 3 no. 2 AbfVerbrG, §§ 370 para. 1 no. 1 + para. 3 no. 1 AO, §§ 1, 2, 15 EStG. Defendant L: §§ 263 para. 1, para. 2, para. 3 nos. 1 + 2, 266 para. 1 + para. 2, 326 para. 1 + para. 2 n. F., 330 para. 1 no. 4, 22, 23, 52, 53 StGB (German Criminal Code), §§ 18a para. 1 no. 1, para. 3 no. 2 AbfVerbrG].
[347] See Benthin 2010. See BGH, Judgment of 25.10.2017 - 1 StR 339/16 =openJur 2018, 5315.

There is also potential here for national payment offices (such as the premium payment office) in the **agricultural sector**, which pays out area-based amounts to young farmers and so-called **premium claims**, which must be reported locally to the payment office, forward irregular incidents to OLAF and agricultural payments fraud to the EPPO. Since this is an area of direct funding, the EU Commission is directly concerned. In this area EDPs might use, like lawyers and judges the database called *Zentrale* InVeKoS Datenbank (ZID).

There are also many **funding projects**, e.g. in the forest sector, which are intended to enable the reforestation caused by the bark beetle e.g. in the Sauerland and Siegerland [South Westphalia, Siegen and Wittgenstein, Hochsauerland or the Area of the Bavarian Forest or the Area of the Harz Region as well as the Area near the Vogesen (France/Belgium/Germany)]. Here, EU funds are distributed by the regional forestry offices as paying offices after the forest farmers have submitted applications in order to achieve the project goals (afforestation with more robust species, etc.). There is potential for misuse of EU funds here, which is why every document that the applicant signs expressly states that the information is relevant to subsidies. Section 264 CC has its scope here. The forms of fraud on the expenditure side can only be touched upon here. However, in Part. 2, a more detailed case study should enable reading of real and fictitious cases from across the EU. Subsidy fraud judgments were also made by the EPPO in 2022. They concentrated, for example, on Romania and Croatia, which is why reference is made to these chapters at this point. The investigative measures that were successful here can also be successful in Germany. **115**

Case Study 5 Fictious Case in the Area of the New Green Deal **116**

	**Fictious Case[348] in the Area of the New Green Deal**
A applies to the responsible regional forestry office (*Forstamt*) for funding for his afforestation in Hochsauerland. There is a fixed subsidy for each tree and tree species, which is also to be planted on the respective areas measured at a distance. A would like to set up a seed trade and get cheap plants beyond his own area. Therefore, it indicates an oversized area. The paying agent pays A, assuming everything is correct. In addition, a planting machine and a sick person with a total value of €175,550 are granted. After a while, competitor B becomes suspicious because he saw a large delivery arriving at A's, but knows that he only owns a small piece of forest. A report leads to investigations which the police officer I, together with the forestry office, checks before an on-site inspection using the GPS satellite and map model	

[348] But see Merkblatt zur Gewährung einer Zuwendung für die Wiederherstellung von Waldökosystemen - Initiierung der Naturverjüngung - für den Zeitraum 04.10.2021-31.07.2022.

for EU forest cultivation areas. Since the funds come from EU funds for regional development, the matter is reported to the EPPO.

117 This case shows that even area, which one would not suspect for fraudulent activities contain potential for fraud cases affecting the EPPO.

(c) Corruption offences

118 In the area of corruption offences in relation to PIF offence suspicion may arise from publicly available information like in the corona mask deals cases, which in the end proved to not constitute an offence by virtue of s. 108e CC but created suspicions alike.[349] That the EU institutions and the payment agencies in the area of shared management in the member States are prone to fraud, has been analysed extensively in the last two decades.[350]

(d) Money laundering with PIF crimes

119 Money laundering[351] needs an existing crime i.e. a PIF offence. Suspicions for AML with PIF money will most likely arise in connection with other offences.[352] AML offences might occur in all areas direct or indirect (shared management). The latest legislative developments in Germany are analysed by commentators, which refer especially to the new structure of s. 261 CC.[353]

120 If money laundering is suspected it can be **reported to the FIU**,[354] which may refer in case of connection to offences that fall into the scope of the EPPO, inform the EPPO:

121

Section 27 [Money Laundering Act] Financial Intelligence Unit
(1) The Financial Intelligence Unit shall be the FIU for the prevention, detection and assistance in combating money laundering and terrorist financing pursuant to Article 32 para. 1 of Directive (EU) 2015/849.
(2) The Financial Transaction Investigation Unit shall be organisationally autonomous and shall operate professionally independently within the scope of its tasks and powers.

[349] OLG München, 17.11.2021 - 8 St 3/21, 8 St 4/21 and annexed thereto BGH, 05.07.2022 - StB 7/22.
[350] See Wagner 2000, pp. 225–251; Brun et al. 2022.
[351] Wissenschaftlicher Dienst des Bundestags 2020, Bekämpfung von Steuerhinterziehung und Geldwäsche in Deutschland und Großbritannien. Verwaltungsstrukturen und verfas-sungsrechtliche Aspekte einer Kompetenzneuordnung (WD 4-3000-167/19) online: https://www.bundestag.de/resource/blob/690140/363d5b45f822c7de24f4d12d71572605/WD-4-167-19-pdf-data.pdf. Accessed 31 December 2024.
[352] LG Essen, 21.12.2016 - 35 KLs 35 Js 162/13 - 26/16 =openJur 2019, 13810.
[353] Brodowski 2021c, pp. 417–424.
[354] See Seibel 2019, pp. 251 et seq.

Section 32 Obligation to transmit data to domestic public authorities
[…] (2) If the Central Financial Transaction Investigation Authority determines during its operational analysis that ***an asset is related to money laundering***, terrorist financing or ***any other criminal offence***, it shall ***immediately transmit*** the result of its analysis as well as ***all relevant information to the competent law enforcement authorities and prosecution offices***. The information referred to in sentence 1 shall also be transmitted to the Federal Intelligence Service insofar as there are factual indications that such transmission is necessary for the performance of the tasks of the Federal Intelligence Service. In the case of paragraph 1, the Central Financial Transaction Investigation Authority shall also transmit to the Federal Office for the Protection of the Constitution the corresponding result of its operational analysis as well as all relevant information on the previously transmitted report.

According to the **MiStRA** the public prosecution offices need to take the following measures in cases of AML offences: **122**

52 Suspected cases under the Money Laundering Act **123**
Section 42 para. 1 of the Money Laundering Act
(1) In criminal cases in which the Central Office for Financial Transaction Investigations has transmitted the result of its operative analysis to the prosecuting authorities pursuant to Section 32 para. 2 of the Money Laundering Act, notification is to be given
1. the filing of public charge
2. the outcome of the procedure including all hiring decisions.
(2) The notifications are to be made to the **General Customs Directorate – Central Office for Financial Transaction Investigations (FIU) – PO Box 850555 51030 Cologne**.

(aa) Suspicious transaction report FIU Germany

General Customs Directorate **124**
Central Office for
Financial Transaction Investigations (FIU)
P.O. Box 85 05 55 51030 Cologne
Fax: 0228 / 303 - 98551
Fields marked with an * are mandatory. The other fields must also be completed, if applicable and known.[355]

[355] Information and table was automatically translated into English.

I. Information on the obligated party		
Already registered *	☐ yes	☐ no (please complete and enclose the application for registration (form **033570**))
I.1	Name of the obligated party*	
I.2	Branch	
I.3	Number oft he organisation (for goAML)	☐ unknown
I.4	File number	
I.5	FIU file number	☐ unknown
I.6	Reported by Authorised organisation	☐ no ☐ yes
II. General information on the matter		
II.1	Reason for the report *	
II.2	Established facts*	
II.3	Business area *	
II.4	Suspected predicate offence*	
II.5	Other	☐ Particular urgency
II.6	**Description of the facts**	
II.7	**Special notes for the FIU** (e.g. check police surveillance measures, immediate referral to law enforcement authorities is recommended)	

033572 Suspicious activity report pursuant to s. 43 of the Money Laundering Act (with transaction) **– FIU – (06/2017)**

(bb) Suspicious transaction report: Example from the FIU

125

III. Transaction(s) and Goods		
III.T	**Transaction(s)**	
III.T.1	**Details of the first transaction**	
III.T.1.1	Internal Reference number	
III.T.1.2	Transactions procedure *	
III.T.1.3	Amount in Euro *	
III.T.1.4	Date of the transaction *	
III.T.1.5	Place of the transaction	
III.T.1.6	Announced transaction	☐ no ☐ yes
III.T.1.7	Date of the announcned transaction	
III.T.1.8	Purpose of use	
III.T.1.9	Comment	

III.T.2	Type of transaction *	☐ Transfer ☐ Other type of transaction

(e) Criminal organisation (PIF "Mafia clause")

126 The "*KfW-Schnellkredite*" "Quick-Loans" Case (see above), which were provided by the German Credit Institute for Reconstruction shows that the suspected group tried to act as a criminal organisation apparently. In Germany this suspicion depends on the material section 129 CC.[356]

(2) Special national databases and registers for (detecting) PIF offences and identifying potential suspects

127 Germany has no special database for PIF offences. S. 492 CPC establishes an automated criminal records system and the police has access to a lot of other databases.[357] Most of the police offices in Germany already take "internet patrols" (*Internetstreifen*). Departement 6 in the Federal Ministry of Finance, which acts as the national Anti-fraud-coordination service (AFCOS) in Germany keeps lists and contacts that are valuable for discovering cases in the area of tax crimes. The Federal Ministry of Finance offers so-called Subsidy Reports.[358] The national prosecution services have different databases.[359]

128 **Obtaining information from registers** is of great importance in investigative proceedings and to check whether investigations are being started at all (against whom: natural person, legal entity or what is affected...?) – especially in VAT proceedings in which several companies are involved. The registers mentioned in Section 22 of the Money Laundering Act provide a good overview:

1. Entries in the transparency register for reports (Section 20 para. 1 sentence 1 and pursuant to Section 21),
2. Announcements of the existence of a participation pursuant to Section 20 para. 6 of the Stock Corporation Act,
3. Voting rights notifications (ss. 40 and 41 of the Securities Trading Act),
4. Lists of members of limited liability companies and entrepreneurial companies
5. Entries in the commercial register,
6. entries in the partnership register,
7. Entries in the register of cooperatives,
8. Entries in the register of associations.

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[356] See as wellt wo other examples BGH, 14.03.2007 - 5 StR 461/06 =NStZ 2007, 592; BGH, 08.08.2006 - 5 StR 273/06 =NStZ 2007, 31.

[357] See https://www.polizeidatenbanken.de/. Accessed 31 December 2024.

[358] See 28. Subventionsbericht des Bundes, Bericht der Bundesregierung über die Entwicklung der Finanzhilfen des Bundes und der Steuervergünstigungen für die Jahre 2019 bis 2022 (28. Subventionsbericht).
online: https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/28-subventionsbericht.pdf?__blob=publicationFile&v=6. Accessed 31 December 2024.

[359] See BayLfD https://www.datenschutz-bayern.de/faq/FAQ-Justiz-register.html: "The federal central register (BZR) and the register of aptitude to drive (FAER) as well as the central execution file (ZVD) for prisoners, Central cross-state procedure register of the public prosecutor's offices (ZStV) [are important]. Accessed 31 December 2024.

To identify suspects or narrow down a suspicion if only the conduct is known and obvious from actions of e.g. certain companies the EDP will need to obtain the register excerpts (e.g. *Handelsregisterauszug*[360]). These excerpts can also be listed as **evidence in the indictment** if the suspicion and evidence of a criminal offence are substantiated and also be introduced as evidence as **evidence in a possible main hearing**.[361] The German Electronic Portal for Registers offers quite simple access and request methods.[362] It contains following information: **129**

Table 11: Example of German Excerpt of Commercial Court Register B

Execution of the District Court number of registration	Basic or share capital	General rules of representation Executive Board, organs, executives, authorized representatives and special powers of representation procuration. Legal form, beginning of the articles of association, company form Other Legal Relationships	Day of registration (of Company etc.)	Notices

The **German Commercial Code** (HGB), ss. 2 et seq., 27 et seq., 128 et seq. The commercial register can be wrong if someone has registered another person or the company does not exist at all. This modus operandi is more common in organized crime. It is worth considering whether changes, e.g. with blockchain technology, if used in moderation, could be achieved. In addition, there is the business register, which can provide information: https://www.unternehmensregister.de/ureg/. **130**

(3) Digital investigations

Digital investigations become more and more relevant and frequent (for the administrative dimension concerning OLAF *see below* → Part B of this Country Chapter, Art. 3 OLAF Regulation, Mn. 1m et seq.). In the area of PIF offences they might involve online portals of the administrative funding authorities, the managing bodies of funds (mainly located in the *Länder* under the supervision of the Ministries of Finance or Work and Social Life). Databases of the customs authorities might be of interest in the area of **131**

[360] The difference here is that Department A contains sole traders and partnerships as well as legal entities under public law, and Department B contains corporations. The Commercial Register Ordinance (HRV) applies. In Germany there are as many Register Courts as Amtsgerichte if no exemption has been issued. Cf. NRW: "According to the regulation on electronic register management and the jurisdiction of the district courts in North Rhine-Westphalia in register matters (Register-VO) of May 8, 2013 (/SGV. NRW. 248 are in North Rhine -Westphalia 30 of the 129 district courts are responsible for commercial register matters. With the internet register information, the North Rhine-Westphalia justice system offers the possibility of inspecting the commercial register at any PC workstation at any time. In addition, inspection takes place - free of charge - at the respective register court"

[361] See e.g. BGH, Beschluss vom 23.11.2004 - KRB 23/04 =openJur 2012, 58362. In this case, however, the reading and introduction must be urged at an early stage, since not reading it out can lead to non-consideration. A strategy from the start of the investigation must therefore be created.

[362] See https://www.handelsregister.de/rp_web/welcome.xhtml. Accessed 31 December 2024.

revenue frauds. In the area of VAT fraud special institutions like KUSS, a special authority analysing the VAT sector (see above) may provide information that constitutes a suspicion. The new **Transparency Register** of the Federal Republic of Germany offers public information to Economic Operators and is therefore important for the investigation into duties in the area of Money Laundering.[363]

132 **Money Laundering Act**
Section 23[364] **Inspection of the Transparency Register, authorisation by ordinance**
(1) In the case of associations under section 20 para. 1, first sentence, and legal structures under section 21, inspection shall be permitted:
1. The following authorities, insofar as it is necessary for the fulfilment of their statutory duties:
[...] b) the ***Central Authority for Financial Transaction Investigations***,
[...] d) the ***criminal prosecution authorities***
e) the ***Federal Central Tax Office as well as the local tax authorities*** according to § 6 paragraph 2 number 5 of the German Tax Code,
f) the authorities responsible for the clarification, prevention and elimination of dangers,
g) the ***courts***, and
h) the authorities according to § 2 paragraph 4,
2. the obligated parties, provided they demonstrate to the body keeping the register that the inspection is carried out in order to fulfil their due diligence obligations in one of the cases specified in § 10 paras. 3 and 3a, and
3. all members of the public.
In these cases, the body keeping the register shall be authorised to transmit the accessible data to the person inspecting the data. In the case of sentence 1 number 3, only the month

[363] See Transparenzregister, Die offizielle Plattform der Bundesrepublik Deutschland für Daten zu wirtschaftlich Berechtigten. online: https://www.transparenzregister.de/treg/de/start;jsessionid=5729161D42C6EB87BC3CFC9D398ABE0D.app41?0. Accessed 31 December 2024.

[364] **§ 23 Einsichtnahme in das Transparenzregister, Verordnungsermächtigung Geldwäschegesetz**
(1) Bei Vereinigungen nach § 20 Absatz 1 Satz 1 und Rechtsgestaltungen nach § 21 ist die Einsichtnahme gestattet:
1. den folgenden Behörden, soweit sie zur Erfüllung ihrer gesetzlichen Aufgaben erforderlich ist:
[...] b) der Zentralstelle für Finanztransaktionsuntersuchungen,
[...] d) den Strafverfolgungsbehörden,
e) dem Bundeszentralamt für Steuern sowie den örtlichen Finanzbehörden nach § 6 Absatz 2 Nummer 5 der Abgabenordnung,
f) den für Aufklärung, Verhütung und Beseitigung von Gefahren zuständigen Behörden,
g) den Gerichten sowie
h) den Stellen nach § 2 Absatz 4,
2. den Verpflichteten, sofern sie der registerführenden Stelle darlegen, dass die Einsichtnahme zur Erfüllung ihrer Sorgfaltspflichten in einem der in § 10 Absatz 3 und 3a genannten Fälle erfolgt, und
3. allen Mitgliedern der Öffentlichkeit.
In diesen Fällen ist die registerführende Stelle befugt, die zugänglichen Daten an den Einsichtnehmenden zu übermitteln. Im Fall des Satzes 1 Nummer 3 sind neben den Angaben nach § 19 Absatz 1 Nummer 1 und 4 nur Monat und Jahr der Geburt des wirtschaftlich Berechtigten, sein Wohnsitzland und alle Staatsangehörigkeiten der Einsichtnahme zugänglich und dürfen übermittelt werden.

and year of birth of the beneficial owner, his country of residence and all nationalities shall be accessible to inspection and may be transmitted, in addition to the information pursuant to section 19 paragraph 1 number 1 and 4.

In these cases, the registration office is authorized to transmit the accessible data to the person viewing the data. In the case of sentence 1 number 3, in addition to the information pursuant to Section 19 para. 1 numbers 1 and 4, only the month and year of birth of the beneficial owner, his country of residence and all nationalities are accessible for inspection and may be transmitted. **133**

Section 26a[365] **Retrieval by Certain Authorities** **134**

(1) The entity keeping the register shall transmit the required information from the transparency register to

1. the Central Financial Transaction Investigation Authority for purposes under section 28 para. 1 sentence 2 numbers 2, 4 and 8,
2. the law enforcement and prosecution authorities for the performance of their duties,
3. the supervisory authorities, insofar as this is necessary in individual cases for the fulfilment of their tasks pursuant to § 51,
4. the Federal Central Tax Office and the local tax authorities in accordance with section 6 para. 2 number 5 of the Fiscal Code, insofar as this is necessary in individual cases for the fulfilment of their respective tasks,
5. the Federal Intelligence Service and the federal and state authorities for the protection of the constitution, insofar as this is necessary in individual cases for the fulfilment of their tasks,

[365] **§ 26a Abruf durch bestimmte Behörden**

(1) Die registerführende Stelle übermittelt die erforderlichen Informationen aus dem Transparenzregister an

1. die Zentralstelle für Finanztransaktionsuntersuchungen für Zwecke nach § 28 Absatz 1 Satz 2 Nummer 2, 4 und 8,
2. die Strafverfolgungsbehörden für ihre Aufgabenerfüllung,
3. die Aufsichtsbehörden, soweit dies im Einzelfall für die Erfüllung ihrer Aufgaben nach § 51 erforderlich ist,
4. das Bundeszentralamt für Steuern und die örtlichen Finanzbehörden nach § 6 Absatz 2 Nummer 5 der Abgabenordnung, soweit dies im Einzelfall für die Erfüllung ihrer jeweiligen Aufgaben erforderlich ist,
5. den Bundesnachrichtendienst und die Verfassungsschutzbehörden des Bundes und der Länder, soweit dies im Einzelfall zur Erfüllung ihrer Aufgaben erforderlich ist,
6. das Zollkriminalamt, soweit dies im Einzelfall zur Erfüllung seiner Aufgaben nach § 4 Absatz 2 und 3 des Zollfahndungsdienstgesetzes erforderlich ist, und
7. die nach § 13 Absatz 1, 2 Nummer 1 und Absatz 2a des Außenwirtschaftsgesetzes zuständigen Behörden, soweit dies im Einzelfall zur Erfüllung ihrer Aufgaben erforderlich ist.

(2) Die Übermittlung erfolgt im Wege des automatisierten Abrufs. Die registerführende Stelle richtet für Abfragen nach Absatz 1 einen nach den Vorgaben der registerführenden Stelle ausgestalteten automatisierten Zugriff auf die im Transparenzregister gespeicherten Daten ein, der auch die Suche nach wirtschaftlich Berechtigten einer Vereinigung nach § 20 oder einer Rechtsgestaltung nach § 21 über die Angaben Name und Vorname sowie zusätzlich Geburtsdatum, Wohnort oder Staatsangehörigkeit des wirtschaftlich Berechtigten erlaubt. § 23 bleibt hiervon unberührt.

(3) Die beteiligten Stellen haben zu gewährleisten, dass für Abfragen nach Absatz 1 dem jeweiligen Stand der Technik entsprechende Maßnahmen zur Sicherstellung von Datenschutz und Datensicherheit getroffen werden, die insbesondere die Vertraulichkeit und Unversehrtheit der Daten gewährleisten.

6. the Customs Criminal Investigation Office, insofar as this is necessary in individual cases for the fulfilment of its duties under section 4 paras. 2 and 3 of the Customs Investigation Service Act, and
7. the authorities responsible under Section 13 paras. 1, 2 sentence 1, and 2a of the Foreign Trade and Payments Act, insofar as this is necessary in individual cases for the performance of their duties.
(2) The transmission shall take place by way of automated retrieval. For queries pursuant to paragraph 1, the register-keeping authority shall set up an automated access to the data stored in the transparency register designed according to the specifications of the register-keeping authority, which shall also allow the search for beneficial owners of an association pursuant to section 20 or a legal arrangement pursuant to section 21 by means of the information on surname and first name and additionally date of birth, place of residence or nationality of the beneficial owner. § Section 23 shall remain unaffected by this.
(3) The offices involved shall ensure that for searches pursuant to paragraph 1, state of the art measures are taken to ensure data protection and data security, which in particular guarantee the confidentiality and integrity of the data.

dd. Overview of judgments for sufficient factual indications for the PIF offences in German criminal law

Figure 6: The offences in national law by virtue of the German PIF offences Acquis **135**

EUFinSchStG and OWiG	CC offences	Tax Code offences
• EuFinSchG=no published decisions yet • s. 40 OWiG (administrative fines with relation to legal entities obtaining funding, etc.)	• BGH, judgment of April 21, 1988 – III ZR 255/86 • s. 261: BVerfG, 31.1.2020 – 2 BvR 2992/14=NStZ 2020, 557; • s. 263: see below, relationship to s. 264 see BGH, 23.04.2020 – 1 StR 559/19 (stating that s. 264 is lex specialis). • s. 264: OLG Celle, 7.4.2016 – 2 Ws 14/16, VG Hannover, 10.10.2007 – 11 A 3074/06; BGH, 14.02.2007 – 5 StR 323/06 =StV 2007, 358 • s. 108e: OLG München – 6 St 4/21 (9), 6 St 5/21 (9) • ss. 267: BGH, 16.8.1989 – 3 StR 91/89; OLG Karlsruhe, 16.12.2002 – 1 Ws 85/02 • s. 335, 335a	• s. 370: BFH, 04.11.1987 – II R 102/85, OLG Frankfurt, 08.02.2018 – 1 U 112/17, Niedersächsisches FG, Judgement of 04.12.2002 – 2 K 442/98 • Concerning legal persons (s. 30 OWiG): BGH, 09.05.2017 – 1 StR 265/16 =NJW 2017, 3798; • missing trader (no tax deduction FG Baden-Württemberg, 16.01.2012 – 12 V 2793/11

(1) Fraud (-related peculiarities in general)

There are different types of fraud against the EU budget. A basic distinction must be made between fraud on the revenue side and fraud on the expenditure side. This separation applies not only to investigations by the delegated public prosecutors, but also to OLAF investigators (*see → National law and "checks and inspections" of OLAF*) and **136**

national authorities in administrative procedures (especially on the expenditure side, for example in the case of subsidies).

137 The first EPPO crime report therefore correctly distinguishes between:

Non-procurement expenditure fraud (31.8% – 2021)

- (Examples: the wide field of cohesion funds under the MFR, wrongful retention of these funds, mostly agricultural subsidies – non-cultivation of fields, wrong sheep, cows, goats, etc., recently Covid-19 related recovery funds)

Procurement expenditure fraud (11.2% 2021)

- (Promotion of infrastructure projects with a high risk of fraud and embezzlement[366], misappropriation[367], which in Germany are co-financed by the federal states[368] and the federal government, affects the construction industry, waste management and the development of programs for further education and training of employees in companies)

VAT revenue fraud (17.6% 2021)

- (cum-ex-fraud schemes [carousels], missing trader structures, organized crime in areas covered by VAT, which may include clothing, cars[369], electronics and merchandise; this form is often associated with pp. 261 CC (AML offences), concealment of the origin of goods[370] in order to circumvent anti-dumping duties to protect the domestic economy (anti-dumping duty fraud[371])

Non-VAT revenue fraud (13.4% 2021)

- (this includes customs fraud at the external borders of the EU, affecting various entrepreneurs from countries around the world who export to the EU)

138 Concealing the origin of goods in order to avoid anti-dumping duties to protect the domestic economy (anti-dumping customs fraud[372] with goods such as stainless steel[373], tobacco products[374], electronics, bicycles; this range of products seems to depend on what is and is currently in particular demand in the EU and on the market may shift to

[366] BGH, 13.04.2010 - 5 StR 428/09 =NStZ 2010, 632.
[367] See OLG Jena, 27.10.2010 - 1 Ws 323/10 [Criminal liability of a sole manager of a municipal institution, § 203 CPC].
[368] LG Bochum, 01.04.2008 - 2 KLs 35 Js 158/07 [fraud by a hidden increase in the funding rate by pretending to have higher project costs as a case of subsidy fraud].
[369] National example: LG Essen, Judgment of 21.11.2016 - 21 KLs-307 Js 93/13-8/16 =openJur 2021, 46390.
[370] See FG Hessen, 15.04.2015 - 7 K 440/12 [Indication of the import of steel cords from the People's Republic of China instead of South Korea].
[371] See BGH, 27.08.2010 - 1 StR 217/10 =HRRS 2010 Nr. 830 [The criminal liability of evading anti-dumping duties]; FG Bremen, 17.11.2016 - 4 K 30/15 (2).
[372] See FG Bremen, 17.11.2016 - 4 K 30/15; FG Düsseldorf, 02.10.2013 - 4 K 1568/12 Z.
[373] See FG Kassel, Judgment of 15.04.2015 - 7 K 440/12 =openJur 2019, 36329.
[374] See LG Nürnberg-Fürth, 15.05.2019 - 18 Qs 51/18 [privilege in cases of "small-scale smuggling" of cigarettes].

other products over the course of the Green Deal and outside of this structure are the Corruption cases[375] (4% in 2021).

Nota bene: All typology-related information is taken from the EPPO's first crime report (published March 2022) and serves as a basis for explaining the initial suspicion scenarios in this area. Reference can be made to national case law. All of the EU fraud typologies identified by the EPPO in the first year exist in German case law.

(2) More examples and precedents:

- OLG Hamburg, 08.03.1996
- 1 Ws 316/95 =wistra 1996, 193–196 [s. 370 AO, antidumping customs duties]
- BFH, 20.06.1989 – VIII R 82/86 =BFHE 156, 543 [s. 152 para. 2 CPC, s. 370 AO, Determination of the application of the amount of capital expenditure according to the German Basic Law]
- BVerfG, 27.06.1991 – 2 BvR 1493/89 [Determination of the application of the amount of capital expenditure according to the German Basic Law]

(a) In national case-law

Some case law can be listed here:

- BFH, Decision of 25.07.2000 – VII B 28/99, NJW 2000, 3157, 3160
- BFH NJW 2000, 3157; BVerfG DStRE 2002, 1091
- BGH, Judgment of 21.04.1988 – III ZR 255/8
- BVerfG, 08.03.2004 – 2 BvR 27/04, NJW 2004, 1517 ("*nach kriminalistischer Erfahrung*")
- OLG Düsseldorf, 27.04.2005 – I-15 U 98/03 [Initial suspicion within the meaning of s. 152 CPC, scope for assessment, legal aspects open up a certain freedom in forming your opinion, official liability, ss. 839 BGB, Art. 34 GG]

Special cases from the recent past involve the Causa Cum-ex frauds in Germany, Ireland, Switzerland and involving other European countries:

***Special cases:* Causa Cum-ex-frauds**
LG Bonn, 18.03.2020 – 62 KLs – 213 Js 41/19 – 1/19.
BGH, 28.07.2021 – 1 StR 519/20 =NStZ 2022, 176 [cum ex-fraud constitutes punishable tax fraud].
BVerfG, 22.11.2021 – 2 BvR 1872/21 =NStZ-RR 2022, 19 [cum ex Judgments do not infringe the Constitution].
BVerfG, 07.04.2022 – 2 BvR 2194/21.

[375] See e.g. BGH, Beschluss vom 26.07.2018 - 3 StR 626/17 =openJur 2019, 2194 [money laundering, § 261 CC]

(b) In the case law of ECtHR and ECJ

139 In respect to investigations and the initial suspicion there is no special law of the ECJ but there is law of ECtHR that can be applicable in these cases.[376]

ee. The level of sufficiency

140 **For all CC offences:**

- No mere guesses[377]
- Pure criminalistic hypotheses[378]

141 **For tax frauds**:

- Nr. 26 para. 3 Bundessteuerblatt Teil I, 2022, Nr. 6, pp. 251–318, Anweisungen für das Straf- und Bußgeldverfahren (Steuer) AStBV (St) 2022: "The mere possibility of a culpable tax evasion (cf. numbers 131 para. 2, 12, 13) does not justify any suspicion."

ff. Objective and subjective standards and perspectives

142 The German CPC presents the Public Prosecutor as the most objective prosecutor in the world ("*Objektivste Anklagebehörde der Welt*"[379]) suggesting that the institution is considered exceptionally impartial or unbiased in its prosecutorial duties., i.e. the German Public Prosecutor does not only or primarily act on behalf and in favour of the (German) State but although on behalf and in favour of the suspect and accused (*Beschuldigter*/*Angeklagter*). This principle is enshrined e.g. in s. 160 para. 2 German CPC. It applies with some restrictions of the EUStAG as well to the EDPs.

143

Section 160 CPC Obligation to clarify facts
(1) As soon as the public prosecution office obtains knowledge of a suspected offence, either through a report of an offence or by other means, it shall investigate the facts in order to decide whether public charges are to be preferred.
(2) The public prosecution office *shall* ***ascertain both*** incriminating and exonerating circumstances and shall ensure that evidence the loss of which is to be feared is taken.

[376] ECtHR, *Case of Eckle v. Germany* (Application no. 8130/78); A case may require financial expertise *Affaire C.P. et Autres C. France* (Requête n° 36009/97), which might create lenghty investigations. German EDPs must therefore be aware that the ECthR has created criteria for the legth. The court might recognize a case evolving as a compley one, but still investigations should not take too long. For parallel proceedings [into fraud or any other PIF offence] the results of ECtHR, *Case of Böhmer v. Germany* (Application no. 37568/97) must be taken into account by the EDPs.
[377] See Mavany 2020, § 152, Margin Number 28 citing BVerfGE 44, 353; 115, 166; BGH NStZ 1994 500.
[378] See Mavany 2020, § 152, Margin Number 28.
[379] The German Public Prosecutor is considered to be a "lawyer on behalf" (*Anwältin des Staates*) of the (German) State and an objective justice organ (*objektives Rechtspflegeorgan*).

(3) The public prosecution office shall also investigate those circumstances which are important for the determination of the legal consequences of the act. To that end, it may avail itself of the services of the court assistance agency.
(4) A measure shall be inadmissible if special provisions regulating its application, being provisions under federal law or under the corresponding *Land* law, present an obstacle thereto.[380]

gg. Other degrees of suspicion

Especially for the preliminary custody according to s. 112 German CPC another stronger degree of suspicion is needed ("*dringender* Tatverdacht"). **144**

hh. Excerpts and information from selected judgments decided by German courts in the PIF-Crimes Area

Case Study 6: Excerpts of Judgments regarding the Degree of Suspicion **145**



Case Studies

In the following excerpts and information from the **Judgments are presented**:
Examples for tax code offences:
s. 370 AO
OLG Frankfurt am Main, Judgment 08.02.2018 – 1 U 112/17 =openJur 2018, 9070: "According to Section 152 para. 2 StPO, the public prosecutor's office is obliged to intervene in relation to all prosecutable criminal offences if there are s*ufficient factual indications*. This is the case if, according to criminalistic experience, there is the *possibility* that a prosecutable criminal offence exists (so-called initial suspicion; Meyer-Goßner/Schmitt, Criminal Procedure Code, 60th edition 2017, s. 152 mn. 4 with further references). Even *distant indications are sufficient for this*, mere *assumptions, however, do not justify* accusing someone of a crime (Schmitt loc.cit.). Section 152 para. 2 StPO not only justifies the competence of the public prosecutor's office to initiate investigations, but also stipulates a prosecution obligation under the statutory conditions (principle of legality, cf. BGH, judgment of April 21, 1988 – III ZR 255/86 –, para. 17, juris). The public prosecutor's office is to be allowed a certain amount of discretion when examining whether there are sufficient factual indications within the meaning of Section 152 para. 2 StPO. Because the application of this indefinite legal concept requires the weighing up of all incriminating and exculpatory circumstances that are essential for the decision in the form of an overall view. The result of this

[380] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch. Cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1327. Accessed 31 December 2024.

largely depends on which circumstances the public prosecutor considers to be essential and what weight he attaches to the factual elements included in the consideration in their relationship to one another. These accentuations, which characterize the overall view, not only result from the nature of the matter, but are also regularly based on subjective, not more precisely verifiable evaluations of the deliberative, whereby different viewers can certainly arrive at different solutions without acting in breach of duty (BGH, loc. cit. Rn. 22, juris). […]

According to the findings of the tax investigation based on the inspection of the tax files of the xFB, the profit and loss account for the year 200X of the WM-OK showed an amount of €6.7 million as an operating expense "FIFA Gala Costs", which was included in the profit determination of the xFB for the year 200X was included and tax-reducing in the corporate and trade tax return of xFB for the year 200X. Due to the position of the plaintiff in the period in question as president of the xFB and vice president for human resources, law and finances of the WM-OC, it does not appear unreasonable, based on criminalistic experience, to provide evidence of the plaintiff's participation, knowledge and responsibility in connection with the Recognition of this not inconsiderable expense as an operating expense in the income statement and the balance sheet of the WM-OK and the balance sheet of the xFB is to be regarded as given. The question of which specific action or which omission of the plaintiff possibly justified an incorrect or incomplete statement within the meaning of § 370 para. 1 no. 1 AO or the participation in such was the aim of the investigations to be carried out and required an initial suspicion for the justifiable assumption not to be determined yet."[381]

[381] OLG Frankfurt am Main, Judgment 08.02.2018 - 1 U 112/17 =openJur 2018, 9070, mn. 25–28: "Nach § 152 Abs. 2 StPO ist die Staatsanwaltschaft verpflichtet, wegen aller verfolgbaren Straftaten einzuschreiten, sofern zureichende tatsächliche Anhaltspunkte vorliegen. Das ist dann der Fall, wenn nach kriminalistischer Erfahrung die Möglichkeit besteht, dass eine verfolgbare Straftat vorliegt (sog. Anfangsverdacht; Meyer-Goßner/Schmitt, Strafprozessordnung, 60. Aufl. 2017, § 152 Rn. 4 m.w.N.). Dazu genügen auch entfernte Indizien, bloße Vermutungen rechtfertigen es hingegen nicht, jemandem eine Tat zur Last zu legen (Schmitt a.a.O). § 152 Abs. 2 StPO begründet nicht nur die Kompetenz der Staatsanwaltschaft zur Einleitung von Ermittlungen, sondern statuiert unter den gesetzlich bestimmten Voraussetzungen einen Verfolgungszwang (Legalitätsprinzip, vgl. BGH, Judgment of 21. April 1988 - III ZR 255/86 -, Rn. 17, juris). Der Staatsanwaltschaft ist bei der Prüfung, ob zureichende tatsächliche Anhaltspunkte im Sinne des § 152 Abs. 2 StPO vorliegen, ein Beurteilungsspielraum zuzubilligen. Denn die Anwendung dieses unbestimmten Rechtsbegriffs erfordert im Einzelfall die Abwägung aller für die Entscheidung wesentlichen belastenden und entlastenden Umstände in Gestalt einer Gesamtschau. Deren Ergebnis hängt maßgeblich davon ab, welche Umstände der Staatsanwalt für wesentlich hält und welches Gewicht er den in die Abwägung einfließenden Sachverhaltselementen in ihrem Verhältnis zueinander beimisst. Diese die Gesamtschau prägenden Akzentuierungen ergeben sich nicht allein aus der Natur der Sache, sondern beruhen regelmäßig auch auf subjektiven, nicht näher verifizierbaren Wertungen des Abwägenden, wobei verschiedene Betrachter, ohne pflichtwidrig zu handeln, durchaus zu unterschiedlichen Lösungen gelangen können (BGH, loc, cit,. Mn. 22, juris). [...]
Nach den Erkenntnissen der Steuerfahndung aufgrund der Einsicht in die Steuerakten des xFB wies die Gewinn- und Verlustrechnung für das Jahr 200X des WM-OK einen Betrag von 6,7 Mio. € als Betriebsausgabe "FIFA Kosten Gala" aus, die in die Gewinnermittlung des xFB für das Jahr 200X einfloss und steuermindernd bei der

Examples for CC offences:

s. 261

- VG München, 31.03.2016 – M 7 S 15.3330

[Latvian citizen, applies for temporary legal protection against a customs security of the cash found on him in the amount of 879,900 euros]

- BVerfG, 31.01.2020 – 2 BvR 2992/14 =NStZ 2020, 557

[special requirements for factual indications s. 152 para. 2 CPC]

- LG Essen, 21.12.2016 – 35 KLs 35 Js 162/13 – 26/16[382]

[sentenced to a total of three years and nine months' imprisonment for 41 concurrent counts of fraud, six counts of attempted fraud, two counts of credit fraud and two counts of tax evasion.]

s. 264

See footnote [383]

See footnote[384]

s. 266

- EuG, 10.10.2019 – T-335/17

[Food security of farm households particularly affected by food insecurity in Zimbabwe (ECHO/ZWE/BUD/2009/02002) – Reinterpretation of the complaint – Audit reports – Audit report of the Court of Auditors, OLAF report – Reimbursement of amounts – Proportionality – Protection of legitimate expectations]

s. 267

- OLG Karlsruhe, 16.12.2002 – 1 Ws 85/02 =openJur 2017, 1743.

Körperschafts- und Gewerbesteuererklärung des xFB für das Jahr 200X berücksichtigt wurde. Schon aufgrund der Position des Klägers in dem fraglichen Zeitraum als Präsident des xFB und Vizepräsident für Personal, Recht und Finanzen des WM-OK erscheint es nach kriminalistischer Erfahrung nicht als unvertretbar, Anhaltspunkte für eine Mitwirkung, Kenntnis und auch Verantwortlichkeit des Klägers im Zusammenhang mit der Erfassung dieses nicht unerheblichen Aufwands als Betriebsausgabe in der GuV und der Bilanz des WM-OK und der Bilanz des xFB als gegeben anzusehen. Die Frage, welche konkrete Handlung oder welche Unterlassung des Klägers möglicherweise eine unrichtige oder unvollständige Angabe im Sinne des § 370 Abs. 1 Nr. 1 AO oder die Teilnahme an einer solchen begründete, war Ziel der durchzuführenden Ermittlungen und brauchte für die vertretbare Annahme eines Anfangsverdachts noch nicht festzustehen"

[382] Provisions that applied: Applied regulations:
Defendant C: Sections 263 subsection 1, subsection 2, subsection 3 nos. 1 + 2, 265b subsection 1 no. 1, 266 subsection 1 + subsection 2, 326 subsection 1 + subsection 2 n. F., 330 para. 1 no. 4, 22, 23, 52, 53 StGB, §§ 18a para. 1 no. 1, para. 3 no. 2 AbfVerbrG, §§ 370 para. 1 no. 1 + para. 3 No. 1 AO, §§ 1, 2, 15 EStG.
Defendant L: Sections 263 subsection 1, subsection 2, subsection 3 nos. 1 + 2, 266 subsection 1 + subsection 2, 326 subsection 1 + subsection 2 new version, 330 subsection 1 no 4, 22, 23, 52, 53 StGB, §§ 18a Paragraph 1 No. 1, Paragraph 3 No. 2 AbfVerbrG.

[383] OLG Celle 2. Strafsenat, Beschluss vom 07.04.2016, 2 Ws 14/16, ECLI:DE:OLGCE:2016:0407.2WS14.16.0A =NStZ 2017, 691.

[384] ECLI:DE:OVGNRW:2015:1028.3D.A1161.11O.00.

"1. In the enforcement proceedings, the public prosecutor's office can also be requested to start investigations by court decision if they deny an initial suspicion for factual reasons, but in doing so fail to recognize the scope of the provision of Section 152 para. 2 StPO from a legal point of view.

An initial suspicion that is sufficient to start investigations within the meaning of Section 152 para. 2 of the Code of Criminal Procedure exists if there is a possibility of a prosecutable criminal offence based on actual indications.

When assessing the suspicious situation within the meaning of Section 152 para. 2 StPO, the public prosecutor's office has a discretion, which, however, may only be influenced by the presumed result of any investigations to be carried out in exceptional cases, in particular the rule of doubt (*in dubio pro reo***) does not apply."**[385]

- BGH, 05.09.2017 – 1 StR 198/17 (tax-related forgery of documents).

s. 334[386]

- BVerwG, 07.02.2008 – 1 D 4.07 [Customs officer of the senior service (clearance manager at the border crossing to Poland); unauthorized acceptance of benefits in eight cases]
- LG Bochum, 13.05.2008 – 2 KLs 35 Js 158/07 [subsidy fraud, standstill of a penalty]
- BGH, 10.06.2015 – 1 StR 399/14 =BGHSt 60, 266 [Punishment for corrupting a public official of another EU Member State]

"The judgment does not stand up to substantive legal review.
The findings made so far do not support the verdict of bribery of a public official of another member state of the European Union pursuant to Article 2 Section 1 Paragraph 1 No. 2 lit. The Criminal Court has applied an incorrect legal standard to the examination of the office holder status within the meaning of this provision by relying solely on the assessment according to domestic law (s. 11 para. 1 no. 2 StGB).

[385] See openJur 2017, 1743: "1. Im Klageerzwingungsverfahren kann die Staatsanwaltschaft auch dann zur Aufnahme von Ermittlungen durch gerichtliche Entscheidung aufgefordert werden, wenn sie einen Anfangsverdacht aus tatsächlichen Gründen verneint, dabei jedoch in rechtlicher Hinsicht die Reichweite der Vorschrift des § 152 Abs.2 StPO verkennt.
2. Ein zur Aufnahme von Ermittlungen ausreichender Anfangsverdacht i.S.d. § 152 Abs.2 StPO liegt dann vor, wenn aufgrund tatsächlicher Anhaltspunkte die Möglichkeit einer verfolgbaren Straftat besteht.
3. Bei der Beurteilung der Verdachtslage i.S.d. § 152 Abs.2 StPO steht der Staatsanwaltschaft ein Beurteilungsspielraum zu, welcher jedoch durch das mutmaßliche Ergebnis ggf. durchzuführender Ermittlungen nur in Ausnahmefällen beeinflusst werden darf, insbesondere findet der Zweifelssatz (in dubio pro reo) keine Anwendung"
[386] VK Niedersachsen, 01.12.2011 - VgK-53/2011 =ZfBR 2012, 727.

Art. 2 Section 1 para. 1 No. 2 EUBestG equates the official of another member state of the European Union with the other public official for the bribery offences of Sections 332, 334 et seq. s. 11 para. 1 no. 2 of the Criminal Code corresponds". The aim of the provisions of the EUBestG (law on the protocol of September 27, 1996 to the convention on the protection of the financial interests of the European Communities of September 10, 1998, Federal Law Gazette II 2340, last amended by law of July 21, 2004, Federal Law Gazette I 1763) is to ensure that state functionaries are punishable under Section 332 of the Criminal Code, even in the case of transnational acts of bribery in the European legal area, in the interests of comprehensive and effective crime prevention.

The definition of the term official within the meaning of Art. 2 § 1 Para. 1 No. 2 EUBestG is based on a two-stage structure; in the case of the official of a member state of the European Union, it presupposes that this official is both according to the law of the accrediting member state concerned and with regard to German law (§ 11 Para. 1 No. 2 StGB). The facts of Art. 2 § 1 Para. 1 No. 2 EUBestG can only be fulfilled if the official status is present according to both legal systems at the same time."[387]

s. 335a[388]
BGH 1 StR 234/17=ECLI:DE:BGH:2018:231018U1STR234.17.0.

Examples for the special PIF-Aquis law:
There are no examples from the newly adopted law (EUFinSchG) at the moment.

c) Consequences to the "Decision to open a case" –fsteps: investigate, discontinue or prosecute

The decision to open a case requires first of all, checking the facts of the case with regard to the requirements of the respective criminal law (*Tatbestandsprüfung*).[389] If this decision has been achieved, the EDPs will need to plan on how to conduct the investigation (see below → Art. 28) and gather the relevant evidence (see below → Art. 30–32) in order to collect all information that is necessary to prove a criminal offence in front of the competent national court (see → Art. 35 & 36 of the Regulation[390]) i.e., a criminal liability and the elements that constitute the whole **concept of crime in general**. A PIF offence will need to be assessed by the relevant conditions for a crime i.e., the elements

[387] See openJur 2015, 12704, Mn. 18–21.
[388] BGH 1 StR 234/17 =ECLI:DE:BGH:2018:231018U1STR234.17.0; For examples see Dorothea Magnus, NZWiSt 2022, 51-58; Sommer 2020.
[389] See Gropp, Juridica 2003, pp. 16 et seq. on the *actus reus* parts; Stuckenberg, § 10, 2021, Mn. 14 et seq.
[390] See Brodowski 2021b, Art. 35. 36 Mn. 1 et seq.

of a particular PIF offence and the EDP will need to decide on how to conduct the case bearing in mind the options of Art. 36, 37 and 39, 40 EPPO Regulation in conformity with the IRP.

146 If the case is opened, the **principle of free organisation of the investigation procedure** applies to the police, who usually start or conduct investigations (→ see below Art. 28), or the criminal and fine offices of the tax authorities in accordance with s. 163 CPC[391], whereby the EDP has general investigative powers in accordance with s. 161 CPC up to the decision with which the EPPO clarifies its intention to take action against a specific person and considers them as an accused, which is expressed through concrete factual measures.[392] In any case, this person must be questioned later before the investigation is concluded in the so–called first interrogation (*erste Vernehmung*) or suspect interrogation (*Beschuldigtenvernehmung*) in accordance with ss. 136 para. 1 sentence 4, 136a para. 1 sentence 2 CPC and only in the event of a confession, the investigating judge will have to be contacted to secure the confession, s. 254 CPC.[393]

147 Even if the **final note** (*Schlussvermerk*) of the police concluding the investigation in the end does not have to contain a legal assessment, according to s. 163a para. 4 sentence 1 CPC, 136 para. 1 sentence 1, the police officers only have to **disclose to the defendant which offence he is charged** with *before* the **instruction on *nemo-tenetur*[394]**, i.e. freedom from self-incrimination, which must **include the criminal provisions** (this must be mentioned by citing them, whereby keywords are not sufficient[395]), the EDP will nevertheless before drawing a final decision according to s. 169a CPC first have to **examine the legal assessment** of any PIF Directive offence in detail (if necessary in the form of a **written legal assessment or opinion on criminal liability** for in-house use, so-called "A-Gutachten" in preparatory legal training). For each element of the offence (*gesetzliches Merkmal der PIF-Straftat*), e.g. the fraud offence under s. 263 CC, it must be examined whether the conduct or the legal characteristic can be proven by a piece of evidence from the **catalogue of formal evidence** under the Code of Criminal Procedure

[391] Köhler 2024, § 163 mn. 64.
[392] Wisneth 2006, p. 185 mn. 462, 63.
[393] How the interrogation of the suspect has to be conducted by police, EDP and investigating judge is described by § 136 CPC; and see Wisneth 2006, p. 185 mn. 463, 464.
[394] See Schmitt 2024, § 136 mn. 20, 20a for above and the following: If this information about the freedom to make a statement and to incriminate oneself is omitted, both before the questioning on the matter in the investigation proceedings pursuant to § 136 para. 1 sentence 2 or in the main hearing pursuant to § 243 para. 5 sentence 1 CPC, this results presumably in a prohibition i.e. exclusion of utilizing this statement as evidence (*Verwertungsverbot*), whereby an exception applies that this prohibition/exclusion to use the evidence does not apply if the accused was aware of his right to remain silent without instruction and if a spontaneous statement was made before the instruction could take place (*Spontanäußerung*) and no deliberate violation of the duty to inform about the right to remain silent is committed. in this case, there must be a formal hearing by a public official and not an act by a private person; see further Wisneth 2006, p. 192 mn. 480 et seq. on exlusion rules for the admissibility of evidence, which will usually assessed by the EDP after taking into account the criminal liability of the suspected PIF offence.
[395] Schmitt 2024, § 136 mn. 6.

(ss. 244 et seq. CPC, whereby a possible EPPO indictment under s. 200 para. 1 sentence 2 CPC must specify the means of proof i.e. enumerate all (relevant) **pieces of evidence** and the court must review these for the **opening decision** according to s. 203 CPC (*Eröffnungsbeschluss*) and then the EDP must procure the evidence to the courtroom under s. 214 para. 3, 4 CPC (evidence, minutes of the telecommunication surveillance, separate investigation volumes, files, documents etc.). Witness hearings must be planned at an early stage and, in VAT carousel cases, experts and economic advisors must be involved.[396]

148 Therefore EDPs will e.g. need to focus especially on the (evidence for) *actus reus* and the *mens rea* conditions of the **relevant PIF offence** – such as s. 370 AO [Tax Evasion e.g. in connection with offences of the Sales Tax Act in a VAT Revenue Fraud Case, which is a crime that requires a success (*Erfolgsdelikt*)[397]].[398] What German criminal justice calls "*Tatbestand*"[399], in relation to the German substantive criminal law enshrined in the Criminal Code or partly in ancillary (not: secondary) criminal law (*Nebenstrafrecht* e.g. *Abgabenordnung*) needs to be assessed according to the requirements that the legislator set up, which includes the **concretization of the objective elements** (*actus reus*, see above) of the crime[400], the subjective elements (*mens rea*, see above)[401] as well as the unlawfulness of the conduct (i.e. no written or unwritten justifications/justificatory defences[402] must intervene) and last but not least the guilt of the offender, which is given if the potential perpetrator is not excused for his/her conduct in relation to a PIF offence.[403]

150 The ECtHR has summarised the **rules on criminal liability** of the German substantive criminal law in short as follows:

[396] See below Art. 29 EPPO Regulation and §§ 53 CPC on rights to refuse to give evidence, cf. Wisneth 2006, p. 207 mn. 515 clarifying that bank employees, for example, have no right to refuse to give evidence, whereby it should be noted that the rules on the right to refuse to give evidence in Germany could currently be subject to statutory amendment de lege ferenda, e.g. to extend them to patch work families etc. (as of 2025).
[397] Vordermayer et al. 2023, Mn. 8 et seq.
[398] See for the common terms in comparing criminal law and criminal procedure Child et al. 2022, Chapter 4 et seq.; Chapter 5, Chapter 15 on Fraud (relevant for Ireland, Malta, Cyprus).
[399] Bohlander 2021, p. 29 et seq.
[400] These include in the most criminal law systems questions of causual links, Authorship, causality, "scientific causation" (emphasis added to the cited book) adequacy, limitation of an endless *sine qua non formula*, etc., see recently Walen and Weiser 2022, pp. 57–94.
[401] See only out of many Safferling 2008, who points at the fact that the traditional german terms are "Intention" and culpability. But even if the terminology is not congruent and differs in detail, it can be said that these are elements of the subjective offence that occur in continental European criminal codes and are also required separately by the PIF Directive for PIF offences.
[402] This is a worldwide recognized condition as a basic element of the concept of crime, see Stasi 2021, pp. 31–47.
[403] See Eser 1987, pp. 17–65. online: https://d-nb.info/112342229X/34 (Accessed 31 December 2024) on the historical implications and the differences between the common law and civil law approach; Bohlander 2021, pp. 29 et seq., 77 et seq. (Rechtswidrigkeit), 115 et seq. ("Guilt and Excusatory Defences").

"25. Under German criminal law, three basic conditions must be met in order to establish criminal liability (*Strafbarkeit*).
26. Firstly, the accused must have fulfilled the constituent elements (*Tatbestan*d) of the criminal offence. These include the question of actus reus (*objektiver Tatbestand*), that is, whether the accused carried out or failed to carry out certain acts described in the relevant legal provision, and the question of mens rea (*subjektiver Tatbestand*), that is, whether the accused acted intentionally or negligently, depending on the legal provision in question.
27. Secondly, the accused must have acted unlawfully (*rechtswidrig*), that is, in the absence of any exonerating circumstances such as self-defence.
28. Thirdly, the accused must have "acted with guilt" (*Schuld*), that is, with the ability to recognise the wrongfulness of his or her actions and to act accordingly. This is not the case, for instance, if he or she was not of sound mind at the time of the offence. The accused has also acted without guilt if he or she mistakenly considered his or her actions to be lawful and could not have avoided such an error; he or she can then invoke a mistake of law (*Verbotsirrtum*).
29. An accused person can only be found guilty of an offence if all three basic conditions of criminal liability – constituent elements, unlawfulness and guilt – have been fulfilled.
30. In order to find a person guilty of committing an offence as a co-perpetrator under Article 25 § 2 of the CC, it is necessary to establish that he or she took a joint decision to act together with other persons (*gemeinschaftlicher Tatentschluss*) and then put that decision into effect together with other persons (*gemeinschaftliche Tatausführung*).
31. In order to find a person guilty of aiding and abetting an offence committed by another person under Article 27 § 1 of the CC, it is necessary to establish that he or she intentionally assisted another person (the main perpetrator) in intentionally committing an unlawful act. It must therefore be established that the main perpetrator has fulfilled the constituent elements of the offence in question and that he or she has acted unlawfully. It is not necessary, however, to establish that the main perpetrator has also acted with guilt either. This follows, on the one hand, from Article 27 § 1 of the CC, which does not refer to the main perpetrator's guilt and, on the other hand, from Article 29 of the CC, which provides that each person involved in an offence is to be punished according to his or her own guilt, without regard to the guilt of the other persons involved. The fact that the criminal liability of a person aiding and abetting an offence depends on the main perpetrator having fulfilled two of the three basic conditions for his or her own criminal liability is also referred to as the "limited accessoriness of aiding and abetting" (*limitierte*

Akzessorietät der Beihilfe, see the Federal Constitutional Court's decision of 27 January 2023, 2 BvR 1122/22, § 39)."[404]

Similar or the same conditions exist in relation to the general part of the offence (i.e., a PIF offence, Art. 22 EPPO Regulation, Art. 1–5 PIF Directive) in every country in the EU, with a divide running where common law differs and civil law countries encounter. **151**

In addition, it is important to determine how the indictment should look like: Are several people involved and is there not an isolated act, but possibly a complicity (*Mittäterschaft*) or an indirect perpetrator (*mittelbare Täterschaft*)? In addition, the questions of the criminal liability of a participant must be clarified in order to be able to determine whether an incitement (*Anstiftung*) to a PIF offence or an abetting (*Beihilfe*) to such an act exists.[405] **152**

If there is no success to a crime, the question arises as to whether a criminal offence can be determined because of the attempt of a PIF offence.[406] **153**

For all of these questions and purposes, the EDPs can additionally to the present presentations, analysis and Compendium references rely on the existing legal commentaries on the penal codes of the EU Member States and the code of criminal procedures of the Member States, which participate in the EPPO, insofar as national law is concerned, e.g. in the concept of a criminal offence or the start of an investigation. **154**

d) Actions if "Decision to open Art. 26 para. 7 EPPO Regulation / not open a case, Art. 24 para. 7, 27 para. 7 EPPO Regulation"

See → Art. 27 f). Of particular importance for the EPPO, if it decided to open a case, is the **early confiscation of incriminated assets** in order to secure their realisation after main proceedings, **ss. 73 et seq., 111b et seq. CC**, which is usually conducted at the same time with investigation measures according to Art. 30 EPPO Regulation and the EPPO has, according to internal interviews, which we conducted internal rules on so–called **EPPO action days**, i.e. special days on which transnational operations are carried out at a time of relative certainty of further action or possible indictment, according to criminal law experience, in order to obtain further evidence and secure the proceedings. **155**

e) Justiciability and appeals

A detailed look at the justiciability of the actions prior or at the beginning of an investigation of the EPPO is given below (→ "Provisions on defence relating to EPPO actions **156**

[404] ECtHR, Case of *C.O. v Germany*, Application No. 16678/22, Judgment of 17 September 2024, mn. 27–31.
[405] See EU Fraud Commentary, Commentary on PIF Directive, Art. 5. For the various translations of these terms see the EUR-Lex database translations of the PIF Directive 2017/1371.
[406] See EU Fraud Commentary, Commentary on PIF Directive, Art. 5.

in Germany"). Common instrument to combat the start of or the proceeding of investigations in Germany is the appeal (*Beschwerde*), which is a formal legal act (*Rechtbehelf*) to counter acts of a law enforcement or judicial authority. If the manner of implementation of the investigative measure is to be challenged, the remedy of section 98 para. 2 sentence 2 CPC may already be relevant at this stage as well as s. 107 para. 2 CPC. There are further remedies that might prove efficient at this stage:

157
- ss. 171, 172 para. 1 s. 1 CPC (possibility of challenge in case of cessation)
- ss. 404, 407 CPC et seq., 410 (Appeal against a penalty order)
- ss. 17, 17c GVG[407]
- s. 147 CPC (right of inspection of the file)
- s. 304 CPC Appeal for requesting an order of a measure by the investigating judge (*Ermittlungsrichter*)

⚖ OLG Celle, 07.04.2016 – 2 Ws 14/16 =StV 2017, 120 [Complaint against the non-opening of the main proceedings: Prerequisites for subsidy fraud in the case of a subsidy from the EU].

f) Excursus: Procedure for summary penalty orders (*Verfahren bei Strafbefehlen)*

158 According to Art. 40 EPPO Regulation, the EPPO can also make use of simplified prosecution procedures under which the summary penalty order acc. to ss. 407 et seq. CPC falls.[408] It is important to present the possibility, because as far as the majority of the criminal cases in Germany are concerned, this procedure is the rule, while the indictment is the exception.[409] The summary proceedings are foreseen for minor criminal offences.[410] The aim of such procedure is the swift closure of a criminal proceedings that can also be in the interest of the accused, sparing time as well as the emotional and financial burden of a trial.[411] The decisions in this procedure are made without a main hearing and without the public, in writing, based on the case file.[412]

159 The procedure follows a summary penalty order request of the EDP to the court as a special form of indictment (s. 407 para. 1 CPC), once he/she has sufficient suspicion of a criminal offence (*hinreichender Tatverdacht*).[413] The competent judge may decide in favour of (s. 408 para. 3 sentence 1 CPC) or against (s. 408 para. 2 CPC) the request. The judge may instead schedule a main hearing acc. to s. 408 para. 3 sentence 2 CPC,

[407] OLG Dresden, 20.06.2005 - 2 Ws 182/05.
[408] Eckstein 2024, mn. 36.
[409] Volk and Engländer 2021, § 4 mn. 2, § 33 mn. 1.
[410] Eckstein 2024, mn. 1.
[411] Frick and Wissmann 2018, p. 439.
[412] Eckstein 2024, mn. 1; Volk and Engländer 2021, § 33 mn. 1.
[413] Frick and Wissmann 2018, p. 440; Schmitt 2018, mn. 1.

if he/she intends on deviating from the request or does not want to decide without the hearing.[414] Important, especially for the defence, is the time frame for an objection acc. to s. 410 para. 1, 2 CPC, since without a timely objection, the request may be granted and has the legal equivalency to a final judgment (s. 410 para. 3 CPC).[415]

The use of the summary penalty order in tax and customs criminal proceedings is not without controversy from the perspective of the defence,[416] although the majority of tax investigations result in a summary penalty order that is issued as requested in 99% of all cases.[417] **160**

[414] For a description of the procedure cf. Volk and Engländer 2021, § 33 mn. 3 et seq.
[415] Volk and Engländer 2021, § 33 mn. 6; Handel 2023, p. 611.
[416] Frick and Wissmann 2018, pp. 439 et seq. The criticism here concerns the *de facto* decision-making power of non-legally trained tax and customs officials to penalise a person. This will be less relevant for EPPO proceedings, as the EPPO evokes proceedings that lie with the tax or customs authorities or initiates investigations itself before requesting a summary penalty order.
[417] Hilgers-Klautzsch 2025, mn. 8.

3. Article 27 Right of evocation

a) Decisions under national (German) law which may have the effect of precluding the EPPO from its right of evocation 238
aa. Statute of limitations (*Verjährungsvorschriften*) 242
bb. Amnesty 249
cc. Criminal complaint 249
dd. Prosecution before the trial court 250
ee. Opposing legal validity (*Rechtskraft*) 250
ff. Abatement of action (dispense with prosecution, dissmissal) 250
b) Urgent measures of national authorities for securing an investigation and prosecution 251
aa. Arrest.....255
bb. Detention.....256
cc. Search.....256
dd. Seizure.....256
c) Competent national authorities in paras 3 to 7 of Art. 27 256
d) Provisions regarding the finalization of the national investigation, para. 7 256
e) Actions if "decision to open Art. 26 para. 7 EPPO Regulation/not open a case" 258
aa. Opening, ss. 12 EUStAG, 492 CPC 258
bb. Art. 26 para. 7 EPPO Regulation 261
cc. Informing national authorities, who reported to the EPPO in accordance with Art. 24 paras 1 and 2 EPPO Regulation in case "of no grounds to initiate an investigation in accordance with Article 26" (Art. 24 para. 7 EPPO Regulation) 264

1. Upon receiving all relevant information in accordance with Article 24 para. 2, the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision. The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.
2. During the periods referred to in paragraph 1, the national authorities shall refrain from taking **any decision under national law** that may have the effect of precluding the EPPO from exercising its right of evocation.
The national authorities shall take any urgent measures necessary, **under national law**, to ensure effective investigation and prosecution.
3. If the EPPO becomes aware, by means other than the information referred to in Article 24 para. 2, of the fact that an investigation in respect of a criminal offence for which it could be competent is already undertaken by the competent authorities of a Member State, it shall inform these authorities without delay. After being duly informed in accordance with Article 24 para. 2, the EPPO shall take a decision on whether to exercise its right of evocation. The decision shall be taken within the time limits set out in paragraph 1 of this Article.
4. The EPPO shall, where appropriate, consult the competent authorities of the Member State concerned before deciding whether to exercise its right of evocation.
5. Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.
6. The right of evocation set out in this Article may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.
Where a European Delegated Prosecutor, who has received the information in accordance with Article 24 para. 2, considers not to exercise the right of evocation, he/she shall inform the competent Permanent Chamber through the European Prosecutor of his/her Member State with a view to enabling the Permanent Chamber to take a decision in accordance with Article 10(4).
7. Where the EPPO has refrained from exercising its competence, it shall inform the **competent national authorities** without undue delay. At any time in the course of the proceedings, the **competent national authorities** shall inform the EPPO of any new facts which could give the EPPO reasons to reconsider its decision not to exercise competence.
The EPPO may exercise its right of evocation after receiving such information, provided that **the national investigation has not already been finalised** and that an indictment

has not been submitted to a court. The decision shall be taken within the time limit set out in paragraph 1.
8. Where, with regard to offences which caused or are likely to cause damage to the Union's financial interests of less than EUR 100 000, the College considers that, with reference to the degree of seriousness of the offence or the complexity of the proceedings in the individual case, there is no need to investigate or to prosecute at Union level, it shall in accordance with Article 9 para. 2, issue general guidelines allowing the European Delegated Prosecutors to decide, independently and without undue delay, not to evoke the case.
The guidelines shall specify, with all necessary details, the circumstances to which they apply, by establishing clear criteria, taking specifically into account the nature of the offence, the urgency of the situation and the commitment of the competent national authorities to take all necessary measures in order to fully recover the damage to the Union's financial interests.
9. To ensure coherent application of the guidelines, a European Delegated Prosecutor shall inform the competent Permanent Chamber of each decision taken in accordance with paragraph 8 and each Permanent Chamber shall report annually to the College on the application of the guidelines.

1 The **term evocation** is not unknown in German law and not at all to German tax authorities, as it is regulated in the fiscal criminal proceedings of the tax code in § 386 para. 4 sentence 2 AO.[418] At **Union level**, on the other hand, there is a much broader evocation in favour of the EPPO. The core is identical, however, the function, i.e. the ***telos* of evocation** – something is taken to another level so that it can be processed "better, faster, cheaper, more effectively" – and is managed by the person who supposedly has the greatest interest in it remains identical.

2 Art. 27 is highly important as the **Taricco-saga** and more recent ECJ case-law has shown that the efficiency principle stipulated by **Art. 325 TFEU**, which shall ensure the equal protection of the financial interests of the EU in the member states is often under pressure by national legislation such as **statues of limitations**[419] or minimal changes

[418] Vordermayer et al. 2023, para. 19; see Krauß 2022, § 142b GVG mn. 18.
[419] ECJ, C-107/23, PPU (Lin), Judgment of the Court (Grand Chamber) of 24 July 2023, mn. 107 saying that "In the absence of harmonisation of the rules on limitation periods for criminal liability in respect of offences affecting the Union's financial interests, it is therefore for the law of each Member State to determine whether the limitation rules are of a procedural or substantive nature." And: "In Belgium, Germany and France, limitation rules are regarded as being of a procedural nature. By contrast, in Greece, Spain, Italy, Latvia, Sweden and Romania, those rules fall under substantive criminal law. In Poland and Portugal, they are both substantive and procedural rules"

that conflict with efficient investigations or prosecutions; thus e.g. the national legislature must ensure that cases in VAT fraud cases do not end in impunity.[420]

Due to the legality principle that finds its basis in the CPC, the German national authorities usually initiate investigations and the EPPO evocates them, which is why in Germany there are more evocation procedures than initiations of investigations by the EPPO. If the national prosecutor or a national office vested with investigative powers has already started investigating or the relevant person has taken any steps applying national law afterwards, these actions may have a **precluding effect** on the right of evocation of the EPPO (cf. para. 2 of Art. 27 EPPO Regulation). **3**



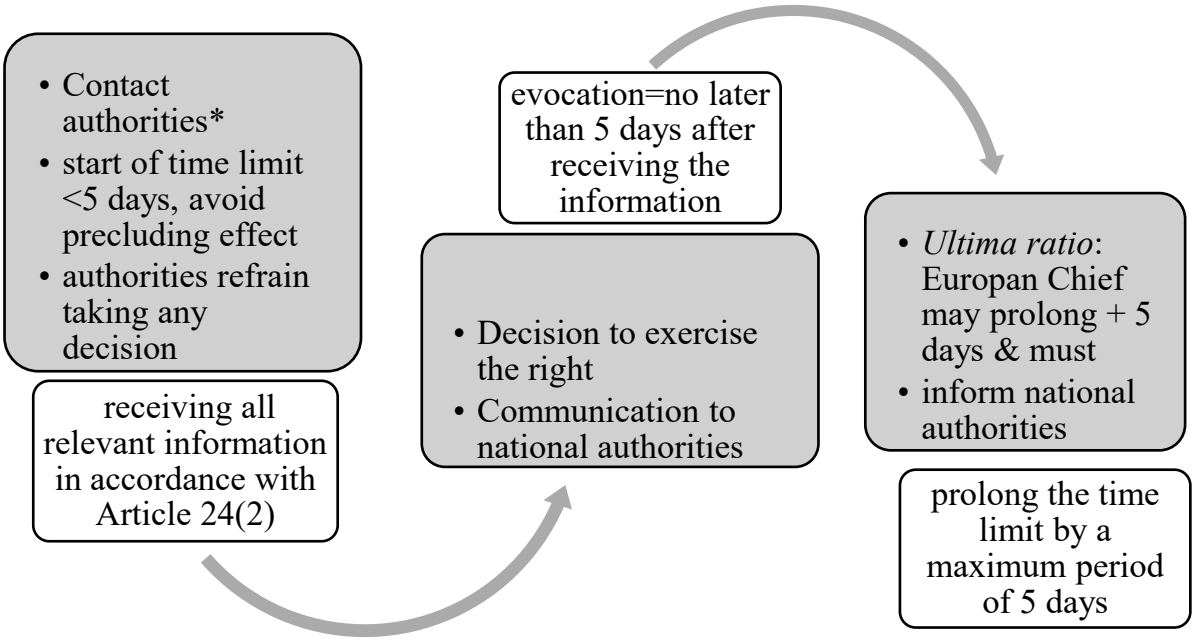
Example: **Section 386 General Tax Code**[421]
Responsibility of the tax authority for tax crimes
(1) If a tax offence is suspected, the financial authority determines the facts. Financial authorities within the meaning of this section are the main customs office, the tax office, the Federal Central Tax Office and the family benefits office.

De jure the prosecutor or the national authority vested with investigative powers is ordered to "stand still" for the time period established by para. 1 of Art. 27 EPPO Regulation. **4**

[420] Most recently on this matter ECJ, C-107/23, *PPU* (*Lin*), Judgment of the Court (Grand Chamber) of 24 July 2023 [Be aware that the name name of the present case, which the ECJ chose is a fictitious name and the proceedings were directed against several natural persons convicted of tax fraud. The case name does not correspond to the real name of any party to the proceedings; see critical to the ECJ's decision Bonelli 2024, 1045 et seq;, who 1070 says the ECJ's doctrine of broadening the direct effect doctrine for Art. 325 TFEU is "malam partem" as it allows EU provisions to directly impact national law, even in ways that can limit individual rights; he shows as well that on p. 1064-1065 the Advocate General opted to protect fundamental rights, and now see Carabot 2023, 401 et seq. and see Nato A, Sabia R, Tatì E 2024, p. 22 et seq. mentioning previous relevant case-law ECJ, C-617/10, *Åkerberg Fransson',* Judgment of 26 February 2013, ECJ, C-105/14, *Taricco*, Judgment of 8 September 2015; ECJ, C-42/17, *M.A.S. and M.B.*' Judgment of 5 December 2017; ECJ, C-612/15, *Kolev and Others*, Judgment of 5 June 2018, para 50; ECJ, C-310/16, *Dzivev and Others*, Judgment of 17 January 2019, para. 25; ECJ, Jointed Cases, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, *Euro Box Promotion,* Judgment of 21 December 2021.

[421] § 386 Zuständigkeit der Finanzbehörde bei Steuerstraftaten (1) Bei dem Verdacht einer Steuerstraftat ermittelt die Finanzbehörde den Sachverhalt. Finanzbehörde im Sinne dieses Abschnitts sind das Hauptzollamt, das Finanzamt, das Bundeszentralamt für Steuern und die Familienkasse. [...]

Figure 7: Right of evocation/time limits/refrain taking decisions that have a precluding effect



* Caption: German Authorities:[422] "In each case, the authority that notified the procedure pursuant to Article 24 para. 2 of the EPPO Regulation [e.g. Public prosecution offices at the Regional Courts, the Public Prosecutor's Offices at the Higher Regional Courts, Federal Public Prosecutor's Office – Tax authorities (s. 386 para. 2 AO): Main customs offices, Tax offices, Federal Central Tax Office]
Art. 24 para. 8: Public prosecution offices: Public prosecution offices at the Regional Courts, the Public Prosecutor's Offices at the Higher Regional Courts, Federal Public Prosecutor General, Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in Ludwigsburg – Tax authorities, insofar as they assume the position of a public prosecutor's office pursuant to section 386, paragraph 2 AO. assumes the position of a public prosecutor's office: Main customs offices, tax offices, Federal Central Tax Office for taxes"

***Example*:** A tax office with a special task (tax investigation), e.g. the Münster finance department (tax office for Criminal tax matters and tax investigation "*Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*"[423]) gets indications for a PIF offence being or having been committed. What does it need to do?

[422] See Mitteilung der Regierung der Bundesrepublik Deutschland an die Europäische Staatsanwaltschaft vom 18. Juni 2021: https://www.eppo.europa.eu/sites/default/files/2021-11/12-DE.pdf (unofficial translation). Accessed 31 December 2024.
[423] See https://www.finanzverwaltung.nrw.de/finanzamt/finanzamt-fuer-steuerstrafsachen-und-steuerfahndung-muenster. Accessed 31 December 2024.

The federal legislature has provided that according to the EPPO Adoption Act (s. 7 para. 1 EUStAG: "§ 386 paragraph 2 of the tax code is to be applied with the proviso that the financial authority under para. 4 sentence 1 e conditions of Article 24 paragraph 2, 3 and 5 of Regulation (EU) 2017/1939 has to inform the European Public Prosecutor's Office of the initiation of preliminary proceedings and the European Public Prosecutor's Office ***can initiate the proceedings in accordance with Article 27*** of Regulation (EU) 2017/1939" **5**

Relevant judgments: BFH, 14.07.2008 – VII B 92/08 =BFHE 220, 348.
Relevant *lex specialis* (the criminal tax offices need to ensure their actions comply with the Orders of the Minister of Finance/*Verwaltungsvorschriften*): Nr. 22 para. 3 Bundessteuerblatt Teil I, 2022, Nr. 6, pp. 251–318, Anweisungen für das Straf- und Bußgeldverfahren (Steuer) — AStBV (St) 2022.

Basically, this example works not only within the area of tax fraud, but also in all other cases of a PIF offence (AML, corruption cases, etc.). The bodies in other PIF offence areas might be depicted from the caption to the Figure above. **6**

Nota bene: The competent authorities, especially the bureaus (*Geschäftsstellen*) of the national prosecution services should be aware of registration signs, which are used for criminal investigation cases in Germany. For example "WiJs" is used for economic criminal offences, which may encompass ss. 263, 264 CC (in connection with ss. 25 et seq. German CC) as well as the attached PIF offences ss. 261, 266 CC (in connection with ss. 25 et seq. German CC) and which are not related primarily to customs or tax offences. For tax offences, including ss. 370 AO, 334, 335 et seq. German CC (eventually in connection with ss. 25 et seq. German CC) are registered with "StJs" signs. "*UJs*" signs are used in cases, in which the suspected perpetrator(s) are not known to the national authorities. The registration sign "Gs" is used for cases of grace. The sign "*HEs*" is used for pre-trial decisions. The court system has different registration signs for its cases (see below 9.).

Therefore it is very important for these national bodies that act prior to the decision of evocation to reconsider the national provisions in this area prior to each investigation task: **7**

a) Decisions under national (German) law which may have the effect of precluding the EPPO from its right of evocation

8 **Section 129 CPC[424] Appearance before judge following provisional arrest after preferment of public charges**

If public charges have already been preferred against the arrested person, he shall be brought before the competent court either immediately or upon the direction of the judge before whom he was first brought; this court shall, at the latest on the day after the arrest, decide on the arrested person's release, detention or provisional placement.[425] […]

Section 153a CPC Non-prosecution subject to imposition of conditions and directions

(1)[426] In a case involving a less serious criminal offence, the public prosecution office, with the consent of the accused and of the court competent to order the opening of the main proceedings, may dispense with the preferment of public charges and concurrently impose conditions on and issue directions to the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle thereto. In particular, the following conditions and instructions may be considered:

1. rendering of a specified service in order to make reparations for damage caused by the offence,

[424] **§ 129 Vorführung bei vorläufiger Festnahme nach Anklageerhebung [CPC]**
Ist gegen den Festgenommenen bereits die öffentliche Klage erhoben, so ist er entweder sofort oder auf Verfügung des Richters, dem er zunächst vorgeführt worden ist, dem zuständigen Gericht vorzuführen; dieses hat spätestens am Tage nach der Festnahme über Freilassung, Verhaftung oder einstweilige Unterbringung des Festgenommenen zu entscheiden.

[425] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.

[426] **§ 153a Absehen von der Verfolgung unter Auflagen und Weisungen [CPC]**
(1) Mit Zustimmung des für die Eröffnung des Hauptverfahrens zuständigen Gerichts und des Beschuldigten kann die Staatsanwaltschaft bei einem Vergehen vorläufig von der Erhebung der öffentlichen Klage absehen und zugleich dem Beschuldigten Auflagen und Weisungen erteilen, wenn diese geeignet sind, das öffentliche Interesse an der Strafverfolgung zu beseitigen, und die Schwere der Schuld nicht entgegensteht. Als Auflagen oder Weisungen kommen insbesondere in Betracht,
1. zur Wiedergutmachung des durch die Tat verursachten Schadens eine bestimmte Leistung zu erbringen,
2. einen Geldbetrag zugunsten einer gemeinnützigen Einrichtung oder der Staatskasse zu zahlen,
3. sonst gemeinnützige Leistungen zu erbringen,
5. sich ernsthaft zu bemühen, einen Ausgleich mit dem Verletzten zu erreichen (Täter-Opfer-Ausgleich) und dabei seine Tat ganz oder zum überwiegenden Teil wieder gut zu machen oder deren Wiedergutmachung zu erstreben,
7. [...] Zur Erfüllung der Auflagen und Weisungen setzt die Staatsanwaltschaft dem Beschuldigten eine Frist, die in den Fällen des Satzes 2 Nummer 1 bis 3, 5 und 7 höchstens sechs Monate, in den Fällen des Satzes 2 Nummer 4 und 6 höchstens ein Jahr beträgt. Die Staatsanwaltschaft kann Auflagen und Weisungen nachträglich aufheben und die Frist einmal für die Dauer von drei Monaten verlängern; mit Zustimmung des Beschuldigten kann sie auch Auflagen und Weisungen nachträglich auferlegen und ändern. Erfüllt der Beschuldigte die Auflagen und Weisungen, so kann die Tat nicht mehr als Vergehen verfolgt werden. Erfüllt der Beschuldigte die Auflagen und Weisungen nicht, so werden Leistungen, die er zu ihrer Erfüllung erbracht hat, nicht erstattet. § 153 Abs. 1 Satz 2 gilt in den Fällen des Satzes 2 Nummer 1 bis 6 entsprechend. § 246a Absatz 2 gilt entsprechend. [...].

2. payment of a sum of money to a non-profit-making institution or to the Treasury,
3. rendering of some other service of a non-profit-making nature,
4. compliance with duties to pay a specified amount in maintenance,
5. making of a serious attempt to reach a mediated agreement with the aggrieved person (victim–offender mediation), thereby trying to make reparation for the offence, in full or to a predominant extent, or to strive therefor,
6. participation in a social skills training course or
7. participation in a supplementary course pursuant to section 2b para. 2 sentence 2 or a driving aptitude course pursuant to section 4a of the Road Transportation Act (*Straßenverkehrsgesetz*).

The public prosecution office shall set a time limit within which the accused is to comply with the conditions and directions and which, in the cases under sentence 2 nos. 1 to 3, 5 and 7, shall be a maximum of six months and, in the cases under sentence 2 nos. 4 and 6, a maximum of one year. The public prosecution office may subsequently revoke the conditions and directions and may extend the time limit once for a period of three months; with the consent of the accused it may also subsequently impose or change conditions and directions. If the accused complies with the conditions and directions, the offence can no longer be prosecuted as a less serious criminal offence. If the accused fails to comply with the conditions and directions, no compensation shall be given for any contribution made towards compliance. Section 153 para. 1 sentence 2 shall apply accordingly in the cases under sentence 2 nos. 1 to 6. Section 246a para. 2 shall apply accordingly. [...][427]

[427] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.

Section 153b CPC[428] Non-prosecution where imposition of penalty may be dispensed with
(1) If the conditions under which the court might dispense with imposing a penalty are met, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with the preferment of public charges.
(2) If charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings at any time prior to commencement of the main hearing.[429]

Section 156 CPC[430] Withdrawal of charges
The public charges may not be withdrawn after the opening of the main proceedings.[431]

Section 160b CPC[432] Discussion of status of proceedings with parties
The public prosecution office may discuss the status of the proceedings with the parties to the proceedings, insofar as this appears suitable to expedite the proceedings. The essential content of this discussion shall be included in the records.[433]

Section 170 CPC Decision to prefer public charges
(1)[434] If the investigations offer sufficient reason to prefer public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court.

[428] **§ 153b Absehen von der Verfolgung bei möglichem Absehen von Strafe**
(1) Liegen die Voraussetzungen vor, unter denen das Gericht von Strafe absehen könnte, so kann die Staatsanwaltschaft mit Zustimmung des Gerichts, das für die Hauptverhandlung zuständig wäre, von der Erhebung der öffentlichen Klage absehen.
(2) Ist die Klage bereits erhoben, so kann das Gericht bis zum Beginn der Hauptverhandlung mit Zustimmung der Staatsanwaltschaft und des Angeschuldigten das Verfahren einstellen.
[429] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[430] **§ 156 Anklagerücknahme [CPC]**
Die öffentliche Klage kann nach Eröffnung des Hauptverfahrens nicht zurückgenommen werden.
[431] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[432] **§ 160b Erörterung des Verfahrensstands mit den Verfahrensbeteiligten**
Die Staatsanwaltschaft kann den Stand des Verfahrens mit den Verfahrensbeteiligten erörtern, soweit dies geeignet erscheint, das Verfahren zu fördern. Der wesentliche Inhalt dieser Erörterung ist aktenkundig zu machen.
[433] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[434] **§ 170 Entscheidung über eine Anklageerhebung [CPC]**
(1) Bieten die Ermittlungen genügenden Anlaß zur Erhebung der öffentlichen Klage, so erhebt die Staatsanwaltschaft sie durch Einreichung einer Anklageschrift bei dem zuständigen Gericht.
(2) Andernfalls stellt die Staatsanwaltschaft das Verfahren ein. Hiervon setzt sie den Beschuldigten in Kenntnis, wenn er als solcher vernommen worden ist oder ein Haftbefehl gegen ihn erlassen war; dasselbe gilt, wenn er um einen Bescheid gebeten hat oder wenn ein besonderes Interesse an der Bekanntgabe ersichtlich ist.

(2) Otherwise, the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or a warrant of arrest was issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.[435] […]

Section 175 CPC[436] Order for preferment of public charges
If, after hearing the accused, the court considers the application to be well-founded, it shall order the preferment of public charges. This order shall be carried out by the public prosecution office.[437]

Section 257c CPC[438] Negotiated agreement [between Prosecutor and defendance]
(1) In suitable cases, the court may reach an agreement with the parties on the further course and outcome of the proceedings in accordance with the following paragraphs. Section 244 para. 2 shall remain unaffected.
(2) The subject matter of this agreement may only comprise the legal consequences which could be the content of the judgment and of the associated court orders, other procedural measures relating to the course of the underlying adjudication proceedings and the conduct of the parties during the proceedings. A confession shall be an integral

[435] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[436] **§ 175 Anordnung der Anklageerhebung [CPC]**
Erachtet das Gericht nach Anhörung des Beschuldigten den Antrag für begründet, so beschließt es die Erhebung der öffentlichen Klage. Die Durchführung dieses Beschlusses liegt der Staatsanwaltschaft ob"
[437] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[438] **§ 257c Verständigung zwischen Gericht und Verfahrensbeteiligten [CPC]**
(1) Das Gericht kann sich in geeigneten Fällen mit den Verfahrensbeteiligten nach Maßgabe der folgenden Absätze über den weiteren Fortgang und das Ergebnis des Verfahrens verständigen. § 244 Absatz 2 bleibt unberührt.
(2) Gegenstand dieser Verständigung dürfen nur die Rechtsfolgen sein, die Inhalt des Urteils und der dazugehörigen Beschlüsse sein können, sonstige verfahrensbezogene Maßnahmen im zugrundeliegenden Erkenntnisverfahren sowie das Prozessverhalten der Verfahrensbeteiligten. Bestandteil jeder Verständigung soll ein Geständnis sein. Der Schuldspruch sowie Maßregeln der Besserung und Sicherung dürfen nicht Gegenstand einer Verständigung sein.
(3) Das Gericht gibt bekannt, welchen Inhalt die Verständigung haben könnte. Es kann dabei unter freier Würdigung aller Umstände des Falles sowie der allgemeinen Strafzumessungserwägungen auch eine Ober- und Untergrenze der Strafe angeben. Die Verfahrensbeteiligten erhalten Gelegenheit zur Stellungnahme. Die Verständigung kommt zustande, wenn Angeklagter und Staatsanwaltschaft dem Vorschlag des Gerichtes zustimmen.
(4) Die Bindung des Gerichtes an eine Verständigung entfällt, wenn rechtlich oder tatsächlich bedeutsame Umstände übersehen worden sind oder sich neu ergeben haben und das Gericht deswegen zu der Überzeugung gelangt, dass der in Aussicht gestellte Strafrahmen nicht mehr tat- oder schuldangemessen ist. Gleiches gilt, wenn das weitere Prozessverhalten des Angeklagten nicht dem Verhalten entspricht, das der Prognose des Gerichtes zugrunde gelegt worden ist. Das Geständnis des Angeklagten darf in diesen Fällen nicht verwertet werden. Das Gericht hat eine Abweichung unverzüglich mitzuteilen.
(5) Der Angeklagte ist über die Voraussetzungen und Folgen einer Abweichung des Gerichtes von dem in Aussicht gestellten Ergebnis nach Absatz 4 zu belehren.

part of any negotiated agreement. The verdict of guilty and measures of reform and prevention may not be the subject of a negotiated agreement.
(3) The court shall announce what the content of the negotiated agreement could be. It may, on free evaluation of all the circumstances of the case and general sentencing considerations, also indicate an upper and lower sentence limit. The parties shall be given the opportunity to make submissions. The negotiated agreement shall come into existence if the defendant and the public prosecution office agree to the court's proposal.
(4) The court shall cease to be bound by a negotiated agreement if legally or factually relevant circumstances have been overlooked or have arisen and the court is therefore then convinced that the prospective sentencing range is no longer appropriate to the severity of the offence or the degree of guilt. The same shall apply if the defendant's further conduct in the proceedings does not correspond to that upon which the court's prediction was based. The defendant's confession may not be used in such cases. The court shall give notification of any deviation without delay.
(5) The defendant shall be instructed as to the conditions for and consequences of the court deviating from the prospective outcome pursuant to para. 4.[439]

Section 294 CPC[440] Procedure following preferment of charges
(1) In all other respects, the provisions on the opening of the main proceedings shall apply accordingly to proceedings following the preferment of the public charges.
(2) The order made after conclusion of these proceedings (section 199) shall include a decision on continuation or revocation of seizure.[441]

aa. Statute of limitations (*Verjährungsvorschriften*)

9 The statues of limitations are very important as they limit the scope of action of the EPPO in all PIF offences cases – such as tax,[442] customs or normal fraud cases.

10
- Criminal Code [displayed below]
- ss. 31–34 Administrative Offences Act (legal entities) [not displayed here]
- General Tax Code in relation to tax frauds

[439] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[440] **§ 294 Verfahren nach Anklageerhebung [CPC]**
(1) Für das nach Erhebung der öffentlichen Klage eintretende Verfahren gelten im übrigen die Vorschriften über die Eröffnung des Hauptverfahrens entsprechend.
(2) In dem nach Beendigung dieses Verfahrens ergehenden Beschluß (§ 199) ist zugleich über die Fortdauer oder Aufhebung der Beschlagnahme zu entscheiden.
[441] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1445. Accessed 31 December 2024.
[442] See Kaligin 2022, pp. 650 et seq.

Chapter 5 Limitation period
Limitation on prosecution
Section 78 CC[443] Limitation period **11**

(1) The imposition of a penalty and the ordering of measures (section 11 para. 1 no. 8) are ruled out following expiry of the limitation period. Section 76a para. 2 remains unaffected.
(2) Serious criminal offences under section 211 (murder under specific aggravating circumstances) are not subject to the statute of limitations.
(3) Where prosecution is subject to the statute of limitations, the limitation period is
1. 30 years in the case of offences which are punishable by imprisonment for life,
2. 20 years in the case of offences which are punishable by a maximum sentence of imprisonment of more than 10 years,
3. 10 years in the case of offences which are punishable by a maximum sentence of imprisonment of more than five years but no more than 10 years,
4. five years in the case of offences which are punishable by a maximum sentence of imprisonment of more than one year but no more than five years,
5. three years in the case of other offences.
(4) The period is determined in accordance with the penalty threatened under the law which defines the elements of the offence realised, irrespective of aggravating or mitigating circumstances provided for in the provisions of the General Part or of aggravated or less serious cases under the Special Part.

[443] **§ 78 Verjährungsfrist Strafgesetzbuch**
(1) Die Verjährung schließt die Ahndung der Tat und die Anordnung von Maßnahmen (§ 11 Abs. 1 Nr. 8) aus. § 76a Absatz 2 bleibt unberührt.
(2) Verbrechen nach § 211 (Mord) verjähren nicht.
(3) Soweit die Verfolgung verjährt, beträgt die Verjährungsfrist
1. dreißig Jahre bei Taten, die mit lebenslanger Freiheitsstrafe bedroht sind,
2. zwanzig Jahre bei Taten, die im Höchstmaß mit Freiheitsstrafen von mehr als zehn Jahren bedroht sind,
3. zehn Jahre bei Taten, die im Höchstmaß mit Freiheitsstrafen von mehr als fünf Jahren bis zu zehn Jahren bedroht sind,
4. fünf Jahre bei Taten, die im Höchstmaß mit Freiheitsstrafen von mehr als einem Jahr bis zu fünf Jahren bedroht sind,
5. drei Jahre bei den übrigen Taten.
(4) Die Frist richtet sich nach der Strafdrohung des Gesetzes, dessen Tatbestand die Tat verwirklicht, ohne Rücksicht auf Schärfungen oder Milderungen, die nach den Vorschriften des Allgemeinen Teils oder für besonders schwere oder minder schwere Fälle vorgesehen sind.

Section 78a CC[444] Commencement
The limitation period begins to run as soon as the offence is completed. If a result constituting an element of the offence occurs later, the limitation period begins to run as of that time.

Section 78b CC[445] Stay of limitation
(1) The limitation period is stayed
1. until the victim of an offence under sections 174 to 174c, 176 to 178, section 180 (3), sections 182, 225, 226a and 237 has reached the age of 30,
2. as long as the prosecution may, by law, not be commenced or continued; this does not apply if the only reason why the offence cannot be prosecuted is due to the absence of a request or authorisation to prosecute or a request to prosecute by a foreign state.

[444] **§ 78a Beginn Strafgesetzbuch**
Die Verjährung beginnt, sobald die Tat beendet ist. Tritt ein zum Tatbestand gehörender Erfolg erst später ein, so beginnt die Verjährung mit diesem Zeitpunkt.
[445] **§ 78b Ruhen Strafgesetzbuch**
(1) Die Verjährung ruht
1. bis zur Vollendung des 30. Lebensjahres des Opfers bei Straftaten nach den §§ 174 bis 174c, 176 bis 178, 182, 184b Absatz 1 Satz 1 Nummer 3, auch in Verbindung mit Absatz 2, §§ 225, 226a und 237,
2. solange nach dem Gesetz die Verfolgung nicht begonnen oder nicht fortgesetzt werden kann; dies gilt nicht, wenn die Tat nur deshalb nicht verfolgt werden kann, weil Antrag, Ermächtigung oder Strafverlangen fehlen.
(2) Steht der Verfolgung entgegen, daß der Täter Mitglied des Bundestages oder eines Gesetzgebungsorgans eines Landes ist, so beginnt die Verjährung erst mit Ablauf des Tages zu ruhen, an dem
1. die Staatsanwaltschaft oder eine Behörde oder ein Beamter des Polizeidienstes von der Tat und der Person des Täters Kenntnis erlangt oder
2. eine Strafanzeige oder ein Strafantrag gegen den Täter angebracht wird (§ 158 der Strafprozeßordnung).
(3) Ist vor Ablauf der Verjährungsfrist ein Urteil des ersten Rechtszuges ergangen, so läuft die Verjährungsfrist nicht vor dem Zeitpunkt ab, in dem das Verfahren rechtskräftig abgeschlossen ist.
(4) Droht das Gesetz strafschärfend für besonders schwere Fälle Freiheitsstrafe von mehr als fünf Jahren an und ist das Hauptverfahren vor dem Landgericht eröffnet worden, so ruht die Verjährung in den Fällen des § 78 Abs. 3 Nr. 4 ab Eröffnung des Hauptverfahrens, höchstens jedoch für einen Zeitraum von fünf Jahren; Absatz 3 bleibt unberührt.
(5) Hält sich der Täter in einem ausländischen Staat auf und stellt die zuständige Behörde ein förmliches Auslieferungsersuchen an diesen Staat, ruht die Verjährung ab dem Zeitpunkt des Zugangs des Ersuchens beim ausländischen Staat
1. bis zur Übergabe des Täters an die deutschen Behörden,
2. bis der Täter das Hoheitsgebiet des ersuchten Staates auf andere Weise verlassen hat,
3. bis zum Eingang der Ablehnung dieses Ersuchens durch den ausländischen Staat bei den deutschen Behörden oder
4. bis zur Rücknahme dieses Ersuchens.
Lässt sich das Datum des Zugangs des Ersuchens beim ausländischen Staat nicht ermitteln, gilt das Ersuchen nach Ablauf von einem Monat seit der Absendung oder Übergabe an den ausländischen Staat als zugegangen, sofern nicht die ersuchende Behörde Kenntnis davon erlangt, dass das Ersuchen dem ausländischen Staat tatsächlich nicht oder erst zu einem späteren Zeitpunkt zugegangen ist. Satz 1 gilt nicht für ein Auslieferungsersuchen, für das im ersuchten Staat auf Grund des Rahmenbeschlusses des Rates vom 13. Juni 2002 über den Europäischen Haftbefehl und die Übergabeverfahren zwischen den Mitgliedstaaten (ABl. e.g. Nr. L 190 S. 1) oder auf Grund völkerrechtlicher Vereinbarung eine § 83c des Gesetzes über die internationale Rechtshilfe in Strafsachen vergleichbare Fristenregelung besteht.
(6) In den Fällen des § 78 Absatz 3 Nummer 1 bis 3 ruht die Verjährung ab der Übergabe der Person an den Internationalen Strafgerichtshof oder den Vollstreckungsstaat bis zu ihrer Rückgabe an die deutschen Behörden oder bis zu ihrer Freilassung durch den Internationalen Strafgerichtshof oder den Vollstreckungsstaat.

(2) If prosecution is not feasible because the offender is a Member of the Bundestag or of a legislative body of one of the Länder, the stay of the limitation period only commences upon expiry of the day on which
1. the public prosecution office or a police authority or police officer gains knowledge of the offence and of the offender's identity or
2. an offence is reported or a request to prosecute is filed against the offender (section 158 of the Code of Criminal Procedure).
(3) If a judgment has been delivered in the proceedings at first instance before the expiry of the limitation period, the limitation period does not expire before the time when the proceedings have been finally concluded.
(4) Where provision is made for an aggregate sentence of imprisonment of more than five years in especially serious cases and if the main proceedings have been opened before the regional court, the statute of limitations is stayed in the cases under section 78 para. 3 no. 4 from the time of the opening of the main proceedings, but no longer than for a period of five years; para. 3 remains unaffected.
(5) If the offender is staying abroad and if the competent authority makes a formal request for extradition to that state, the limitation period is stayed as of the time the request is served on the foreign state
1. until the offender is surrendered to the German authorities,
2. until the offender leaves the territory of the requested foreign state by other means,
3. until the foreign state's denial of the request is served on the German authorities or
4. until the request is withdrawn.
If the date of service of the request on the foreign state cannot be ascertained, the request is deemed to have been served one month after having been sent or handed over to the foreign state, unless the requesting authority gains knowledge of the fact that the foreign state did not in fact receive the request or only at a later point in time. Sentence 1 does not apply to requests for extradition for which, in the requested state, a limitation period similar to section 83c of the Act on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen) exists, either based on the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1) or based on an international agreement.
(6) In the cases under section 78 para. 3 nos. 1 to 3, the limitation period is stayed from the time of the handing over of a person to the International Criminal Court or the executing state until that person's return to the German authorities or release from the International Criminal Court or the executing state.

Section 78c CC[446] Interruption

(1) The limitation period is interrupted by

1. the first examination of the accused, notice that a preliminary investigation has been initiated against the accused, or the order for such examination or notice of such examination,
2. any judicial examination of the accused or the order for a judicial examination of the accused,
3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been examined or has been given notice of the launch of a preliminary investigation,
4. any judicial seizure or search warrant and judicial decisions upholding them,
5. a warrant of arrest, a provisional order for placement, an order to be brought before a judge for examination and judicial decisions upholding them,
6. the preferment of public charges,

[446] **§ 78c Unterbrechung Strafgesetzbuch**

(1) Die Verjährung wird unterbrochen durch

1. die erste Vernehmung des Beschuldigten, die Bekanntgabe, daß gegen ihn das Ermittlungsverfahren eingeleitet ist, oder die Anordnung dieser Vernehmung oder Bekanntgabe,
2. jede richterliche Vernehmung des Beschuldigten oder deren Anordnung,
3. jede Beauftragung eines Sachverständigen durch den Richter oder Staatsanwalt, wenn vorher der Beschuldigte vernommen oder ihm die Einleitung des Ermittlungsverfahrens bekanntgegeben worden ist,
4. jede richterliche Beschlagnahme- oder Durchsuchungsanordnung und richterliche Entscheidungen, welche diese aufrechterhalten,
5. den Haftbefehl, den Unterbringungsbefehl, den Vorführungsbefehl und richterliche Entscheidungen, welche diese aufrechterhalten,
6. die Erhebung der öffentlichen Klage,
7. die Eröffnung des Hauptverfahrens,
8. jede Anberaumung einer Hauptverhandlung,
9. den Strafbefehl oder eine andere dem Urteil entsprechende Entscheidung,
10. die vorläufige gerichtliche Einstellung des Verfahrens wegen Abwesenheit des Angeschuldigten sowie jede Anordnung des Richters oder Staatsanwalts, die nach einer solchen Einstellung des Verfahrens oder im Verfahren gegen Abwesende zur Ermittlung des Aufenthalts des Angeschuldigten oder zur Sicherung von Beweisen ergeht,
11. die vorläufige gerichtliche Einstellung des Verfahrens wegen Verhandlungsunfähigkeit des Angeschuldigten sowie jede Anordnung des Richters oder Staatsanwalts, die nach einer solchen Einstellung des Verfahrens zur Überprüfung der Verhandlungsfähigkeit des Angeschuldigten ergeht, oder
12. jedes richterliche Ersuchen, eine Untersuchungshandlung im Ausland vorzunehmen.

Im Sicherungsverfahren und im selbständigen Verfahren wird die Verjährung durch die dem Satz 1 entsprechenden Handlungen zur Durchführung des Sicherungsverfahrens oder des selbständigen Verfahrens unterbrochen.

(2) Die Verjährung ist bei einer schriftlichen Anordnung oder Entscheidung in dem Zeitpunkt unterbrochen, in dem die Anordnung oder Entscheidung abgefasst wird. Ist das Dokument nicht alsbald nach der Abfassung in den Geschäftsgang gelangt, so ist der Zeitpunkt maßgebend, in dem es tatsächlich in den Geschäftsgang gegeben worden ist.

(3) Nach jeder Unterbrechung beginnt die Verjährung von neuem. Die Verfolgung ist jedoch spätestens verjährt, wenn seit dem in § 78a bezeichneten Zeitpunkt das Doppelte der gesetzlichen Verjährungsfrist und, wenn die Verjährungsfrist nach besonderen Gesetzen kürzer ist als drei Jahre, mindestens drei Jahre verstrichen sind. § 78b bleibt unberührt.

(4) Die Unterbrechung wirkt nur gegenüber demjenigen, auf den sich die Handlung bezieht.

(5) Wird ein Gesetz, das bei der Beendigung der Tat gilt, vor der Entscheidung geändert und verkürzt sich hierdurch die Frist der Verjährung, so bleiben Unterbrechungshandlungen, die vor dem Inkrafttreten des neuen Rechts vorgenommen worden sind, wirksam, auch wenn im Zeitpunkt der Unterbrechung die Verfolgung nach dem neuen Recht bereits verjährt gewesen wäre.

7. the opening of the main proceedings,
8. the setting of each date for the main hearing,
9. a summary penalty order or another decision equivalent to a judgment,
10. the provisional judicial termination of the proceedings due to the indicted accused's absence, as well as any order of the judge or public prosecutor issued after such termination of the proceedings or in proceedings in absentia to ascertain the indicted accused's whereabouts or to secure evidence,
11. the provisional judicial termination of the proceedings due to the indicted accused being unfit to stand trial and any order of the judge or public prosecutor issued after such termination of the proceedings for the purposes of reviewing the indicted accused's fitness to stand trial or
12. any judicial request to undertake an investigative act abroad.
In preventive detention proceedings and independent proceedings, the limitation period is interrupted on account of those acts done to conduct the preventive detention proceedings and independent proceedings which correspond to those in sentence 1.
(2) In the case of a written order or decision being made, the limitation period is interrupted at the time at which the order or decision is signed. If the document is not immediately processed after signing, the time at which it is actually submitted for processing is decisive.
(3) After each interruption, the limitation period begins to run anew. However, the prosecution is barred by limitation once double the statutory limitation period has elapsed since the time indicated in section 78a and at least three years if the limitation period is shorter than three years under special laws. Section 78b remains unaffected.
(4) The interruption has effect only for the person in relation to whom the interrupting act is done.
(5) If a law which applies at the time the offence is completed is amended before a decision is given and the limitation period is thereby shortened, then acts leading to an interruption which were undertaken before the entry into force of the new law retain their effect, notwithstanding that at the time of the interruption the prosecution would have been barred by the statute of limitations under the amended law.

12

Federal Tax Code (AO)

See s. 376 for tax offences including tax evasion and tax fraud.

Section 376 AO[447] **Statute of limitations on prosecution**

(1) In the cases of particularly serious tax evasion referred to in Section 370 para. 3 sentence 2 numbers 1 to 6, the limitation period is 15 years; Section 78b paragraph 4 of the Criminal Code applies accordingly.

(2) The statute of limitations for the prosecution of a tax offence is also interrupted by the fact that the accused is notified of the initiation of fine proceedings or that notification is ordered.

(3) Notwithstanding Section 78c para. 3 sentence 2 of the Criminal Code, in the cases of particularly serious tax evasion referred to in Section 370 para. 3 sentence 2 numbers 1 to 6, prosecution shall become statute-barred at the latest if two and a half times the statutory limitation period has expired.

National Jurisprudence

Cum-ex-fraud:

- LG Bonn, 18.03.2020 – 62 KLs – 213 Js 41/19 – 1/19.
- BGH, 28.07.2021 – 1 StR 519/20 =NStZ 2022, 176 [cum ex-fraud constitutes punishable tax fraud].
- BVerfG, 22.11.2021 – 2 BvR 1872/21 =NStZ-RR 2022, 19 [cum ex Judgments do not infringe the Constitution].
- BVerfG, 07.04.2022 – 2 BvR 2194/21.

Subsidy fraud:

- BGH, 10.12.2019 – 4 StR 136/19 =openJur 2020, 205[448]

[447] **§ 376 Verfolgungsverjährung AO**
(1) In den in § 370 Absatz 3 Satz 2 Nummer 1 bis 6 genannten Fällen besonders schwerer Steuerhinterziehung beträgt die Verjährungsfrist 15 Jahre; § 78b Absatz 4 des Strafgesetzbuches gilt entsprechend.
(2) Die Verjährung der Verfolgung einer Steuerstraftat wird auch dadurch unterbrochen, dass dem Beschuldigten die Einleitung des Bußgeldverfahrens bekannt gegeben oder diese Bekanntgabe angeordnet wird.
(3) Abweichend von § 78c Absatz 3 Satz 2 des Strafgesetzbuches verjährt in den in § 370 Absatz 3 Satz 2 Nummer 1 bis 6 genannten Fällen besonders schwerer Steuerhinterziehung die Verfolgung spätestens, wenn seit dem in § 78a des Strafgesetzbuches bezeichneten Zeitpunkt das Zweieinhalbfache der gesetzlichen Verjährungsfrist verstrichen ist.

[448] Margin Numbers 7–9: "b) Den letzten Teilbetrag der Fördermittel erlangte der jeweilige Subventionsempfänger in beiden Fällen außerhalb der zehnjährigen (absoluten) Verjährungsfrist: im Fall IV. 2. c) der Urteilsgründe am 18. Februar 2005 (UA 284), im Fall IV. 2. d) der Urteilsgründe am 26. September 2005 (UA 287).
c) Es kann dahinstehen, ob erst die Abgabe der nach den Zahlungen eingereichten Verwendungsnachweise, die dem Landesverwaltungsamt nach den Förderbestimmungen spätestens sechs Monate nach Beendigung der Maßnahme vorzulegen waren, die jeweilige Tat beendete. Denn die Subventionsnehmer reichten die Verwendungsnachweise schon am 17. Dezember 2004 (UA 31) bzw. am 22. September 2005 (UA 34) - ebenfalls außerhalb des Zeitraums der absoluten Verjährung - beim Landesverwaltungsamt ein.
d) Die von den Sachbearbeitern des Landesverwaltungsamts am 15. Mai 2007 (UA 31) bzw. am 23. April 2008 (UA 35) gefassten Prüfvermerke sind für die Beendigung der Tat im Sinne des § 78a Satz 1 StGB unbeachtlich. Denn bei ihnen handelt es sich lediglich um Verwaltungsinterna ohne Rechtswirkung nach außen, die zudem in keinem zeitlichen Zusammenhang zum Erhalt der Fördermittel oder zur Einreichung der Verwendungsnachweise mehr standen"

bb. Amnesty

Art. 60 German Basic Law[449] **13**

(1) The Federal President appoints and dismisses federal judges, federal civil servants, officers and non-commissioned officers, unless otherwise provided by law.
(2) He shall exercise the right of pardon on behalf of the Federation in individual cases.
(3) He can transfer these powers to other authorities.
(4) Paragraphs 2 to 4 of Article 46 shall apply mutatis mutandis to the Federal President.

National Jurisprudence: BFH, 20.06.1989 – VIII R 82/86 =BFHE 156, 543.

cc. Criminal complaint

Section 77b CC[450] **Deadline for applications**

(1) An offence that can only be prosecuted upon application will not be prosecuted if the person entitled to file the application fails to file the application within a period of three months. If the end of the period falls on a Sunday, a public holiday or a Saturday, the period ends at the end of the next working day.
(2) The period begins at the end of the day on which the person entitled learns about the act and the identity of the perpetrator. For the application of the legal representative and the person with custody, it depends on their knowledge.
(3) If more than one person is entitled to submit an application or if more than one person is involved in the crime, the time limit for and against each runs separately.
(4) If the right to apply has passed to relatives as a result of the death of the injured person, the period ends no earlier than three months and no later than six months after the death of the injured person.

[449] **Art 60 Grundgesetz**
(1) Der Bundespräsident ernennt und entläßt die Bundesrichter, die Bundesbeamten, die Offiziere und Unteroffiziere, soweit gesetzlich nichts anderes bestimmt ist.
(2) Er übt im Einzelfalle für den Bund das Begnadigungsrecht aus.
(3) Er kann diese Befugnisse auf andere Behörden übertragen.
(4) Die Absätze 2 bis 4 des Artikels 46 finden auf den Bundespräsidenten entsprechende Anwendung.

[450] **§ 77b StGB Antragsfrist**
(1) Eine Tat, die nur auf Antrag verfolgbar ist, wird nicht verfolgt, wenn der Antragsberechtigte es unterläßt, den Antrag bis zum Ablauf einer Frist von drei Monaten zu stellen. Fällt das Ende der Frist auf einen Sonntag, einen allgemeinen Feiertag oder einen Sonnabend, so endet die Frist mit Ablauf des nächsten Werktags.
(2) 1Die Frist beginnt mit Ablauf des Tages, an dem der Berechtigte von der Tat und der Person des Täters Kenntnis erlangt. Für den Antrag des gesetzlichen Vertreters und des Sorgeberechtigten kommt es auf dessen Kenntnis an.
(3) Sind mehrere antragsberechtigt oder mehrere an der Tat beteiligt, so läuft die Frist für und gegen jeden gesondert.
(4) Ist durch Tod des Verletzten das Antragsrecht auf Angehörige übergegangen, so endet die Frist frühestens drei Monate und spätestens sechs Monate nach dem Tod des Verletzten.
(5) Der Lauf der Frist ruht, wenn ein Antrag auf Durchführung eines Sühneversuchs gemäß § 380 der Strafprozeßordnung bei der Vergleichsbehörde eingeht, bis zur Ausstellung der Bescheinigung nach § 380 Abs. 1 Satz 3 der Strafprozeßordnung.

(5) The period shall be suspended if the conciliation authority receives an application for an attempt at atonement pursuant to Section 380 of the Code of Criminal Procedure, until the certificate pursuant to Section 380 para. 1 sentence 3 of the Code of Criminal Procedure is issued.

dd. Prosecution before the trial court

14
- rejection of an application to compel public charges according to s. 174 CPC;
- decision not to open main proceedings according to ss. 204, 211 CPC;
- final summary penalty order according to ss. 407, 408 para. 3, 410 para. 3 CPC;
- rejection decision according to s. 408 para. 2 CPC, with which the issuing of a summary penalty order is rejected.

ee. Opposing legal validity (*Rechtskraft*)

- ss. 260, 316, 343 CPC
- Art. 103 para. 3 CPC[451]

15 If there is a foreign obstacle to prosecution under Article 54 of the Schengen Convention in a case of fraud and a regional court has decided due to it, the public prosecutor needs to assess whether this is true as there are cases that resulted in a positive revision of the whole case.[452]

ff. Abatement of action (dispense with prosecution, dissmissal)

16
- Unconditional judicial dismissal of the case according to s. 153 para. 2 CPC;
- Public prosecutor's dismissal of the case by decision according to s. 153a para. 1 CPC;
- Judicial dismissal of the case according to s. 153a para. 2 CPC;[453]
- Dismissal of the case by decision according to s. 206a para. 1 CPC due to an unrecoverable procedural obstacle;
- Dismissal of the case by decision according to s. 206b CPC;
- Dismissal of the case by judgment according to s. 260 para. 3 CPC due to an unrecoverable procedural obstacle

[451] LG Hamburg 24.06.1996 615 KLS 3/93.
[452] BGH, judgment of 28.07.2016 - 3 StR 25/16 =openJur 2016, 8667, Margin number 16: [...] "The indictment of the Oldenburg Public Prosecutor's Office dated June 23, 2008, charges the defendant with the following acts of fraud (Section 263 of the German Criminal Code) [...]: [...]. "The Regional Court wrongly assumed that there was a procedural impediment. Article 54 of the Schengen Convention does not prevent further prosecution of the defendant in the criminal proceedings pending against him in Germany"
[453] FG Rheinland-Pfalz, 20.10.2020 - 5 K 1613/17.

In summary: ss. 153[454], 153a, 153b, 153c (non applicable in EPPO cases), d, e, f et seq., Sec. 156 (*Anklagerücknahme*), 157, 205 (trial stage), s. 444 (legal entities)

b) Urgent measures of national authorities for securing an investigation and prosecution

In order to ensure that no evidence is lost, police authorities – especially the *Landeskriminalämter* and the police of the *Länder* specialised in economic crime as well as the customs and tax police authorities will need to take urgent measures.[455] The provisions that apply in this regard read as follows: **17**

Criminal Procedure Code

s. 163[456] Role of police in preliminary investigation

(1) The authorities and officers of the police force ***are to investigate offences and take all measures which may not be deferred in order to prevent the concealment of facts***. To this end, they shall be authorised to request and, in exigent circumstances, to demand information from all authorities, as well as to conduct investigations of any kind, insofar as there are no other statutory provisions which specifically regulate their powers.

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[454] VG Regensburg, Gerichtsbescheid vom 07.02.2019 - RO 5 K 17.1019 =openJur 2020, 51121.

[455] Kaligin 2022, pp. 547 et seq.

[456] **§ 163 Aufgaben der Polizei im Ermittlungsverfahren CPC**

(1) Die Behörden und Beamten des Polizeidienstes ***haben Straftaten zu erforschen und alle keinen Aufschub gestattenden Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten***. Zu diesem Zweck sind sie befugt, alle Behörden um Auskunft zu ersuchen, bei Gefahr im Verzug auch, die Auskunft zu verlangen, sowie ***Ermittlungen jeder Art vorzunehmen***, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln.

(2) Die Behörden und Beamten des Polizeidienstes übersenden ihre Verhandlungen ohne Verzug der Staatsanwaltschaft. Erscheint die schleunige Vornahme richterlicher Untersuchungshandlungen erforderlich, so kann die Übersendung unmittelbar an das Amtsgericht erfolgen.

(3) Zeugen sind verpflichtet, auf Ladung vor Ermittlungspersonen der Staatsanwaltschaft zu erscheinen und zur Sache auszusagen, wenn der Ladung ein Auftrag der Staatsanwaltschaft zugrunde liegt. Soweit nichts anderes bestimmt ist, gelten die Vorschriften des Sechsten Abschnitts des Ersten Buches entsprechend. Die eidliche Vernehmung bleibt dem Gericht vorbehalten.

(4) Die Staatsanwaltschaft entscheidet

1.über die Zeugeneigenschaft oder das Vorliegen von Zeugnis- oder Auskunftsverweigerungsrechten, sofern insoweit Zweifel bestehen oder im Laufe der Vernehmung aufkommen,

2.über eine Gestattung nach § 68 Absatz 3 Satz 1, Angaben zur Person nicht oder nur über eine frühere Identität zu machen,

3.über die Beiordnung eines Zeugenbeistands nach § 68b Absatz 2 und

4.bei unberechtigtem Ausbleiben oder unberechtigter Weigerung des Zeugen über die Verhängung der in den §§ 51 und 70 vorgesehenen Maßregeln; dabei bleibt die Festsetzung der Haft dem nach § 162 zuständigen Gericht vorbehalten.

Im Übrigen trifft die erforderlichen Entscheidungen die die Vernehmung leitende Person.

(5) Gegen Entscheidungen von Beamten des Polizeidienstes nach § 68b Absatz 1 Satz 3 sowie gegen Entscheidungen der Staatsanwaltschaft nach Absatz 4 Satz 1 Nummer 3 und 4 kann gerichtliche Entscheidung durch das nach § 162 zuständige Gericht beantragt werden. Die §§ 297 bis 300, 302, 306 bis 309, 311a und 473a gelten jeweils entsprechend. Gerichtliche Entscheidungen nach Satz 1 sind unanfechtbar.

(6) Für die Belehrung des Sachverständigen durch Beamte des Polizeidienstes gelten § 52 Absatz 3 und § 55 Absatz 2 entsprechend. In den Fällen des § 81c Absatz 3 Satz 1 und 2 gilt § 52 Absatz 3 auch bei Untersuchungen durch Beamte des Polizeidienstes sinngemäß.

(7) § 185 Absatz 1 und 2 des Gerichtsverfassungsgesetzes gilt entsprechend. [...]

(2) The authorities and officers of the police service ***forward their hearings to the public prosecutor's office without delay***. If it appears necessary to carry out judicial investigative measures quickly, the documents can be sent directly to the district court.
(3) ***Witnesses are obliged to appear before investigators of the public prosecutor's office and to testify on the matter if the summons is based on an order from the public prosecutor's office***. Unless otherwise specified, the provisions of the sixth section of the first book apply accordingly. The sworn questioning is reserved for the court. [...]"[457]

18 **Administration of Offences Act**

s. 53[458] **Tasks of the police**

(1) The authorities and officers of the police service shall, at their best discretion, investigate administrative offences and ***make all orders that cannot be postponed in order to prevent the matter from being obscured***. Unless otherwise provided in this Act, when investigating administrative offences they have the same rights and obligations as when prosecuting criminal offences. They send their files immediately to the administrative authority, in cases of connection (section 42) to the public prosecutor's office.
(2) The police officers who are appointed investigators of the public prosecutor's office/civil servants (Section 152 of the Courts Constitution Act) ***may order seizures, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure*** that apply to them.

– see ss. 97, 105 et seq. CPC

19 **Market Organisation Act (MOG)**

s. 37 Powers of the customs authorities

(1)[459] The public prosecutor's office can start in case of

[457] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi; Translation completely revised and regularly updated by Ute Reusch. No highliting in the original.
[458] See **§ 53 Aufgaben der Polizei OWiG**
(1) 1Die Behörden und Beamten des Polizeidienstes haben nach pflichtgemäßem Ermessen Ordnungswidrigkeiten zu erforschen und dabei alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. 2Sie haben bei der Erforschung von Ordnungswidrigkeiten, soweit dieses Gesetz nichts anderes bestimmt, dieselben Rechte und Pflichten wie bei der Verfolgung von Straftaten. 3Ihre Akten übersenden sie unverzüglich der Verwaltungsbehörde, in den Fällen des Zusammenhangs (§ 42) der Staatsanwaltschaft.
(2) Die Beamten des Polizeidienstes, die zu Ermittlungspersonen der Staatsanwaltschaft bestellt sind (§ 152 des Gerichtsverfassungsgesetzes), können nach den für sie geltenden Vorschriften der Strafprozeßordnung Beschlagnahmen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen anordnen.
[459] **§ 37 MOG**
(1) Die Staatsanwaltschaft kann bei
1. Straftaten nach den in § 35 bezeichneten Strafvorschriften,
2. Straftaten nach den §§ 263 und 264 des Strafgesetzbuches, die sich beziehen auf Vergünstigungen (§ 6) und Leistungen der Interventionsstelle im Rahmen von Interventionen (§ 7), die im Zusammenhang mit Regelungen

1. Criminal offences according to the penal provisions specified in Section 35,
2. Criminal offences under Sections 263 and 264 of the Criminal Code that relate to benefits (Section 6) and services provided by the intervention agency in the context of interventions (Section 7) in connection with regulations within the meaning of Section 1 para. 2 for the purpose of common Market organisations are granted, as well as compensation amounts according to s. 39 and
3. favouring a person who has committed a criminal offence under number 1 or 2,
Investigations (s. 161 para. 1 sentence 1 Criminal Procedure Code), which can also be carried out by the main customs offices or the customs investigation offices. Sentence 1 applies to the administrative authority in the case of administrative offences in accordance with the fine provisions specified in Section 35 and in the case of administrative offences in accordance with Section 36.
(2) The ***main customs offices and the customs investigation offices and their officials*** **shall also investigate and prosecute criminal and administrative offences** of the type referred to in para. 1 without being requested to do so by the public prosecutor's office or the administrative authority, if these involve bringing into or out of the scope of this Act, the Imports or exports relating to the manufacture, use or treatment of market regulation goods that are subject to official monitoring by the federal tax authorities in accordance with this Act or the statutory ordinances issued on the basis of this Act. 2 The same applies to other criminal and administrative offences if there is imminent danger. 3 Section 163 of the Code of Criminal Procedure and s. 53 of the law on administrative offences remain unaffected.
(3) In the cases of paragraphs 1 and 2, the officers of ***the main customs offices and the customs investigation offices have the rights and duties of the police officers*** under the

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im Sinne des § 1 Absatz 2 zu Zwecken der gemeinsamen Marktorganisationen gewährt werden, sowie auf Ausgleichsbeträge nach § 39 und
3. Begünstigung einer Person, die eine Straftat nach Nummer 1 oder 2 begangen hat, Ermittlungen (§ 161 Absatz 1 Satz 1 Strafprozessordnung) auch durch die Hauptzollämter oder die Zollfahndungsämter vornehmen lassen. Satz 1 gilt für die Verwaltungsbehörde bei Ordnungswidrigkeiten nach den in § 35 bezeichneten Bußgeldvorschriften und bei Ordnungswidrigkeiten nach § 36 entsprechend.
(2) Die Hauptzollämter und die Zollfahndungsämter sowie deren Beamte haben auch ohne Ersuchen der Staatsanwaltschaft oder der Verwaltungsbehörde Straftaten und Ordnungswidrigkeiten der in Absatz 1 bezeichneten Art zu erforschen und zu verfolgen, wenn diese das Verbringen in den oder aus dem Geltungsbereich dieses Gesetzes, die Einfuhr oder Ausfuhr, die Herstellung, Verwendung oder Behandlung von Marktordnungswaren betreffen, die der amtlichen Überwachung durch die Bundesfinanzverwaltung nach diesem Gesetz oder den auf Grund dieses Gesetzes erlassenen Rechtsverordnungen unterliegen. Dasselbe gilt für die sonstigen Straftaten und Ordnungswidrigkeiten, soweit Gefahr im Verzug ist. § 163 der Strafprozessordnung und § 53 des Gesetzes über Ordnungswidrigkeiten bleiben unberührt.
(3) In den Fällen der Absätze 1 und 2 haben die Beamten der Hauptzollämter und der Zollfahndungsämter die Rechte und Pflichten der Polizeibeamten nach den Vorschriften der Strafprozessordnung und des Gesetzes über Ordnungswidrigkeiten. Sie sind insoweit Ermittlungspersonen der Staatsanwaltschaft.
(4) In diesen Fällen können die Hauptzollämter und Zollfahndungsämter sowie deren Beamte im Bußgeldverfahren Beschlagnahmen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung vornehmen; unter den Voraussetzungen des § 111p Absatz 2 Satz 2 der Strafprozessordnung können auch die Hauptzollämter die Notveräußerung anordnen.

provisions of the Code of Criminal Procedure and the Act on Administrative Offences. 2 In this respect, they are investigators of the public prosecutor's office.
(4) In these cases, ***the main customs offices and customs investigation offices and their officials may carry out confiscations, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure*** applicable to investigators of the public prosecutor's office; under the conditions of s. 111p paragraph 2 sentence 2 of the Code of Criminal Procedure, the main customs offices can also order the emergency sale.

20 **Foreign Trade and Payments Act**

Section 21[460] **Tasks and powers of the customs authorities Foreign**

(1) In the case of criminal and administrative offences pursuant to Sections 17 and 18, with the exception of Section 18 para. 1b and 2 no. 8, and pursuant to Section 19, with the exception of Section 19 para. 1 no. 2, of this Act or pursuant to Section 19 para. 1 to 3, Section 20 paras. 1 and 2, Section 20a paras. 1 to 3, in each case also in conjunction with Section 21, or pursuant to Section 22a para. 1 no. 4, 5 and 7 of the War Weapons Control Act, the public prosecution office can have investigations carried out pursuant to Section 161 para. 1 sentence 1 of the Code of Criminal Procedure by the main customs offices or the customs investigation offices. The administrative authority within the meaning of Section 22 para. 3 sentence 1 can in the cases of sentence 1 also have investigations carried out by a different main customs office or the customs investigation offices.
(2) ***Even without a request from the public prosecution office or the administrative authority, the main customs offices and the customs investigation offices and their***

[460] **§ 21 Aufgaben und Befugnisse der Zollbehörden Außenwirtschaftsgesetz (AWG)**
(1) Die Staatsanwaltschaft kann bei Straftaten und Ordnungswidrigkeiten nach den §§ 17 und 18, mit Ausnahme von § 18 Absatz 1b und 2 Nummer 8, sowie nach § 19, mit Ausnahme von § 19 Absatz 1 Nummer 2, dieses Gesetzes oder nach § 19 Absatz 1 bis 3, § 20 Absatz 1 und 2, § 20a Absatz 1 bis 3, jeweils auch in Verbindung mit § 21, oder nach § 22a Absatz 1 Nummer 4, 5 und 7 des Gesetzes über die Kontrolle von Kriegswaffen Ermittlungen nach § 161 Absatz 1 Satz 1 der Strafprozessordnung auch durch die Hauptzollämter oder die Zollfahndungsämter vornehmen lassen. Die Verwaltungsbehörde im Sinne des § 22 Absatz 3 Satz 1 kann in den Fällen des Satzes 1 Ermittlungen auch durch ein anderes Hauptzollamt oder die Zollfahndungsämter vornehmen lassen.
(2) Die Hauptzollämter und die Zollfahndungsämter sowie deren Beamte ***haben auch ohne Ersuchen der Staatsanwaltschaft oder der Verwaltungsbehörde Straftaten und Ordnungswidrigkeiten*** der in Absatz 1 bezeichneten Art zu erforschen und zu verfolgen, wenn diese die Ausfuhr, Einfuhr, Verbringung oder Durchfuhr von Waren betreffen. Dasselbe gilt, soweit Gefahr im Verzug ist. § 163 der Strafprozessordnung und § 53 des Gesetzes über Ordnungswidrigkeiten bleiben unberührt.
(3) In den Fällen der Absätze 1 und 2 haben die Beamten der Hauptzollämter und der Zollfahndungsämter die Rechte und Pflichten der Polizeibeamten nach den Bestimmungen der Strafprozessordnung und des Gesetzes über Ordnungswidrigkeiten. Sie sind insoweit Ermittlungspersonen der Staatsanwaltschaft.
(4) In den Fällen der Absätze 1 und 2 können die Hauptzollämter und Zollfahndungsämter sowie deren Beamte im Bußgeldverfahren Beschlagnahmen, Durchsuchungen und Untersuchungen vornehmen sowie sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung ergreifen. Unter den Voraussetzungen des § 111p Absatz 2 Satz 2 der Strafprozessordnung können auch die Hauptzollämter die Notveräußerung anordnen.

officials must investigate and prosecute criminal and administrative offences of the nature cited in para. 1 if these are related to the export, import, transfer or transit of material goods. The same applies to the extent that there is imminent danger. ***This shall be without prejudice to Section 163 of the Code of Criminal Procedure and Section 53 of the Act on Administrative Offences***.
(3) In the cases of paras. 1 and 2, the officials of the main customs offices and the customs investigation offices shall have the rights and obligations of police officers pursuant to the provisions of the Code of Criminal Procedure and the Act on Administrative Offences. To this extent they are thus investigators of the public prosecution office.
(4) In the cases of paras. 1 and 2, the main customs offices and customs investigation offices and their officials can in fine proceedings undertake seizures, searches and inquiries and can take other measures pursuant to the provisions of the Code of Criminal Procedure applying to investigators of the public prosecution office. Under the preconditions of Section 111p para. 2 sentence 2 of the Code of Criminal Procedure, also the main customs offices can order an emergency sale"[461]

aa. Arrest

- ss. 127 et seq. CPC **21**

Section 9a Other Measures to Ensure Law Enforcement and Enforcement
Section 131 para. 1[462] **(Notice of arrest)** (1) On the basis of an arrest warrant or a placement order, the judge or the public prosecutor's office and, **if there is imminent/urgent danger**, their investigators (section 152 of the Courts Constitution Act) ***may issue a notice of arrest***.

[461] Translation provided by the Language Service of the Federal Ministry for Economic Affairs and Climate Action.
[462] Abschnitt 9a Strafprozessordnung
Weitere Maßnahmen zur Sicherstellung der Strafverfolgung und Strafvollstreckung
§ 131 Ausschreibung zur Festnahme
(1) Auf Grund eines Haftbefehls oder eines Unterbringungsbefehls können der Richter oder die Staatsanwaltschaft und, wenn Gefahr im Verzug ist, ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) die Ausschreibung zur Festnahme veranlassen.
(2) Liegen die Voraussetzungen eines Haftbefehls oder Unterbringungsbefehls vor, dessen Erlass nicht ohne Gefährdung des Fahndungserfolges abgewartet werden kann, so können die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) Maßnahmen nach Absatz 1 veranlassen, wenn dies zur vorläufigen Festnahme erforderlich ist. Die Entscheidung über den Erlass des Haft- oder Unterbringungsbefehls ist unverzüglich, spätestens binnen einer Woche herbeizuführen.
(3) Bei einer Straftat von erheblicher Bedeutung können in den Fällen der Absätze 1 und 2 der Richter und die Staatsanwaltschaft auch Öffentlichkeitsfahndungen veranlassen, wenn andere Formen der Aufenthaltsermittlung erheblich weniger Erfolg versprechend oder wesentlich erschwert wären. Unter den gleichen Voraussetzungen steht diese Befugnis bei Gefahr im Verzug und wenn der Richter oder die Staatsanwaltschaft nicht rechtzeitig erreichbar ist auch den Ermittlungspersonen der Staatsanwaltschaft (§ 152 des Gerichtsverfassungsgesetzes) zu. In den Fällen des Satzes 2 ist die Entscheidung der Staatsanwaltschaft unverzüglich herbeizuführen. Die Anordnung tritt außer Kraft, wenn diese Bestätigung nicht binnen 24 Stunden erfolgt.

bb. Detention

22 - ss. 112 et seq. CPC

cc. Search

23 - ss. 163 CPC, 37 para. 4 MOG, 53 para. 2 OwiG, 21 para. 3 AWG (see above)

dd. Seizure

- ss. 163 CPC, 37 para. 4 MOG, 53 para. 2 OwiG, 21 para. 3 AMG (see above)

c) Competent national authorities in paras 3 to 7 of Art. 27

24 Art. 27 of the EPPO Regulation relates to the situation that a national authority has already due to its own competence derived from national law and without having any prior contact to the EPPO and its organs initiated an investigation while the EPPO realizes it could be competent for the same conduct, too. If the EPPO now decides to exercise its evocation right according to Art. 27 EPPO Regulation it needs to inform the national authorities in the Member States.

Table 12: Competent authorities under Art. 27 paras 3 to 7 EPPO Regulation

"**Competent national authorities**"	**Competent authority**: "The authority responsible for the procedure depending on Art. 24 para. 2 EPPO Regulation. If necessary, a public prosecutor's office or a tax authority to which the procedure after the notification was transferred."[463]

d) Provisions regarding the finalization of the national investigation, para. 7

25 The following national provisions are of importance to para. 7 of Art. 27 of the EPPO Regulation:

26

Section 169a CPC[464] **Note of conclusion of investigations**
If the public prosecution office is considering preferring public charges, it shall make a note in the files that the investigations have been concluded.

(4) Der Beschuldigte ist möglichst genau zu bezeichnen und soweit erforderlich zu beschreiben; eine Abbildung darf beigefügt werden. Die Tat, derer er verdächtig ist, Ort und Zeit ihrer Begehung sowie Umstände, die für die Ergreifung von Bedeutung sein können, können angegeben werden.
(5) Die §§ 115 und 115a gelten entsprechend.

[463] Mitteilung der Regierung der Bundesrepublik Deutschland an die Europäische Staatsanwaltschaft vom 18. Juni 2021.

[464] **§ 169a Vermerk über den Abschluss der Ermittlungen**
Erwägt die Staatsanwaltschaft, die öffentliche Klage zu erheben, so vermerkt sie den Abschluß der Ermittlungen in den Akten.

Section 170 CPC[465] **Decision to prefer public charges**
(1) If the investigations offer sufficient reason to prefer public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court.
(2) Otherwise, the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or a warrant of arrest was issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.

Section 171 CPC[466] **Order terminating proceedings**
If the public prosecution office does not grant an application to prefer public charges or if, after conclusion of the investigations, it orders the proceedings to be terminated, it shall notify the applicant, indicating the reasons. If the applicant is also the aggrieved person, the order shall indicate to him the possibility of contesting the decision and the time limit provided therefor (section 172 para. 1). Section 187 para. 1 sentence 1 and para. 2 of the Courts Constitution Act shall apply accordingly to aggrieved persons who would be entitled to join a public prosecution as private accessory prosecutor pursuant to section 395, insofar as they make a request for a translation. *Nota bene***:** ss. 172–177 CPC do **not** apply in EPPO proceedings].

But see as well s. 61 Administrative Offences Act in administrative proceedings. **27**

s. 61 OwiG Termination of the investigation[467]
As soon as the administrative authority has concluded the investigation, it shall note this in the files if it is considering further prosecution of the administrative offence.

And see → **s. 169a CPC** above for criminal proceedings.

[465] **§ 170 Entscheidung über eine Anklageerhebung**
(1) Bieten die Ermittlungen genügenden Anlaß zur Erhebung der öffentlichen Klage, so erhebt die Staatsanwaltschaft sie durch Einreichung einer Anklageschrift bei dem zuständigen Gericht.
(2) Andernfalls stellt die Staatsanwaltschaft das Verfahren ein. Hiervon setzt sie den Beschuldigten in Kenntnis, wenn er als solcher vernommen worden ist oder ein Haftbefehl gegen ihn erlassen war; dasselbe gilt, wenn er um einen Bescheid gebeten hat oder wenn ein besonderes Interesse an der Bekanntgabe ersichtlich ist.
[466] **§ 171 Einstellungsbescheid**
Gibt die Staatsanwaltschaft einem Antrag auf Erhebung der öffentlichen Klage keine Folge oder verfügt sie nach dem Abschluß der Ermittlungen die Einstellung des Verfahrens, so hat sie den Antragsteller unter Angabe der Gründe zu bescheiden. In dem Bescheid ist der Antragsteller, der zugleich der Verletzte ist, über die Möglichkeit der Anfechtung und die dafür vorgesehene Frist (§ 172 Abs. 1) zu belehren. § 187 Absatz 1 Satz 1 und Absatz 2 des Gerichtsverfassungsgesetzes gilt entsprechend für Verletzte, die nach § 395 der Strafprozessordnung berechtigt wären, sich der öffentlichen Klage mit der Nebenklage anzuschließen, soweit sie einen Antrag auf Übersetzung stellen"
[467] **§ 61 Abschluß der Ermittlungen**
Sobald die Verwaltungsbehörde die Ermittlungen abgeschlossen hat, vermerkt sie dies in den Akten, wenn sie die weitere Verfolgung der Ordnungswidrigkeit erwägt.

e) Actions if "decision to open Art. 26 para. 7 EPPO Regulation/not open a case"

28 See → mainly Art. 26 above and s. 160 et seq. CPC. Already at the **start** of investigations, the EDP may consider whether there are **several different acts concerning PIF crimes**. If this is the case, the EDP may at a later stage apply s. 154 CPC.

29 It is possible to **discontinue prosecution of an offence when multiple offences** are under investigation, provided the conditions of s**. 154 CPC** are met. In such cases, a partial waiver of prosecution should ideally be sought at an early stage of the proceedings. This requires careful consideration of s. 264 CPC, which governs the concept of the **same procedural offence** (*dieselbe Tat*) and is closely tied to the material concurrence (*Konkurrenzen*) of the underlying substantive offences – e.g. s. 263 CC (fraud) in relation to s. 370 of the Fiscal Code (AO), or VAT-related offences under the VAT Act (UStG) in concurrence with s. 266 CC (breach of trust).[468]

30 S. **154a CPC** serves a different function, as practitioners familiar with indictments in national proceedings will know: it is intended to **streamline the indictment** by omitting less significant aspects of the same procedural offence. However, this presupposes that the omitted acts fall within the same procedural offence (!) as defined in s. 264 CPC.[469] The legal test applied here is derived from the German Federal Court of Justice's so-called unofficial five-point theory, which examines continuity of time, place, and other connecting elements – ensuring that no procedural break (*Zäsur*) and a different procedural offence has occurred.

aa. Opening, ss. 12 EUStAG, 492 CPC

31 The German legislature has assigned further tasks to the German EDP. If an investigation is opened by virtue of Art. 26 para. 1 EPPO Regulation, he/she must notify the national public prosecutors:

s. 12 para. 1 EUStAG Notification obligations of the Delegated European Public Prosecutor's Office
(1)[470] If the European Public Prosecutor's Office has initiated preliminary proceedings pursuant to Article 26 para. 1 of Regulation (EU) 2017/1939 or exercised its right of evocation pursuant to Article 27 para. 1 of this Regulation, the Delegated European

[468] Schmitt 2024, § 154 StPO mn. 1b.
[469] Schmitt 2024, § 154a StPO mn. 1a.
[470] **§ 12 EUStAG Mitteilungspflichten des Delegierten Europäischen Staatsanwalts**
(1) Hat die Europäische Staatsanwaltschaft gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 ein Ermittlungsverfahren eingeleitet oder gemäß Artikel 27 Absatz 1 dieser Verordnung ihr Evokationsrecht ausgeübt, übermittelt der Delegierte Europäische Staatsanwalt die gemäß § 492 Absatz 2 Satz 1 der Strafprozessordnung in das staatsanwaltschaftliche Verfahrensregister einzutragenden Daten an das beim Bundesamt für Justiz geführte Register. […]

Public Prosecutor ***shall transmit the data to be entered in the Public Prosecutor's procedural register pursuant to Section 492 para. 2, first sentence, of the Code of Criminal Procedure to the register kept at the Federal Office of Justice***. […]

s. 492 CPC[471] **Central Public Prosecutor's Register of Proceedings** (1) The Federal Office of Justice (register authority) shall maintain a central register of proceedings of the public prosecutor's office.
(2) The register shall contain
1. the personal data of the accused and, where necessary, other features suitable for identification purposes
2. the competent authority and the file number,
3. the more detailed description of the offences, in particular the dates of the offences, the places of the offences and the amount of any damage,
4. the allegations of the offences by stating the legal provisions,

[471] **§ 492 StPO Zentrales staatsanwaltschaftliches Verfahrensregister**
(1) Das Bundesamt für Justiz (Registerbehörde) führt ein zentrales staatsanwaltschaftliches Verfahrensregister.
(2) 1In das Register sind
1. die Personendaten des Beschuldigten und, soweit erforderlich, andere zur Identifizierung geeignete Merkmale,
2. die zuständige Stelle und das Aktenzeichen,
3. die nähere Bezeichnung der Straftaten, insbesondere die Tatzeiten, die Tatorte und die Höhe etwaiger Schäden,
4. die Tatvorwürfe durch Angabe der gesetzlichen Vorschriften,
5. die Einleitung des Verfahrens sowie die Verfahrenserledigungen bei der Staatsanwaltschaft und bei Gericht nebst Angabe der gesetzlichen Vorschriften
einzutragen. 2Die Daten dürfen nur für Strafverfahren gespeichert und verändert werden.
(3) 1Die Staatsanwaltschaften teilen die einzutragenden Daten der Registerbehörde zu dem in Absatz 2 Satz 2 genannten Zweck mit. 2Auskünfte aus dem Verfahrensregister dürfen nur Strafverfolgungsbehörden für Zwecke eines Strafverfahrens erteilt werden. 3Dem Bundeskriminalamt dürfen Auskünfte auch erteilt werden, soweit dies im Einzelfall zur Erfüllung seiner Aufgaben nach § 5 Absatz 1, § 6 Absatz 1 oder § 7 Absatz 1 und 2 des Bundeskriminalamtgesetzes erforderlich ist. 4§ 5 Abs. 5 Satz 1 Nr. 2 des Waffengesetzes, § 8a Absatz 5 Satz 1 Nummer 2 des Sprengstoffgesetzes, § 7 Absatz 3 Satz 1 Nummer 3 des Luftsicherheitsgesetzes, § 12 Absatz 1 Nummer 2 des Sicherheitsüberprüfungsgesetzes und § 31 Absatz 4a Satz 1 des Geldwäschegesetzes bleiben unberührt; die Auskunft über die Eintragung wird insoweit im Einvernehmen mit der Staatsanwaltschaft, die die personenbezogenen Daten zur Eintragung in das Verfahrensregister mitgeteilt hat, erteilt, wenn hiervon eine Gefährdung des Untersuchungszwecks nicht zu besorgen ist.
(4) 1Die in Absatz 2 Satz 1 Nummer 1 und 2 und, wenn dies erforderlich ist, Nummer 3 und 4 genannten Daten dürfen nach Maßgabe des § 18 Abs. 3 des Bundesverfassungsschutzgesetzes, auch in Verbindung mit § 10 Abs. 2 des Gesetzes über den Militärischen Abschirmdienst und § 10 Absatz 3 des BND-Gesetzes, auf Ersuchen auch an die Verfassungsschutzbehörden des Bundes und der Länder, den Militärischen Abschirmdienst und den Bundesnachrichtendienst übermittelt werden. 2§ 18 Abs. 5 Satz 2 des Bundesverfassungsschutzgesetzes gilt entsprechend.
(4a) 1Kann die Registerbehörde eine Mitteilung oder ein Ersuchen einem Datensatz nicht eindeutig zuordnen, übermittelt sie an die ersuchende Stelle zur Identitätsfeststellung Datensätze zu Personen mit ähnlichen Personalien. 2Nach erfolgter Identifizierung hat die ersuchende Stelle alle Daten, die sich nicht auf die betroffene Person beziehen, unverzüglich zu löschen. 3Ist eine Identifizierung nicht möglich, sind alle übermittelten Daten zu löschen. 4In der Rechtsverordnung nach § 494 Abs. 4 ist die Anzahl der Datensätze, die auf Grund eines Abrufs übermittelt werden dürfen, auf das für eine Identifizierung notwendige Maß zu begrenzen.
(5) 1Die Verantwortung für die Zulässigkeit der Übermittlung trägt der Empfänger. 2Die Registerbehörde prüft die Zulässigkeit der Übermittlung nur, wenn besonderer Anlaß hierzu besteht.
(6) Die Daten dürfen unbeschadet des Absatzes 3 Satz 3 und 4 sowie des Absatzes 4 nur in Strafverfahren verwendet werden.

5. the initiation of the proceedings as well as the completion of the proceedings at the public prosecutor's office and at the court, together with an indication of the statutory provisions.
shall be entered. The data may only be stored and changed for criminal proceedings.
(3) The public prosecutor's offices shall notify the register authority of the data to be entered for the purpose specified in paragraph 2, sentence 2. [2]Information from the register of proceedings may only be provided to prosecuting authorities for the purposes of criminal proceedings. The Federal Criminal Police Office may also be provided with information insofar as this is necessary in individual cases for the fulfilment of its duties under section 5 para. 1, section 6 para. 1 or section 7 paras. 1 and 2 of the Federal Criminal Police Office Act. Section 5 para. 5 sentence 1 no. 2 of the Weapons Act, s. 8a para. 5 sentence 1 no. 2 of the Explosives Act, s. 7 para. 3 sentence 1 no. 3 of the Aviation Security Act, s. 12 para. 1 no. 2 of the Security Clearance Act and s. 31 para. 4a sentence 1 of the Money Laundering Act shall remain unaffected; in this respect, information on the entry shall be provided in agreement with the public prosecutor's office which has communicated the personal data for entry in the register of proceedings, if this is not likely to jeopardise the purpose of the investigation.
(4) The data mentioned in paragraph 2, first sentence, numbers 1 and 2 and, if necessary, numbers 3 and 4 may also be transmitted to the Federal and Länder authorities for the protection of the constitution, the Military Counter-Intelligence Service and the Federal Intelligence Service upon request in accordance with section 18, paragraph 3 of the Federal Act for the Protection of the Constitution, also in conjunction with section 10, paragraph 2 of the Military Counter-Intelligence Service Act and section 10, paragraph 3 of the Federal Intelligence Service Act. Section 18 para. 5 sentence 2 of the Federal Act for the Protection of the Constitution shall apply accordingly.
(4a) If the register authority cannot clearly assign a notification or a request to a data record, it shall transmit data records on persons with similar personal data to the requesting authority for the purpose of establishing their identity. Once identification has been made, the requesting authority shall immediately delete all data not relating to the person concerned. If identification is not possible, all transmitted data shall be deleted. 4In the statutory instrument under s. 494 para. 4, the number of data records that may be transmitted on the basis of a request shall be limited to the extent necessary for identification.
(5) The recipient shall be responsible for the permissibility of the transmission. The register authority shall examine the permissibility of the transmission only if there is special cause to do so.
(6) The data may only be used in criminal proceedings, notwithstanding paragraph 3, sentences 3 and 4, and paragraph 4.

32 If an investigation procedure is to be started, the competent national authorities must be informed:

s. 12 para. 2 EUStAG:[472] (2) The Delegated European Public Prosecutor ***shall notify*** the initiation of the pre-trial proceedings pursuant to Article 26 para. 1 of Regulation (EU) 2017/1939 to the public prosecutor's office which, pursuant to Section 142 in conjunction with Section 143 of the Judicature Act, is competent to prosecute criminal offences pursuant to Article 22 of Regulation (EU) 2017/1939 if the European Public Prosecutor's Office does not take over the prosecution.

bb. Art. 26 para. 7 EPPO Regulation

Thus these tasks can be summarised as follows: **33**

In order to fulfil the requisite of § 12 Notification obligations of the European Delegated Public Prosecutor EUStAG the EDP and the assistants need to determine the office with the help of ss. 143 GVG, 7 et seq. CPC

s. 143 GVG[473]
(1) The local jurisdiction of the public prosecutor's office shall be determined by the local jurisdiction of the court in which the public prosecutor's office is located. If there is no competent court within the scope of this Act or if such court has not been determined, the public prosecutor's office which first dealt with the case shall have jurisdiction. If, in the cases referred to in sentence 2, the jurisdiction of a court is established, the proceedings shall be transferred to the public prosecutor's office having jurisdiction pursuant to sentence 1 as soon as all necessary measures have been taken to safeguard proceedings and the state of proceedings permits an orderly transfer. Sentence 3 shall apply mutatis mutandis if the jurisdiction of a public prosecutor's office has ceased and another public prosecutor's office has become competent. […]

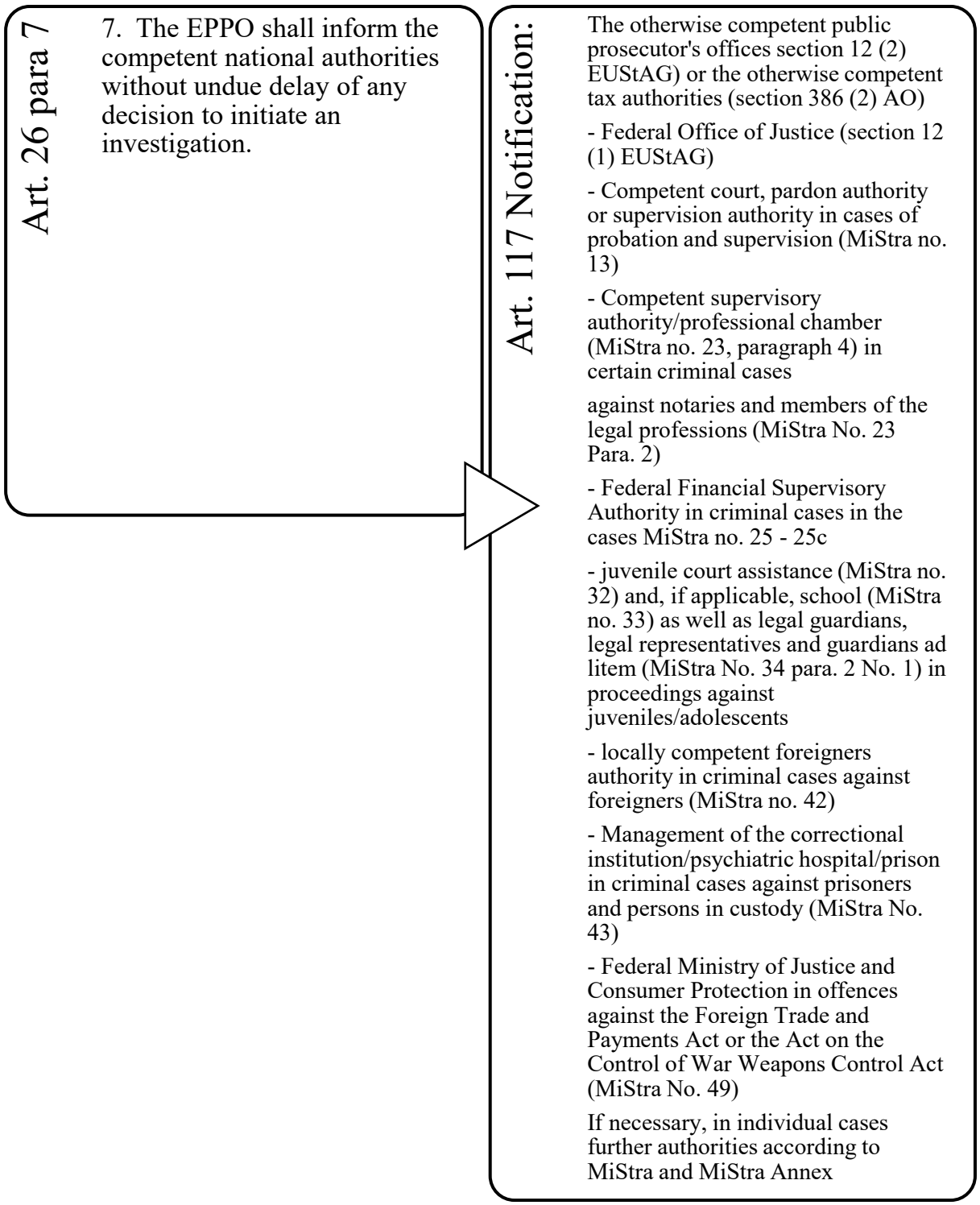
The sections from the CPC determine the competent prosecutor on German territory:
Section 7 Venue at place of commission
Section 8 Venue at domicile or habitual residence
Section 9 Venue at place of apprehension
Section 10 Venue for offences committed abroad on-board ships or aircraft

[472] **§ 12 EUStAG Mitteilungspflichten des Delegierten Europäischen Staatsanwalts**
[…] (2) Der Delegierte Europäische Staatsanwalt teilt die Einleitung des Ermittlungsverfahrens gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 der Staatsanwaltschaft mit, die nach § 142 in Verbindung mit § 143 des Gerichtsverfassungsgesetzes für die Verfolgung von Straftaten gemäß Artikel 22 der Verordnung (EU) 2017/1939 zuständig ist, wenn die Europäische Staatsanwaltschaft nicht die Verfolgung übernimmt.

[473] **§ 143 GVG** (1) Die örtliche Zuständigkeit der Staatsanwaltschaft bestimmt sich nach der örtlichen Zuständigkeit des Gerichts, bei dem die Staatsanwaltschaft besteht. Fehlt es im Geltungsbereich dieses Gesetzes an einem zuständigen Gericht oder ist dieses nicht ermittelt, ist die zuerst mit der Sache befasste Staatsanwaltschaft zuständig. Ergibt sich in den Fällen des Satzes 2 die Zuständigkeit eines Gerichts, ist das Verfahren an die nach Satz 1 zuständige Staatsanwaltschaft abzugeben, sobald alle notwendigen verfahrenssichernden Maßnahmen ergriffen worden sind und der Verfahrensstand eine geordnete Abgabe zulässt. Satz 3 gilt entsprechend, wenn die Zuständigkeit einer Staatsanwaltschaft entfallen ist und eine andere Staatsanwaltschaft zuständig geworden ist.

Section 10a Venue for offences committed abroad at sea
Section 11 Venue for offences committed abroad by extraterritorial German nationals and German civil servants
Section 11a
Venue for offences committed abroad by soldiers on special foreign deployment
Section 12 Concurrence of more than one venue
Section 13 Venue for connected criminal cases

Figure 8: Art. 26 para. 7 EPPO Regulation **34**



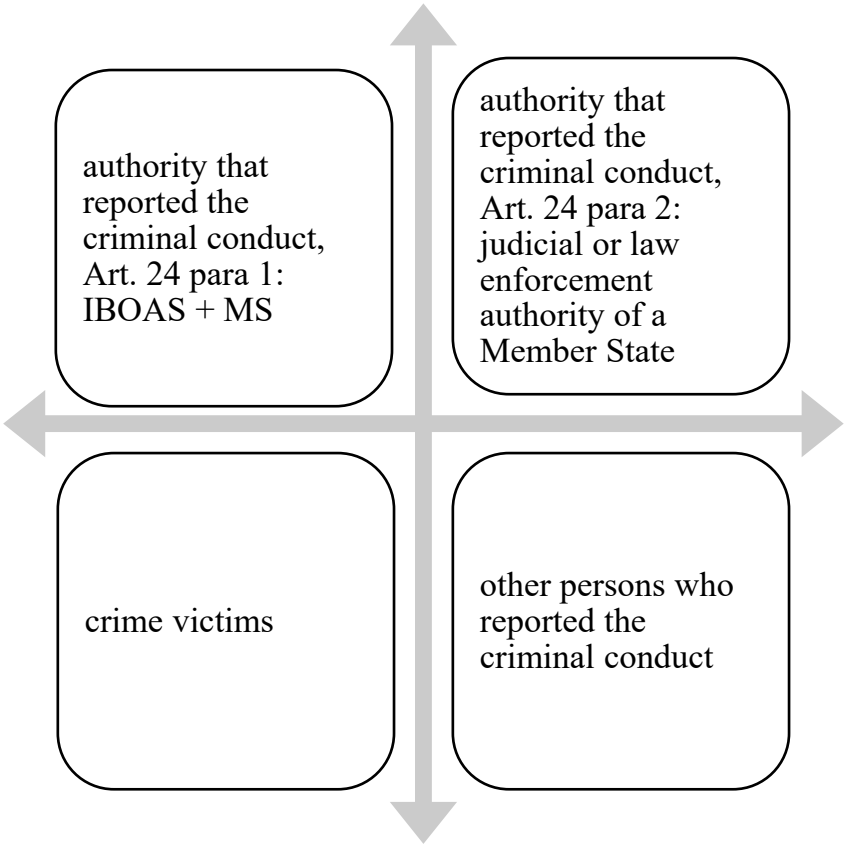
See https://www.eppo.europa.eu/sites/default/files/2021-11/12-DE.pdf.

Acc. to the German Notification to the EPPO: "The otherwise responsible public prosecutor's offices (s. 12 para. 2 EUStAG) or the otherwise competent financial authorities (s. 386 para. 2 AO)

cc. Informing national authorities, who reported to the EPPO in accordance with Art. 24 paras 1 and 2 EPPO Regulation in case "of no grounds to initiate an investigation in accordance with Article 26" (Art. 24 para. 7 EPPO Regulation)

35 If an investigation is not opened, the EDP must acc. to Art. 24 para. 7, likewise 27 para. 7 EPPO Reg. inform the national authorities, i.e. the Prosecution offices of the Länder as "judicial and law enforcement authorities" according to Art. 24 para. 2 and the tax and customs offices as "authority that reported the criminal conduct" in accordance with Art. 24 para. 1. The IBOAs can be retrieved from a list in the EU Fraud Commentary. The crime victim is identified via the accusation or crime report. Other person, who reported conduct means persons that are not identical with the victim.

36 *Figure 9: Informing National Authorities, Art. 24 para. 7, 26 and 27 EPPO Regulation*



4. Article 28 Conducting the investigation

a) The handling EDP carrying out the investigative measures, para. 1 270
b) Methods, databases and investigation tools for PIF area crimes 270
c) Instructions and assignment of investigative measures for "those national authorities" (*Ermittlungspersonen der (EU-)StA*) ..271
aa. Specialised tax and customs, police, and investigative staff in the area of (white collar-) PIF crimes in Germany 273
(1) The investigative staff at the police offices in the *Länder* 274
(2) Tax and customs police (*Steuer- und Zollfahndung*) in Germany 275
(a) Customs intelligence/investigation service (*Zollfahndung*) 275
(b) Tax investigators (*Steuerfahndung*) 278
(3) Task forces, investigative teams, commissions, special committees and the special staff of the criminal bureaus (*Landeskriminalämter*) 279
(4) Overview of the (representative) special units responsible for PIF offences 280
bb. Instructions of police and investigative staff by virtue of the CPC 288
cc. Administration of offences Act, Market Organisation Act 294
d) Ensuring compliance with national law..... 297
aa. Via the general investigation provisions 297
bb. Via national administrative decrees/regulations under criminal procedural law (*Nationale strafprozessrechtliche Verwaltungsvorschriften*) 300
(1) Germany: RiVASt, RiStBV (amended for Hamburg) 300
(2) Specific Decrees, non-formal laws, execution of the CPC 306
e) Urgent measures within national law to ensure effective investigations 306
aa. Provisions in relation to the gathering of evidence 306
bb. Follow-up due to Art. 28 para. 2, s. 2 EPPO Regulation: Informing the EDP 319
f) Art. 28 para. 3 and 4: Adoption in national law 319

1. The European Delegated Prosecutor handling a case may, in accordance with this Regulation **and with national law**, either **undertake** the **investigation measures** and other measures on his/her own or **instruct the competent authorities** in his/her Member State. Those authorities shall, **in accordance with national law**, ensure that all instructions are followed and **undertake the measures assigned** to them. The handling European Delegated Prosecutor shall report through the case management system to the competent European Prosecutor and **to the Permanent Chamber** any **significant developments** in the case, **in accordance with** the rules laid down in **the internal rules of procedure** of the EPPO.
2. At any time during the investigations conducted by the EPPO, the competent national authorities shall take urgent measures **in accordance with national law** necessary **to ensure effective investigations** even where not specifically acting under an instruction given by the handling European Delegated Prosecutor. The national authorities shall **without undue delay inform** the handling European Delegated Prosecutor of the **urgent measures** they have taken.
3. The competent Permanent Chamber may, on proposal of the supervising European Prosecutor decide to reallocate a case to another European Delegated Prosecutor in the same Member State when the handling European Delegated Prosecutor:
(a) cannot perform the investigation or prosecution; or
(b) fails to follow the instructions of the competent Permanent Chamber or the European Prosecutor.
4. In **exceptional cases**, after having obtained the approval of the competent Permanent Chamber, the supervising European Prosecutor may take a reasoned decision to conduct the investigation personally, either by undertaking personally the investigation measures and other measures or by instructing the competent authorities in his/her Member State, where this appears to be indispensable in the interest of the efficiency to the investigation or prosecution by reasons of one or more of the following criteria:
(a) the seriousness of the offence, in particular in view of its possible repercussions at Union level;
(b) when the investigation concerns officials or other servants of the Union or members of the institutions of the Union;
(c) in the event of failure of the reallocation mechanism provided for in paragraph 3.
In such exceptional circumstances Member States shall ensure that the European Prosecutor is entitled to order or request investigative measures and other measures and that he/she has all the powers, responsibilities and obligations of a European Delegated Prosecutor in accordance with this Regulation and national law.
The competent national authorities and the European Delegated Prosecutors concerned by the case shall be informed without undue delay of the decision taken under this paragraph.

The conduct of investigations is dependent on instruction relationships, whereby in contrast to the dependency in classically national systems, in the area of EU anti-fraud investigations the EPPO (i.e. the college level) has supervisory powers as it is a supranational, independent body. **1**

In her speech for the first anniversary of the EPPO, given at the conference "EPPO one year in action – Towards Resolving Complexity and Bringing Added Value"[474] in the *Hémicylce* in Luxembourg on 1st June 2022, *Laura Kövesi* outlined that in order to enhance the detection rates of EU fraud specialised customs units and specialised financial experts, groups of specialised EU investigators educated in the typologies of EU frauds are needed to enhance the conduct of investigations. She underlined that these special units could be set up tomorrow and that doing so depended only on political will.[475] **2**

As long as there are no special units as the first Adovate General of the EPPO requested, the detection rates depend on the conduct of investigations and the cooperation with national authorities – especially the assignment and instruction of investigative tasks. The situation in Germany will be analysed below, stating the cooperation level and important actions to be taken. **3**

The involvement of the Permanent Chambers (PC) is very important for any decision. The main working language in these meetings is English and the decisions of the EDPs are discussed by written reports, which is the reason for an interpretation as the PC as a comparative law chamber.[476] **4**

The investigations on national level and at Union-level must be distinguished. Especially at the Union level, the investigation is different than at the national level. In many cases, investigations will be carried out in Union institutions (EU IBOAs). The EPPO has started to set up working arrangements for this type of investigation. For example, the one with the European Investment Bank provides for cooperation with the in-house fraud detection service ("a kind of internal investigation commission"). In the following we shall focus on the national investigations level with regard to Germany. **5**

[474] Organized by the University of Luxembourg (Prof. Katalin Ligeti), ECLAN and the EPPO.

[475] EPPO, European Public Prosecutor's Office One Year In Action: https://www.outube.com/watch?v=v2oUUyTEPFU; Kövesi 2022 Welt.de. So kommt die EU im Kampf gegen Verbrecherbanden in die Offensive. online: https://www.welt.de/debatte/kommentare/article239196661/So-kommt-die-EU-im-Kampf-gegen-die-Kriminalitaet-in-die-Offensive.html (Accessed 31 December 2024): "Ich fordere deshalb alle zuständigen nationalen Behörden auf, diese bewährte Praxis zu übernehmen und zur Unterstützung unserer Ermittlungen spezialisierte Einheiten einzurichten, die Finanz-, Steuer- und Zollfahnder vereinen. Ich schlage vor, dass wir eine Elitetruppe hoch qualifizierter Finanzbetrugsermittler innerhalb der EU bilden, die über die EPPO länderübergreifend arbeitet. Dafür muss man kein Gesetz ändern; es ist eine reine Organisationsentscheidung der zuständigen nationalen Behörden. Es kann schon morgen geschehen"

[476] Franssen and Simonato 2023, p. 558: "Arguably, the PCs are a real 'supranational' (or 'multinational') element and one of the 'most European-oriented' entities in the EPPO's structure." And "During those meetings the EPs somehow become, more or less consciously, comparative lawyers."

6 For the different PIF offences, the German system provides different investigative bodies acting by virtue of different national codes such as the General Tax Code (*Abgabenordung*), the police laws and the customs laws including the customs administration laws. For "normal revenue frauds" or corruption offences related e.g. to a parliament or Ministry of the *Länder*, the police[477] or customs might be the competent body that needs to be addressed by the EDPs.

7 For tax frauds e.g. VAT frauds the specialised tax offices have to relinquish their competence and inform the EPPO to exercise its competence (ss. 7 EPPO Adoption Act, **No. 140a AStBV** (St) 2022, see above → p. 230), which can then use the national *Steuerfahndung* (SteuFA) by virtue of ss. 404 General Tax Code for its investigations.

8 For all other non-tax-fraud related offences that constitute or are considered a PIF offence (see above → p. 175, mn. 54) the EDP must then take into account the police structure in Germany, established under and supervised by the Ministries of Interior (of the *Länder*) is due to the German Basic Law (Grundgesetz) and the federal system of the Republic vested to the *Länder*, cf. Art. 30, 70 German Basic Law[478].

9 Thus he/she can primarly order/assign and conduct measures with the ***Länder* based (criminal) police offices** (*Polizeidienstellen*) acting under the supervision of the States Offices of Criminal Investigation (*Landeskriminalämter der Bundesländer*).[479] Often the EDPs can, while conducting or aiming at conducting investigations on the spot, in their area of responsibility (internally amended jurisdiction, see above → p. 154) within Germany, only make use of special powers if making use of these auxiliary (administrative e.g. tax) bodies and/or classic police structures (which depends, as said above on the specific PIF offence i.e. the suspicion of one of the PIF offences, for the list of PIF Directive offences see above → Sources and national sections 1: Overview for Germany – Art. 26 EPPO Regulation).

10 The **degree of specialisation** of these investigative bodies, their education and training in the fight against fraud against the Union is therefore fundamental to the success or failure of an investigation, the aim of which is always to collect and analyse sufficient evidence for a potential prosecution (see → Art. 34 et seq. EPPO Regulation).

11 All depends therefore – at least in the relevant fraud area of e.g. subsidy fraud – probably on special(ised) economic crime units, so-called *Wirtschaftskriminalitätsdienstellen* and

[477] See *Soiné* 2022, V. 1 et seq.
[478] The catalogues of competences for the Bund are not indicating a competence in the area of police organisation, thus the Bundesländer are capable of issuing laws in this area.
[479] *Kühne* 2015, § 7 Margin Number 146 et seq; Pfeffer 2020, Margin Number 41 et seq.

economic officers of the economic crime departments of national prosecution offices of the Länder (*Wirtschaftskriminalitätsdezernate, Wirtschaftsreferenten*).[480]

In addition to that the police bodies investigating under the supervision of the EDP might contact the Federal Office of Criminal Investigation (*Bundeskriminalamt)*, located in Wiesbaden (Hesse), which can ("only") provide by virtue of Art. 73 n° 10 of the German Basic Law and Art. 87 German Basic Law in connection with the applicable sections of the Federal Law on the Federal Office of Criminal Investigations *Bundeskriminalamtsgesetz* (see e.g. s. 35 BKAG[481]) support to investigations of the Kriminalpolizei or a specialised economic crime unit (*Ermittlungsunterstützung*).[482] In the area of customs fraud the *Zollkriminalamt* has a special function for support actions. The area of VAT fraud is mainly dealt with by the Ministry of Finance and the *Bundeszentralamt für Steuern* by virtue of the Financial Administration Organisation Act (*Finanzverwaltungsgesetz*). **12**

In the practical operations of the EPPO, efficient cooperation with national investigative bodies is indispensable. A requirement that applies to any investigation is sending regular **progress reports** every 3 to 6 months; these have to be supplied by all relevant authorities involved when the need for investigation of new measures, cases, or suspects – whether natural or legal persons – arises. **13**

In major investigations, **progress reports are routine**. This is to keep everyone involved updated on the case and its direction. In minor cases, local police investigate and usually have questions related to the application of laws, court procedures, or witness testimony. Most of the time, these are to clarify procedural or legal issues so that the integrity of the case can be maintained. In this respect, the EPPO would usually stay behind the scene unless any particular guidance or intervention was required. **14**

In practice, too, the EDP may also **contact the administrative authorities and tax offices** directly for the necessary documentation or information, and this also illustrates the EPPO's principle of early **involvement in the investigation process**. Regarding certain aspects requiring judicial supervision – such as authorisations for investigative measures – the police or other investigative bodies normally **prepare the requests to court** instead of direct intervention from the EPPO. **15**

[480] See already an introductionary article on this area focusing on the role of administrative authorities in criminal investigations against organized or serious financial crime Böse 2017, Oxford et al., 85 et seq.

[481] **§ 35 Unterstützung der Polizeibehörden der Länder bei der Strafverfolgung BKAG** (1) Zur Unterstützung von Strafverfolgungsmaßnahmen kann das Bundeskriminalamt Bedienstete zu den Polizeibehörden in den Ländern entsenden, wenn die zuständige Landesbehörde darum ersucht oder wenn dies den Ermittlungen dienlich sein kann. Die Zuständigkeit der Polizeibehörden in den Ländern bleibt unberührt.
(2) Die oberste Landesbehörde ist unverzüglich zu benachrichtigen.

[482] See Krause-Ablaß 2022 Der Criminal Compliance Podcast. Einblicke in die Praxis der Europäischen Staatsanwaltschaft (EUStA): "Andienung von Fällen [durch Steuerbehörden]/Zusammenarbeit mit Bundeskriminalamt und Landeskriminalämter]" . online: https://criminal-compliance.podigee.io/102-cr Accessed 31 December 2024.

a) The handling EDP carrying out the investigative measures, para. 1

16

s. 2 EUStAG Rules of procedure
If the European Public Prosecutor's Office is competent under Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken on the prosecution under Article 25 of this Regulation, the provisions on criminal proceedings, in particular the Criminal Procedure Code, the Courts Constitution Act, the Youth Courts Act and the Tax code, to be applied, unless otherwise stipulated in Regulation (EU) 2017/1939 in the currently applicable version or in this law.

b) Methods, databases and investigation tools for PIF area crimes

17 The EDP can access certain German databases. The investigative (police) staff (*Ermittlungspersonen*) have access to police-based databases and internal information channels that are established under the remit of the Ministries of Interior of the Länder. The police has access to INPOL.[483] For VAT fraud investigations (*Ermittlungen in Sachen Umsatzsteuererklärunge/(-pflichten*) the EDPs might rely on the specialised office, calles "KUSS". An assignment of authorities in Germany is possible under s. 161 para. 1 s. 1 German CPC[484].

18 In order to discover and conduct investigations in the area of VAT frauds Germany is part of various databases or has established own solutions.[485] The investigative staff of the EDPs, such as the tax police (*Steuerfahndung*) has access to following databases that might simplify the ongoing investigations[486]:

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[483] Kühne, 2015, § 7 Mn. 152 et seq.

[484] **§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft *befugt*, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle *befugt*, von allen Behörden Auskunft zu verlangen.
(2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist § 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden.
(3) Ist eine Maßnahme nach diesem Gesetz nur bei Verdacht bestimmter Straftaten zulässig, so dürfen die auf Grund einer entsprechenden Maßnahme nach anderen Gesetzen erlangten personenbezogenen Daten ohne Einwilligung der von der Maßnahme betroffenen Personen zu Beweiszwecken im Strafverfahren nur zur Aufklärung solcher Straftaten verwendet werden, zu deren Aufklärung eine solche Maßnahme nach diesem Gesetz hätte *angeordnet werden* dürfen. § 100e Absatz 6 Nummer 3 bleibt unberührt.
(4) In oder aus einer Wohnung erlangte personenbezogene Daten aus einem Einsatz technischer Mittel zur Eigensicherung im Zuge nicht offener Ermittlungen auf polizeirechtlicher Grundlage dürfen unter Beachtung des Grundsatzes der Verhältnismäßigkeit zu Beweiszwecken nur verwendet werden (Artikel 13 Abs. 5 des Grundgesetzes), wenn das Amtsgericht (§ 162 Abs. 1), in dessen Bezirk die anordnende Stelle ihren Sitz hat, die Rechtmäßigkeit der Maßnahme festgestellt hat; bei Gefahr im Verzug ist die richterliche Entscheidung unverzüglich nachzuholen.

[485] See Bundesrechnungshof 2009 Intra-Community-VAT-fraud. Deutsche Übersetzungshilfe; Witten 2007; BT-Drs.19/24000.

[486] See Groeben and Finanzamt Kelheim 2017 Arbeitsgruppe AG-EDV. Alphabetisches Nachschlagewerk der Begriffe und Abkürzungen im EDV-Bereich der Steuerverwaltung in Bayern.

- ZEUGE: Access and connection of the tax investigation offices to the public prosecutor's censorship register kept at the Federal Office of Justice.[487] **19**
- KUSS: Coordination Office for Special VAT Audits and Tax Investigation Measures/*Koordinierungsstelle für Umsatzsteuer-Sonderprüfungen und Steuerfahndungsmaßnahmen*[488]
- ZAUBER: Central database for storing and evaluating VAT fraud cases and developing risk profiles (ZAUBER): Access by the state tax authorities and the tax investigation department.

Nota bene: The Länder have own specialized, central offices e.g. North-Rhine Westphalia: see ZEUS: Central Office for Combating VAT Fraud at the Federal Central Office for Taxes /*Zentralstelle zur Umsatzsteuerbetrugsbekämpfung.*[489]

c) Instructions and assignment of investigative measures for "those national authorities" (*Ermittlungspersonen der (EU-)StA*)

Who can and might be instructed by the German EDPs depends on the organisation of investigations in specific areas of crime i.e. EU fraud crimes (See → EU fraud typologies above p. 174, mn. 54).[490] Art. 28 EPPO Regulation refers to conducting investigations in very specific areas. These are the areas that arise according to Art. 3–5 of the PIF Directive and Art. 22 EPPO Regulation. For these areas, there are then different competent authorities for e.g. the area of tax fraud, VAT fraud, money laundering offences from the acts of Art. 3 PIF Directive 2017/1371 as well as various corruption offences. This can be well illustrated by the example of s. 12b Customs Administration Act: **20**

[487] See Groeben and Finanzamt Kelheim 2017 Arbeitsgruppe AG-EDV. Alphabetisches Nachschlagewerk der Begriffe und Abkürzungen im EDV-Bereich der Steuerverwaltung in Bayern, p. 21: "Durch das maschinelle Auskunfts-Verfahren ZEUGE werden befugte Finanzämter elektronisch an das staatsanwaltschaftliche Verfahrensregister (ZStV) und das Bundeszentralregister (BZR) angebunden. Mit der Pilotierung im 2. Halbjahr 2007 begonnen werden. Stand der Pilotierungen, Verfahrensinfo vom 12.01.2007, AIS: Themen > EDV > EDV-Info"

[488] See Bayerischer Landtag, Drucks. 17/3542; IWW, PStR Praxis Steuerstrafrecht, ID 43246102 (31.3.2022); See § 5 (1) nos. 13, 15 and 16 of the Financial Administration Act (FVG) and Council Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax ("Cooperation Regulation"). See Heuel 2021, pp. 183 et seq. describing the EU legislation and the national law, 190 et seq. explaining the VAT fraud schemes that need to be investigated.

[489] See GVBl. 1.4.2022, Finanzamt für Steuerstrafsachen und Steuerfahndung Bonn; Verordnung über die Zuständigkeiten der Finanzämter (Finanzamtszuständigkeitsverordnung – FA-ZVO), GV. NRW. 2022 S. 45).

[490] According to the German notifications pursuant Art. 117 (https://www.eppo.europa.eu/sites/default/files/2021-11/12-DE.pdf. Accessed 31 December 2024): "those national authorities" are: Police authorities (Police of the German Federal States, Federal Police, Federal Criminal Police Office); Federal financial authorities (main customs offices, customs investigation offices, customs criminal investigation office); Federal state tax authorities (tax offices, tax investigation offices); Federal forestry and hunting administration; Forestry, hunting and fisheries administrations and mining offices of the Federal states; if necessary, other authorities whose members are authorised to act as investigators according to the respective Federal state ordinances (section 152, paragraph 2 of the GVG); Control officers of the Federal Agency for Agriculture and Food in the context of fisheries control outside coastal waters pursuant to section 16 sub-section 3 SeeFischG.

Section 12b Customs Administration Act[491] Powers of the Customs Investigation Service in the Prosecution of International Organised Money Laundering
The authorities of the Customs Investigation Service and their officers shall, in the performance of their duties under Section 1 para. 5, have the same rights and duties as the authorities and officers of the Police Service under the provisions of the Code of Criminal Procedure; their officers shall be investigators of the public prosecutor's office.

21 Furthermore, one can note from the example of the prosecution of tax offences, s. 370 Tax Code, that the investigative bodies are equally considered police-like authorities, which are competent under ss. 208, 404 General Tax Code. Thus it can be concluded that sections on instructions and assignment possibilities with regard to investigative measures for "those national authorities" **are enshrined in different German Codes** such as the Federal Tax Code, the Customs Investigation Service Act, the Customs Administration Act, the Criminal Procedure Code, the Subsidy Act and special opening clauses (*Öffnungsklauseln*) in other Codes such as s. 152 para. 1 Courts Constitution Act (GVG), which rely on following wording: "The investigators of the public prosecutor's office *are obliged in this capacity to comply with the orders of the public prosecutor's office* of their district and of the officials superior to them"[492]: "*Die Staatsanwaltschaft…ist befugt*"; "*Das …*[*Amt*] *ist befugt Weisung zu erteilen…*" or like in s. 110 para. 1 CPC: "*und auf deren Anordnung ihren Ermittlungspersonen…*".

22 Sections 111m and 111k CPC show that more professions might be involved in investigative measures in Germany, s. 111m (administration of confiscated or seized objects) CPC: "It can entrust its investigators (Section 152 of the Courts Constitution Act) or the bailiff with the administration. In suitable cases, another person can also be assigned to administer it"[493] or s. 111k (Procedure for enforcing confiscation and attachment of property): "this can be carried out by the authority specified in Section 2 of the Judicial Enforcement Act, the bailiff, the public prosecutor's office or their investigators (Section 152 of the Courts Constitution Act)."

23 Also to be considered is the role played by the EPPO in monitoring the **progress reports**, which were mentioned above already. Its role is not intrusive in nature, insofar as the **EDP adheres** to the rules set forth in the **Operational Guidelines** set up by the EPPO. In this respect, therefore, the EPPO does not usually interfere unless procedural

[491] § 12b Befugnisse des Zollfahndungsdienstes bei der Verfolgung der internationalen organisierten Geldwäsche ZollV Die Behörden des Zollfahndungsdienstes und ihre Beamten haben bei der Erfüllung ihrer Aufgaben nach § 1 Absatz 5 *dieselben Rechte und Pflichten wie die Behörden und Beamten des Polizeidienstes nach den Vorschriften der Strafprozessordnung*; *ihre Beamten sind Ermittlungspersonen der Staatsanwaltschaft.*
[492] Die Ermittlungspersonen der Staatsanwaltschaft sind in dieser Eigenschaft verpflichtet, den Anordnungen der Staatsanwaltschaft ihres Bezirks und der dieser vorgesetzten Beamten Folge zu leisten.
[493] § 111m Abs. 2 StPO: "Sie kann ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) oder den Gerichtsvollzieher mit der Verwaltung beauftragen"

breaches or deviation from the standard procedure has been found. It ensures that investigations will be effective, within the limits of EU law, and that national authorities can carry out their work in an effective manner, in full awareness of what is procedurally expected. This approach places immense emphasis on adherence to laid-down procedures and cooperation between national and EU bodies to ensure that investigations are invariably conducted in line with European standards. In practice, one would always need to be apprised of guidelines set by the EPPO and ensure **clear communication channels with the relevant authorities** for the smooth processing of such complex, cross-border (VAT-)investigations.

aa. Specialised tax and customs, police, and investigative staff in the area of (white collar-) PIF crimes in Germany

The so-called investigative staff (*Ermittlungspersonen*) may include police authorities, financial officers of tax officers (*Finanzämter, Bundeszentralamt für Steuern* under the directory of the Federal Ministry of Finance) and customs authorities (*Hauptzollämter*, *Zollkriminalamt* as well under the instruction power of the Federal Ministry of Finance). Apart from the operational assignment of these investigators, i.e. the investigative staff to the ministries, they are subordinate to the respective investigating public prosecutor's office in individual (EU-fraud) cases. **24**

Nota bene: each of the 16 German Federal States have their own police authorities.[494]

In addition the (federal) customs police (*Behörden des Zollfahndungsdienstes* aka *Zollfahndungsämter*[495]), located in the different Länder via Main Customs Offices (*Hauptzollämter*) and Main Customs Intelligence Services (*Hauptfahndungsämter*) have the power to investigate in the area of certain crimes such as e.g. s. 264 CC, subsidy fraud under the regime of the *Zollfahndungsdienstgesetz*[496] cf. e.g. s. 25 ZFdG and s. 208 Federal Tax Code/*Abgabenordnung*. **25**

The situation concerning speialized police staff investigating economic crime, like e.g. PIF offences is **highly divergent in Germany**. The **variety of different task forces**, economic officers, specialised criminal investigators and auditors, as well as appraisers in criminal cases is vast. **26**

[494] E.g. Hessian police authorities are: Polizeipräsidium Nordhessen, Polizeipräsidium Mittelhessen, Polizeipräsidium Osthessen, Polizeipräsidium Westhessen, Polizeipräsidium Südosthessen, Polizeipräsidium Frankfurt am Main, Polizeipräsidium Südhessen, Landespolizeipräsidium, Hessisches Landeskriminalamt, Hessisches Bereitschaftspolizeipräsidium, Hessisches Polizeipräsidium für Technik, (Polizeiakademie Hessen). This is similar for every Federal State (such as Bremen, Bayern, NRW etc.).

[495] Since 2019 "Behörden des Zollfahndungsdienstes" , see Hoyer and Scharenberg 1995, § 208, Margin number 1; Wamers et al. 2006.

[496] Law on the Customs Criminal Police Office and Customs Investigation Offices (Customs Investigation Service Act - ZFdG).

Side-facts and proposals de lege ferenda:

The Länder, especially the Ministries of Justice of the Länder can issue special regulations n investigative staff, so-called *Verordnungen über Ermittlungspersonen der Staatsanwaltschaften des Landes*.[497] If taking a closer look at these regulations, it becomes apparent that they have not been amended in order to accommodate the EDPs in the five country centers (regional offices). Still it can be guessed that the EDPs are able to use these structures as they operate as well as national prosecutors if not on duty for a PIF offence case, which leads to the conclusion that the legislators of the Länder believed that this pre-established relationship of investigative staff and the allocation of resources encompasses the use of the staff named by these special regulations i.e. suffices for EPPO investigations.

27 From an objective point-of-view it can still be argued that the importance to harmonize the investigations of the police in PIF offence matters has not really been recognized as a primary task of the Länder structures. De lege ferenda – and this would be conform to the requests of Laura Kövesi, the General Prosecutor of the EPPO – the competent authorities ensuring the functioning and the specialization of the police should focus more on producing and harmonizing the area of investigative staff for PIF offences i.e. those of the PIF Directive (or the national implementation).

(1) The investigative staff at the police offices in the *Länder*

28 In addition, the possibility to order or assign investigative tasks to support staff depends on the location of the EDP within Germany. Although the EDP operates nationwide (*bundesweit*, s. 143 para. 6 GVG*)*, he/she must rely on regional (investigative and police) structures for combating white-collar crime. There are **no specially trained police investigators or auditors' referees for PIF crimes (only!)** but mainly the national staff that combats White Collar Crimes as well in similar national cases. This is problematic because Police schools should start teaching on e.g. how EU funding functions and at least offer courses to senior Tax Staff or Police Staff to get more knowledge about EU Procurement, EU Funding etc. The Federal Customs Organisation needs to focus more on EU Revenue Rules and keep its staff up-to-date in this area [see below → Customs intelligence/investigation service (*Zollfahndung*)].

29 The Ministries of Justice of the States (*Justizminister der Länder*) are responsible for establishing special units at the investigative level, and the Ministries of the Interior (*Innenminister*) are responsible for establishing special police teams and ensuring their training and awareness of new situations.

[497] Verordnung über die Ermittlungspersonen der Staatsanwaltschaft, vom 30. April 1996, SGV. NRW, neu gefasst durch Verordnung vom 16. Februar 2016 (GV. NRW. S. 120), in Kraft getreten am 25. Februar 2016.

Side facts:

The **police** uses **special tools and identificators** to identify crimes **in its documents**. The so-called T-codes (or more precisely T-Group Keys). The T-Group Keys identify a crime/offence with a number. Fraud, s. 263 CC is identified e.g. by "*5 – 100T-Gruppen-Schlüssel für Betrug*". Subsidy fraud, s. 264 CC is identified via "*5 – 142 T-Gruppen-Schlüssel für Subventionsbetrug*". Computer frauds, s. 263a CPP are identified by "5 170 T et seq." All other frauds are identified by "*5 – 170 T-Gruppen-Schlüssel für einen sonstigen Betrug*."

Nota bene: There are no T-Group numbers for VAT frauds or special procurement frauds as these kinds of special frauds, like VAT-frauds are normally not handled by police authorities as this offence are restricted to investigations of the "tax police", i.e. the *Steuerfahndungsdienstellen* (normally located within a tax office (*Finanzamt*) or as an own authority). The T-Group sector number "7–100" is used for economic crime offences, which are not enshrined in the CC ("*T-Gruppen-Schlüssel für Straftaten gegen strafrechtliche Nebengesetze aus dem Wirtschaftssektor*").

(2) Tax and customs police (*Steuer- und Zollfahndung*) in Germany

30 In addition, the Ministers of Finance of the Länder (*Finanzminister der Länder*) are responsible for the implementation of the **structure of financial investigations**, which is determined by the Federal Ministry of Finance (*Bundesfinanzministerium*), so that even the so-called tax investigation (*Steuerfahndung*[498]) and customs investigation (*Zollfahndung*) offices seem to be fully unified only at the first level.[499]

(a) Customs intelligence/investigation service (*Zollfahndung*)

31 The customs investigation service has no special name in Germany and it is made up of the higher-level, coordinating **customs criminal investigation office** (*Zollkriminalamt*), implemented within the structure of the **General Direction Customs** and the individual customs investigation offices in the Federal States (*Bundesländer*), which act as federal authorities and are responsible for combating criminal and administrative offences in the area of responsibility of the **Federal Ministry of Finance**, which is why they are not regulated by the Ministries of Finance of the Federal States or the Ministries of Justice of the Federal States.

32 If it is commonly spoken of the "criminal police of the customs administration", this is not entirely correct, but it can paraphrase what is meant. In their function as real investigators, the **customs investigators also have the powers of the police investigators** acting on behalf of the national prosecution services and offices, which means that they

[498] See Matthes 2008, pp. 10 et seq.
[499] See for a perspective from the past Rieger 1993, pp. 52–61.

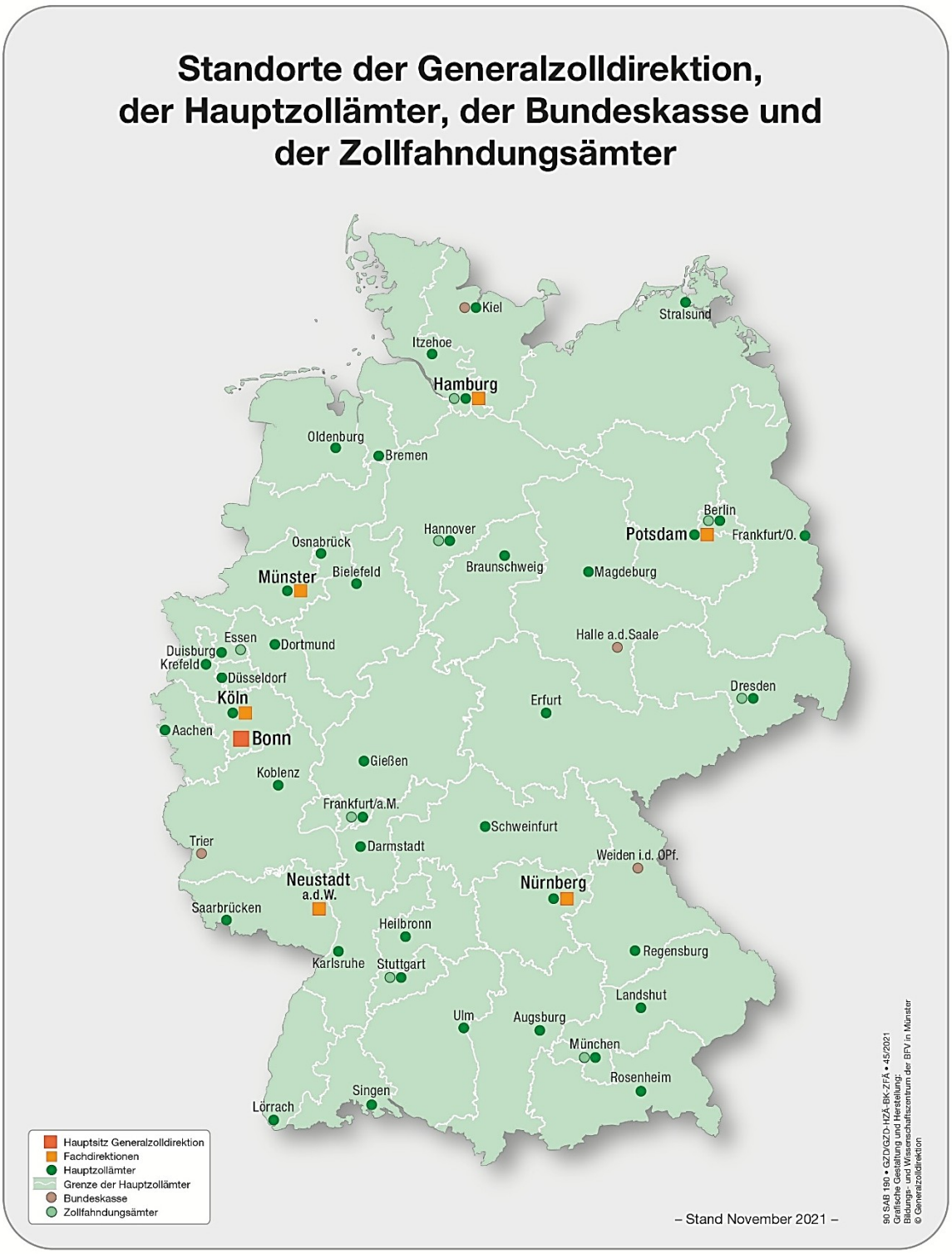
can carry out investigative acts for the German EDPs of the EPPO in accordance with the tax code (*Abgabenordnung*) and the Customs Investigation Acts (*Zollfahndungsdienstgesetz, ZFdG*). These include seizure and search and other measures that are presented below in the Compendium as quick and urgent measures.
The **Federal Coordinator for Data protection** in Germany has warned the citizens of actions by the customs investigators as they may infringe basic rights of the suspects and the office of the coordinator and controller is concerned about the Databases, which the customs offices operate and analyse frequently.[500]

33 A **major reform idea** for customs control was presented by GdP "Zoll 2030". Their concept would modernise the customs enforcement into a federal law enforcement body that operates with a two-Pillar Model ("Security & Enforcement" and "Economy & Revenue"). By separating fiscal administration from criminal enforcement, it would create clear accountability for both revenue protection and financial crime control. This would allow the EPPO to rely on a structured, police-level partner when invoking its competence under Articles 22–28 EPPO Regulation. The reform aims to transform the existing customs enforcement system into a comprehensive financial police under the Federal Ministry of Finance (BMF). Its main purpose: to unify all enforcement, investigative, and control services into a professional police-like institution to combat smuggling, money laundering, tax, economic and labour market crime, and sanction violations. This new system merges: the Customs Investigation Service (*Zollfahndung*), the Financial Control of Undeclared Work (FKS), the Sanctions Enforcement Office, and all Customs Control Units (KEen) into one integrated federal enforcement agency. At the top would be the Customs or Financial Police Headquarters (*Zoll- bzw. Finanzpolizeipräsidium*), a federal command authority replacing today's *Zollkriminalamt* in Cologne. It oversees eight regional Directorates, each responsible for operational control within several federal states. Each Directorate contains a Command and Operations Staff (leadership, situation and coordination centre, press and communications), Central Services (special operations, digital forensics, witness protection, technical surveillance, and training), Central Commissariats for organised crime, complex economic offences, asset recovery, and sanctions enforcement. Beneath the directorates are Inspections, which manage day-to-day operations in their regions, and Commissariats, which form the operational backbone. These commissariats run 24/7 Customs Watch Units, investigate customs and financial crimes, and provide specialised teams for digital forensics, telecommunications surveillance, and mobile operations.[501] The Financial

[500] See Bundesbeauftragter für den Datenschutz und die Informationsfreiheit. Zollfahndungsdienst. online: https://www.bfdi.bund.de/DE/Buerger/Inhalte/Polizei-Strafjustiz/National/Zollfahndungsdienst.html. Accessed 31 December 2024. See for an equal picture and explanation already Rump 1993, pp. 35–52.
[501] GDP, Zoll 2030, http://bit.ly/4nn8xLi; https://zoll-2030.de/; http://bit.ly/43sxHke.

Intelligence Unit (FIU) will either remain independent or become part of the new headquarters.

The following presentation offers the locations of the relevant offices in Germany and one can see that the regional EDP offices have not been established for the mere or out **34**



of sheer interest in the proximity of major German cities, but as well or mainly because of the proximity to these special investigation offices.

(b) Tax investigators (*Steuerfahndung*)

35 The tax investigation with its tax investigators (*Steuerfahnder, Fahndungsprüfer*), which is an country-integrated, so-called organisational part of the German state financial authorities (existing 16 times), has the task within the framework of the legal powers of the tax code (ss. 208, 404 etc. AO) to operate in the area of detection and investigation of tax offences, whereby they shall discover both unknown tax cases (assessments; acting like a **tax police**[502]) and ordinary tax offences as well as tax fine matters, which they should examine more closely.[503] The tax investigation police operates under the legality principle and needs to establish a criminal suspicion (*Anfangsverdacht*) for its operations.[504] In some federal states, it is centralized by special criminal tax offices (or, in other words, offices for tax penalties and fines; See, for example the different offices (*Dienststellen*), in e.g. Münster in North Rhine-Westphalia and Augsburg in Bavaria).[505]

36 The EDP may instruct the tax investigators in their role as "*Ermittlungsperson*" of the prosecution office, where the EDP resides or on the basis of s. 143 para. 6 GVG in all parts of the Federal Republic of Germany. The **tax investigators have similar powers to the customs officers and the police officers** (see s. 404 AO and see above).[506] The online investigations are in the focus of the debates in 2022 due to various Judgments.[507]

37 The currently active EDPs in Germany, similar to the Chief Prosecutor of the EPPO, have commented on the sometimes-**insufficient equipment** or the **lack of young people** in tax investigation (and their training) and have called for improvements.[508] These demands are rightly addressed to the state finance ministries in Germany, all of which are responsible for this area of their state civil servants and employees. Since the tax investigators are directly available to the EDP investigators of the EPPO via the cooperation regulations in accordance with the tax code, a good and effective investigation depends on the contact person.

38

[502] Vordermayer et al. 2022b, para. 22 et seq: "Steuer-Kriminalpolizei" ..
[503] Rüping 2002, p. 2020; Aichberger 2022; Klein and Rüsken 2020, § 208 AO Mn. 2327, 40–44b; Pflaum 2018, Mn. 7, 8; Randt 2015, Mn. 7-20; Wegner 2015, Mn. 21-24.
[504] Klein and Rüsken 2020, § 208 AO, Mn. 23¬27, 40–44b.
[505] MBF 2018; Pflaum 2018, Mn. 6.
[506] Hadamitzky and Senge 2022, Mn. 1-10 (here Mn. 4 et seq., 10); Doege 2022, pp. 466–472; Billsdorfer 2022, p. 859; Duesberg 2022, pp. 596 et seq.; LG Frankfurt (Oder) (2. Strafkammer), Beschluss vom 07.04.2022 – 22 Qs 8/22 [investigations tax office].
[507] LG Koblenz, Reichweite der Online-Durchsicht nach §§ 110 Abs. 3 S. 2 StPO, NZWiSt 2022, 160. Rühs 2022, pp. 2305 et seq.
[508] Pflaum 2018, Mn. 24-48; Vordermayer et al. 2022b, Mn. 9 et seq.

Art. 140a of the General Instructions for Criminal Tax Proceedings, which came into force in 2022, provides a first direction in this area.

Internal (administrative tax) agreements and decrees, on the other hand, are even more important and the entire domestic law of the federal states in Germany is enormous (each over 6000 individual decrees, references and agreements). All of these are also the basis of the work of the tax investigators, which the Union legislature has only remote interference in, e.g. through the data protection regulations. **39**

Besides this general structure there are different units and specialised, joint investigation teams within Germany, so-called **Joint Financial Investigation Group** (*Gemeinsame Finanzermittlungsgruppen*), which primarly focus on the area of money laundering, s. 261 CC, a PIF offence according to Art. 4 PIF Directive (EU) 2017/1371 and the obligations by the Anti-Money Laundering Act (*Geldwäschegesetz*, GwG). The example of Brandenburg shows that these groups were introduced in 1999 and kept being helpful for the next twenty years already.[509] **40**

(3) Task forces, investigative teams, commissions, special committees and the special staff of the criminal bureaus (*Landeskriminalämter*)

Side facts: A closer look at the designation of investigative staff in Germany

Another possibility is the formation of Investigative commissions ("*Ermittlungskommissionen*"), Investigation teams ("*Ermittlungsteams*" of two or more persons), which are used in the NRW-based police in the area of Organized crime. One of the younger examples shows that NRW used a task force to discover illegal financial transfers ("*Task-Force NRW"*). The name of the force some tangles up with the Joint Financial Investigation Groups (see above) and if taking a closer look one can see that it encompassed "Police officers, public prosecutors and tax investigators".

Special Commissions (*Spezialkommissionen*) are used in cases of State or national significance of the same crime pattern (e.g. always the same subsidy fraud). Special units are responsible for arrests. Often the LKA of the *Länder* contains so-called "AStOK" (*Auswerte- und Analysestellen für Organisierte Kriminalität*), which are evaluation and analysis centres for organised crime.[510]

[509] Polizeipräsidium Eberswalde. 20 Jahre Gemeinsame Finanzermittlungsgruppe Polizei/Zoll (GFG) beim Landeskriminalamt Brandenburg. online: https://polizei.brandenburg.de/pressemeldung/20-jahre-gemeinsame-finanzermittlungsgru/1629422 (Accessed 31 December 2024). For the regional office in NRW see Claudia Franken, LKA NRW, Bekämpfung der Geldwäsche, who indicates that "Gemeinsamen Finanzermittlungsgruppen (GFG) der Polizei NRW und des Zollfahndungsamtes Essen haben die Bekämpfung der Geldwäsche sowie die Verhinderung der Terrorismusfinanzierung im Fokus (verfahrensunabhängige Finanzermittlungen)". For further information one can consult the yearly statistics, Lagebild Finanzermittlungen NRW.

[510] See https://www.gdp.de/gdp/gdpnrw.nsf/id/B93530B38C77F9DAC1257FA0003EB74F/$file/Neue_Perspektiven_fuer_Regierungsbeschaeftigte.pdf?open. Accessed 31 December 2024.

41 On the level of the police units or the investigation teams and commission **specialised databases** can be used **for financial and economic crime investigations** e.g. in NRW, the most populous Country State of Germany police investigators can use the unit responsible for ZIVED – **Central Information Dissemination External Databases** ("*ZIVED – Zentrale Informationsvermittlung Externe Datenbanken*").

(4) Overview of the (representative) special units responsible for PIF offences

The table shows the authorities in the Five Regional Country Centers of the EPPO in Germany (constituting an excerpt of the situation in Germany):

42 *Table 13: Examples for special units responsible for PIF offences in the Five Regional Country Centers of the EPPO in Germany*

	Hesse[511]	**Bavaria**	**North-Rhine Westphalia**	**Berlin**	**Hamburg**
Normal police and specialised police units level					
CC frauds, ss. 263, 264 and AML, s. 261 (in combination with ss. 22, 23 I, 25, 26, 27 CC or s. 129 CC)	Hesse State Criminal Police Office, Central Office for Combating Organized Crime (ZOK) at the Office of the Public Prosecutor in Frankfurt am Main	The Bavarian police consists of various offices located throughout the state.[512] In addition the State Office of Criminal Investigation, Deparment VI (Economic crimes, etc.) Departement II (SG 211) supports or even takes over special investigations. Bavaria hosts so-called Criminal Police Inspectorates with Central Tasks (KPI/Z)/ *Krimi-*	"To combat economic crime (e.g. S. 264 CC, subsidy frauds etc.) phenomenons – including PIF offences –, the 16 police headquarters of the state and the LKA NRW have specialised units with specially trained staff."[514] LKA Department 1 =conducts investigation and analysis of organised	Berlin has a complex police organisation. The Berlin LKA (State Office of Criminal Investigations) hosts LKA 3 (*Wirtschaftskriminalität, Corruption, Umwelt-/ Verbraucherschutzdelikte, Polizeidelikte*), which is competent for KA 3 Economic crime, Corruption, Environmental;	Hamburg has various police departments and precincts as well as a water police. LKA 5 fights white-collar crime, fraud and computer crime. "LKA 50 - Tel.: 040/4286 75000 E-mail: lkahh50 {at} polizei. hamburg.de Special economic offences,

[511] Ministerium des Innern und für Sport Ministerium der Justiz, Aktenzeichen: LPP 1–22 g 04.67-01, 4600 - III/2 - 2020/990 - III/A, StAnz. 20/2021 S. 672.

[512] The Central Franconia Police Headquarters, Munich Police Headquarters, Lower Bavaria Police Headquarters, The Police Headquarters of Upper Bavaria North, The Police Headquarters Upper Bavaria South, Upper Franconia Police Headquarters, Police Headquarters Upper Palatinate, Police Headquarters Swabia North, The Police Headquarters Swabia South/West, Lower Franconia Police Headquarters.

[514] See https://polizei.nrw/artikel/wirtschaftskriminalitaet. Accessed 31 December 2024.

		nalpolizei-inspektionen mit Zentralaufgaben (KPI/Z) for serious organized crime.[513] Polizeipräsidum München Kriminalfachdezernat 7 München K 71 Wirtschaftskriminalität, PP München, K 72 &Wirtschaftskriminalität, PP München Zentralstelle Cybercrime für die Wirtschaft in Bayern	crime i.e. responsible for serious crime consist of 6-sub-departements =this PIF offences[515] The Sub-departments 12 (economic crime area in General), 13[516] (financial investigations with customs and police) and 15 (corruption offences) are of special interest for PIF offences.[517]	Consumer protection offences, police offences; 3 FüD; 31 Financial investigations investigation groups; White-collar crime Nality; 32 Economic crimi-Nality; 33 Environmental/ consumer protection offences/ Industrial crime Crime; 34 Police/corruption offences, accounting billing fraud in the health.	which include offences committed in the context of actual or feigned economic activity and which require special commercial knowledge to be solved, are handled by LKA 51. These include Serious property offences, insolvency offences, offences in connection with the capital market, offences in connection with banking, insurance and credit. LKA 51 – Tel.: 040/4286 75100 E-mail: lkahh51 {at} polizei. hamburg.de LKA 52 is responsible for

[513] See Polizei Bayern, https://www.polizei.bayern.de/wir-ueber-uns/organisation/organigramm/index.html.
[515] See Wirtschaftskriminalität, Lagebild NRW 2020. online: https://polizei.nrw/sites/default/files/2021-12/211208_LKA-Lagebild-Wirtschaftskriminalit%C3%A4t-2020.docx.pdf. Accessed 31 December 2024.
[516] LKA NRW, Dezernat 13 – Finanzermittlungen: "Das Dezernat 13 umfasst gemeinsame Finanzermittlungsgruppen zwischen der Polizei und dem Zoll sowie verfahrensintegrierte Finanzermittlungen. Des Weiteren fungiert das Dezernat 13 als zentrale Informations- und Koordinierungsstelle für Finanzermittlungen und Gewinnabschöpfung des Landes NRW und beinhaltet auch eine Recherchestelle. Dezernat 13 Finanzermittlungen SG 13.1 - GFG 1 SG 13.2 - GFG 2 SG 13.3 – Verfahrensintegrierte Finanzermittlungen, Vermögensabschöpfung, SG 13.4 - Zentrale Informations- und Koordinierungsstelle Finanzermittlung und Gewinnabschöpfung, Recherchestelle ZIVED"
[517] See Korruptionslagebild NRW 2020. online: https://polizei.nrw/sites/default/files/2021-11/2021-09-28%20Anlage%201%20LB%20Korruption%202020_final.pdf. Accessed 31 December 2024.

					combating special offences in payment transactions, e.g. for Account opening and transfer fraud, counterfeit money offences, payment card offences. LKA 53 - Tel.: 040/4286 75300 E-mail: lkahh53 {at} polzei.hamburg.de The LKA 55 handles all general fraud offences centrally for the whole of Hamburg, e.g. Goods and goods credit fraud, benefit and credit fraud, embezzlement. The cybercrime offence area of LKA 54 with the Cybercrime Central Contact Point (ZAC) is presented separately in the "Cybercrime" field of action

					(link to IT security).”[518]
Corruption offences (in combination with ss. 22, 23 I, 25, 26, 27 CC or s. 129 CC)				The Berlin State Prosecutor’s Office has a special department for corruption offences, which will be used to similar investigations to those EDPs need to carry out (Berliner *Zentralstelle für Korruptionsbekämpfung*).	
Tax and customs investigation level (“tax and customs police”)					
Special VAT 6 cum ex-frauds (in combination with ss. 22, 23 I, 25, 26, 27 CC or s. 129 CC) **s. 370 AO (in**		Steuerfahndung Augsburg[519], Spezialeinsatzkommando	First the specialised tax offices can be named, which can act as investigative staff of the prosecutors e.g. the “*Finanzamt für Steuerstrafsachen und Steuerfahndung Münster =STraFA*”. The StraFA” often have their own offices that work closely together with the	The “*Finanzamt für Fahndung und Strafsachen Berlin*” is one authority exclusively dealing with tax offences of the Federal Tax Code (*Abgabenordnung*).[521]	In Hamburg the “*Finanzamt für Prüfungsdienste und Strafsachen in Hamburg*” is competent to take investigative measures compliant to the AO and the CPC. “*Finanzamt für Prüfungsdienste und Strafsachen in Hamburg* Hugh-Greene-Weg 6 22529 Hamburg

[518] See https://www.netzwerkstandortsicherheit.hamburg/wirtschaftskriminalitaet-a-786212. Accessed 31 December 2024.
[519] See https://www.finanzamt.bayern.de/Augsburg-Stadt/Kontakt/Ansprechpartner/Aussenpruefung/Steuerfahndung.php?f=Augsburg-Stadt&c=n&d=x&t=x. Accessed 31 December 2024.
[521] Verordnung über besondere Zuständigkeitsregelungen im Bereich der Finanzverwaltung des Landes Berlin (Finanzämter-Zuständigkeitsverordnung - FÄZustVO), Vom 8. Dezember 2021, see Berliner Vorschriften- und Rechtsprechungsdatenbank, GVBl. 2021, 1310: “Wahrnehmung der Aufgaben der Steuerfahndung”.

combination with ss. 22, 23 I, 25, 26, 27 CC or s. 129 CC) **Smuggling offences**			specializd police units in the area of economic and organized crime, cf. e.g. "*Ermittlungsgruppe Organisierte Kriminalität und Steuerhinterziehung)*".[520] Zentralstelle für Umsatzsteuerbetrug Cum/ex proceedings in the 16 main criminal investigation offices of the state; special cooperation with tax investigation services from North Rhine-Westphalia and Hesse is possible. LKA NRW can take over investigations in these cases.		Anmeldung im 9. Obergeschoss" E-Mail: Poststelle FAPrueStra@finanzamt.hamburg.de De-Mail: Finanzamt@hamburg.de-mail.de

Source: The authors.

[520] See https://www.dstg-nrw.de/uploads/media/20170403_Steufahndung_Positionspapier_PR_DStL.pdf. Accessed 31 December 2024.

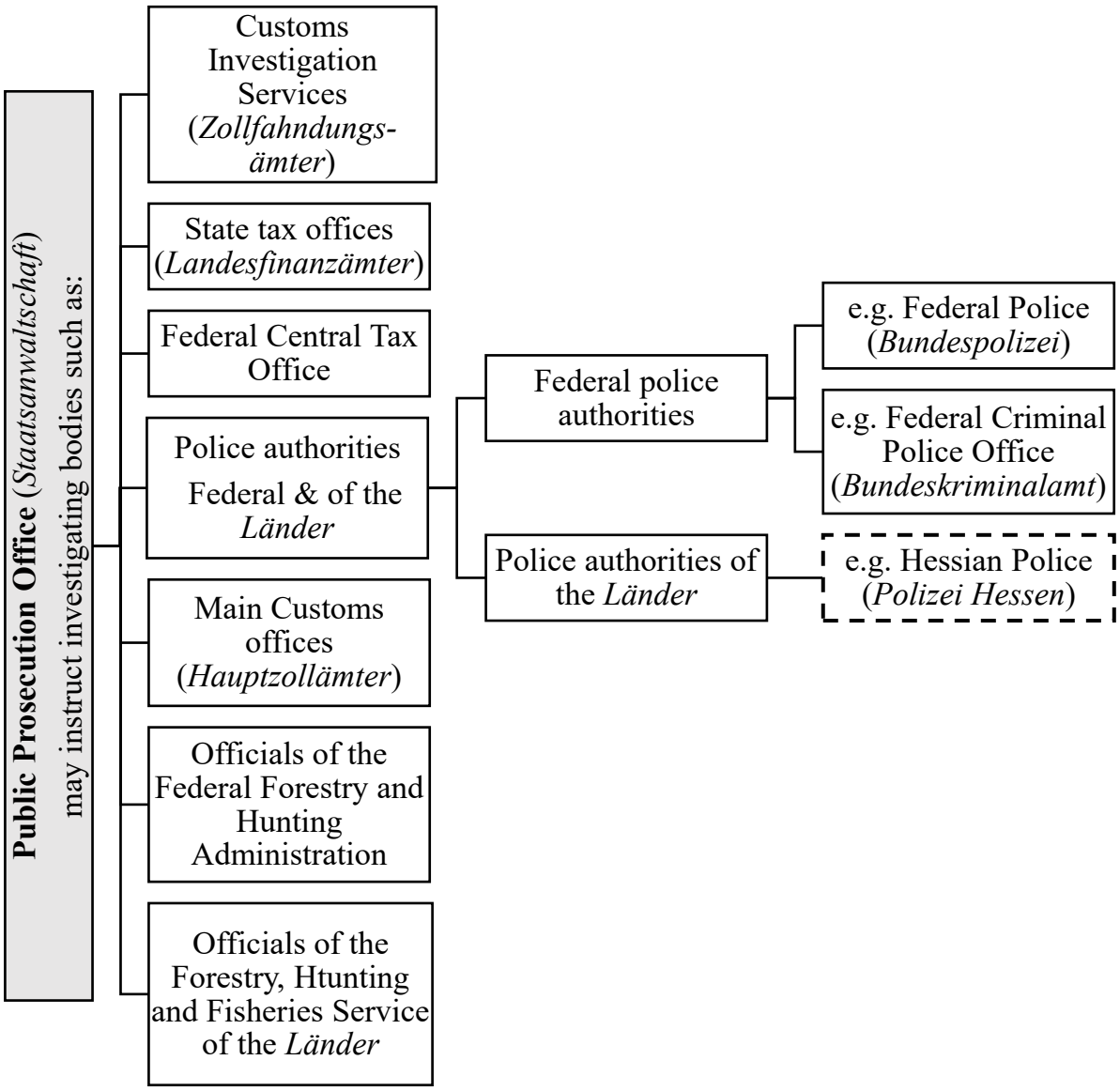
All *Länder based* police offices – at least the State Investigation Offices – have access to operational units eg: E/SE Staff Deployment. **43**

Special Units; Personal Security (PS); Mobile Operations; Command (MEK); Special Operations Command (SEK); Mobile Operations **44**

Command – Reconnaissance Reconnaissance/Operative Services (MEK-A/OD); Witness Protection; Covert Investigations/ Confidential (ZS/VE/VP). **45**

Nota bene: The table examined only the police forces of the countries that are located at the EDP centres. However, the EDPs are allowed to investigate nationwide and can therefore, in accordance with the jurisdiction agreement (see Art. 26 EPPO above), also instruct the state criminal investigation authorities of the non-centre states and conduct investigations with them (this concerns the other 11 federal states).

46 *Figure 11: Assignment of "those national authorities" in Germany, Art. 28 EPPO Regulation (Example: police)*



Cf. Regulation on the Investigators of the Public Prosecutor's Office of 26 September 2011, section 1.

Figure 12: Structure of police investigations for EDPs in the Frankfurt am Main center **47**

Source: https://www.polizei.hessen.de/File/2021-05-21-organigramm-ppffm-internet.pdf; https://www.polizei.hessen.de/die-polizei/organisation/. Accessed 31 March 2025.

bb. Instructions of police and investigative staff by virtue of the CPC

48 **Assignment of measures e.g. to gather evidence:**

- ss 48–71 CPC witness evidence
- ss 72–85 CPC expert evidence
- ss 86–93 CPC physical evidence
- ss 249–256 CPC documentary evidence

49

Section 158 CPC[522] **Report of offence; request to prosecute**
(1) An offence may be reported orally **or** in writing **in the** public prosecution office, in the police authorities offices and by police officers, and by the local courts. An offence which is reported orally shall be recorded in writing. Upon application, the aggrieved person is to be provided with written confirmation of receipt of his report. Such confirmation is to include a short summary of the aggrieved person's statements regarding the time and place of commission of the offence, and of the type of offence reported. Issuance of such confirmation may be refused if the purpose of the investigation, including in relation to other criminal **proceedings**, appears to be authorized.)
(2) In the case of offences which may be prosecuted only upon request, the request shall be made in writing or orally for the record to a court or to the public prosecution office; if the request is made to another authority, it shall be made in writing.

[522] **§ 158 Strafanzeige; Strafantrag StPO**
(1) Die Anzeige einer Straftat und der Strafantrag können bei der Staatsanwaltschaft, den Behörden und Beamten des Polizeidienstes und den Amtsgerichten mündlich oder schriftlich angebracht werden. Die mündliche Anzeige ist zu beurkunden. Dem Verletzten ist auf Antrag der Eingang seiner Anzeige schriftlich zu bestätigen. Die Bestätigung soll eine kurze Zusammenfassung der Angaben des Verletzten zu Tatzeit, Tatort und angezeigter Tat enthalten. Die Bestätigung kann versagt werden, soweit der Untersuchungszweck, auch in einem anderen Strafverfahren, gefährdet erscheint.
(2) Bei Straftaten, deren Verfolgung nur auf Antrag eintritt, muß der Antrag bei einem Gericht oder der Staatsanwaltschaft schriftlich oder zu Protokoll, bei einer anderen Behörde schriftlich angebracht werden. […]

Section 161 CPC[523] **Public prosecution office's general investigatory powers**
(1) For the purpose indicated in section 160 paras. 1 to 3, the public prosecution office shall be entitled to request information from all the authorities and to make investigations of any kind, either itself or through the police authorities and police officers, provided there are no other statutory provisions specifically regulating their powers. The police authorities and police officers shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all the authorities.
(2) If measures under this statute are admissible only if the commission of particular offences is suspected, personal data which have been obtained as a result of a corresponding measure taken pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to investigate one of the offences in respect of which such a measure could have been ordered to investigate the offence pursuant to this statute. Section 100e para. 6 no. 3 shall remain unaffected.
(3) Personal data obtained on or from private premises by technical means for the purpose of personal protection during covert investigations under police law may be used as evidence, having regard to the principle of proportionality (Article 13 para. 5 of the Basic Law) only after determination of the lawfulness of the measure by the local court (section 162 para. 1) in whose district the authority making the order is located; in exigent circumstances, a judicial decision is to be sought without delay.

Nota bene:
· ss. 3 para. 12 Customs Investigation Service Act (ZFdG)
· s. 386 Federal Tax Code,
· s. 81g para. 3, s. 95a para. 6 (Deferral of notification of the accused; prohibition of disclosure), 98 para. 1, 100a para. 4, 100j para. 3 (Inventory data information), 105

[52] **§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft StPO**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft *befugt*, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle *befugt*, von allen Behörden Auskunft zu verlangen.
(2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist § 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden.
(3) Ist eine Maßnahme nach diesem Gesetz nur bei Verdacht bestimmter Straftaten zulässig, so dürfen die auf Grund einer entsprechenden Maßnahme nach anderen Gesetzen erlangten personenbezogenen Daten ohne Einwilligung der von der Maßnahme betroffenen Personen zu Beweiszwecken im Strafverfahren nur zur Aufklärung solcher Straftaten verwendet werden, zu deren Aufklärung eine solche Maßnahme nach diesem Gesetz hätte *angeordnet werden* dürfen. § 100e Absatz 6 Nummer 3 bleibt unberührt.
(4) In oder aus einer Wohnung erlangte personenbezogene Daten aus einem Einsatz technischer Mittel zur Eigensicherung im Zuge nicht offener Ermittlungen auf polizeirechtlicher Grundlage dürfen unter Beachtung des Grundsatzes der Verhältnismäßigkeit zu Beweiszwecken nur verwendet werden (Artikel 13 Abs. 5 des Grundgesetzes), wenn das Amtsgericht (§ 162 Abs. 1), in dessen Bezirk die anordnende Stelle ihren Sitz hat, die Rechtmäßigkeit der Maßnahme festgestellt hat; bei Gefahr im Verzug ist die richterliche Entscheidung unverzüglich nachzuholen"

	para. 1 (searches of homes and premises in urgent cases), 111 para. 1–3 (Establishment of checkpoints at publicly accessible locations), 111j para. 3, 111k para. 1 and 2, 111m para. 1, 111p paras 3, 4 (emergency sale), 119 para. 2, 131 (Notice of arrest), 131c, 132, 163 para. 3 Criminal Procedure Code · the Subsidy Act and special opening clauses (Öffnungsklauseln) in other Codes such as s. 152 para. 1 Courts Constitution Act (GVG)
50	**Section 162 CPC[524] Investigating judge** (1) If the public prosecution office considers a judicial investigation to be necessary, it shall submit its applications prior to the preferment of public charges to the local court in the district of which it is located or in which the branch of the public prosecution office submitting the application is located. If the public prosecution office additionally considers it necessary that a warrant of arrest be issued or an order for placement be made, it may also, without prejudice to sections 125 and 126a, submit such an application before the court designated in sentence 1. The local court in the district of which the investigation procedures are to be carried out shall be competent to undertake examinations and inspections if the public prosecution office submits its application to such court in order to expedite proceedings or to avoid inconvenience to the persons concerned. (2) The court shall examine whether, given the circumstances of the case, the investigation applied for is permitted by law. (3) After the preferment of public charges, the court seized of the matter shall be the competent court. During proceedings on an appeal on points of law, the court whose judgment is being contested shall be the competent court. After final conclusion of the proceedings, paras. 1 and 2 shall apply accordingly. Following an application for the reopening of proceedings, the court competent to decide in the reopened proceedings shall be the competent court.

[524] **§ 162 Ermittlungsrichter**
(1) Erachtet die Staatsanwaltschaft die Vornahme einer gerichtlichen Untersuchungshandlung für erforderlich, so stellt sie ihre Anträge vor Erhebung der öffentlichen Klage bei dem Amtsgericht, in dessen Bezirk sie oder ihre den Antrag stellende Zweigstelle ihren Sitz hat. Hält sie daneben den Erlass eines Haft- oder Unterbringungsbefehls für erforderlich, so kann sie, unbeschadet der §§ 125, 126a, auch einen solchen Antrag bei dem in Satz 1 bezeichneten Gericht stellen. Für gerichtliche Vernehmungen und Augenscheinnahmen ist das Amtsgericht zuständig, in dessen Bezirk diese Untersuchungshandlungen vorzunehmen sind, wenn die Staatsanwaltschaft dies zur Beschleunigung des Verfahrens oder zur Vermeidung von Belastungen Betroffener dort beantragt.
(2) Das Gericht hat zu prüfen, ob die beantragte Handlung nach den Umständen des Falles gesetzlich zulässig ist.
(3) Nach Erhebung der öffentlichen Klage ist das Gericht zuständig, das mit der Sache befasst ist. Während des Revisionsverfahrens ist das Gericht zuständig, dessen Urteil angefochten ist. Nach rechtskräftigem Abschluss des Verfahrens gelten die Absätze 1 und 2 entsprechend. Nach einem Antrag auf Wiederaufnahme ist das für die Entscheidungen im Wiederaufnahmeverfahren zuständige Gericht zuständig.

Section 163 CPC
[…] (2) The authorities and officers of the police force shall transmit their records to the public prosecution office without delay. If it appears necessary that a judicial investigation be performed promptly, transmission directly to the local court shall be possible.
(3) Upon being summoned by the public prosecution office's investigators, witnesses shall be obliged to appear in court and make a statement on the subject matter if the summons was issued on the public prosecution office's behalf. Unless otherwise provided, the provisions of Part 6 of Book 1 shall apply accordingly. The court reserves the right to examine witnesses under oath.
(4) The public prosecution office shall decide
1. whether a person has the status of witness or whether he has the right to refuse to testify or provide information if there are doubts as to these matters or such doubts arise in the course of the examination,
2. whether a person is permitted, pursuant to section 68 para. 3 sentence 1, not to provide personal details or only concerning a previous identity,
3. whether to assign counsel to a witness pursuant to section 68b para. 2 and
4. whether to impose one of the measures provided for under sections 51 and 70 in the event of a witness's non-appearance in court without justification or refusal to give testimony without justification; the court competent pursuant to section 162 shall have the right to determine the sentence of imprisonment.
In all other respects, the person conducting the examination shall take all necessary decisions.
(5) An application may be made for a court decision by the court competent pursuant to section 162 against decisions taken by police officers pursuant to section 68b para. 1 sentence 3 and against decisions taken by the public prosecution office pursuant to para. para. 4 sentence 1 nos. 3 and 4. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. Court decisions as referred to in sentence 1 shall not be contestable.
(6) Section 52 para. 3 and section 55 para. 2 shall apply accordingly to instruction given to experts by police officers. In the cases under section 81c para. 3 sentences 1 and 2, section 52 para. 3 shall also apply accordingly to examinations by police officers.
(7) Section 185 paras. 1 and 2 of the Courts Constitution Act shall apply analogously.

General Tax Code[525]

Section 386 AO[526] **Jurisdiction of the revenue authority in the case of tax crimes**

(1) Where a tax crime is suspected, the revenue authority shall investigate the facts of the case. The revenue authority within the meaning of this chapter shall be the main customs office, the tax office, the Federal Central Tax Office and the child benefits disbursement office.

(2) The revenue authority shall conduct the investigation independently within the limits laid down in sections 399 para. 1, 400 and 401 where the act

1. is exclusively a tax crime or
2. simultaneously violates other criminal laws, and such violation involves church taxes or other public-law levies linked to tax bases, base amounts of non-personal taxes or tax amounts.

(3) Para. 2 above shall not apply as soon as an arrest warrant or a remand to a psychiatric hospital centre is issued against the accused for the act.

(4) The revenue authority may hand the criminal matter over to the public prosecutor's office at any time. The public prosecutor's office may take over the criminal matter at any time. In both cases, the public prosecutor's office may, with the mutual agreement of the revenue authority, return the criminal matter to the revenue authority.

Section 397 AO[527] **Initiating criminal proceedings**

(1) Criminal proceedings shall be deemed to have been initiated as soon as the revenue authority, the police, the public prosecutor's office, one of its investigators or the judge

[525] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.

[526] **§ 386 Zuständigkeit der Finanzbehörde bei Steuerstraftaten**

(1) Bei dem Verdacht einer Steuerstraftat ermittelt die Finanzbehörde den Sachverhalt. Finanzbehörde im Sinne dieses Abschnitts sind das Hauptzollamt, das Finanzamt, das Bundeszentralamt für Steuern und die Familienkasse.

(2) Die Finanzbehörde führt das Ermittlungsverfahren in den Grenzen des § 399 Abs. 1 und der §§ 400, 401 selbständig durch, wenn die Tat

1.ausschließlich eine Steuerstraftat darstellt oder

2.zugleich andere Strafgesetze verletzt und deren Verletzung Kirchensteuern oder andere öffentlich-rechtliche Abgaben betrifft, die an Besteuerungsgrundlagen, Steuermessbeträge oder Steuerbeträge anknüpfen.

(3) Absatz 2 gilt nicht, sobald gegen einen Beschuldigten wegen der Tat ein Haftbefehl oder ein Unterbringungsbefehl erlassen ist.

(4) Die Finanzbehörde kann die Strafsache jederzeit an die Staatsanwaltschaft abgeben. Die Staatsanwaltschaft kann die Strafsache jederzeit an sich ziehen. In beiden Fällen kann die Staatsanwaltschaft im Einvernehmen mit der Finanzbehörde die Strafsache wieder an die Finanzbehörde abgeben.

[527] **§ 397 Einleitung des Strafverfahrens**

(1) Das Strafverfahren ist eingeleitet, sobald die Finanzbehörde, die Polizei, die Staatsanwaltschaft, eine ihrer Ermittlungspersonen oder der Strafrichter eine Maßnahme trifft, die erkennbar darauf abzielt, gegen jemanden wegen einer Steuerstraftat strafrechtlich vorzugehen.

(2) Die Maßnahme ist unter Angabe des Zeitpunkts unverzüglich in den Akten zu vermerken.

(3) Die Einleitung des Strafverfahrens ist dem Beschuldigten spätestens mitzuteilen, wenn er dazu aufgefordert wird, Tatsachen darzulegen oder Unterlagen vorzulegen, die im Zusammenhang mit der Straftat stehen, derer er verdächtig ist.

in a criminal court adopts a measure, the purpose of which is identifiably to institute criminal action against somebody for a tax crime.
(2) The measure and the time at which it was taken shall be entered in the records without undue delay.
(3) The accused shall be informed of the initiation of criminal proceedings at the latest when he is called upon to reveal facts or supply documents which are related to the crime of which he is suspected.

Section 399 AO[528] Revenue authority's rights and obligations
(1) Where the revenue authority conducts the investigation independently pursuant to section 386 para. 2, the revenue authority shall have the same rights and obligations as the public prosecutor's office has in an investigation.
(2) Where a revenue authority has been given jurisdiction pursuant to section 387 para. 2 for an area covered by several revenue authorities, the right and obligation of these revenue authorities to investigate the facts where a tax crime is suspected and to issue all non-deferrable orders to avoid obfuscation of the case shall remain unaffected. They may order confiscation, emergency sales, searches, inspections and other measures in accordance with the regulations of the Code of Criminal Procedure applying to the public prosecution office's investigators.

Section 402 AO[529] General rights and obligations of the revenue authority
(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399 para. 2 sentence 2.

[528] **§ 399 Rechte und Pflichten der Finanzbehörde**
(1) Führt die Finanzbehörde das Ermittlungsverfahren auf Grund des § 386 Abs. 2 selbständig durch, so nimmt sie die Rechte und Pflichten wahr, die der Staatsanwaltschaft im Ermittlungsverfahren zustehen.
(2) Ist einer Finanzbehörde nach s. 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so bleiben das Recht und die Pflicht dieser Finanzbehörden unberührt, bei dem Verdacht einer Steuerstraftat den Sachverhalt zu erforschen und alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. Sie können Beschlagnahmen, Notveräußerungen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung anordnen.
[529] **§ 402 Allgemeine Rechte und Pflichten der Finanzbehörde [Abgabenordnung]**
(1) Führt die Staatsanwaltschaft das Ermittlungsverfahren durch, so hat die sonst zuständige Finanzbehörde dieselben Rechte und Pflichten wie die Behörden des Polizeidienstes nach der Strafprozessordnung sowie die Befugnisse nach § 399 Abs. 2 Satz 2.
(2) Ist einer Finanzbehörde nach § 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so gilt Absatz 1 für jede dieser Finanzbehörden.

(2) Where a revenue authority has been transferred pursuant to section 387 para. 2 jurisdiction for an area covered by several revenue authorities, para. 1 above shall apply for each of these revenue authorities.[530]

Section 404 AO[531] Tax and customs investigation
The Customs Investigation Offices and the agencies of Land revenue authorities which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399 para. 2, second sentence, as well as the power to examine the papers of those affected by the search (section 110 para. 1 of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.[532]

cc. Administration of offences Act, Market Organisation Act

51 Further tasks of the police in the investigation phase may be:

Administration of Offences Act
Section 53 OWiG[533] Tasks of the police
(1) The ***authorities and officers of the police service*** shall, at their best discretion, investigate administrative offences and make all orders that cannot be postponed in order to prevent the matter from being obscured. Unless otherwise provided in this Act, when investigating administrative offences they have the same rights and obligations as when prosecuting criminal offences. They send their files immediately to the administrative authority, in cases of connection (section 42) to the public prosecutor's office.

[530] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.
[531] **§ 404 Steuer- und Zollfahndung [Abgabenordnung]**
Die Behörden des Zollfahndungsdienstes und die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden sowie ihre Beamten haben im Strafverfahren wegen Steuerstraftaten dieselben Rechte und Pflichten wie die Behörden und Beamten des Polizeidienstes nach den Vorschriften der Strafprozessordnung. Die in Satz 1 bezeichneten Stellen haben die Befugnisse nach § 399 Abs. 2 Satz 2 sowie die Befugnis zur Durchsicht der Papiere des von der Durchsuchung Betroffenen (§ 110 Abs. 1 der Strafprozessordnung); ihre Beamten sind Ermittlungspersonen der Staatsanwaltschaft.
[532] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html.
[533] See **§ 53 Aufgaben der Polizei OWiG**
(1) 1Die Behörden und Beamten des Polizeidienstes haben nach pflichtgemäßem Ermessen Ordnungswidrigkeiten zu erforschen und dabei alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. 2Sie haben bei der Erforschung von Ordnungswidrigkeiten, soweit dieses Gesetz nichts anderes bestimmt, dieselben Rechte und Pflichten wie bei der Verfolgung von Straftaten. 3Ihre Akten übersenden sie unverzüglich der Verwaltungsbehörde, in den Fällen des Zusammenhangs (§ 42) der Staatsanwaltschaft.
(2) Die Beamten des Polizeidienstes, die zu Ermittlungspersonen der Staatsanwaltschaft bestellt sind (§ 152 des Gerichtsverfassungsgesetzes), können nach den für sie geltenden Vorschriften der Strafprozeßordnung Beschlagnahmen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen anordnen.

(2) The police officers who are appointed investigators of the public prosecutor's office/civil servants (Section 152 of the Courts Constitution Act) ***may order seizures, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure*** that apply to them.
- see ss. 97, 105 et seq. CPC

Market Organisation Act (MOG)

Section 37 MOG[534] Powers of the customs authorities

(1) The public prosecutor's office can start in case of
1. Criminal offences according to the penal provisions specified in Section 35,
2. Criminal offences under Sections 263 and 264 of the Criminal Code that relate to benefits (Section 6) and services provided by the intervention agency in the context of interventions (Section 7) in connection with regulations within the meaning of Section 1 para. 2 for the purpose of common Market organisations are granted, as well as compensation amounts according to s. 39 and
3. authorize a person who has committed a criminal offence under number 1 or 2,
investigations (s. 161 Section 1 Sentence 1 Criminal Procedure Code), which can also be carried out by instruction of the public prosecutor the main customs offices or the customs investigation offices ("*vornehmen lassen*"). Sentence 1 applies to the adminis-

[534] § 37 Marktordnungsgesetz
(1) ***Die Staatsanwaltschaft kann*** bei
1. Straftaten nach den in § 35 bezeichneten Strafvorschriften,
2. Straftaten nach den §§ 263 und 264 des Strafgesetzbuches, die sich beziehen auf Vergünstigungen (§ 6) und Leistungen der Interventionsstelle im Rahmen von Interventionen (§ 7), die im Zusammenhang mit Regelungen im Sinne des § 1 Absatz 2 zu Zwecken der gemeinsamen Marktorganisationen gewährt werden, sowie auf Ausgleichsbeträge nach § 39 und
3. Begünstigung einer Person, die eine Straftat nach Nummer 1 oder 2 begangen hat, ***Ermittlungen (§ 161 Absatz 1 Satz 1 Strafprozessordnung) auch durch die Hauptzollämter oder die Zollfahndungsämter vornehmen lassen.***
Satz 1 gilt für die Verwaltungsbehörde bei Ordnungswidrigkeiten nach den in § 35 bezeichneten Bußgeldvorschriften und bei Ordnungswidrigkeiten nach § 36 entsprechend.
(2) Die Hauptzollämter und die Zollfahndungsämter sowie deren Beamte haben auch ohne Ersuchen der Staatsanwaltschaft oder der Verwaltungsbehörde Straftaten und Ordnungswidrigkeiten der in Absatz 1 bezeichneten Art zu erforschen und zu verfolgen, wenn diese das Verbringen in den oder aus dem Geltungsbereich dieses Gesetzes, die Einfuhr oder Ausfuhr, die Herstellung, Verwendung oder Behandlung von Marktordnungswaren betreffen, die der amtlichen Überwachung durch die Bundesfinanzverwaltung nach diesem Gesetz oder den auf Grund dieses Gesetzes erlassenen Rechtsverordnungen unterliegen. Dasselbe gilt für die sonstigen Straftaten und Ordnungswidrigkeiten, soweit Gefahr im Verzug ist. § 163 der Strafprozessordnung und § 53 des Gesetzes über Ordnungswidrigkeiten bleiben unberührt.
(3) In den Fällen der Absätze 1 und 2 haben die Beamten der Hauptzollämter und der Zollfahndungsämter die Rechte und Pflichten der Polizeibeamten nach den Vorschriften der Strafprozessordnung und des Gesetzes über Ordnungswidrigkeiten. Sie sind insoweit Ermittlungspersonen der Staatsanwaltschaft.
(4) In diesen Fällen können die Hauptzollämter und Zollfahndungsämter sowie deren Beamte im Bußgeldverfahren Beschlagnahmen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung vornehmen; unter den Voraussetzungen des § 111p Absatz 2 Satz 2 der Strafprozessordnung können auch die Hauptzollämter die Notveräußerung anordnen.

trative authority in the case of administrative offences in accordance with the fine provisions specified in Section 35 and in the case of administrative offences in accordance with Section 36.
(2) The ***main customs offices and the customs investigation offices and their officials shall also investigate and prosecute criminal and administrative offences of the type referred to in para. 1 without being requested*** to do so by the public prosecutor's office or the administrative authority, if these involve bringing into or out of the scope of this Act, the Imports or exports relating to the manufacture, use or treatment of market regulation goods that are subject to official monitoring by the federal tax authorities in accordance with this Act or the statutory ordinances issued on the basis of this Act. 2 The same applies to other criminal and administrative offences if there is imminent danger. 3 Section 163 of the Code of Criminal Procedure and s. 53 of the law on administrative offences remain unaffected.
(3) In the cases of paragraphs 1 and 2, the officers of ***the main customs offices and the customs investigation offices have the rights and duties of the police officers*** under the provisions of the Code of Criminal Procedure and the Act on Administrative Offences. 2 In this respect, they are investigators of the public prosecutor's office.
(4) In these cases, ***the main customs offices and customs investigation offices and their officials may carry out*** confiscations, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure applicable to investigators of the public prosecutor's office; under the conditions of s. 111p paragraph 2 sentence 2 of the Code of Criminal Procedure, the main customs offices can also order the emergency sale.

Foreign Trade and Payments Act 52

Section 21[535] **Tasks and powers of customs authorities**

(1) ***In the case of criminal and administrative offences*** pursuant to Sections 17 and 18, with the exception of Section 18 para. 1b and 2 no. 8, and pursuant to Section 19, with the exception of Section 19 para. 1 no. 2, of this Act or pursuant to Section 19 para. 1 to 3, Section 20 paras. 1 and 2, Section 20a paras. 1 to 3, in each case also in conjunction with Section 21, or pursuant to Section 22a para. 1 no. 4, 5 and 7 of the War Weapons Control Act, ***the public prosecution office can ask for investigations tob be carried out pursuant to Section 161 para. 1 sentence 1 of the Code of Criminal Procedure by the main customs offices or the customs investigation offices***. The administrative authority within the meaning of Section 22 para. 3 sentence 1 can in the cases of sentence 1 also have investigations carried out by a different main customs office or the customs investigation offices. [...][536]

d) Ensuring compliance with national law

aa. Via the general investigation provisions

Section 161 para. 1 CPC[537] **General investigative power of the public prosecutor's office** 53

(1) For the purposes specified in s. 160 para. 1 to 3, the Public Prosecutor's Office shall have the power to request information from all authorities and to conduct investigations of any kind either itself or through the authorities and officers of the police service, unless other statutory provisions specifically regulate its powers. The authorities and officers of the police service shall be obliged to comply with the request or order of the public prosecutor's office and in this case shall be authorized to demand information from all authorities.[…]

[535] **§ 21 Aufgaben und Befugnisse der Zollbehörden Außenwirtschaftsgesetz (AWG)**
(1) ***Die Staatsanwaltschaft kann bei Straftaten und Ordnungswidrigkeiten*** nach den §§ 17 und 18, mit Ausnahme von § 18 Absatz 1b und 2 Nummer 8, sowie nach § 19, mit Ausnahme von § 19 Absatz 1 Nummer 2, dieses Gesetzes oder nach § 19 Absatz 1 bis 3, § 20 Absatz 1 und 2, § 20a Absatz 1 bis 3, jeweils auch in Verbindung mit § 21, oder nach § 22a Absatz 1 Nummer 4, 5 und 7 des Gesetzes über die Kontrolle von Kriegswaffen ***Ermittlungen nach § 161 Absatz 1 Satz 1 der Strafprozessordnung auch durch die Hauptzollämter oder die Zollfahndungsämter vornehmen lassen.*** Die Verwaltungsbehörde im Sinne des § 22 Absatz 3 Satz 1 kann in den Fällen des Satzes 1 Ermittlungen auch durch ein anderes Hauptzollamt oder die Zollfahndungsämter vornehmen lassen. […]

[536] Translation provided by the Language Service of the Federal Ministry for Economic Affairs and Climate Action.

[537] **§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft *befugt*, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle *befugt*, von allen Behörden Auskunft zu verlangen. […]

General Tax Code[538]

Section 386 AO[539] **Jurisdiction of the revenue authority in the case of tax crimes**

(1) Where a tax crime is suspected, the revenue authority shall investigate the facts of the case. The revenue authority within the meaning of this chapter shall be the main customs office, the tax office, the Federal Central Tax Office and the child benefits disbursement office.

(2) The revenue authority shall conduct the investigation independently within the limits laid down in sections 399 para. 1, 400 and 401 where the act

1. is exclusively a tax crime or
2. simultaneously violates other criminal laws, and such violation involves church taxes or other public-law levies linked to tax bases, base amounts of non-personal taxes or tax amounts.

(3) Para. 2 above shall not apply as soon as an arrest warrant or a remand to a psychiatric hospital centre is issued against the accused for the act.

(4) The revenue authority may hand the criminal matter over to the public prosecutor's office at any time. The public prosecutor's office may take over the criminal matter at any time. In both cases, the public prosecutor's office may, with the mutual agreement of the revenue authority, return the criminal matter to the revenue authority.

Section 397 AO[540] **Initiating criminal proceedings**

(1) Criminal proceedings shall be deemed to have been initiated as soon as the revenue authority, the police, the public prosecutor's office, one of its investigators or the judge

[538] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.

[539] **§ 386 Zuständigkeit der Finanzbehörde bei Steuerstraftaten**

(1) Bei dem Verdacht einer Steuerstraftat ermittelt die Finanzbehörde den Sachverhalt. Finanzbehörde im Sinne dieses Abschnitts sind das Hauptzollamt, das Finanzamt, das Bundeszentralamt für Steuern und die Familienkasse.

(2) Die Finanzbehörde führt das Ermittlungsverfahren in den Grenzen des § 399 Abs. 1 und der §§ 400, 401 selbständig durch, wenn die Tat

1.ausschließlich eine Steuerstraftat darstellt oder

2.zugleich andere Strafgesetze verletzt und deren Verletzung Kirchensteuern oder andere öffentlich-rechtliche Abgaben betrifft, die an Besteuerungsgrundlagen, Steuermessbeträge oder Steuerbeträge anknüpfen.

(3) Absatz 2 gilt nicht, sobald gegen einen Beschuldigten wegen der Tat ein Haftbefehl oder ein Unterbringungsbefehl erlassen ist.

(4) Die Finanzbehörde kann die Strafsache jederzeit an die Staatsanwaltschaft abgeben. Die Staatsanwaltschaft kann die Strafsache jederzeit an sich ziehen. In beiden Fällen kann die Staatsanwaltschaft im Einvernehmen mit der Finanzbehörde die Strafsache wieder an die Finanzbehörde abgeben.

[540] **§ 397 Einleitung des Strafverfahrens**

(1) Das Strafverfahren ist eingeleitet, sobald die Finanzbehörde, die Polizei, die Staatsanwaltschaft, eine ihrer Ermittlungspersonen oder der Strafrichter eine Maßnahme trifft, die erkennbar darauf abzielt, gegen jemanden wegen einer Steuerstraftat strafrechtlich vorzugehen.

(2) Die Maßnahme ist unter Angabe des Zeitpunkts unverzüglich in den Akten zu vermerken.

(3) Die Einleitung des Strafverfahrens ist dem Beschuldigten spätestens mitzuteilen, wenn er dazu aufgefordert wird, Tatsachen darzulegen oder Unterlagen vorzulegen, die im Zusammenhang mit der Straftat stehen, derer er verdächtig ist.

in a criminal court adopts a measure, the purpose of which is identifiably to institute criminal action against somebody for a tax crime.
(2) The measure and the time at which it was taken shall be entered in the records without undue delay.
(3) The accused shall be informed of the initiation of criminal proceedings at the latest when he is called upon to reveal facts or supply documents which are related to the crime of which he is suspected.

Section 399 AO[541] Revenue authority's rights and obligations
(1) Where the revenue authority conducts the investigation independently pursuant to section 386 para. 2, the revenue authority shall have the same rights and obligations as the public prosecutor's office has in an investigation.
(2) Where a revenue authority has been given jurisdiction pursuant to section 387 para. 2 for an area covered by several revenue authorities, the right and obligation of these revenue authorities to investigate the facts where a tax crime is suspected and to issue all non-deferrable orders to avoid obfuscation of the case shall remain unaffected. They may order confiscation, emergency sales, searches, inspections and other measures in accordance with the regulations of the Code of Criminal Procedure applying to the public prosecution office's investigators.

Section 402 AO[542] General rights and obligations of the revenue authority
(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399 para. 2, second sentence.

[541] **§ 399 Rechte und Pflichten der Finanzbehörde**
(1) Führt die Finanzbehörde das Ermittlungsverfahren auf Grund des § 386 Abs. 2 selbständig durch, so nimmt sie die Rechte und Pflichten wahr, die der Staatsanwaltschaft im Ermittlungsverfahren zustehen.
(2) Ist einer Finanzbehörde nach s. 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so bleiben das Recht und die Pflicht dieser Finanzbehörden unberührt, bei dem Verdacht einer Steuerstraftat den Sachverhalt zu erforschen und alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. Sie können Beschlagnahmen, Notveräußerungen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung anordnen.
[542] "**§ 402 Allgemeine Rechte und Pflichten der Finanzbehörde [Abgabenordnung]**
(1) Führt die Staatsanwaltschaft das Ermittlungsverfahren durch, so hat die sonst zuständige Finanzbehörde dieselben Rechte und Pflichten wie die Behörden des Polizeidienstes nach der Strafprozessordnung sowie die Befugnisse nach § 399 Abs. 2 Satz 2.
(2) Ist einer Finanzbehörde nach § 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so gilt Absatz 1 für jede dieser Finanzbehörden"

(2) Where a revenue authority has been transferred pursuant to section 387 para. 2 jurisdiction for an area covered by several revenue authorities, para. 1 above shall apply for each of these revenue authorities.[543]

Section 404 AO Tax and customs investigation
The Customs Investigation Offices and the agencies of Land revenue authorities which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399 para. 2, second sentence, as well as the power to examine the papers of those affected by the search (section 110 para. 1 of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.[544]

bb. Via national administrative decrees/regulations under criminal procedural law (*Nationale strafprozessrechtliche Verwaltungsvorschriften*)

(1) Germany: RiVASt, RiStBV (amended for Hamburg)

54

RiVASt[545]

Number 1 Principles of application[546]
(1) These Guidelines are intended for courts, public prosecutors' offices and other authorities. With regard to decisions subject to judicial independence, they contain only indications.
(2) The Guidelines shall be applied unless they are precluded by international agreements (treaties, conventions, reciprocal declarations, etc.),
(treaties, agreements, declarations of reciprocity, etc.). They are based on the rule of cases. In special cases, they may be deviated from.

[543] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.
[544] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.
[545] General Order of the Authority for Justice and Consumer Protection, AV Nr. 10/2021, Az.: 4208/2, 9500/120, 18 May 2021.
[546] Nummer 1 Anwendungsgrundsätze (1) Diese Richtlinien sind für Gerichte, Staatsanwaltschaften und andere Behörden bestimmt. Hinsichtlich der Entscheidungen, die der richterlichen Unabhängigkeit unterliegen, enthalten sie nur Hinweise. (2) Die Richtlinien sind anzuwenden, soweit ihnen nicht völkerrechtliche Übereinkünfte (Verträge, Vereinbarungen, Gegenseitigkeitserklärungen u. Ä.) entgegenstehen. Sie sind auf den Regelfall abgestellt. In besonderen Fällen kann von ihnen abgewichen werden.

Section 3 Cross-border special investigation methods
Point 142a Cross-border surveillance (including controlled delivery) [...]
Section 142b Joint Coordination Groups [...]
Number 142c Joint investigation teams [...]

Point 155[547] **Scope, applicable rules**
This Section applies to incoming extradition requests from a Member State irrespective of whether a whether a European arrest warrant or the documents referred to in Section 10 IRG are transmitted.
An alert entered in the Schengen Information System (SIS II) pursuant to Article 26 of the SIS II Decision1 shall be deemed to be a European Arrest Warrant pursuant to Section 83a para. 2 IRG.

Point 156[548] **Procedure following arrest on the basis of a SIS or INTERPOL alert**
(1) After an arrest, the Federal Criminal Police Office shall forward the documents available to it in accordance with No. 6.
In particular, if available, the form of the European arrest warrant as well as the name arrest warrant and the name and address of the requesting judicial authority (with e-mail address, telephone and fax number), telephone and fax numbers), and a translation of the facts of the case and their legal assessment.
To the competent Prosecutor General's Office and to the arresting police station for presentation to the competent court.
(2) The Federal Criminal Police Office shall inform the SIRENE or INTERPOL Bureau of the requesting Member State of the following the name and address of the competent Public Prosecutor's Office (with telephone and fax numbers and e-mail address).

[547] Nummer 155 Anwendungsbereich, anzuwendende Vorschriften Dieser Abschnitt gilt für eingehende Auslieferungsersuchen aus einem Mitgliedstaat unabhängig davon, ob ein Europäischer Haftbefehl oder die in § 10 IRG genannten Unterlagen übermittelt werden. Eine in das Schengener Informationssystem (SIS II) eingestellte Ausschreibung nach Artikel 26 SIS IIBeschluss1 gilt als Europäischer Haftbefehl nach Maßgabe des § 83a Absatz 2 IRG.
[548] Nummer 156 Verfahren nach Festnahme aufgrund einer SIS- oder INTERPOL-Ausschreibung (1) Nach einer Festnahme übermittelt das Bundeskriminalamt entsprechend Nummer 6 die bei ihm vorhandenen Unterlagen, insbesondere, soweit vorhanden, das Formular des Europäischen Haftbefehls sowie die Bezeichnung und Anschrift der ersuchenden Justizbehörde (mit E-Mail-Addresse, Telefon- und Faxnummer), und eine Übersetzung des Sachverhalts und dessen rechtlicher Würdigung an die zuständige Generalstaatsanwaltschaft und an die festnehmende Polizeidienststelle zur Vorlage bei dem zuständigen Gericht. (2) Das Bundeskriminalamt teilt dem SIRENE- bzw. INTERPOL-Büro des ersuchenden Mitgliedstaats Name und Anschrift der zuständigen Generalstaatsanwaltschaft (mit Telefon- und Faxnummer und EMail-Anschrift) mit.

	Point 156a[549] **Forwarding of requests by the prosecuted person to the requesting Member State** (1. If the requested person wishes to appoint a legal counsellor in the requesting Member State prior to the transfer, the requesting Member State shall Member State prior to transfer, the General Prosecutor's Office shall immediately inform the competent authority in the requesting Member State. (2. If the European arrest warrant is issued for the purpose of executing a custodial sentence or a custodial sentence or detention order and the requested person has not previously been officially informed that person has not previously been officially informed that a judgment has been passed against him or her, he or she may request that a copy of the judgment be provided to him or her before transfer. In this case, the shall forward the request without delay to the competent authority of the requesting Member State.
55	RiVASt is the **main guideline** for dealings with foreign countries in matters of criminal law. Special regulations for the countries are separate in the annex of the guideline, e.g. for Afghanistan (April 2018).
56	**XIV. RiStBV Section: Communication with the European Public Prosecutor's Office – 301** Criminal cases falling within the competence of the European Public Prosecutor's Office (1)[550] Cases from which there is a suspicion of a criminal offence falling within the competence of the European Public Prosecutor's Office pursuant to Articles 22 and 23

[549] Nummer 156a Weiterleitung von Anträgen der verfolgten Person an den ersuchenden Mitgliedstaat (1) Wünscht die verfolgte Person bereits vor Überstellung im ersuchenden Mitgliedstaat einen Rechtsbeistand zu benennen, so unterrichtet die Generalstaatsanwaltschaft umgehend die zuständige Behörde im ersuchenden Mitgliedstaat. (2) Wird der Europäische Haftbefehl zur Vollstreckung einer Freiheitsstrafe oder einer freiheitsentziehenden Maßregel der Sicherung ausgestellt und ist die verfolgte Person zuvor nicht offiziell davon in Kenntnis gesetzt worden, dass gegen sie ein Urteil ergangen ist, kann sie beantragen, dass ihr eine Abschrift des Urteils vor Überstellung übergeben wird. In diesem Fall hat die Generalstaatsanwaltschaft diesen Antrag unverzüglich an die zuständige Behörde des ersuchenden Mitgliedstaates weiterzuleiten.

[550] "**XIV. Abschnitt: Verkehr mit der Europäischen Staatsanwaltschaft – 301** Strafsachen, die in die Zuständigkeit der Europäischen Staatsanwaltschaft fallen
(1) Vorgänge, aus denen sich der Verdacht einer in die Zuständigkeit der Europäischen Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 des Ra tes vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Er richtung der Europäischen Staatsanwaltschaft (EUStA-VO) fallenden Straftat ergibt, über sendet der Staatsanwalt gemäß Artikel 24 Abs. 1 oder 2 EUStA-VO mit einem Bericht unverzüglich der Europäischen Staatsanwaltschaft, sofern nach den Umständen erkenn bar ist, dass der Tatzeitpunkt nach Inkrafttreten der EUStA-VO am 21. November 2017 liegt (siehe Artikel 120 Abs. 2 Unterabs.' I EUStA-VO) und die Europäische Staatsanwalt- schaft gemäß Artikel 25 Abs. 2 und 3 EUStA-VO ihre Zuständigkeit ausüben könnte. Satz I gilt auch dann, wenn zum Zeitpunkt der Unterrichtung nicht erkennbar Ist, ob die Kriterien des Artikels 25 Abs. 2 EUStA-VO erfüllt sind. Vor Übersendung des Vorgangs nach Artikel 24 Abs. 2 EUStA-VO hat der Staatsanwalt nach Möglichkeit Kontakt mit dem zuständigen deutschen Zentrum der Delegierten Europäischen Staatsanwälte aufzuneh men, um eine zeitgerechte Entscheidung über die Evokation zu ermöglichen.
(2) Der Bericht an die Europäische Staatsanwaltschaft enthält mindestens eine Beschrei bung des Sachverhaltes einschließlich einer Bewertung des entstandenen oder voraus sichtlichen Schadens, die mögliche rechtliche Würdigung und alle vorliegenden Informati onen über mögliche Opfer, Verdächtige und andere Beteiligte (Artikel

of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor's Office (EUStA-Reg), the public prosecutor shall, in accordance with Article 24 para. 1 or 2 of the EUStA Regulation, send a report to the European Public Prosecutor's Office without delay, if it is evident from the circumstances that the offence was committed after the

24 Abs. 4 EUStA VO) sowie die Mitteilung, ob die Meldung nach Artikel 24 Abs. I oder 2 EUStA-VO erfolgt, insbesondere ob nach deutschem Recht bereits ein Ermittlungsverfahren als eingeleitet gilt. Auf besondere Umstände (z. B. drohende Verjährung, Untersuchungshaft, erforderli che eilige richterliche Maßnahmen) ist hinzuweisen. Der Vorgang und der Bericht sind der. Europäischen Staatsanwaltschaft über den Generalstaatsanwalt, in dringenden Fällen unmittelbar bei gleichzeitiger Übersendung vdn Abschriften an den Generalstaatsanwalt, zuzuleiten.

(3) Ein Bericht nach. Artikel 24 Abs. 2 EUStA-VO erfolgt auch in den Fällen des Artikel 24 Abs. 3 EUStA-VO, in denen der Staatsanwalt der Auffassung Ist, dass die Europäische Staatsanwaltschaft gemäß Artikel 25 Abs. 3 EUStA-VO ihre Zuständigkeit nicht ausüben könnte. In diesen Fällen ist eine Obersendung des Vorgangs in der Regel nicht erforder lich. Etwas anderes gilt dann, wenn bereits zum Zeitpunkt der Unterrichtung ein Einver ständnis mit der Übernahme des Verfahrens durch die Europäische Staatsanwaltschaft gemäß Artikel 25 Abs. 4 i. V. m. Abs. 3 Buchstabe b EUStA-VO besteht. In diesem Fall ist das Einverständnis im Bericht nach Abs. 2 ausdrücklich zu erklären. Bei der Prüfung, ob ein solches Einverständnis erklärt werden soll, ist insbesondere zu berücksichtigen, ob es sich um eine Straftat handelt, die grenzüberschreitende Bezüge oder Bedeutung aufweist, an der eine kriminelle Vereinigung beteiligt ist oder die Straftat eine ernste Gefahr für die finanziellen Interessen der Union oder für die Glaubwürdigkeit ihrer Institutionen und das Vertrauen ihrer Bürger darstellen könnte (Erwägungsgrund Nr..60 der EUStA-VO).

(4) Abs. I und 2 gelten auch, wenn die Europäische Staatsanwaltschaft auf anderem Weg als durch einen Bericht Kenntnis erhält, dass eine Staatsanwaltschaft bereits in Bezug auf eine Straftat Ermittlungen, für die die Europäische Staatsanwaltschaft zuständig sein könnte, durchführt und um Unterrichtung gemäß Artikel 24 Abs. 2 EUStA-Verordnung bittet (Artikel 27 Abs. 3 EUStA-VO).

(5) Nach Übersendung des Vorgangs gemäß Abs. I und des Berichts gemäß Abs. 2 hat der Staatsanwalt bis zur Entscheidung der Europäischen Staatsanwaltschaft über die Ein leitung eines Verfahrens (Artikel 26 Abs. I EUStA-VO) oder die Übernahme des Verfah rens (Artikel 27 Abs. I EUStA-VO) nur solche Maßnahmen vorzunehmen, die dringend erforderlich sind, um effektive Ermittlungen und eine effektive Strafverfolgung sicherzu stellen. Vor solchen Amtshandlungen hat der Staatanwalt, soweit möglich, mit dem zu ständigen Delegierten Europäischen Staatsanwalt Fühlung zu nehmen.

(6) Bei Beantwortung von Anfragen der Europäischen Staatsanwaltschaft nach Artikel 24 Abs. 9 EUStA-VO sind die Informationen der Europäischen Staatsanwaltschaft über den Generalstaatsanwalt, in dringenden Fällen unmittelbar bei gleichzeitiger Obersendung ' von Abschriften an den Generalstaatsanwalt, zuzuleiten.

(7) Der zuständige Delegierte Europäische Staatsanwalt ist unverzüglich über alle neuen Sachverhalte zu unterrichten, die die Europäische Staatsanwaltschaft dazu veranlassen könnten, ihre Entscheidung, ihre Zuständigkeit nicht auszuüben, zu überprüfen (Artikel 27 Abs. 7 EUStA-VO). Bei der Unterrichtung ist auf die Umstände hinzuweisen, die eine Übernahme des Verfahrens durch die Europäische Staatsanwaltschaft nahelegen. Abs. 2 Satz 3 gilt sinngemäß.

(8) Besteht Uneinigkeit darüber, ob die strafbare Handlung in den Anwendungsbereich der Artikel 22 Abs. 2 und 3 oder Artikel 25 Abs. 2 und 3 EUStA-VO fällt, leitet die Staats anwaltschaft dem Generalbundesanwalt die Akten zusammen mit einer kurzen Stellung nahme über den Generalstaatsanwalt zur Entscheidung zu (Artikel 25 Abs. 6 EUStA-VO, § 142b Abs. 2 Satz I GVG).

(9) Erhält der Staatsanwalt die Mitteilung, dass die Europäische Staatsanwaltschaft ge mäß Artikel 26 Abs. I EUStA-VO ein Verfahren eingeleitet hat (§ 12 Abs. 2 EUStAG), so prüft der Staatsanwalt, ob damit zusammenhängende Verfahren anhängig sind und unter richtet ggf. den mit den Ermittlungen betrauten Delegierten Europäischen Staatsanwalt gemäß Abs. 1 und 2.

(10) Trifft ein Staatsanwalt dringend erforderliche Maßnahmen gemäß Artikel 28 Abs. 2 EUSIA-VO, so ist der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt, unverzüglich und unmittelbar über die ergriffenen Maßnahmen bei gleichzeitiger Über sendung von Abschriften an den Generalstaatsanwalt zu unterrichten.

(11) Die Übersendung von Vorgängen und Berichten erfolgt nach Maßgabe der von den deutschen Zentren der Delegierten Europäischen Staatsanwälte herausgegebenen Richt linien für die Kommunikation mit den nationalen Behörden und, soweit möglich, auch elektronisch. Der Staatsanwalt soll ein Aktendoppel behalten.

entry into force of the EUStA Regulation on 20 November 2017. (see Article 120 para. 2 subpar 1 of the EUStA Regulation) and the European Public Prosecutors could exercise its jurisdiction in accordance with Article 25paras. 2 and 3 of the EUStA Regulation. Sentence 1 also applies if, at the time of the notification, it is not authorized whether the criteria of Article 25 (2) of the EUStA Regulation are met. Before sending the file the public prosecutor shall, if possible, contact the competent German Centre of Delegated European Public Prosecutors in order to enable a timely decision on the evocation.
(2) The report to the European Public Prosecutor's Office contains at least a description of the of the facts of the case, including an assessment of the damage caused or likely to be caused, the possible legal assessment and any available information on possible victims, suspects and information on possible victims, suspects and other parties involved (Article 24 para. 4 EUStA Regulation) as well as whether the report is made in accordance with Article 24 para. 1or 2 of the EUStA Regulation, in particular whether preliminary proceedings are already deemed to have been initiated under German law. Special circumstances (e.g. imminent statute of limitations, pre-trial detention, required urgent judicial measures) must be pointed out. The file and the report shall be forwarded to the European Public Prosecutor's Office via the Chief Public Prosecutor, in urgent cases directly with copies sent to the Chief Public Prosecutor at the same time.
(3) A report pursuant to Article 24 para. 2 of the EUStA Regulation shall also be made in the cases of Article 24 para. 3 of the EUStA-Regulation, in which the Public Prosecutor is of the opinion that the European Public Prosecutor's Office could not exercise its jurisdiction pursuant to Article 25 para. 3. In these cases, it is generally not necessary to forward the case. The situation is different if, at the time of the notification, there is already an agreement to take over the proceedings.
(3) A report pursuant to Article 24 para. 2 of the EUStA Regulation shall also be made in the cases of Article 24 para. 3 of the EUStA-Regulation, in which the Public Prosecutor is of the opinion that the European Public Prosecutor's Office could not exercise its jurisdiction pursuant to Article 25 para. 3. In these cases, it is generally not necessary to forward the case. The situation is different if at the time of the notification there is already an agreement to the European Public Prosecutor's Office taking over the proceedings pursuant to Article 25 para. 4 in conjunction with para. 3 letter b of the EUStA Regulation. In this case, the consent shall be expressly stated in the report pursuant to para. 2. When examining whether such consent is to be declared, it must in particular be taken into account whether it is a criminal offence that has cross-border connections or significance, involves a criminal 304authorized304n, or if the offence poses a serious threat to the financial interests of the Union or to the credibility of its institutions and the confidence of its citizens (recital 60 of the EUStA Regulation).
(4) Paragraphs 1 and 2 shall also apply if the European Public Prosecutor's Office becomes aware, by means other than by a report that a public prosecutor's office is already investigating an offence for which the European Public Prosecutor's Office may have

jurisdiction and requests information pursuant to Article 24(2) of the EUStA Regulation (Article 27 para. 3 EUStA Regulation).
(5) After sending the case pursuant to paragraph 1 and the report pursuant to paragraph 2, the prosecutor shall until the decision of the European Public Prosecutor's Office on the initiation of proceedings (Article 26 para. 1 of the EUStA Regulation) or to take over the proceedings (Article 27 para. 1 of the EUStA Regulation) only take such measures as are urgently necessary to ensure effective investigations and prosecution. Prior to such official acts, the Public Prosecutor shall, as far as possible, consult with the Delegate European Public Prosecutor before taking such official action.
(6) When answering enquiries of the European Public Prosecutor's Office according to Article 24 para. 9 of the EUStA-Regulation, the information of the European Public Prosecutor's Office shall be made available via the Attorney General, in urgent cases directly with simultaneous transmission of copies to the Attorney General.
(7) The competent Delegated European Public Prosecutor shall be informed without delay of any new facts which might lead the European Public Prosecutor's Office to change its decision to review its decision not to exercise its jurisdiction (Article 27 para. 7 EUStA-V). When informing the European Public Prosecutor's Office, reference must be made to the circumstances suggesting that the European Public Prosecutor's Office should take over the proceedings. Para. 2 sentence 3 shall apply mutatis mutandis.
(8) If there is disagreement as to whether the offence falls within the scope of application of Article 22 paras. 2 and 3 or Article 25 paras. 2 and 3 of the EUStA Regulation, the Public Prosecutor's Office forwards the files to the Federal Public Prosecutor together ***with a brief statement of the Attorney General for a decision*** (Article 25 para. 6 of the EUStA Regulation, section 142b para. 2 sentence 1 GVG).
(9) If the Public Prosecutor receives the notification that the European Public Prosecutor's proceedings pursuant to Article 26 para. 1 of the EUStA Regulation (Section 12 para. 2 of the EUStAG), the public prosecutor shall check whether related proceedings are pending and, if necessary, inform the Delegated European Public Prosecutor entrusted with the investigations in accordance with paras. 1 and 2.
(10) If a public prosecutor takes urgently required measures pursuant to Article 28 para. 2 EUStA Regulation, the Delegated European Public Prosecutor entrusted with the investigation shall be informed immediately and directly of the measures taken, with simultaneous transmission of copies to the Chief Public Prosecutor at the same time.
(11) The transmission of files and reports shall be carried out in accordance with the guidelines issued by the German Centres of Delegated communication with the national authorities and, as far as possible, also electronically. The public prosecutor shall keep a duplicate file.

(2) Specific Decrees, non-formal laws, execution of the CPC

57 See → *Erlasse des Bundesministeriums der Justiz und für Verbraucherschutz*: Decrees of the Federal Ministry of Justice and Consumer Protection; *Erlasse des Bundesministeriums der Finanzen*: Decrees of the Federal Ministry of Finance.

e) Urgent measures within national law to ensure effective investigations

58 A distinction is made between personal and material PIF evidence (*Sach- und Personalbeweis*). As an EDP one must primarily collect evidence that is essential to further clarify ans foster the case. This includes, above all, the **application of s. 94 CPC** to secure material evidence, but also, for example, the securing of data, the **request for an EIO**, a **preservation order for electronic evidence** under the **e-Evidence Regulation (EU) 2023/1543** (with the option of obtaining European Production Orders for subscriber, traffic, and content data), and, if applicable, the consideration of cross-border measures, in which case Article 31 of the EPPO Regulation applies. For **personal evidence**, factors such as the health condition of the potential **witness** or the **risk** of absconding abroad must be considered, as swift action may be required to ensure the **admissibility of the evidence** in a main trial (e.g., service of summons abroad, fear of **deletion** of (VAT, receipt) data, etc.).[551]

aa. Provisions in relation to the gathering of evidence

59 The EPPO uncovered in 2023 a massive customs and **VAT fraud scheme**, with estimated damages amounting to €200 million.[552] The investigation operation, code-named "*Maskenball*", led to the arrest of four suspects in Germany and the Netherlands. The criminal network allegedly used a **sophisticated system** to avoid customs duties and VAT by importing large quantities of textiles, shoes, and small electronics from China into the EU using falsified invoices. This scheme significantly reduced the declared value of goods, resulting in lower customs duties. Moreover, the group exploited **Customs Procedure 42**, which allows goods to be imported into the EU without VAT if they are immediately transported to another member state.[553] However, the suspects avoided paying VAT by manipulating this regulation. This case is highly relevant for

[551] Köhler 2024, § 160 StPO, mn. 15, 16, 162, mn. 3a, 8; see Frunza-Nicolescu 2023, pp. 210–216 discussing 4-scenarios with different legal frameworks depending on where the aimed data is located; see Wahl 2023: "[Regulation is a] result of a hard compromise found in trilogue negotiations"; Bachmaier Winter 2024, p. 4 summarizing the so-called ELI project with a proposal on a Directive for the admissibility of evidence and see her especially analysing the situation in which evidence is obtained in breach of the meo tenetur principle, 18 et seq. and explaining the way towards exclusion of "'unacceptable coercion'", and last but not least referring to Art. 21, 22 of the e-evidence Regulation.

[552] See Schmidt 2023 Rheinische Post. Europäische Staatsanwaltschaft deckt Steuerbetrug auf. online: https://rp-online.de/politik/eu/europaeische-staatsanwaltschaft-deckt-steuerbetrug-auf_aid-101540491. Accessed 31 December 2024.

[553] Ibid.

the EPPO, as it highlights the agency's critical role in cross-border investigations of complex fraud cases involving multiple EU Member States. The successful **detection and arrests** demonstrate the EPPO's capacity to tackle large-scale tax evasion schemes that harm the EU's financial interests.[554] This is a typical case of defrauding the EU of its money. The use of customs and VAT fraud is a common method used by organized crime to evade significant amounts of taxes and duties, directly affecting the EU budget. The scale of this fraud and the methods used underscore the importance of EPPO's investigative efforts to safeguard EU finances. Therefore **urgent measures are needed** if a fraud scheme is discovered for the first time, and this will help lead the investigation and safeguard it by freezing money or securing evidence.

60 The urgent measures, which Art. 28 para. 2 of the EPPO Regulation focuses on, are mainly carried out by the police (*Polizeidienstellen der Länder*) and "investigators i.e. civil servants of the public prosecutor's office/*Ermittlungspersonen der Staatsanwaltschaft*" as well as *Steuerfahndungsbehörden* and may result from the investigation-related provisions in the German Criminal Procedure Code, the German Court Constitution Act as well as the German Tax Code, the Market Organization Act (for agriculture-subsidy-fraud cases), the Administrative Offences Act (OwiG), the Customs Code and its accompanying Codes:

61
- E.g. Securing of evidence, forensics (ss. 35 para. 4 MOG, 36 et seq. OwiG, 97 et seq., 110 para. 1 CPC, 210 para. 2 AO555, 399 para. 2 AO, 404 AO)
- E.g. Preservation of evidence (ss. 35 para. 4 MOG, ss. 35 para. 4 MOG, 36 et seq. OwiG, 97 et seq. CPC, 210 para. 2 AO, 399 para. 2 AO, 404 AO)
- E.g. search for and search the crime scene (ss. 35 para. 4 MOG, ss. 35 para. 4 MOG, 36 et seq. OwiG, 97 et seq. CPC, 210 para. 2 AO, 399 para. 2 AO, 404 AO
- E.g. Informing those encountered about their rights if they are to be interviewed[556]

62 The German term "*Gefahr im Verzug*" (immediate danger) may fall under the scope of Art. 28 para. 2 of the EPPO Regulation, too. Thus the examining judge[557] (*Ermittlungsrichter*) might get involved in the conduction of the investigation in order to secure evidence for a PIF offence.

[554] Ibid.
[555] S. 287 AO does only relate to the enforcement of measures (*Vollstreckung in Sachen*).
[556] All of these measures have in common that they are part of the collection of evidence ("*Sammeln von Beweisen*").
[557] Not to be confused with the investigating judge in France e.g. Germany had a "*Untersuchungsrichter*" till the mid-70s.

63 **Section 21 CPC[558] Powers in exigent circumstances**
A court lacking jurisdiction must conduct those investigatory acts which are to be undertaken in its district where delay is likely to jeopardise the success **163** [of the investigation.

Section 163 CPC[559] Role of police in preliminary investigation
(1) The authorities and officers of the police force are to investigate offences and take all measures which may not be deferred in order to prevent the concealment of facts. To this end, they shall be authorized to request and, in exigent circumstances, to demand information from all authorities, as well as to conduct investigations of any kind, insofar as there are no other statutory provisions which specifically regulate their powers.
(2) The authorities and officers of the police force shall transmit their records to the public prosecution office without delay. If it appears necessary that a judicial investigation be performed promptly, transmission directly to the local court shall be possible.
(3) Upon being summoned by the public prosecution office's investigators, witnesses shall be obliged to appear in court and make a statement on the subject matter if the

[558] **§ 21 Befugnisse bei Gefahr im Verzug**
Ein unzuständiges Gericht hat sich den innerhalb seines Bezirks vorzunehmenden Untersuchungshandlungen zu unterziehen, bei denen Gefahr im Verzug ist.

[559] **§ 163 Aufgaben der Polizei im Ermittlungsverfahren**
(1) Die Behörden und Beamten des Polizeidienstes haben Straftaten zu erforschen und alle keinen Aufschub gestattenden Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. Zu diesem Zweck sind sie befugt, alle Behörden um Auskunft zu ersuchen, bei Gefahr im Verzug auch, die Auskunft zu verlangen, sowie Ermittlungen jeder Art vorzunehmen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln.
(2) Die Behörden und Beamten des Polizeidienstes übersenden ihre Verhandlungen ohne Verzug der Staatsanwaltschaft. Erscheint die schleunige Vornahme richterlicher Untersuchungshandlungen erforderlich, so kann die Übersendung unmittelbar an das Amtsgericht erfolgen.
(3) Zeugen sind verpflichtet, auf Ladung vor Ermittlungspersonen der Staatsanwaltschaft zu erscheinen und zur Sache auszusagen, wenn der Ladung ein Auftrag der Staatsanwaltschaft zugrunde liegt. Soweit nichts anderes bestimmt ist, gelten die Vorschriften des Sechsten Abschnitts des Ersten Buches entsprechend. Die eidliche Vernehmung bleibt dem Gericht vorbehalten.
(4) Die Staatsanwaltschaft entscheidet
1.über die Zeugeneigenschaft oder das Vorliegen von Zeugnis- oder Auskunftsverweigerungsrechten, sofern insoweit Zweifel bestehen oder im Laufe der Vernehmung aufkommen,
2.über eine Gestattung nach § 68 Absatz 3 Satz 1, Angaben zur Person nicht oder nur über eine frühere Identität zu machen,
3.über die Beiordnung eines Zeugenbeistands nach § 68b Absatz 2 und
4.bei unberechtigtem Ausbleiben oder unberechtigter Weigerung des Zeugen über die Verhängung der in den §§ 51 und 70 vorgesehenen Maßregeln; dabei bleibt die Festsetzung der Haft dem nach § 162 zuständigen Gericht vorbehalten.
Im Übrigen trifft die erforderlichen Entscheidungen die die Vernehmung leitende Person.
(5) Gegen Entscheidungen von Beamten des Polizeidienstes nach § 68b Absatz 1 Satz 3 sowie gegen Entscheidungen der Staatsanwaltschaft nach Absatz 4 Satz 1 Nummer 3 und 4 kann gerichtliche Entscheidung durch das nach § 162 zuständige Gericht beantragt werden. Die §§ 297 bis 300, 302, 306 bis 309, 311a und 473a gelten jeweils entsprechend. Gerichtliche Entscheidungen nach Satz 1 sind unanfechtbar.
(6) Für die Belehrung des Sachverständigen durch Beamte des Polizeidienstes gelten § 52 Absatz 3 und § 55 Absatz 2 entsprechend. In den Fällen des § 81c Absatz 3 Satz 1 und 2 gilt § 52 Absatz 3 auch bei Untersuchungen durch Beamte des Polizeidienstes sinngemäß.
(7) § 185 Absatz 1 und 2 des Gerichtsverfassungsgesetzes gilt entsprechend.

summons was issued on the public prosecution office's behalf. Unless otherwise provided, the provisions of Part 6 of Book 1 shall apply accordingly. The court reserves the right to examine witnesses under oath.
(4) The public prosecution office shall decide
1. whether a person has the status of witness or whether he has the right to refuse to testify or provide information if there are doubts as to these matters or such doubts arise in the course of the examination,
2. whether a person is permitted, pursuant to section 68 para. 3 sentence 1, not to provide personal details or only concerning a previous identity,
3. whether to assign counsel to a witness pursuant to section 68b para. 2 and
4. whether to impose one of the measures provided for under sections 51 and 70 in the event of a witness's non-appearance in court without justification or refusal to give testimony without justification; the court competent pursuant to section 162 shall have the right to determine the sentence of imprisonment.
In all other respects, the person conducting the examination shall take all necessary decisions.
(5) An application may be made for a court decision by the court competent pursuant to section 162 against decisions taken by police officers pursuant to section 68b para. 1 sentence 3 and against decisions taken by the public prosecution office pursuant to para. 4 sentence 1 nos. 3 and 4. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. Court decisions as referred to in sentence 1 shall not be contestable.
(6) Section 52 para. 3 and section 55 para. 2 shall apply accordingly to instruction given to experts by police officers. In the cases under section 81c para. 3 sentences 1 and 2, section 52 para. 3 shall also apply accordingly to examinations by police officers.
(7) Section 185 paras. 1 and 2 of the Courts Constitution Act shall apply analogously.

Section 161 CPC[560] Public prosecution office's general investigatory powers
(1) For the purpose indicated in section 160 paras. 1 to 3, the public prosecution office shall be entitled to request information from all the authorities and to make investigations of any kind, either itself or through the police authorities and police officers, provided there are no other statutory provisions specifically regulating their powers. The police authorities and police officers shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all the authorities.
(2) If measures under this statute are admissible only if the commission of particular offences is suspected, personal data which have been obtained as a result of a corresponding measure taken pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to investigate one of the offences in respect of which such a measure could have been ordered to investigate the offence pursuant to this statute. Section 100e para. 6 no. 3 shall remain unaffected.
(3) Personal data obtained on or from private premises by technical means for the purpose of personal protection during covert investigations under police law may be used as evidence, having regard to the principle of proportionality (Article 13 para. 5 of the Basic Law) only after determination of the lawfulness of the measure by the local court (section 162 para. 1) in whose district the authority making the order is located; in exigent circumstances, a judicial decision is to be sought without delay.

[560] **§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft befugt, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle befugt, von allen Behörden Auskunft zu verlangen.
(2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist § 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden.
(3) Ist eine Maßnahme nach diesem Gesetz nur bei Verdacht bestimmter Straftaten zulässig, so dürfen die auf Grund einer entsprechenden Maßnahme nach anderen Gesetzen erlangten personenbezogenen Daten ohne Einwilligung der von der Maßnahme betroffenen Personen zu Beweiszwecken im Strafverfahren nur zur Aufklärung solcher Straftaten verwendet werden, zu deren Aufklärung eine solche Maßnahme nach diesem Gesetz hätte angeordnet werden dürfen. § 100e Absatz 6 Nummer 3 bleibt unberührt.
(4) In oder aus einer Wohnung erlangte personenbezogene Daten aus einem Einsatz technischer Mittel zur Eigensicherung im Zuge nicht offener Ermittlungen auf polizeirechtlicher Grundlage dürfen unter Beachtung des Grundsatzes der Verhältnismäßigkeit zu Beweiszwecken nur verwendet werden (Artikel 13 Abs. 5 des Grundgesetzes), wenn das Amtsgericht (§ 162 Abs. 1), in dessen Bezirk die anordnende Stelle ihren Sitz hat, die Rechtmäßigkeit der Maßnahme festgestellt hat; bei Gefahr im Verzug ist die richterliche Entscheidung unverzüglich nachzuholen.

Section 163b CPC[561] **Measures to establish identity**
(1) If somebody is suspected of having committed an offence, the public prosecution office and police officers may take the measures necessary to establish his identity; section 163a para. 4 sentence 1 shall apply accordingly. The suspect may be kept in custody if his identity cannot be established by other means or only with considerable difficulty. Under the conditions of sentence 2, it shall be admissible to search the suspect and the objects found on him as well as to carry out measures for identification purposes.
(2) If and so far as it is necessary to investigate an offence, the identity of a person who is not suspected of an offence may also be established; section 69 para. 1 sentence 2 shall apply accordingly. Measures of the kind designated in para. 1 sentence 2 may not be taken if they are disproportionate to the importance of the matter; measures of the kind designated in para. 1 sentence 3 may not be taken against the will of the person concerned.

Section 161 CPC grants the public prosecution office broad authority to request information, direct police inquiries, and conduct investigations necessary to establish the fact. And section 163 CPC uthorizes the police to take non-deferrable measures ("*Gefahr im Verzug*") to prevent loss or concealment of evidence and to perform immediate investigative acts. **64**

They must, however, report to the prosecution without delay, ensuring judicial oversight later. Section 163b CPC regulates identity checks and searches of suspects and non-suspects for evidentiary purposes and it allows temporary detention or search when necessary to secure identification, subject to proportionality and respect for individual rights. **65**

[561] **§ 163b Maßnahmen zur Identitätsfeststellung**
(1) Ist jemand einer Straftat verdächtig, so können die Staatsanwaltschaft und die Beamten des Polizeidienstes die zur Feststellung seiner Identität erforderlichen Maßnahmen treffen; § 163a Abs. 4 Satz 1 gilt entsprechend. Der Verdächtige darf festgehalten werden, wenn die Identität sonst nicht oder nur unter erheblichen Schwierigkeiten festgestellt werden kann. Unter den Voraussetzungen von Satz 2 sind auch die Durchsuchung der Person des Verdächtigen und der von ihm mitgeführten Sachen sowie die Durchführung erkennungsdienstlicher Maßnahmen zulässig.
(2) Wenn und soweit dies zur Aufklärung einer Straftat geboten ist, kann auch die Identität einer Person festgestellt werden, die einer Straftat nicht verdächtig ist; § 69 Abs. 1 Satz 2 gilt entsprechend. Maßnahmen der in Absatz 1 Satz 2 bezeichneten Art dürfen nicht getroffen werden, wenn sie zur Bedeutung der Sache außer Verhältnis stehen; Maßnahmen der in Absatz 1 Satz 3 bezeichneten Art dürfen nicht gegen den Willen der betroffenen Person getroffen werden.

Section 163d CPC[562] Storage and matching of data obtained at checkpoints

(1) If certain facts give rise to the suspicion that

1. an offence under section 111 or
2. an offence under section 100a para. 2 nos. 6 to 9 and 11

has been committed, the data concerning the identity of persons obtained at a checkpoint by the border police, in the case under no. 1 also data obtained at checkpoints pursuant to section 111, as well as the circumstances which may be important for investigating the offence or for apprehending the offender may be electronically stored if facts justify the assumption that the evaluation of the data may lead to the apprehension of the offender or to the investigation of the offence and the measure is not disproportionate to the importance of the matter. This shall also apply where, in the case under sentence 1, passports and identity cards are automatically machine-read. The data may only be transmitted to prosecuting authorities.

(2) Measures of the kind designated in para. 1 may be ordered only by the judge, in exigent circumstances also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). If the public prosecution office or one of its investigators has made the order, the public prosecution office shall apply for judicial confirmation of such order without delay. Section 100e para. 1 sentence 3 shall apply accordingly.

[562] **§ 163d Speicherung und Abgleich von Daten aus Kontrollen**
(1) Begründen bestimmte Tatsachen den Verdacht, daß
1.eine der in § 111 bezeichneten Straftaten oder
2.eine der in § 100a Abs. 2 Nr. 6 bis 9 und 11 bezeichneten Straftaten
begangen worden ist, so dürfen die anläßlich einer grenzpolizeilichen Kontrolle, im Falle der Nummer 1 auch die bei einer Personenkontrolle nach s. 111 anfallenden Daten über die Identität von Personen sowie Umstände, die für die Aufklärung der Straftat oder für die Ergreifung des Täters von Bedeutung sein können, in einem Dateisystem gespeichert werden, wenn Tatsachen die Annahme rechtfertigen, daß die Auswertung der Daten zur Ergreifung des Täters oder zur Aufklärung der Straftat führen kann und die Maßnahme nicht außer Verhältnis zur Bedeutung der Sache steht. Dies gilt auch, wenn im Falle des Satzes 1 Pässe und Personalausweise automatisch gelesen werden. Die Übermittlung der Daten ist nur an Strafverfolgungsbehörden zulässig.
(2) Maßnahmen der in Absatz 1 bezeichneten Art dürfen nur durch den Richter, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden. Hat die Staatsanwaltschaft oder eine ihrer Ermittlungspersonen die Anordnung getroffen, so beantragt die Staatsanwaltschaft unverzüglich die richterliche Bestätigung der Anordnung. § 100e Absatz 1 Satz 3 gilt entsprechend.
(3) Die Anordnung ergeht schriftlich. Sie muß die Personen, deren Daten gespeichert werden sollen, nach bestimmten Merkmalen oder Eigenschaften so genau bezeichnen, wie dies nach der zur Zeit der Anordnung vorhandenen Kenntnis von dem oder den Tatverdächtigen möglich ist. Art und Dauer der Maßnahmen sind festzulegen. Die Anordnung ist räumlich zu begrenzen und auf höchstens drei Monate zu befristen. Eine einmalige Verlängerung um nicht mehr als drei weitere Monate ist zulässig, soweit die in Absatz 1 bezeichneten Voraussetzungen fortbestehen.
(4) Liegen die Voraussetzungen für den Erlaß der Anordnung nicht mehr vor oder ist der Zweck der sich aus der Anordnung ergebenden Maßnahmen erreicht, so sind diese unverzüglich zu beenden. Die durch die Maßnahmen erlangten personenbezogenen Daten sind unverzüglich zu löschen, sobald sie für das Strafverfahren nicht oder nicht mehr benötigt werden; eine Speicherung, die die Laufzeit der Maßnahmen (Absatz 3) um mehr als drei Monate überschreitet, ist unzulässig. Über die Löschung ist die Staatsanwaltschaft zu unterrichten.

(3) The order shall be given in writing. It shall describe the person whose data are to be stored as precisely as possible, by making reference to particular features or characteristics in the light of the information available about the suspect or suspects at the time of the order. The order shall specify the nature and duration of the measures. It shall be limited to a particular area and to a maximum period of three months. One extension of no more than three further months shall be admissible if the conditions of para. 1 continue to apply.
(4) If the conditions for issuance of the order no longer exist or if the purpose of the measures set out in the order has been fulfilled, the measures are to be terminated without delay. The personal data obtained by means of the measures are to be deleted without delay as soon as they are not or no longer required for the criminal proceedings; storage of the data exceeding the duration of the measures (para. 3) by more than three months shall be inadmissible. The public prosecution office shall be notified of the deletion.

Section 163e CPC[563] Order for observation during police checks
(1) An order may be made for police observation during police checks allowing for personal identification data to be taken if there are sufficient factual indications to show that an offence of substantial significance has been committed. The order may be directed only against the accused person and only where other means of establishing the facts or determining the offender's whereabouts would offer much less prospect of success or would be much more difficult. The measure shall be admissible against other persons if it can be assumed, on the basis of certain facts, that they are linked to the

[563] **§ 163e Ausschreibung zur Beobachtung bei polizeilichen Kontrollen**
(1) Die Ausschreibung zur Beobachtung anläßlich von polizeilichen Kontrollen, die die Feststellung der Personalien zulassen, kann angeordnet werden, wenn zureichende tatsächliche Anhaltspunkte dafür vorliegen, daß eine Straftat von erheblicher Bedeutung begangen wurde. Die Anordnung darf sich nur gegen den Beschuldigten richten und nur dann getroffen werden, wenn die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Täters auf andere Weise erheblich weniger erfolgversprechend oder wesentlich erschwert wäre. Gegen andere Personen ist die Maßnahme zulässig, wenn auf Grund bestimmter Tatsachen anzunehmen ist, daß sie mit dem Täter in Verbindung stehen oder eine solche Verbindung hergestellt wird, daß die Maßnahme zur Erforschung des Sachverhalts oder zur Ermittlung des Aufenthaltsortes des Täters führen wird und dies auf andere Weise erheblich weniger erfolgversprechend oder wesentlich erschwert wäre.
(2) Das Kennzeichen eines Kraftfahrzeuges, die Identifizierungsnummer oder äußere Kennzeichnung eines Wasserfahrzeuges, Luftfahrzeuges oder eines Containers kann ausgeschrieben werden, wenn das Fahrzeug auf eine nach Absatz 1 ausgeschriebene Person zugelassen ist oder das Fahrzeug oder der Container von ihr oder einer bisher namentlich nicht bekannten Person genutzt wird, die einer Straftat von erheblicher Bedeutung verdächtig ist.
(3) Im Falle eines Antreffens können auch personenbezogene Daten eines Begleiters der ausgeschriebenen Person, des Führers eines nach Absatz 2 ausgeschriebenen Fahrzeuges oder des Nutzers eines nach Absatz 2 ausgeschriebenen Containers gemeldet werden.
(4) Die Ausschreibung zur polizeilichen Beobachtung darf nur durch das Gericht angeordnet werden. Bei Gefahr im Verzug kann die Anordnung auch durch die Staatsanwaltschaft getroffen werden. Hat die Staatsanwaltschaft die Anordnung getroffen, so beantragt sie unverzüglich die gerichtliche Bestätigung der Anordnung. § 100e Absatz 1 Satz 3 gilt entsprechend. Die Anordnung ist auf höchstens ein Jahr zu befristen. Eine Verlängerung um jeweils nicht mehr als drei Monate ist zulässig, soweit die Voraussetzungen der Anordnung fortbestehen.

offender or that such a link is being established, that the measure will lead to the establishment of the facts or to the determination of the offender's whereabouts and using other means would offer much less prospect of success or would be much more difficult.
(2) The license plate number of a motor vehicle or the identification number or external marking of a watercraft, an aircraft or a container may be included in the notice if the vehicle, watercraft or aircraft is registered in the name of a person in respect of whom a notice has been issued pursuant to para. 1 or if the vehicle, watercraft, aircraft or container is being used by that person or by another person whose identity is yet unknown and who is suspected of having committed an offence of substantial significance.
(3) Should such a person be encountered, personal data about an individual accompanying the person referred to in the notice or about a person operating a vehicle, watercraft or an aircraft included in the notice pursuant to para. 2 or about a person using a container included in the notice pursuant to para. 2 may also be communicated.
(4) The order for police observation may only be given by the court. In exigent circumstances, the order may also be made by the public prosecution office. If the public prosecution office has made the order, it shall apply for court confirmation without delay. Section 100e para. 1 sentence 3 shall apply accordingly. The order shall be limited to a maximum of one year. It may be extended by no more than three months in each case, insofar as the conditions for making the order continue to apply.

Section 163f CPC[564] Long-term observation
(1) If there are sufficient factual indications showing that an offence of substantial significance has been committed, then an order may be made for the planned observation of the accused
1. to last for a continuous period exceeding 24 hours or
2. to take place on more than two days

[564] **§ 163f Längerfristige Observation**
(1) Liegen zureichende tatsächliche Anhaltspunkte dafür vor, dass eine Straftat von erheblicher Bedeutung begangen worden ist, so darf eine planmäßig angelegte Beobachtung des Beschuldigten angeordnet werden, die
1.durchgehend länger als 24 Stunden dauern oder
2.an mehr als zwei Tagen stattfinden
soll (längerfristige Observation).
Die Maßnahme darf nur angeordnet werden, wenn die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Täters auf andere Weise erheblich weniger Erfolg versprechend oder wesentlich erschwert wäre. Gegen andere Personen ist die Maßnahme zulässig, wenn auf Grund bestimmter Tatsachen anzunehmen ist, dass sie mit dem Täter in Verbindung stehen oder eine solche Verbindung hergestellt wird, dass die Maßnahme zur Erforschung des Sachverhalts oder zur Ermittlung des Aufenthaltsortes des Täters führen wird und dies auf andere Weise erheblich weniger Erfolg versprechend oder wesentlich erschwert wäre.
(2) Die Maßnahme darf auch durchgeführt werden, wenn Dritte unvermeidbar betroffen werden. § 100d Absatz 1 und 2 gilt entsprechend.
(3) Die Maßnahme darf nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden. Die Anordnung der Staatsanwaltschaft oder ihrer Ermittlungspersonen tritt außer Kraft, wenn sie nicht binnen drei Werktagen von dem Gericht bestätigt wird. § 100e Absatz 1 Satz 4 und 5, Absatz 3 Satz 1 gilt entsprechend.

(longer-term observation). The measure may be ordered only if other means of establishing the facts or determining the offender's whereabouts would offer much less prospect of success or would be much more difficult. The measure shall be admissible against other persons if it can be assumed, on the basis of certain facts, that they are linked to the offender or that such a link is being established, that the measure will lead to the establishment of the facts or determination of the offender's whereabouts and using other means would offer much less prospect of success or would be much more difficult.
(2) The measure may be taken even if it unavoidably affects third parties.
(3) Such measures may be ordered only by the court and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). An order made by the public prosecution office or one of its investigators shall become ineffective if it is not confirmed by the court within three working days. Section 100e para. 1 sentences 4 and 5 and para. 3 sentence 1 shall apply accordingly.

Section 165 CPC[565] **Judicial investigatory acts in exigent circumstances**
In exigent circumstances, the judge may, even without an application, undertake the necessary investigatory acts if a public prosecutor is not available.

s. 163 CPC *See above → Provisions in relation to the gathering of evidence, s. 163*
Tasks of the police in investigations
(1) The authorities and officers of the police service ***must investigate criminal offences and issue all orders that do not permit delay*** in order to prevent the matter from being covered up. For this purpose, they are authorized to request information from all authorities, in the event of imminent danger also to request information, and to carry out investigations of any kind, unless other statutory provisions specifically regulate their powers. […]

[565] **§ 165 Richterliche Untersuchungshandlungen bei Gefahr im Verzug**
Bei Gefahr im Verzug kann der Richter die erforderlichen Untersuchungshandlungen auch ohne Antrag vornehmen, wenn ein Staatsanwalt nicht erreichbar ist.

Section 143 Court Constitution Act[566]
(1) The local competence of the public prosecution office shall be determined by the local jurisdiction of the court at which the public prosecution office exists. If venue cannot be established in any court within the territorial scope of this Act, or if such court cannot be ascertained, the public prosecution office first seized of the matter shall be competent. If in the cases referred to in sentence 2 the jurisdiction of a court is established, the proceedings shall be referred to the public prosecution office competent pursuant to sentence 1 as soon as all necessary measures have been taken to secure the proceedings and the state of the proceedings permits an orderly referral. Sentence 3 shall apply *mutatis mutandis* where the competence of one public prosecution office has ceased to exist and another public prosecution office has become competent.
(2) **In exigent circumstances, an official of the public prosecution office who lacks competence must perform the official acts necessary in his district.** […][567]

66 In addition the Sections of the German General Tax Code may apply with relation to Art. 28 para. 2 of the EPPO Regulation e.g. if it comes to tax fraud matters:

Section 29 AO[568] **Imminent danger**
In **143 [of the** case of imminent danger, local jurisdiction for non-deferrable measures shall lie with any revenue authority in whose district the matter requiring the official act arises. The authority otherwise locally responsible shall be informed without undue delay.

[566] **§ 143 Gerichtsverfassungsgesetz (GVG)**
(1) Die örtliche Zuständigkeit der Staatsanwaltschaft bestimmt sich nach der örtlichen Zuständigkeit des Gerichts, bei dem die Staatsanwaltschaft besteht. Fehlt es im Geltungsbereich dieses Gesetzes an einem zuständigen Gericht oder ist dieses nicht ermittelt, ist die zuerst mit der Sache befasste Staatsanwaltschaft zuständig. Ergibt sich in den Fällen des Satzes 2 die Zuständigkeit eines Gerichts, ist das Verfahren an die nach Satz 1 zuständige Staatsanwaltschaft abzugeben, sobald alle notwendigen verfahrenssichernden Maßnahmen ergriffen worden sind und der Verfahrensstand eine geordnete Abgabe zulässt. Satz 3 gilt entsprechend, wenn die Zuständigkeit einer Staatsanwaltschaft entfallen ist und eine andere Staatsanwaltschaft zuständig geworden ist.
(2) Ein unzuständiger Beamter der Staatsanwaltschaft hat sich den innerhalb seines Bezirks vorzunehmenden Amtshandlungen zu unterziehen, bei denen Gefahr im Verzug ist. [...]
[567] Translation provided by Kathleen Müller-Rostin, cf. here: https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0722. Accessed 31 December 2024.
[568] **§ 29 Gefahr im Verzug**
Bei Gefahr im Verzug ist für unaufschiebbare Maßnahmen jede Finanzbehörde örtlich zuständig, in deren Bezirk der Anlass für die Amtshandlung hervortritt. Die sonst örtlich zuständige Behörde ist unverzüglich zu unterrichten.

II. Revenue authority procedure in the case of tax crimes

Section 399 AO[569] Revenue authority's rights and obligations

(1) Where the revenue authority conducts the investigation independently pursuant to section 386 para. 2, the revenue authority shall have the same rights and obligations as the public prosecutor's office has in an investigation.

(2) Where a revenue authority has been given jurisdiction pursuant to section 387 para. 2 for an area covered by several revenue authorities, the right and obligation of these revenue authorities to investigate the facts where a tax crime is suspected and to issue all non-deferrable orders to avoid obfuscation of the case shall remain unaffected. They may order confiscation, emergency sales, searches, inspections and other measures in accordance with the regulations of the Code of Criminal Procedure applying to the public prosecution office's investigators.

Section 402 AO[570] General rights and obligations of the revenue authority

(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399 para. 2, second sentence.

(2) Where a revenue authority has been transferred pursuant to section 387 para. 2 jurisdiction for an area covered by several revenue authorities, para. 1 above shall apply for each of these revenue authorities.[571]

[569] **II. Verfahren der Finanzbehörde bei Steuerstraftaten § 399 Rechte und Pflichten der Finanzbehörde**
(1) Führt die Finanzbehörde das Ermittlungsverfahren auf Grund des § 386 Abs. 2 selbständig durch, so nimmt sie die Rechte und Pflichten wahr, die der Staatsanwaltschaft im Ermittlungsverfahren zustehen.
(2) Ist einer Finanzbehörde nach § 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so bleiben das Recht und die Pflicht dieser Finanzbehörden unberührt, bei dem Verdacht einer Steuerstraftat den Sachverhalt zu erforschen und alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. Sie können Beschlagnahmen, Notveräußerungen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen nach den für Ermittlungspersonen der Staatsanwaltschaft geltenden Vorschriften der Strafprozessordnung anordnen

[90] **§ 402 Allgemeine Rechte und Pflichten der Finanzbehörde [Abgabenordnung]**
(1) Führt die Staatsanwaltschaft das Ermittlungsverfahren durch, so hat die sonst zuständige Finanzbehörde dieselben Rechte und Pflichten wie die Behörden des Polizeidienstes nach der Strafprozessordnung sowie die Befugnisse nach § 399 Abs. 2 Satz 2.
(2) Ist einer Finanzbehörde nach § 387 Abs. 2 die Zuständigkeit für den Bereich mehrerer Finanzbehörden übertragen, so gilt Absatz 1 für jede dieser Finanzbehörden.

[571] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.

Section 403 AO[572] **Participation of the financial authority**
(1) If the public prosecutor's office or the police carry out investigations relating to tax offences, the financial authority otherwise responsible is authorized to take part. You should be informed in good time of the place and time of the investigative activities. The representative of the tax authority is allowed to ask questions to the accused, witnesses and experts.
(2) Paragraph 1 shall apply mutatis mutandis to judicial hearings at which the public prosecutor's office is also permitted to be present.
(3) The otherwise competent financial authority shall be informed of the bill of indictment and the application for the issuance of a penal order.
(4) If the public prosecutor's office considers discontinuing the proceedings, it shall hear the otherwise competent financial authority.

Section 404 AO[573] **Tax and customs investigation**
The Customs Investigation Offices and the agencies of Land revenue authorities which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399 para. 2, second sentence, as well as the power to examine the papers of those affected by the search (section 110 para. 1 of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.[574]

[572] **§ 403 Beteiligung der Finanzbehörde[Abgabenordnung]**
(1) Führt die Staatsanwaltschaft oder die Polizei Ermittlungen durch, die Steuerstraftaten betreffen, so ist die sonst zuständige Finanzbehörde befugt, daran teilzunehmen. Ort und Zeit der Ermittlungshandlungen sollen ihr rechtzeitig mitgeteilt werden. Dem Vertreter der Finanzbehörde ist zu gestatten, Fragen an Beschuldigte, Zeugen und Sachverständige zu stellen.
(2) Absatz 1 gilt sinngemäß für solche richterlichen Verhandlungen, bei denen auch der Staatsanwaltschaft die Anwesenheit gestattet ist.
(3) Der sonst zuständigen Finanzbehörde sind die Anklageschrift und der Antrag auf Erlass eines Strafbefehls mitzuteilen.
(4) Erwägt die Staatsanwaltschaft, das Verfahren einzustellen, so hat sie die sonst zuständige Finanzbehörde zu hören.
[573] "**§ 404 Steuer- und Zollfahndung [Abgabenordnung]** Die Behörden des Zollfahndungsdienstes und die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden sowie ihre Beamten haben im Strafverfahren wegen Steuerstraftaten dieselben Rechte und Pflichten wie die Behörden und Beamten des Polizeidienstes nach den Vorschriften der Strafprozessordnung. Die in Satz 1 bezeichneten Stellen haben die Befugnisse nach § 399 Abs. 2 Satz 2 sowie die Befugnis zur Durchsicht der Papiere des von der Durchsuchung Betroffenen (**§ 110 Abs. 1** der Strafprozessordnung); ihre Beamten sind Ermittlungspersonen der Staatsanwaltschaft"
[574] Translation provided by the Language Service of the Federal Ministry of Finance, cf. here https://www.gesetze-im-internet.de/englisch_ao/index.html. Accessed 31 December 2024.

bb. Follow-up due to Art. 28 para. 2, s. 2 EPPO Regulation: Informing the EDP

The competent national authority that has carried out urgent measures in order to secure evidence for a PIF offence, must directly inform the competent EDP in one of the regional offices. **67**

From the point-of-view of German national law the equivalent for this Art. of the Regulation is s. 163 para. 2 CPC, which establishes the main obligation for the competent national authorities.[575] **68**

f) Art. 28 para. 3 and 4: Adoption in national law

Cf. **in relation to Art. 28 para. 3 and 4 of the EPPO Regulation** the following newly introduced paragraph in the German Court Constitutions Act: **69**

Courts Constitution Act (GVG)

Section 142b[576] **European Public Prosecutor's Office**

(1) In proceedings in which the European Public Prosecutor's Office pursuant to Articles 22 and 23 of Regulation (EU) 2017/1939 of the Council of 12 October 2017 on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor's Office (EPPO) (OJ L 283 dated 31.10.2017, p. 1) and has taken on the prosecution in accordance with Article 25 of this regulation, the office of public prosecutor is exercised by public prosecutors who are also appointed as European Delegated Public Prosecutors for the Federal Republic of Germany in accordance with this regulation. In proceedings before the Federal Court of Justice, the office of public prosecutor is exercised by a federal prosecutor who is also appointed as the European Delegated Public Prosecutor in accordance with Regulation (EU) 2017/1939. If the European Public Prosecutor appointed for the Federal Republic of Germany in accordance with Regulation (EU) 2017/1939 acts in accordance with Article 28 para. 4 of this Regulation, the office of the public prosecutor is exercised by him.

(2) In the case of Article 25 para. 6 of Regulation (EU) 2017/1939, the Federal Public Prosecutor General shall make a decision at the request of the public prosecutor concerned or the European Public Prosecutor's Office. The public prosecutor concerned or the European public prosecutor's office can lodge a complaint with the Federal Court of Justice against the decision of the Federal Public Prosecutor's Office.[577]

[575] See already Trautmann 2022, § 6 Mn. 134–135.

[576] Unofficial translation.

[577] **Gerichtsverfassungsgesetz (GVG)**
§ 142b Europäische Staatsanwaltschaft
(1) In Verfahren, in denen die Europäische Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung

5. Article 29 Lifting privileges or immunities

a) National privilege and immunity provisions, para. 1 322
aa. Privilege provisions 322
(1) Legal (professional) privilege 322
(a) Provisions in German law ss. 52, 53, 53a, 148 CPC and BRAO..... 322
(b) Provisions on lifting a legal (professional) privilege 332
(c) National jurisprudence..... 335
(2) Spousal privilege 335
(a) Provisions in German law 335
(b) Provisions on lifting a spousal privilege 336
(3) Privilege against self-incrimination 337
(a) Enshrinement in German law..... 337
(b) Related national jurisprudence 341
bb. Conclusion and summary to the different privileges and the lifting/waiving procedure in German law 341
b) Immunity provisons as *Verfahrensvoraussetzung* and *Verfahrenshindernisse* according to german criminal doctrine 342
aa. Parliamentary privilege or immunity..... 344
bb. Provisions to lift the parliamentary privilege/ immunity 346
c) Immunities and Privileges under union law, para. 2 ... 355

1. Where the investigations of the EPPO involve persons protected by a privilege or immunity **under national law**, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a

der Europäischen Staatsanwaltschaft (EUStA) (ABl. L 283 vom 31.10.2017, S. 1) zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat, wird das Amt der Staatsanwaltschaft durch Staatsanwälte ausgeübt, die zugleich als Delegierte Europäische Staatsanwälte für die Bundesrepublik Deutschland gemäß dieser Verordnung ernannt sind. Bei Verfahren vor dem Bundesgerichtshof wird das Amt der Staatsanwaltschaft durch einen Bundesanwalt ausgeübt, der zugleich als Delegierter Europäischer Staatsanwalt gemäß der Verordnung (EU) 2017/1939 ernannt ist. Wird der gemäß der Verordnung (EU) 2017/1939 für die Bundesrepublik Deutschland ernannte Europäische Staatsanwalt gemäß Artikel 28 Absatz 4 dieser Verordnung tätig, wird das Amt der Staatsanwaltschaft durch diesen ausgeübt.
(2) Im Falle des Artikels 25 Absatz 6 der Verordnung (EU) 2017/1939 entscheidet der Generalbundesanwalt auf Antrag der betroffenen Staatsanwaltschaft oder der Europäischen Staatsanwaltschaft. Gegen die Entscheidung des Generalbundesanwalts kann die betroffene Staatsanwaltschaft oder die Europäische Staatsanwaltschaft Beschwerde beim Bundesgerichtshof erheben.

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

The lifting of privileges or immunities is highly important for the EPPO – especially in corruption cases. Working Arrangements[578], EPPO Guidelines and some first remarks of the ECJ in such cases shape precedents and further rules annexed to the EU's primary and secondary law requisites. The following Codes apply in relation to Artt. 29, 34 and 42 EPPO Regulation in Germany: **1**

Sources and national sections 2: Overview for Germany – Art. 29 EPPO Regulation **2**

Short Overview Box	
"Under national law"	Sources: Grundgesetz, GG (Basic German Law/ German Constitution) Strafprozessordnung, the German Criminal Procedure Code; Strafgesetzbuch, the German Criminal Code; the Gerichtsverfassungsgesetz, the German Court Constitutions Act; the EU-StAG, the German law executing the EPPO Regulation.
"In accordance with the procedures laid down by that national law"	Cf. mainly Art. 46 et seq. Grundgesetz, the Geschäftsordnung des Bundestages (GO-BT) and subsequent provisions in the German Criminal Procedure Code.
Investigations of the EPPO	Cf. Art. 26–28 of the EPPO Regulation.
"European Chief Prosecutor"	Cf. for the position of the European Chief Prosecutor and its tasks, Art. 11 of the EPPO Regulation.[579]

Source: The authors.

[578] The EPPO has numerous Working Arrangements already. A very important one was signed with the European Parliament. https://www.europarl.europa.eu/resources/library/media/20241128RES25671/20241128RES25671.pdf. Accessed 31 December 2024.
[579] Cf. e.g. the first European Chief Prosecutor is Laura Kodruta Kövesi.

a) National privilege and immunity provisions, para. 1

3 They can mainly be found in ss. 52, 53, 145, 145a, 168c, 243 para 5 s. 1 CPC and in constitutional priovisions.

aa. Privilege provisions

4 They serve as fundamental teleological (purpose-driven) function in legal systems rooted in the rule of law and enable appeal proceedings (Revision) if they are infringed by the Economic criminal chamber if PIF proceedings or may pose a threat to the applicability of evidence if not respected by the EDPs.

(1) Legal (professional) privilege

5 Its core telos is to protect the integrity of the administration of justice by ensuring that clients can communicate openly and candidly with their legal advisers without fear that such communications will later be disclosed to adversaries, courts, or public authorities.

(a) Provisions in German law ss. 52, 53, 53a, 148 CPC and BRAO

6 *Synopsis 3: Provisions of the Criminal Procedure Code/Strafprozeßordnung regarding the Rights to refuse to testify (Legal Professional Privileges)*

"**Section 53 [of the German Criminal Procedure Code] Right to refuse testimony on professional grounds** (1) The following persons may also refuse to testify: 1. clergy, concerning that information which was confided to them or which became known to them in their capacity as spiritual advisers; 2. defence counsel of the accused, concerning that information which was confided to them or which became known to them in this capacity; 3. lawyers and non-lawyer providers of legal services who have been admitted to a bar association, patent attorneys, notaries, certified public accountants, sworn auditors, tax consultants (*Steuerberater*) and tax representatives	**s. 53 Zeugnisverweigerungsrecht der Berufsgeheimnisträger** (1) Zur Verweigerung des Zeugnisses sind ferner berechtigt 1. Geistliche über das, was ihnen in ihrer Eigenschaft als Seelsorger anvertraut worden oder bekanntgeworden ist; 2. Verteidiger des Beschuldigten über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist; 3. Rechtsanwälte und Kammerrechtsbeistände, Patentanwälte, Notare, Wirtschaftsprüfer, vereidigte Buchprüfer, Steuerberater und Steuerbevollmächtigte, Ärzte, Zahnärzte, Psychotherapeuten, Psychologische Psychotherapeuten,

(*Steuerbevollmächtigte*), doctors, dentists, psychological psychotherapists, psychotherapists specialising in the treatment of children and juveniles, pharmacists and midwives, concerning that information which was confided to them or which became known to them in this capacity; subject to section 53a, the same shall not apply to in-house lawyers (section 46 (2) of the Federal Code for Lawyers) and in-house patent attorneys (section 41a para. 2 of the Federal Code for Patent Attorneys (*Patentanwaltsordnung*) in respect of that which was confided to them or became known to them in this capacity;	Kinder- und Jugendlichenpsychotherapeuten, Apotheker und Hebammen über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist; für Syndikusrechtsanwälte (s. 46 Absatz 2 der Bundesrechtsanwaltsordnung) und Syndikuspatentanwälte (s. 41a Absatz 2 der Patentanwaltsordnung) gilt dies vorbehaltlich des s. 53a nicht hinsichtlich dessen, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
3a. members or representatives of a recognised counselling agency under sections 3 and 8 of the Act on Pregnancies in Conflict Situations (*Schwangerschaftskonfliktgesetz*), concerning that information which was confided to them or which became known to them in this capacity;	3a. Mitglieder oder Beauftragte einer anerkannten Beratungsstelle nach den ss. 3 und 8 des Schwangerschaftskonfliktgesetzes über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
3b. drug dependency counsellors in a counselling agency recognised or set up by an authority, a body, an institution or a foundation under public law, concerning that information which was confided to them or which became known to them in this capacity;	3b. Berater für Fragen der Betäubungsmittelabhängigkeit in einer Beratungsstelle, die eine Behörde oder eine Körperschaft, Anstalt oder Stiftung des öffentlichen Rechts anerkannt oder bei sich eingerichtet hat, über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
4. Members of the Bundestag, of the Federal Convention, of the European Parliament from the Federal Republic of Germany or of a *Land* parliament, concerning persons who have confided certain facts to them in their capacity as members of these bodies or to whom	4. Mitglieder des Deutschen Bundestages, der Bundesversammlung, des Europäischen Parlaments aus der Bundesrepublik Deutschland oder eines Landtages über Personen, die ihnen in ihrer Eigenschaft als Mitglieder dieser Organe oder

they have confided facts in this particular capacity, as well as concerning the facts themselves;
5. individuals who are or have been professionally involved in the preparation, production or dissemination of printed matter, broadcasts, film documentaries or in the information and communication services involved in instruction or in the formation of opinion.

The persons designated in sentence 1 no. 5 may refuse to testify concerning the author or contributor of comments and documentation or concerning any other informant or the information communicated to them in their professional capacity, including its content, as well as concerning the content of materials which they have produced themselves and matters which have received their professional attention. This shall only apply insofar as this concerns contributions, documentation, information and materials for the editorial element of their activity or information and communication services which have been editorially reviewed.
(2) The persons designated in para. 1 sentence 1 nos. 2 to 3b may not refuse to testify if they have been released from their obligation of secrecy. The right of the persons designated in para. 1 sentence 1 no. 5 to refuse to testify concerning the content of materials which they themselves have produced and matters which have received their professional attention shall lapse if the testimony is

denen sie in dieser Eigenschaft Tatsachen anvertraut haben, sowie über diese Tatsachen selbst;
5. Personen, die bei der Vorbereitung, Herstellung oder Verbreitung von Druckwerken, Rundfunksendungen, Filmberichten oder der Unterrichtung oder Meinungsbildung dienenden Informations- und Kommunikationsdiensten berufsmäßig mitwirken oder mitgewirkt haben.
Die in Satz 1 Nr. 5 genannten Personen dürfen das Zeugnis verweigern über die Person des Verfassers oder Einsenders von Beiträgen und Unterlagen oder des sonstigen Informanten sowie über die ihnen im Hinblick auf ihre Tätigkeit gemachten Mitteilungen, über deren Inhalt sowie über den Inhalt selbst erarbeiteter Materialien und den Gegenstand berufsbezogener Wahrnehmungen. Dies gilt nur, soweit es sich um Beiträge, Unterlagen, Mitteilungen und Materialien für den redaktionellen Teil oder redaktionell aufbereitete Informations- und Kommunikationsdienste handelt.

(2) Die in Absatz 1 Satz 1 Nr. 2 bis 3b Genannten dürfen das Zeugnis nicht verweigern, wenn sie von der Verpflichtung zur Verschwiegenheit entbunden sind. Die Berechtigung zur Zeugnisverweigerung der in Absatz 1 Satz 1 Nr. 5 Genannten über den Inhalt selbst erarbeiteter Materialien und den Gegenstand entsprechender Wahrnehmungen

required to assist in investigating a serious criminal offence (*Verbrechen*) or if the subject of the investigation is 1. a crime against peace and of endangering the democratic state under the rule of law or of treason and of endangering external security (sections 80a, 85, 87, 88, 95, also in conjunction with sections 97b, 97a, 98 to 100a of the Criminal Code (*Strafgesetzbuch*)), 2. a crime against sexual self-determination under sections 174 to 176 and section 177 para. 2 no. 1 of the Criminal Code or 3. money laundering or concealing unlawfully acquired assets under section 261 paras. 1 to 4 of the Criminal Code and an investigation of the facts and circumstances or an investigation as to the whereabouts of the accused would otherwise offer no prospect of success or would be much more difficult. The witness may refuse to testify even in such cases, however, where testimony would result in disclosure of the identity of the author or contributor of comments and documentation or of any other informant, or of the information communicated to him in his professional capacity pursuant to para. 1 sentence 1 no. 5 or of the content of such communications”[580]	entfällt, wenn die Aussage zur Aufklärung eines Verbrechens beitragen soll oder wenn Gegenstand der Untersuchung 1. eine Straftat des Friedensverrats und der Gefährdung des demokratischen Rechtsstaats oder des Landesverrats und der Gefährdung der äußeren Sicherheit (ss. 80a, 85, 87, 88, 95, auch in Verbindung mit s. 97b, ss. 97a, 98 bis 100a des Strafgesetzbuches), 2. eine Straftat gegen die sexuelle Selbstbestimmung nach den ss. 174 bis 176, 177 Absatz 2 Nummer 1 des Strafgesetzbuches oder 3. eine Geldwäsche nach s. 261 des Strafgesetzbuches, deren Vortat mit einer im Mindestmaß erhöhten Freiheitsstrafe bedroht ist, ist und die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise aussichtslos oder wesentlich erschwert wäre. Der Zeuge kann jedoch auch in diesen Fällen die Aussage verweigern, soweit sie zur Offenbarung der Person des Verfassers oder Einsenders von Beiträgen und Unterlagen oder des sonstigen Informanten oder der ihm im Hinblick auf seine Tätigkeit nach Absatz 1 Satz 1 Nr. 5 gemachten Mitteilungen oder deren Inhalts führen würde”
“Section 53a Right of persons involved to refuse testimony (1) Persons who, in the context of	**s. 53a Zeugnisverweigerungsrecht der mitwirkenden Personen** (1) Den Berufsgeheimnisträgern nach s. 53 Absatz 1 Satz 1 Nummer 1 bis 4

[580] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.

of persons who have the right to refuse testimony on professional grounds pursuant to section 53 para. 1 sentence 1 nos. 1 to 4 shall be equal to those persons. 1. a contractual relationship, 2. a measure preparatory to vocational training or 3. some other ancillary activity, are involved in the professional activity The decision as to whether or not such persons shall exercise their right to refuse to testify shall be taken by the persons with the right to refuse testimony on professional grounds, unless such a decision cannot be obtained within a foreseeable time. (2) Release from the obligation of secrecy (section 53 para. 2 sentence 1) shall apply equally to the persons involved referred to in para. 1."[581]	stehen die Personen gleich, die im Rahmen 1. eines Vertragsverhältnisses, 2. einer berufsvorbereitenden Tätigkeit oder 3. einer sonstigen Hilfstätigkeit an deren beruflicher Tätigkeit mitwirken. Über die Ausübung des Rechts dieser Personen, das Zeugnis zu verweigern, entscheiden die Berufsgeheimnisträger, es sei denn, dass diese Entscheidung in absehbarer Zeit nicht herbeigeführt werden kann. (2) Die Entbindung von der Verpflichtung zur Verschwiegenheit (s. 53 Absatz 2 Satz 1) gilt auch für die nach Absatz 1 mitwirkenden Personen.
"**Section 54 Authorisation for members of public service to testify** (1) The special provisions of civil service law shall apply to the examination of judges, civil servants and other persons in the public service as witnesses concerning circumstances covered by their official obligation of secrecy, as well as to permission to testify. (2) Members of the Bundestag, of a *Land* parliament, of the Federal Government or of a *Land* government, as well as employees of a federal or *Land* parliamentary group shall be subject to the special provisions applicable to them.	**s. 54 Aussagegenehmigung für Angehörige des öffentlichen Dienstes** (1) Für die Vernehmung von Richtern, Beamten und anderen Personen des öffentlichen Dienstes als Zeugen über Umstände, auf die sich ihre Pflicht zur Amtsverschwiegenheit bezieht, und für die Genehmigung zur Aussage gelten die besonderen beamtenrechtlichen Vorschriften. (2) Für die Mitglieder des Bundestages, eines Landtages, der Bundes- oder einer Landesregierung sowie für die Angestellten einer Fraktion des Bundestages und eines Landtages gelten die für

[581] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.

(3) The Federal President may refuse to testify if his testimony would be detrimental to the welfare of the Federation or of one of the *Länder*. (4) These provisions shall also apply if the persons referred to in the above are no longer members of the public service or employees of a parliamentary group or if their terms of office have expired, insofar as the events concerned occurred or became known to them during their terms of service, employment or office."[582]	die maßgebenden besonderen Vorschriften. (3) Der Bundespräsident kann das Zeugnis verweigern, wenn die Ablegung des Zeugnisses dem Wohl des Bundes oder eines deutschen Landes Nachteile bereiten würde. (4) Diese Vorschriften gelten auch, wenn die vorgenannten Personen nicht mehr im öffentlichen Dienst oder Angestellte einer Fraktion sind oder ihre Mandate beendet sind, soweit es sich um Tatsachen handelt, die sich während ihrer Dienst-, Beschäftigungs- oder Mandatszeit ereignet haben oder ihnen während ihrer Dienst-, Beschäftigungs- oder Mandatszeit zur Kenntnis gelangt sind.
"**S. 55 Right to refuse information** (1) Any witness may refuse to answer any questions the reply to which would subject him or one of the relatives indicated in section 52 para. 1 to the risk of being prosecuted for an offence or a regulatory offence. (2) The witness shall be instructed as to his right to refuse to answer."[583]	**s. 55 Auskunftsverweigerungsrecht** (1) Jeder Zeuge kann die Auskunft auf solche Fragen verweigern, deren Beantwortung ihm selbst oder einem der in s. 52 Abs. 1 bezeichneten Angehörigen die Gefahr zuziehen würde, wegen einer Straftat oder einer Ordnungswidrigkeit verfolgt zu werden. (2) Der Zeuge ist über sein Recht zur Verweigerung der Auskunft zu belehren.
"Section 56 Substantiation of grounds for refusal to testify The fact on which a witness bases his refusal to testify in the cases under sections 52, 53 and 55 is to be substantiated upon	**s. 56 Glaubhaftmachung des Verweigerungsgrundes** Die Tatsache, auf die der Zeuge die Verweigerung des Zeugnisses in den Fällen

[582] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.
[583] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.

request. A sworn declaration by the witness shall be sufficient."[584]	der ss. 52, 53 und 55 stützt, ist auf Verlangen glaubhaft zu machen. Es genügt die eidliche Versicherung des Zeugen.
"Section 148 Accused's communications with defence counsel (1) The accused shall be entitled to communicate with defence counsel in writing as well as orally even when he is not at liberty. (2) If an accused who is not at liberty is strongly suspected of having committed an offence under section 129a, also in conjunction with section 129b para. 1, of the Criminal Code, the court shall order that in communications with defence counsel any papers or other items shall be rejected if the sender does not agree to their being first submitted to the court competent pursuant to section 148a. If no warrant of arrest has been issued for an offence under section 129a, also in conjunction with section 129b para. 1, of the Criminal Code, the decision shall be given by the court which would be competent to issue a warrant of arrest. If the written correspondence referred to in sentence 1 is subject to surveillance, devices which rule out the possibility of handing over papers and other items shall be put in place in respect of conversations with defence counsel"[585]	**s. 148 Kommunikation des Beschuldigten mit dem Verteidiger** (1) Dem Beschuldigten ist, auch wenn er sich nicht auf freiem Fuß befindet, schriftlicher und mündlicher Verkehr mit dem Verteidiger gestattet. (2) Ist ein nicht auf freiem Fuß befindlicher Beschuldigter einer Tat nach s. 129a, auch in Verbindung mit s. 129b Abs. 1, des Strafgesetzbuches dringend verdächtig, soll das Gericht anordnen, dass im Verkehr mit Verteidigern Schriftstücke und andere Gegenstände zurückzuweisen sind, sofern sich der Absender nicht damit einverstanden erklärt, dass sie zunächst dem nach s. 148a zuständigen Gericht vorgelegt werden. Besteht kein Haftbefehl wegen einer Straftat nach s. 129a, auch in Verbindung mit s. 129b Abs. 1, des Strafgesetzbuches, trifft die Entscheidung das Gericht, das für den Erlass eines Haftbefehls zuständig wäre. Ist der schriftliche Verkehr nach Satz 1 zu überwachen, sind für Gespräche mit Verteidigern Vorrichtungen vorzusehen, die die Übergabe von Schriftstücken und anderen Gegenständen ausschließen.

[584] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.
[585] Ibid.

Synopsis 4: The right to refuse to testify in the investigation phase **7**

"S. 160a Persons entitled to refuse testimony professional grounds
(1) An investigation measure directed at a person designated in section 53 para. 1 sentence 1 no. 1, 2 or 4, a lawyer or a non-lawyer provider of legal services who has been admitted to a bar association shall be inadmissible if it is expected to produce information in respect of which such person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any recording of such information is to be deleted without delay. The fact that the information was obtained and deleted shall be included in the records. If information about a person referred to in sentence 1 is obtained through an investigation measure which is not aimed at such person and in respect of which such person may refuse to testify, sentences 2 to 4 shall apply accordingly.
(2) Insofar as a person designated in section 53 para. 1 sentence 1 nos. 3 to 3b or no. 5 might be affected by an investigation measure and it is to be expected that information would thereby be obtained in respect of which the person would have the right to refuse to testify, this shall be given particular consideration in the context of examining proportionality; if the proceedings do not concern an offence of substantial significance, then, in principle, no overriding interest in prosecuting the offence is to be presumed. Insofar as is expedient, the measure should be dispensed with or, to the extent possible for this type of measure, restricted. Sentence 1 shall apply accordingly to the use of information for evidential purposes. Sentences 1 to 3 shall not apply to lawyers and non-lawyer providers of legal services who have been admitted to a bar association.
(3) Paras. 1 and 2 shall apply accordingly insofar as the persons designated in section 53a would have the right to refuse to testify.
(4) Paras. 1 to 3 shall not apply if certain facts give rise to the suspicion that the person who is entitled to refuse to testify participated in the offence or in handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling stolen goods. If the offence may be prosecuted only upon request or only upon authorisation, sentence 1 shall apply in the cases under s.53 para. 1 s. 1 no. 5 as soon as and insofar as the request to prosecute has been filed or the authorisation granted.
(5) Section 97, s. 100d para. 5 and section 100g para. 4 shall remain unaffected."[586]

The Federal Tax Code (*Abgabenordnung*) provides for ss. 102,[587] 103, which equally provide for special legal professional privileges in financial matters in Germany. **8**

[586] See Duffett and Ebinger, https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1327.
[587] **§ 102 Auskunftsverweigerungsrecht zum Schutz bestimmter Berufsgeheimnisse**

9 Additonally the following provisions might be of relevance in order to assess the existence of an LLP:

Synopsis 5: Provisions from the Lawyer Organisation Act (BRAO)

BRAO (Lawyer Organisation Act) **Section 43a Basic Obligations** [588] (1) The lawyer may not enter into any commitments that endanger his professional independence. (2) The lawyer is obliged to maintain secrecy. This duty applies to everything that has become known to him in the exercise of his profession. This does not apply to facts which are obvious or which do not require confidentiality due to their significance. The lawyer must oblige the persons he employs in writing	**Bundesrechtsanwaltsordnung** **s. 43a Grundpflichten** (1) Der Rechtsanwalt darf keine Bindungen eingehen, die seine berufliche Unabhängigkeit gefährden. (2) Der Rechtsanwalt ist zur Verschwiegenheit verpflichtet. Diese Pflicht bezieht sich auf alles, was ihm in Ausübung seines Berufes bekanntgeworden ist. Dies gilt nicht für Tatsachen, die offenkundig sind oder ihrer Bedeutung nach keiner Geheimhaltung bedürfen.

(1) Die Auskunft können ferner verweigern:
1. Geistliche über das, was ihnen in ihrer Eigenschaft als Seelsorger anvertraut worden oder bekannt geworden ist,
2. Mitglieder des Bundestages, eines Landtages oder einer zweiten Kammer über Personen, die ihnen in ihrer Eigenschaft als Mitglieder dieser Organe oder denen sie in dieser Eigenschaft Tatsachen anvertraut haben, sowie über diese Tatsachen selbst,
3. a) Verteidiger,
b) Rechtsanwälte, Patentanwälte, Notare, Steuerberater, Wirtschaftsprüfer, Steuerbevollmächtigte, vereidigte Buchprüfer,
c) Ärzte, Zahnärzte, Psychotherapeuten, Psychologische Psychotherapeuten, Kinder- und Jugendlichenpsychotherapeuten, Apotheker und Hebammen,
über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekannt geworden ist,
4. Personen, die bei der Vorbereitung, Herstellung oder Verbreitung von periodischen Druckwerken oder Rundfunksendungen berufsmäßig mitwirken oder mitgewirkt haben, über die Person des Verfassers, Einsenders oder Gewährsmanns von Beiträgen und Unterlagen sowie über die ihnen im Hinblick auf ihre Tätigkeit gemachten Mitteilungen, soweit es sich um Beiträge, Unterlagen und Mitteilungen für den redaktionellen Teil handelt; § 160 bleibt unberührt.
(2) **1**Den im Absatz 1 Nr. 1 bis 3 genannten Personen stehen ihre Gehilfen und die Personen gleich, die zur Vorbereitung auf den Beruf an der berufsmäßigen Tätigkeit teilnehmen. **2**Über die Ausübung des Rechts dieser Hilfspersonen, die Auskunft zu verweigern, entscheiden die im Absatz 1 Nr. 1 bis 3 genannten Personen, es sei denn, dass diese Entscheidung in absehbarer Zeit nicht herbeigeführt werden kann.
(3) **1**Die in Absatz 1 Nr. 3 genannten Personen dürfen die Auskunft nicht verweigern, wenn sie von der Verpflichtung zur Verschwiegenheit entbunden sind. **2**Die Entbindung von der Verpflichtung zur Verschwiegenheit gilt auch für die Hilfspersonen.
(4) **1**Die gesetzlichen Anzeigepflichten der Notare und die Mitteilungspflichten der in Absatz 1 Nr. 3 Buchstabe b bezeichneten Personen nach der Zinsinformationsverordnung vom 26. Januar 2004 (BGBl. I S. 128), die zuletzt durch Artikel 4 Abs. 28 des Gesetzes vom 22. September 2005 (BGBl. I S. 2809) geändert worden ist, in der jeweils geltenden Fassung bleiben unberührt. **2**Soweit die Anzeigepflichten bestehen, sind die Notare auch zur Vorlage von Urkunden und zur Erteilung weiterer Auskünfte verpflichtet. **3**Die Mitteilungspflichten der in Absatz 1 Nummer 3 Buchstabe b bezeichneten Personen hinsichtlich der in § 138f Absatz 3 Satz 1 Nummer 1 und 4 bis 9 bezeichneten Angaben bestehen auch dann, wenn mit diesen Angaben betroffene Nutzer identifizierbar sein sollten.

[588] Unofficial translation.

to secrecy and instruct them about the criminal consequences of a breach of duty. In addition, he has to work towards compliance with the obligation of confidentiality in a suitable manner. The persons employed by the lawyer are equal to those who participate in his professional activity in the context of a job preparation activity or other ancillary activity. Clause 4 does not apply to trainee lawyers and salaried persons who are subject to the same requirements as the lawyer with regard to the duty of confidentiality. If a lawyer has teamed up with other persons who are subject to the same requirements with regard to the obligation of confidentiality as he is to practice jointly and there is a uniform employment relationship with the employees, it is also sufficient to prove that another of these persons fulfills the obligation under sentence 4 has made.	Der Rechtsanwalt hat die von ihm beschäftigten Personen in schriftlicher Form zur Verschwiegenheit zu verpflichten und sie dabei über die strafrechtlichen Folgen einer Pflichtverletzung zu belehren. Zudem hat er bei ihnen in geeigneter Weise auf die Einhaltung der Verschwiegenheitspflicht hinzuwirken. Den von dem Rechtsanwalt beschäftigten Personen stehen die Personen gleich, die im Rahmen einer berufsvorbereitenden Tätigkeit oder einer sonstigen Hilfstätigkeit an seiner beruflichen Tätigkeit mitwirken. Satz 4 gilt nicht für Referendare und angestellte Personen, die im Hinblick auf die Verschwiegenheitspflicht den gleichen Anforderungen wie der Rechtsanwalt unterliegen. Hat sich ein Rechtsanwalt mit anderen Personen, die im Hinblick auf die Verschwiegenheitspflicht den gleichen Anforderungen unterliegen wie er, zur gemeinschaftlichen Berufsausübung zusammengeschlossen und besteht zu den Beschäftigten ein einheitliches Beschäftigungsverhältnis, so genügt auch der Nachweis, dass eine andere dieser Personen die Verpflichtung nach Satz 4 vorgenommen hat.
(3) The lawyer may not behave in an unobjective manner in the exercise of his profession. In particular, behaviour is irrelevant if it involves the deliberate dissemination of untruths or such disparaging statements for which other parties or the course of the proceedings have given no cause.	(3) Der Rechtsanwalt darf sich bei seiner Berufsausübung nicht unsachlich verhalten. Unsachlich ist insbesondere ein Verhalten, bei dem es sich um die bewußte Verbreitung von Unwahrheiten oder solche herabsetzenden Äußerungen handelt, zu denen andere Beteiligte oder der Verfahrensverlauf keinen Anlaß gegeben haben.

(4) The lawyer may not represent any conflicting interests. (5) The lawyer is obliged to exercise the necessary care when handling the assets entrusted to him. Third-party funds must be forwarded immediately to the person entitled to receive them or paid into an escrow account. (6) The lawyer is obliged to continue his education.	(4) Der Rechtsanwalt darf keine widerstreitenden Interessen vertreten. (5) Der Rechtsanwalt ist bei der Behandlung der ihm anvertrauten Vermögenswerte zu der erforderlichen Sorgfalt verpflichtet. Fremde Gelder sind unverzüglich an den Empfangsberechtigten weiterzuleiten oder auf ein Anderkonto einzuzahlen. (6) Der Rechtsanwalt ist verpflichtet, sich fortzubilden.

(b) Provisions on lifting a legal (professional) privilege

10 In German law some exceptions exist: Facts that are obvious can be disclosed. Disclosure is commonly handled very restrictive in Germany. The client can release the lawyer from the obligation to secrecy (consent situation).

11 Section 138 StGB (German Criminal Code) holds someone who gains information about a crime criminal liable if he does not inform the competent authority i.e. police or a prosecutor.

12 In case of money laundering the German **GwG Act** applies and obliges the lawyer to report evidence. The enforcement of claims may justify the disclosure of information. If the client releases the lawyer explicitly from his obligation to remain silent, the lawyer loses his right not to testify in court. The client is the "master of the secret" and this leads to the disclosure obligation of the lawyer if the client decides to release a certain piece of information.

13 Provisions such as s. 53 para. 2 contain further exemptions for legal privileges:

Section 53 CPC Right to refuse to testify of professional confidentiality persons
(1)[589] You are also entitled to refuse the certificate […].

[589] § 53 Zeugnisverweigerungsrecht der Berufsgeheimnisträger
(1) [1]Zur Verweigerung des Zeugnisses sind ferner berechtigt
[...] (2) [1]Die in Absatz 1 Satz 1 Nr. 2 bis 3b Genannten dürfen das Zeugnis nicht verweigern, wenn sie von der Verpflichtung zur Verschwiegenheit entbunden sind. [2]Die Berechtigung zur Zeugnisverweigerung der in Absatz 1 Satz 1 Nr. 5 Genannten über den Inhalt selbst erarbeiteter Materialien und den Gegenstand entsprechender Wahrnehmungen entfällt, wenn die Aussage zur Aufklärung eines Verbrechens beitragen soll oder wenn Gegenstand der Untersuchung
1. eine Straftat des Friedensverrats und der Gefährdung des demokratischen Rechtsstaats oder des Landesverrats und der Gefährdung der äußeren Sicherheit (§§ 80a, 85, 87, 88, 95, auch in Verbindung mit § 97b, §§ 97a, 98 bis 100a des Strafgesetzbuches),

(2) Those named in Paragraph 1 Clause 1 Nos. 2 to 3b may not refuse to testify if they are released from the obligation to maintain secrecy/confidentiality. The right of the persons designated in para. 1 sentence 1 no. 5 to refuse to testify concerning the content of materials which they themselves have produced and matters which have received their professional attention shall lapse if the testimony is required to assist in investigating a serious criminal offence (Verbrechen) or if the subject of the investigation is
1. a crime of betrayal of peace and endangering the democratic constitutional state or treason and endangering external security (sections 80a, 85, 87, 88, 95, also in conjunction with section 97b, sections 97a, 98 to 100a of the Criminal Code),
2. a criminal offence against sexual self-determination according to Sections 174 to 174c, 176a, 176b, 177 paragraph 2 number 1 of the Criminal Code or
3. money laundering according to Section 261 of the Criminal Code, the predicate offence of which is threatened with a minimum imprisonment sentence,
and the investigation of the facts or the determination of the whereabouts of the accused would otherwise be futile or significantly more difficult. 3 The witness can, however, refuse to testify in these cases as well, insofar as they relate to the disclosure of the person of the author or of the sender of articles and documents or of the other informant or of the notifications made to him with regard to his activity in accordance with paragraph 1 sentence 1 number 5 or whose content would lead.

2. eine Straftat gegen die sexuelle Selbstbestimmung nach den §§ 174 bis 174c, 176a, 176b, 177 Absatz 2 Nummer 1 des Strafgesetzbuches oder
3. eine Geldwäsche nach § 261 des Strafgesetzbuches, deren Vortat mit einer im Mindestmaß erhöhten Freiheitsstrafe bedroht ist,
ist und die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise aussichtslos oder wesentlich erschwert wäre. 3Der Zeuge kann jedoch auch in diesen Fällen die Aussage verweigern, soweit sie zur Offenbarung der Person des Verfassers oder Einsenders von Beiträgen und Unterlagen oder des sonstigen Informanten oder der ihm im Hinblick auf seine Tätigkeit nach Absatz 1 Satz 1 Nr. 5 gemachten Mitteilungen oder deren Inhalts führen würde.

14 In addition, *nota bene* Section 138 German Criminal Code:

Section 138 CC[590] **Failure to report planned offences**
(1) Whoever has credible information about the planning or the commission of
[…] 2. high treason in the cases under sections 81 to 83 para. 1,
3. treason or endangering external security in the cases under sections 94 to 96, section 97a or 100,
4. counterfeiting money or securities in the cases under sections 146, 151 and 152, or counterfeiting guaranteed payment cards and blank Eurocheque in the cases under section 152b paras. 1 to 3,
5. murder under specific aggravating circumstances (section 211) or murder (section 212) or genocide (section 6 of the Code of Crimes against International Law) or a crime against humanity (section 7 of the Code of Crimes against International Law) or a war crime (section 8, 9, 10, 11 or 12 of the Code of Crimes against International Law) or a crime of aggression (section 13 of the Code of Crimes against International Law),
6. an offence against personal liberty in the cases under section 232 para. 3 sentence 2, section 232a paras. 3, 4 and 5, section 232b paras. 3 or 4, section 233a paras. 3 or 4, in each case to the extent that it constitutes a serious criminal offence, under section 234, 234a, 239a or 239b,

[590] § 138 Nichtanzeige geplanter Straftaten
(1) Wer von dem Vorhaben oder der Ausführung
1. (weggefallen)
2. eines Hochverrats in den Fällen der §§ 81 bis 83 Abs. 1,
3. eines Landesverrats oder einer Gefährdung der äußeren Sicherheit in den Fällen der §§ 94 bis 96, 97a oder 100,
4. einer Geld- oder Wertpapierfälschung in den Fällen der §§ 146, 151, 152 oder einer Fälschung von Zahlungskarten mit Garantiefunktion in den Fällen des § 152b Ab§ 1 bis 3,
5. eines Mordes (s. 211) oder Totschlags (§ 212) oder eines Völkermordes (§ 6 des Völkerstrafgesetzbuches) oder eines Verbrechens gegen die Menschlichkeit (§ 7 des Völkerstrafgesetzbuches) oder eines Kriegsverbrechens (§§ 8, 9, 10, 11 oder 12 des Völkerstrafgesetzbuches) oder eines Verbrechens der Aggression (§ 13 des Völkerstrafgesetzbuches),
6. einer Straftat gegen die persönliche Freiheit in den Fällen des § 232 Absatz 3 Satz 2, des § 232a Absatz 3, 4 oder 5, des § 232b Absatz 3 oder 4, des § 233a Absatz 3 oder 4, jeweils soweit es sich um Verbrechen handelt, der §§ 234, 234a, 239a oder 239b,
7. eines Raubes oder einer räuberischen Erpressung (§§ 249 bis 251 oder 255) oder
8. einer gemeingefährlichen Straftat in den Fällen der §§ 306 bis 306c oder 307 Abs. 1 bis 3, des s. 308 Abs. 1 bis 4, des s. 309 Abs. 1 bis 5, der §§ 310, 313, 314 oder 315 Abs. 3, des s. 315b Abs. 3 oder der §§ 316a oder 316c zu einer Zeit, zu der die Ausführung oder der Erfolg noch abgewendet werden kann, glaubhaft erfährt und es unterläßt, der Behörde oder dem Bedrohten rechtzeitig Anzeige zu machen, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft.
(2) Ebenso wird bestraft, wer
1. von der Ausführung einer Straftat nach s. 89a oder
2. von dem Vorhaben oder der Ausführung einer Straftat nach s. 129a, auch in Verbindung mit s. 129b Abs. 1 Satz 1 und 2,
zu einer Zeit, zu der die Ausführung noch abgewendet werden kann, glaubhaft erfährt und es unterlässt, der Behörde unverzüglich Anzeige zu erstatten. s. 129b Abs. 1 Satz 3 bis 5 gilt im Fall der Nummer 2 entsprechend.
(3) Wer die Anzeige leichtfertig unterläßt, obwohl er von dem Vorhaben oder der Ausführung der rechtswidrigen Tat glaubhaft erfahren hat, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft.

7. robbery or extortion with use of force or threat of force (sections 249 to 251 or section 255) or
8. offences constituting a public danger in the cases under sections 306 to 306c or section 307 paras. 1 to 3, section 308 paras. 1 to 4, section 309 paras. 1 to 5, section 310, 313, 314, section 315 para. 3, section 315b para. 3 or section 316a or 316c
at a time when the commission or result can still be prevented and fails to report it in time to the public authorities or to the person threatened incurs a penalty of imprisonment for a term not exceeding five years or a fine.
(2) Whoever credibly learns
1. of the commission of an offence under section 89a or
2. of the planning or commission of an offence under section 129a, also in conjunction with section 129b para. 1 sentences 1 and 2,
at a time when the commission can still be prevented and fails to report it without delay to the public authorities incurs the same penalty. Section 129b para. 1 sentences 3 to 5 applies accordingly in the case under no. 2.
(3) Whoever recklessly fails to make a report although they have credible information about the planning or the commission of an unlawful act incurs a penalty of imprisonment for a term not exceeding one year or a fine.

(c) National jurisprudence

- BVerfG, Beschl. v. 30.11.2021 – 2 BvR 2038/18 =StV 2022, 137 (concerning s. 97 CPC).
- See Gärditz, StV 2020, 716 et seq.

(2) Spousal privilege

(a) Provisions in German law

The spousal privilege is regulated within the right of the accused's relatives by s. 52 CPC: **15**

Section 52 CPC Right of accused's relatives to refuse testimony
(1)[591] The following persons may refuse to testify:

[591] **s. 52 Zeugnisverweigerungsrecht der Angehörigen des Beschuldigten**
(1) Zur Verweigerung des Zeugnisses sind berechtigt
1. der Verlobte des Beschuldigten;
2. der Ehegatte des Beschuldigten, auch wenn die Ehe nicht mehr besteht;
2a. der Lebenspartner des Beschuldigten, auch wenn die Lebenspartnerschaft nicht mehr besteht;
3. wer mit dem Beschuldigten in gerader Linie verwandt oder verschwägert, in der Seitenlinie bis zum dritten Grad verwandt oder bis zum zweiten Grad verschwägert ist oder war.

1. the accused's fiancé or fiancée;
2. the accused's spouse, even if the marriage no longer exists;
2a. the accused's life partner, even if the life partnership no longer exists;
3. a person who is or was lineally related or related by marriage, collaterally related to the third degree or related by marriage to the second degree to the accused.
(2) If minors, due to the lack of intellectual maturity, or minors or persons placed in care, due to mental illness or disability, have no sufficient understanding of the importance of their right of refusal to testify, then testimony may be taken from such persons only if they are willing to testify and if their statutory representative also agrees to their examination. If the statutory representative is himself accused, he may not decide on the exercise of the right of refusal to testify; if both parents are entitled to act as statutory representative, the same shall apply to the parent who is not accused.
(3) Persons who are entitled to refuse to testify and, in cases under para. 2, also their representatives authorised to decide on the exercise of the right of refusal to testify shall be instructed concerning their right prior to each examination. They may revoke the waiver of this right during the examination"

(b) Provisions on lifting a spousal privilege

Section 55 Right to refuse to give information
(1) Any witness may refuse to answer any questions the reply to which would subject him or one of the relatives indicated in section 52 para. 1 to the risk of being prosecuted for an offence or a regulatory offence.
(2) The witness shall be instructed as to his right to refuse to answer."[592]

16 According to the wording of Section 55, the witness "may" ("*kann*") refuse to testify. So it is up to his or her decision. These persons can therefore waive their right to refuse to testify and make a statement. For the lifting procedure of the German law, the criminal jurisprudence (concerning this national legislation) must be taken into account.

(2) Haben Minderjährige wegen mangelnder Verstandesreife oder haben Minderjährige oder Betreute wegen einer psychischen Krankheit oder einer geistigen oder seelischen Behinderung von der Bedeutung des Zeugnisverweigerungsrechts keine genügende Vorstellung, so dürfen sie nur vernommen werden, wenn sie zur Aussage bereit sind und auch ihr gesetzlicher Vertreter der Vernehmung zustimmt. Ist der gesetzliche Vertreter selbst Beschuldigter, so kann er über die Ausübung des Zeugnisverweigerungsrechts nicht entscheiden; das gleiche gilt für den nicht beschuldigten Elternteil, wenn die gesetzliche Vertretung beiden Eltern zusteht.
(3) Die zur Verweigerung des Zeugnisses berechtigten Personen, in den Fällen des Absatzes 2 auch deren zur Entscheidung über die Ausübung des Zeugnisverweigerungsrechts *befugt*e Vertreter, sind vor jeder Vernehmung über ihr Recht zu belehren. Sie können den Verzicht auf dieses Recht auch während der Vernehmung widerrufen.

[592] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html. Accessed 31 December 2024.

(3) Privilege against self-incrimination

It is a criminal law standard to speak of an "overriding legal principle" when it comes to the conclusion that an accused (*Beschuldigter*, s. 136 para. 1 CPC) or accused in court (*Angeklagter*, see s. 243 para. 5 CPC) is generally not obliged to actively contribute to the clarification of the facts of his potential criminal conduct. This stems and is concluded by accepting the long standing principle "*nemo tenetur se ipsum accusare*" (see above → B. II. j.).[593] German criminal law does not *expressis verbis* state the principle, but there are several provisions that can be used to prove the principle that derives from the Basic Law and the German Consitution. **17**

(a) Enshrinement in German law

Synopsis 6: Privilege against self-incrimination in German law **18**

Strafprozessordnung	**German Criminal Procedure Code**
§ 55 **Auskunftsverweigerungsrecht** (1) Jeder Zeuge kann die Auskunft auf solche Fragen verweigern, deren Beantwortung ihm selbst oder einem der in s. 52 Abs. 1 bezeichneten Angehörigen die Gefahr zuziehen würde, wegen einer Straftat oder einer Ordnungswidrigkeit verfolgt zu werden. (2) Der Zeuge ist über sein Recht zur Verweigerung der Auskunft zu belehren. [...]	**Section 55** **Right to refuse to give information** (1) Any witness may refuse to answer any questions the reply to which would subject him or one of the relatives indicated in section 52 para. 1 to the risk of being prosecuted for an offence or a regulatory offence. (2) The witness shall be instructed as to his right to refuse to answer. […]
§ 136 **Erste Vernehmung** (1) Bei Beginn der ersten Vernehmung ist dem Beschuldigten zu eröffnen, welche Tat ihm zu Last gelegt wird und welche Strafvorschriften in Betracht kommen. Er ist darauf hinzuweisen, daß es ihm nach dem Gesetz freistehe, sich zu der Beschuldigung zu äußern oder nicht zur Sache auszusagen und jederzeit, auch schon vor seiner Vernehmung, einen von ihm zu wählenden Verteidiger zu befragen.	**Section 136** **First examination** (1) At the commencement of the first examination, the accused shall be informed of the offence with which he is charged and of the applicable criminal law provisions. He shall be advised that the law grants him the right to respond to the charges or not to make any statement on the charges and the right, at any stage, even prior to his examination, to consult defence counsel of his

[593] Reinel 2015, pp. 325 et seq.; Caianiello 2023, pp. 486 et seq. on problems of the Directive and shortcomings.

Möchte der Beschuldigte vor seiner Vernehmung einen Verteidiger befragen, sind ihm Informationen zur Verfügung zu stellen, die es ihm erleichtern, einen Verteidiger zu kontaktieren. Auf bestehende anwaltliche Notdienste ist dabei hinzuweisen. Er ist ferner darüber zu belehren, daß er zu seiner Entlastung einzelne Beweiserhebungen beantragen und unter den Voraussetzungen des s. 140 die Bestellung eines Pflichtverteidigers nach Maßgabe des s. 141 Absatz 1 und des s. 142 Absatz 1 beantragen kann; zu Letzterem ist er dabei auf die Kostenfolge des s. 465 hinzuweisen. In geeigneten Fällen soll der Beschuldigte auch darauf, dass er sich schriftlich äußern kann, sowie auf die Möglichkeit eines Täter-Opfer-Ausgleichs hingewiesen werden.	choice. If the accused wishes to consult defence counsel prior to his examination, he shall be provided with information which makes it easier for him to be able to contact such defence counsel. Reference is thereby to be made to any emergency legal services which are available. He shall, further, be advised that he may request evidence to be taken in his defence and, under the conditions of section 140 paras. 1 and 2, request the appointment of defence counsel in accordance with section 141 paras. 1 and 3; in the latter case, reference shall be made to the resulting costs referred to in section 465. In appropriate cases, the accused shall also be informed that he may make a written statement and of the possibility of victim–offender mediation.
(2) Die Vernehmung soll dem Beschuldigten Gelegenheit geben, die gegen ihn vorliegenden Verdachtsgründe zu beseitigen und die zu seinen Gunsten sprechenden Tatsachen geltend zu machen.	(2) The examination is to give the accused the opportunity to dispel the grounds for suspecting him and to assert the facts which speak in his favour.
(3) Bei der ersten Vernehmung des Beschuldigten ist zugleich auf die Ermittlung seiner persönlichen Verhältnisse Bedacht zu nehmen.	(3) At the first examination of the accused, consideration shall also be given to ascertaining his personal situation.[595]
(4) Die Vernehmung des Beschuldigten kann in Bild und Ton aufgezeichnet werden. Sie ist aufzuzeichnen, wenn 1. dem Verfahren ein vorsätzlich begangenes Tötungsdelikt zugrunde liegt und der Aufzeichnung weder die äußeren	(4) The questioning of the accused may be recorded in image and sound. It shall be recorded if 1. the proceedings are based on an intentionally committed homicide and neither the external circumstances nor

[595] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch.

Umstände noch die besondere Dringlichkeit der Vernehmung entgegenstehen oder 2. die schutzwürdigen Interessen von Beschuldigten, die erkennbar unter eingeschränkten geistigen Fähigkeiten oder einer schwerwiegenden seelischen Störung leiden, durch die Aufzeichnung besser gewahrt werden können. (5) s. 58a Absatz 2 gilt entsprechend. In criminal tax proceedings s. **393 para. 1 s. 1 General Tax Code** might apply.[594]	the particular urgency of the questioning prevent the recording, or 2. the interests worthy of protection of suspects who are recognisably suffering from impaired mental capacity or a serious mental disorder can be better protected by the recording. (5) Section 58b shall apply mutatis mutandis.

In addition it can be acknowledged that Germany is part of the "*Internationale[r] Pakt vom 19. Dezember 1966 über bürgerliche und politische Rechte*"[596] and Art. 14 para. 3 lit. g of this Treaty exemplifies the right not to incriminate oneself.[597] **19**

Article 14 International Covenant on Civil and Political Rights[598] **20**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any Judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in

[594] BStBl I 2022 Nr. 6, 251-318, AStBV, Nr. 16.
[596] Germany enacted supplelemtary legislation, the so-called "*Gesetz zu dem Internationalen Pakt vom 19. Dezember 1966 über bürgerliche und politische Rechte*", cf. BGBl. II 1973 Nr. 60 from the 20.11.1973, pp. 1533–1556, online: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl273s1533.pdf. Accessed 31 December 2024.
[597] Cf. Arslan, ZStW (2015) 127, pp. 1111 (1111).
[598] […] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.
Cf. here for the legally binding languages and the whole wording: UN Human Right Office of the High Commissioner: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx. Accessed 31 December 2024.

detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
[4.–7.][599]

21 Furthermore it is relevant to mention that in tax proceedings the General Tax Code of Germany (AO) applies:

Section 393 AO[600] Relationship between criminal proceedings and the taxation procedure
(1) The rights and obligations of the taxpayers and of the revenue authority in the taxation procedure and in criminal proceedings shall be determined by the regulations which apply to the proceedings in the particular case. In the taxation procedure, however, coercive measures (section 328) against the taxpayer shall be impermissible where this

[599] UN Human Right Office of the High Commissioner: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx. Accessed 31 December 2024.

[600] **§ 393 Verhältnis des Strafverfahrens zum Besteuerungsverfahren Abgabenordnung**
(1) Die Rechte und Pflichten der Steuerpflichtigen und der Finanzbehörde im Besteuerungsverfahren und im Strafverfahren richten sich nach den für das jeweilige Verfahren geltenden Vorschriften. Im Besteuerungsverfahren sind jedoch Zwangsmittel (§ 328) gegen den Steuerpflichtigen unzulässig, wenn er dadurch gezwungen würde, sich selbst wegen einer von ihm begangenen Steuerstraftat oder Steuerordnungswidrigkeit zu belasten. Dies gilt stets, soweit gegen ihn wegen einer solchen Tat das Strafverfahren eingeleitet worden ist. Der Steuerpflichtige ist hierüber zu belehren, soweit dazu Anlass besteht.
(2) Soweit der Staatsanwaltschaft oder dem Gericht in einem Strafverfahren aus den Steuerakten Tatsachen oder Beweismittel bekannt werden, die der Steuerpflichtige der Finanzbehörde vor Einleitung des Strafverfahrens oder in Unkenntnis der Einleitung des Strafverfahrens in Erfüllung steuerrechtlicher Pflichten offenbart hat, dürfen diese Kenntnisse gegen ihn nicht für die Verfolgung einer Tat verwendet werden, die keine Steuerstraftat ist. Dies gilt nicht für Straftaten, an deren Verfolgung ein zwingendes öffentliches Interesse (§ 30 Abs. 4 Nr. 5) besteht.
(3) Erkenntnisse, die die Finanzbehörde oder die Staatsanwaltschaft rechtmäßig im Rahmen strafrechtlicher Ermittlungen gewonnen hat, dürfen im Besteuerungsverfahren verwendet werden. Dies gilt auch für Erkenntnisse, die dem Brief-, Post- und Fernmeldegeheimnis unterliegen, soweit die Finanzbehörde diese rechtmäßig im Rahmen eigener strafrechtlicher Ermittlungen gewonnen hat oder soweit nach den Vorschriften der Strafprozessordnung Auskunft an die Finanzbehörden erteilt werden darf.

would force him to incriminate himself in a tax crime or tax-related administrative offence which he committed. This shall invariably apply where criminal proceedings have been initiated against him for such an act. The taxpayer shall be instructed accordingly as necessary.
(2) Where during criminal proceedings the public prosecutor's office or the court learns from the tax records of facts or evidence which the taxpayer, in compliance with his obligations under tax law, revealed to the revenue authority before the initiation of criminal proceedings or in ignorance of the initiation of criminal proceedings, this knowledge may not be used against him for the prosecution of an act that is not a tax crime. This shall not apply to crimes for the prosecution of which there is a compelling public interest (section 30(4) number 5).
(3) Findings which the revenue authority or the public prosecutor's office lawfully gained in the course of criminal investigations may be used in the taxation procedure. This shall also apply with respect to findings subject to the privacy of correspondence, posts and telecommunications to the extent that the revenue authority legally obtained them within in the course of their own criminal investigations or to the extent that information may be issued to the revenue authorities pursuant to the provisions of the Code of Criminal Procedure.

(b) Related national jurisprudence

E.g. FG Hamburg, 14.01.2020 – 4 K 123/15.

bb. Conclusion and summary to the different privileges and the lifting/waiving procedure in German law

The privileges found in ss. 52 et seq. CPC allow the persons named therein to refuse to testify. The right to refuse to testify is excluded if there is no obligation to maintain confidentiality, e.g. in the case of s. 53 para. 1 s.1 no. 5 CPC for persons who participate or have participated professionally in the preparation, production or distribution of printed works, radio broadcasts, film reports or information and communication services serving to inform or form opinions. They are exempt from the obligation to testify, for example, if the testimony is intended to contribute to the investigation of a crime or if the subject of the investigation is one of the criminal offences listed in para. 2 nos. 1 to 3. This also applies, for example, to money laundering according to s. 261 CC. This rule applies as well to the persons named in s. 53a para. 1 CPC, cf. s. 53 para. 2 CPC. **22**

The questioning of members of the public service is a special matter that is ruled, among other codes, by the Civil Service Law (cf. s. 54 CPC). Importantly, s. 55 CPC handles the right of a witness to refuse to provide information if this would incriminate him- or herself. In the cases of ss. 52, 53 and 55 CPC, the refusal to testify must be substantiated on request by means of a sworn declaration (s. 56 CPC). **23**



Section 160a CPC is a special regulation for preliminary proceedings. It rules the effect of the right to refuse to give evidence in relation to investigative measures that could be taken against persons entitled to these rights. Paragraph 1 clearly states that investigative measures that violate the right to refuse to testify of certain persons subject to professional secrecy such as clergy, defence lawyers, lawyers, notaries, tax consultants, doctors, psychotherapists, etc. are **inadmissible**. Any knowledge obtained nonetheless may not be used and all records must be deleted. The bearer of professional secrecy thus has a strong right to refuse testimony under the German Code of Criminal Procedure. This must be taken into account by the EPPO. In the remaining cases, the principle of proportionality will be applied to determine which interest prevails (cf. s. 160a para. 2 CPC). Exceptions to this exist if the professional secrecy holder is involved in certain offences. Further special privileges are offered in the Federal Tax Code.

24 The **privilege against self-incrimination** of the suspect and accused, which is based in German Basic Law, is guaranteed in German criminal proceedings by the Code of Criminal Procedure. For information obtained from tax proceedings s. 393 of the Federal Tax Code must be taken into account.

b) Immunity provisons as *Verfahrensvoraussetzung* and *Verfahrenshindernisse* according to german criminal doctrine

25 In the German Parliaments there are two different forms of special rights, like in other parliaments in Europe and the world, that belong to parliamentarians, i.e. the "*Immunität*" and the "*Indemnität*". Thus firstly the German *Bundestag* has special legislation, which ensures the political and democratic freedom and latitude in the speech processes (*Abgeordnetenreden*) i.e. the so-called "*Indemnität*".[601] Secondly the general form of an immunity can be distinguished. The immunity is a right of the *Bundestag* dedicated to parliamentarians, enshrined in Art. 46 paras 4 to 6 German Basic Law (*Grundgesetz*) and has a direct effect on criminal or disciplinary prosecution, which is hindered by the Basic Law as long as the Parliament itself does not start a lifting procedure (see below).

26 The Data Manual of the German Bundestag provides for the following statistics:

[601] Deutscher Bundestag 2022 Internetausgabe des Datenhandbuches zur Geschichte des Deutschen Bundestages. Kapitel 2.4 Indemnität und Immunität. Zeugnisverweigerung. online: https://www.bundestag.de/resource/blob/272930/51e97e9149a237d438278178a56cfce4/Kapitel_02_04_Indemnit__t_und_Immunit__t__Zeugnisverweigerung-pdf-data.pdf. Accessed 31 December 2024.

Table 14: Immunity/Statistics for the German Bundestag

	12. WP 1990–1994	**13. WP 1994–1998**	**14. WP 1998–2002**	**15. WP 2003–2005**	**16. WP 2005–2009**	**17. WP 2009–2013**	**18. WP 2013–2017**	**19. WP 2017–2021**
Immunitätsfälle insgesamt	13	22	17	15	13	9	12	26
genehmigt	12	19	14	15	12	9	12	25
nicht genehmigt	1	2	3	0	1	0	0	0
nicht behandelt bzw. eingestellt	0	1	0	0	0	0	0	0
Äußerungs-delikte	2	2	3	0	0	0	0	3
Sonstige Delikte	6	11	6	7	9	6	2	16
Disziplinar- und Ehrengerichts-verfahren	0	2	1	1	0	0	0	3
Beschränkungen der persönlichen Freiheit *(Haft, zwangsweise Vorführung, Erzwingungs-haft)*	0	1	0	0	0	1	1	0
Sonstiges (z.B. Mitglieder der Bundes-versammlung)	0	3	1	4	0	0	0	0
Zeugen-vernehmungen	3	1	0	3	0	0	0	0
Zahl der betroffenen Abgeordneten	12	15	15	11	12	9	12	21

Source: *Deutscher Bundestag*, Sekretariat Ausschuss für Wahlprüfung, Immunität und Geschäftsordnung. Nota bene: For the 2021–2024 phase there was no data available yet.

aa. Parliamentary privilege or immunity

27

National rules on privileges and immunities

Article 46 Basic Law[602] Immunities of Members

(1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a remark made by him in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.

(2) A Member may not be called to account or arrested for a punishable offence without permission of the Bundestag unless he is apprehended while committing the offence or in the course of the following day.

(3) The permission of the Bundestag shall also be required for any other restriction of a Member's freedom of the person or for the initiation of proceedings against a Member under Article 18.

(4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag.[603]

Article 47 Basic Law[604] Right of refusal to give evidence

Members may refuse to give evidence concerning persons who have confided information to them in their capacity as Members of the Bundestag or to whom they have confided information in this capacity and to give evidence concerning this information itself. To the extent that this right of refusal to give evidence applies, no seizure of documents shall be permissible.[605]

[602] **Art. 46 Grundgesetz für die Bundesrepublik Deutschland**
(1) Ein Abgeordneter darf zu keiner Zeit wegen seiner Abstimmung oder wegen einer Äußerung, die er im Bundestage oder in einem seiner Ausschüsse getan hat, gerichtlich oder dienstlich verfolgt oder sonst außerhalb des Bundestages zur Verantwortung gezogen werden. Dies gilt nicht für verleumderische Beleidigungen.
(2) Wegen einer mit Strafe bedrohten Handlung darf ein Abgeordneter nur mit Genehmigung des Bundestages zur Verantwortung gezogen oder verhaftet werden, es sei denn, daß er bei Begehung der Tat oder im Laufe des folgenden Tages festgenommen wird.
(3) Die Genehmigung des Bundestages ist ferner bei jeder anderen Beschränkung der persönlichen Freiheit eines Abgeordneten oder zur Einleitung eines Verfahrens gegen einen Abgeordneten gemäß Artikel 18 erforderlich.
(4) Jedes Strafverfahren und jedes Verfahren gemäß Artikel 18 gegen einen Abgeordneten, jede Haft und jede sonstige Beschränkung seiner persönlichen Freiheit sind auf Verlangen des Bundestages auszusetzen"

[603] Translated by Christian Tomuschat, David P. Currie, Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag, cf. here https://www.gesetze-im-internet.de/englisch_gg/index.html. Accessed 31 December 2024.

[604] **Art. 47 Zeugnisverweigerungsrecht der Abgeordneten [Grundgesetz]**
Die Abgeordneten sind berechtigt, über Personen, die ihnen in ihrer Eigenschaft als Abgeordnete oder denen sie in dieser Eigenschaft Tatsachen anvertraut haben, sowie über diese Tatsachen selbst das Zeugnis zu verweigern. Soweit dieses Zeugnisverweigerungsrecht reicht, ist die Beschlagnahme von Schriftstücken unzulässig.

[605] Translated by Christian Tomuschat, David P. Currie, Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag, cf. here https://www.gesetze-im-internet.de/englisch_gg/index.html.

Article 60 Basic Law[606] **Appointment of civil servants – Pardon – Immunity**
(1) The Federal President shall appoint and dismiss federal judges, federal civil servants and commissioned and non-commissioned officers of the Armed Forces, except as may otherwise be provided by a law.
(2) He shall exercise the power to pardon offenders on behalf of the Federation in individual cases.
(3) He may delegate these powers to other authorities.
(4) Paragraphs 2 to 4 of Article 46 shall apply to the Federal President, *mutatis mutandis*.[607]

Applicable Provisions from the German Criminal Procedure Code

Section 152a CPC[608] **Provisions of *Land* law governing prosecution of elected representatives**
The law of a *Land* concerning the conditions under which a criminal prosecution may be instituted or continued against members of a legislative body shall also apply to the other *Länder* of the Federal Republic of Germany and to the Federation. [609]

[606] **Art. 60 [Grundgesetz]**
(1) Der Bundespräsident ernennt und entläßt die Bundesrichter, die Bundesbeamten, die Offiziere und Unteroffiziere, soweit gesetzlich nichts anderes bestimmt ist.
(2) Er übt im Einzelfalle für den Bund das Begnadigungsrecht aus.
(3) Er kann diese Befugnisse auf andere Behörden übertragen.
(4) **Die Absätze 2 bis 4 des Artikels 46** finden auf den Bundespräsidenten entsprechende Anwendung.
[no highlighting in the original].
[607] Translated by: Christian Tomuschat, David P. Currie, Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag. online: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0289. Accessed 31 December 2024.
[608] **§ 152a Landesgesetzliche Vorschriften über die Strafverfolgung von Abgeordneten**
Landesgesetzliche Vorschriften über die Voraussetzungen, unter denen gegen Mitglieder eines Organs der Gesetzgebung eine Strafverfolgung eingeleitet oder fortgesetzt werden kann, sind auch für die anderen Länder der Bundesrepublik Deutschland und den Bund wirksam.
[609] Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi. Translation completely revised and regularly updated by Ute Reusch, cf. here: https://www.gesetze-im-internet.de/englisch_CPC/englisch_CPC.html#p1827. Accessed 31 December 2024.

28

Relevant Laws of the German *Länder*[610]

Excerpts from the sixteen German *Landesgesetze* are not shown here as they apply to parliamentarians of a *Länderparlament*. To find the provisions just navigate to the Constitution of one of the Länder and search for a similar provision.

Other relevant provisions in national law

Section 36 CC[611] Parliamentary statements

Members of the Bundestag, the Federal Convention or of a legislative body of one of the *Länder* may at no time be held liable outside of the body on account of a vote they cast or a statement they made within one of those bodies or one of their committees. This does not apply to defamatory insults.[612]

bb. Provisions to lift the parliamentary privilege/immunity

29 In the following the national provisions on the procedure of lifting parliamentarian immunities or privileges are presented:

30 *Sources and national sections 3: Art. 29 EPPO Regulation (parliamentary privilege/immunity)*

National provisions on the procedure of lifting
Article 46 [German Grundgesetz/Basic Law] [Immunities of Members] (1) […] (2) A Member may not be called to account or arrested for a punishable offence without permission of the Bundestag unless he is apprehended while committing the offence or in the course of the following day [*Nota bene*: *in flagrante delicto exception*]. (3) […] (4) […].”[613]

[610] Cf. the preamble of the Grundgesetz for an enumeration of the *Länder*: “Germans in the *Länder* of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia [...]”, cf. Translated by: Christian Tomuschat, David P. Currie, Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag, here: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0289. Accessed 31 December 2024.
Art. 31 GG does not apply with regard to immunities and privileges of the Constitutions of the Länder.

[611] **§ 36 Parlamentarische Äußerungen [Strafgesetzbuch]**
Mitglieder des Bundestages, der Bundesversammlung oder eines Gesetzgebungsorgans eines Landes dürfen zu keiner Zeit wegen ihrer Abstimmung oder wegen einer Äußerung, die sie in der Körperschaft oder in einem ihrer Ausschüsse getan haben, außerhalb der Körperschaft zur Verantwortung gezogen werden. Dies gilt nicht für verleumderische Beleidigungen.

[612] Translation provided by Prof. Dr Michael Bohlander. Translation completely revised and regularly updated by Ute Reusch, cf. here https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0197. Accessed 31 December 2024.

[613] Cf. above in the first table in this section for all information relating to citation/translation references, etc [no highlighting in the original].

Section 107 Immunity Matters [Rules of Procedure of the German Bundestag]
(1) Requests in immunity matters are to be forwarded by the President directly to the Committee on Election Review, Immunity and Rules of Procedure.
(2) The latter shall establish principles for the handling of requests for the lifting of immunity from members of the Bundestag (Annex 6) and make these principles the starting point for the recommendations for resolutions to be made to the Bundestag in individual cases.
(3) The consultation on a recommendation for a resolution is not bound to a deadline. It should begin no earlier than the third day after the submission has been distributed (Section 75 para. 1 lit. h). If the recommendation for a resolution has not yet been distributed, it will be read out.
(4) Before the Committee for Election Review, Immunity and Rules of Procedure is constituted, the President can submit a recommendation for a resolution to the Bundestag directly on immunity matters.[614]

Synopsis of Annex 6 – Resolution of the German Bundestag regarding the lifting of the immunity of members of the Bundestag

Unofficial translation	*Original German text*
Nota bene: Annex 6 – Resolution of the German Bundestag regarding the lifting of the immunity of members of the Bundestag is not printed here completely [due to Section 107 para. 2 Rules of Procedure of the German Bundestag the principles displayed in the following are only a snapshot of this legislative period as the principles are decided by the Committee	Anlage 6 – Beschluß des Deutschen Bundestages betr. Aufhebung der Immunität von Mitgliedern des Bundestages wird hier nicht vollständig abgedruckt [aufgrund von s. 107 Abs. 2 Geschäftsordnung des Deutschen Bundestages sind die nachfolgend aufgeführten Grundsätze nur eine Momentaufnahme dieser Legislaturperiode,

[614] No official translation available. "**Geschäftsordnung des Deutschen Bundestages § 107 Immunitätsangelegenheiten**
(1) Ersuchen in Immunitätsangelegenheiten sind vom Präsidenten unmittelbar an den Ausschuß für Wahlprüfung, Immunität und Geschäftsordnung weiterzuleiten.
(2) Dieser hat Grundsätze über die Behandlung von Ersuchen auf Aufhebung der Immunität von Mitgliedern des Bundestages aufzustellen (Anlage 6) und diese Grundsätze zum Ausgangspunkt seiner in Einzelfällen zu erarbeitenden Beschlußempfehlungen an den Bundestag zu machen.
(3) Die Beratung über eine Beschlußempfehlung ist an eine Fristen nicht gebunden. Sie soll frühestens am dritten Tage nach Verteilung der Vorlage (§ 75 Abs. 1 Buchstabe h) beginnen. Ist die Beschlußempfehlung noch nicht verteilt, wird sie verlesen.
(4) Vor der Konstituierung des Ausschusses für Wahlprüfung, Immunität und Geschäftsordnung kann der Präsident dem Bundestag in Immunitätsangelegenheiten unmittelbar eine Beschlußempfehlung vorlegen"

for Election Review, Immunity and Rules of Procedure at the beginning of each election period.

The whole Annex 6 [current version] can be retrieved from the link in the footnote to this sentence.[615]
The most important passages are presented here in a summarised manner:
"1. […]
"Before initiating investigative proceedings, the President of the German Bundestag and, unless there are reasons to prevent the establishment of the truth, the member of the Bundestag concerned must be notified; If the member of the Bundestag is not notified, the President must also be informed of this, stating the reasons. The right of the German Bundestag to request the suspension of the proceedings (Article 46 para. 4 of the Basic Law) remains unaffected.

In individual cases, the preliminary investigation may be initiated no earlier than 48 hours after receipt of the notification by the President of the German Bundestag."[616] Sundays, public holidays and Saturdays are not included in the calculation of the deadline. The President of the German Bundestag may, in agreement with the Chair of the Committee on

da die Grundsätze vom Ausschuss für Wahlprüfung, Immunität und Geschäftsordnung unter festgelegt werden der Beginn jeder Wahlperiode.
Der gesamte Anhang 6 [aktuelle Fassung] kann über den Link in der Fußnote zu diesem Satz abgerufen werden. Die wichtigsten Passagen werden hier zusammengefasst dargestellt:
1. [...]
Vor Einleitung eines Ermittlungsverfahrens ist dem Präsidenten des Deutschen Bundestages und, soweit nicht Gründe der Wahrheitsfindung entgegenstehen, dem betroffenen Mitglied des Bundestages Mitteilung zu machen; unterbleibt eine Mitteilung an das Mitglied des Bundestages, so ist der Präsident auch hiervon unter Angabe der Gründe zu unterrichten. Das Recht des Deutschen Bundestages, die Aussetzung des Verfahrens zu verlangen (Artikel 46 Abs. 4 GG), bleibt unberührt.
Das Ermittlungsverfahren darf im Einzelfall frühestens 48 Stunden nach Zugang der Mitteilung beim Präsidenten des Deutschen Bundestages eingeleitet werden. Bei der Berechnung der Frist werden Sonntage, allgemeine Feiertage und Sonnabende nicht mitgerechnet. Der Präsident des Deutschen Bundestages

[615] Cf. here: https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/anlage6-245194. Accessed 31 December 2024.
[616] "Vor Einleitung eines Ermittlungsverfahrens ist dem Präsidenten des Deutschen Bundestages und, soweit nicht Gründe der Wahrheitsfindung entgegenstehen, dem betroffenen Mitglied des Bundestages Mitteilung zu machen; unterbleibt eine Mitteilung an das Mitglied des Bundestages, so ist der Präsident auch hiervon unter Angabe der Gründe zu unterrichten. Das Recht des Deutschen Bundestages, die Aussetzung des Verfahrens zu verlangen (Artikel 46 Abs. 4 GG), bleibt unberührt.
Das Ermittlungsverfahren darf im Einzelfall frühestens 48 Stunden nach Zugang der Mitteilung beim Präsidenten des Deutschen Bundestages eingeleitet werden"

the Scrutiny of Elections, Immunity and Rules of Procedure, extend the deadline appropriately.	kann im Einvernehmen mit dem Vorsitzenden des Ausschusses für Wahlprüfung, Immunität und Geschäftsordnung die Frist angemessen verlängern.
2.–7. […]	2.–7. […]
A. Principles in matters of immunity	A. Grundsätze in Immunitätsangelegenheiten
1. Eligibility to apply for a waiver	1. Antragsberechtigung
Are entitled to submit an application for the waiver of immunity	Berechtigt zur Stellung eines Antrages auf Aufhebung der Immunität sind
a) the public prosecutor's offices, courts, honorary and professional courts of a public law character as well as professional institutions that exercise professional supervision by law	a) die Staatsanwaltschaften, Gerichte, Ehren- und Berufsgerichte öffentlichrechtlichen Charakters sowie berufsständische Einrichtungen, die kraft Gesetzes Standesaufsicht ausüben,
b) […]	b) [...]
c) […]	c) [...]
d) the Committee on Voting, Immunity and the Rules of Procedure.	d) der Ausschuß für Wahlprüfung, Immunität und Geschäftsordnung.
2. Notification to the President of the Bundestag and submission of the motions	2. *Mitteilung an den Präsidenten des Bundestages und Einreichen der Anträge*
a) […]	a) [...]
b) The public prosecutor's offices and courts address their applications to the President of the Bundestag (*Bundestagspräsident)* on official channels via the Federal Minister of Justice, who submits them with a request to obtain a decision on whether to authorize criminal prosecution or to restrict the personal freedom of a member of the Bundestag or the otherwise intended measure is granted.	b) Die Staatsanwaltschaften und Gerichte richten ihre Anträge an den Präsidenten des Bundestages auf dem Dienstweg über den Bundesminister der Justiz, der sie mit der Bitte vorlegt, eine Entscheidung herbeizuführen, ob die Genehmigung zur Strafverfolgung oder Beschränkung der persönlichen Freiheit eines Mitgliedes des Bundestages oder der sonst beabsichtigten Maßnahme erteilt wird.
c) […]	c) [...]
3. […]	3. [...]
4. Immunity decisions	4. *Entscheidungen in Immunitätsangelegenheiten*

The main purpose of immunity law is to ensure that the Bundestag is able to work and function properly [*telos*]; the individual MP has the right to a decision free of irrelevant, arbitrary motives. The decision on the lifting or restoration of immunity is made by the Bundestag on its own responsibility, taking into account the interests of Parliament and the other sovereign powers, taking into account the interests of the MPs concerned. Evidence is not considered; the decision does not include a determination of right or wrong, guilt or not guilt.	Das Immunitätsrecht bezweckt vornehmlich, die Arbeits- und Funktionsfähigkeit des Bundestages sicherzustellen; der einzelne Abgeordnete hat einen Anspruch auf eine von sachfremden, willkürlichen Motiven freie Entscheidung. Die Entscheidung über die Aufhebung oder Wiederherstellung der Immunität trifft der Bundestag in eigener Verantwortung unter Abwägung der Belange des Parlaments und der anderen hoheitlichen Gewalten unter Berücksichtigung der Belange des betroffenen Abgeordneten. In eine Beweiswürdigung wird nicht eingetreten; die Entscheidung beinhaltet keine Feststellung von Recht oder Unrecht, Schuld oder Nichtschuld.
5. […]	5. [...]
6. Arrest of a member of the Bundestag while committing the act [in flagrante delicto]	*6. Festnahme eines Mitgliedes des Bundestages bei Begehung der Tat*
If a member of the Bundestag is arrested while committing the offence or in the course of the following day, criminal proceedings or arrest, provided that they take place “during the course of the following day” at the latest, do not require authorisation (Article 46, Paragraph 2 of the Basic Law). Another presentation or arrest after previous release and the expiry of the day following the act then again requires the approval of the Bundestag; because this is a restriction of personal freedom (Article 46, Paragraph 2 of the Basic Law), which is not related to arrest “in the act”.	Bei Festnahme eines Mitgliedes des Bundestages bei Begehung der Tat oder im Laufe des folgenden Tages bedarf die Durchführung des Strafverfahrens oder eine Verhaftung, soweit sie bis spätestens “im Laufe des folgenden Tages” erfolgt, keiner Genehmigung (Artikel 46 Abs. 2 des Grundgesetzes). Eine erneute Vorführung oder Verhaftung nach vorheriger Freilassung und Verstreichen des der Tat folgenden Tages bedarf dann wieder der Genehmigung des Bundestages; denn hierin liegt eine Beschränkung der persönlichen Freiheit (Artikel 46 Abs. 2 des Grundgesetzes), die in keinem

	Zusammenhang mit der Festnahme "auf frischer Tat" steht.
7. Arrest of a member of the Bundestag a) The authorisation granted for the duration of an electoral term to conduct investigative proceedings against members of the Bundestag for criminal offences as well as the authorisation to bring public charges against a criminal offence does not at the same time include authorisation to arrest (Article 46 para. 2 of the Basic Law) or compulsorily Demonstration.	*7. Verhaftung eines Mitgliedes des Bundestages* a) Die für die Dauer einer Wahlperiode erteilte Genehmigung zur Durchführung von Ermittlungsverfahren gegen Mitglieder des Bundestages wegen Straftaten sowie die Genehmigung zur Erhebung der öffentlichen Klage wegen einer Straftat umfaßt nicht zugleich auch die Genehmigung zur Verhaftung (Artikel 46 Abs. 2 des Grundgesetzes) oder zwangsweisen Vorführung.
b) Arrest (Article 46, Paragraph 2 of the Basic Law) only includes pre-trial detention; arrest for the execution of a sentence again requires special approval.	b) Unter Verhaftung (Artikel 46 Abs. 2 des Grundgesetzes) ist nur die Untersuchungshaft zu verstehen; die Verhaftung zur Strafvollstreckung bedarf wieder einer besonderen Genehmigung.
c) Approval for arrest includes approval for forcible demonstration.	c) Die Genehmigung zur Verhaftung schließt die Genehmigung zur zwangsweisen Vorführung ein.
d) Permission to forcibly display does not include permission to arrest.	d) Die Genehmigung zur zwangsweisen Vorführung schließt nicht die Genehmigung zur Verhaftung ein.
8. Enforcement of custodial sentences or compulsory detention (Sections 96, 97 OWiG) Authorisation to bring public charges against a criminal offence does not entitle to the execution of a custodial sentence. The execution of a custodial sentence or compulsory detention (ss. 96, 97 OWiG) require the approval of the Bundestag. In order to simplify the course of business, the Committee for Election Review, Immunity and Rules of Procedure is instructed to make a preliminary decision	*8. Vollstreckung von Freiheitsstrafen oder von Erzwingungshaft (ss. 96, 97 OWiG)* Die Genehmigung zur Erhebung der öffentlichen Klage wegen einer Straftat berechtigt nicht zur Vollstreckung einer Freiheitsstrafe. Die Vollstreckung einer Freiheitsstrafe oder einer Erzwingungshaft (ss. 96, 97 OWiG) bedürfen der Genehmigung des Bundestages. Zur Vereinfachung des Geschäftsganges ist der Ausschuss für Wahlprüfung, Immunität und Geschäftsordnung beauftragt, eine

on the approval of enforcement, but only in the case of imprisonment if a higher imprisonment than three months has not been recognized, or in the case of a total sentence (Sections 53 up to 55 StGB, s. 460 CPC) none of the recognized individual sentences exceed three months.

9. Disciplinary proceedings [Disziplinarverfahren] […]
10. Honorary and professional court proceedings
11. […]
12. Bagatelle
13. Simplified procedure (preliminary decisions)
14. Obligation to obtain approval in special cases
The approval of the Bundestag is required:
a) To enforce orderly custody to enforce an omission or tolerance (s. 890 ZPO).

If in a judgment or an injunction, directed to an omission or tolerance, a penalty is threatened in the event of a violation, the threat constitutes the establishment of a norm. The examination of whether this norm enables the debtor to fulfil the obligation to cease and desist in the future is to stop, is injured, therefore means a "hold responsible" within the meaning of Article 46, Paragraph 2 of the Basic Law for violation of "an act threatened with punishment". It is irrelevant whether the proceedings are aimed at detention or fines.

Vorentscheidung über die Genehmigung der Vollstreckung zu treffen, bei Freiheitsstrafen jedoch nur, soweit nicht auf eine höhere Freiheitsstrafe als drei Monate erkannt ist, oder bei einer Gesamtstrafenbildung (ss. 53 bis 55 StGB, s. 460 CPC) keine der erkannten Einzelstrafen drei Monate übersteigt.
9. Disziplinarverfahren [...]

10. Ehren- und Berufsgerichtsverfahren [...]
11. Verfahren bei Verkehrsdelikten [...]
12. Verfahren bei Bagatellsachen [...]
13. Vereinfachtes Verfahren (Vorentscheidungen) [...]
14. Genehmigungspflicht in besonderen Fällen
Die Genehmigung des Bundestages ist erforderlich:
a) Zur Vollstreckung von Ordnungshaft zur Erzwingung einer Unterlassung oder Duldung (s. 890 ZPO).
Wird in einem Urteil oder einer einstweiligen Verfügung, gerichtet auf eine Unterlassung oder Duldung, für den Fall der Zuwiderhandlung eine Strafe angedroht, so stellt die Androhung die Festsetzung einer Norm dar. Die Prüfung, ob diese Norm, die den Schuldner zur künftigen Erfüllung der Unterlassungspflicht anhalten soll, verletzt ist, bedeutet daher ein "zur Verantwortung ziehen" im Sinne des Artikels 46 Abs. 2 des Grundgesetzes wegen Verletzung "einer mit Strafe bedrohten Handlung". Dabei ist es unerheblich, ob in dem Verfahren Ordnungshaft oder –geld angestrebt wird.

b) For the enforcement of detention to enforce an affidavit of the debtor (s. 901 ZPO). Since only the execution of the arrest warrant is a restriction of personal freedom within the meaning of Article 46 para. 2 of the Basic Law and therefore requires the approval of the German Bundestag, the Committee on Election Review, Immunity and Rules of Procedure takes the position that the procedure can be carried out Enforcement of the affidavit against a member of the Bundestag as a debtor and also the order of detention by the court to enforce the performance of the affidavit do not mean "hold responsible" and therefore do not require the approval of the German Bundestag.	b) Zur Vollstreckung der Haft zur Erzwingung der eidesstattlichen Versicherung des Schuldners (s. 901 ZPO). Da lediglich die Vollstreckung des Haftbefehls eine Beschränkung der persönlichen Freiheit im Sinne des Artikels 46 Abs. 2 des Grundgesetzes ist und daher der Genehmigung des Deutschen Bundestages bedarf, steht der Ausschuß für Wahlprüfung, Immunität und Geschäftsordnung auf dem Standpunkt, daß die Durchführung des Verfahrens zur Erzwingung der eidesstattlichen Versicherung gegen ein Mitglied des Bundestages als Schuldner und auch die Anordnung der Haft durch das Gericht zur Erzwingung der Leistung der eidesstattlichen Versicherung noch kein "zur Verantwortung ziehen" bedeuten und daher keiner Genehmigung des Deutschen Bundestages bedürfen.
c) For the enforcement of orderly detention or for compulsory presentation due to failure to act as a witness (s. 51 CPC and s. 380 ZPO).	c) Zur Vollstreckung der Ordnungshaft oder zur zwangsweisen Vorführung wegen Ausbleibens als Zeuge (s. 51 CPC und s. 380 ZPO).
d) For the enforcement of regular detention or detention due to unfounded refusal to testify (Section 70 of the Code of Criminal Procedure and Section 390 of the Code of Civil Procedure).	d) Zur Vollstreckung der Ordnungshaft oder der Haft wegen grundloser Zeugnisverweigerung (s. 70 CPC und s. 390 ZPO).
e) To enforce compulsory detention to obtain unjustifiable acts (s. 888 ZPO).	e) Zur Vollstreckung der Zwangshaft zur Erwirkung unvertretbarer Handlungen (s. 888 ZPO).
f) For the enforcement of detention or other restrictions of liberty to enforce personal security arrest (s. 933 ZPO).	f) Zur Vollstreckung der Haft oder sonstigen Freiheitsbeschränkung zur Vollziehung des persönlichen Sicherheitsarrestes (s. 933 ZPO).
g) For the enforcement of the orderly detention for unfairness (s. 178 GVG).	g) Zur Vollstreckung der Ordnungshaft wegen Ungebühr (s. 178 GVG).

h) For the compulsory presentation of the debtor or joint debtor and for the enforcement of detention in insolvency proceedings (Section 21 Paragraph 3 and Section 98 Paragraph 2 InsO).
i) For temporary placement in a sanatorium or nursing home (Section 126a CPC).
j) Regarding custodial measures of reform and security (ss. 61ff. StGB).

k) For compulsory presentation (ss. 134, 230, 236, 329 and 387 CPC).
15. […]

16. Pending criminal proceedings
Pending criminal proceedings as well as any ordered detention, execution of a custodial sentence or other restriction of personal freedom (cf. number 14) are to be suspended ex officio when assuming the mandate of a member of parliament.

If proceedings are to be continued, a decision of the Bundestag must be obtained beforehand, unless the approval to conduct investigations into a criminal offence has already been granted.

17. Treatment of amnesty cases
The Committee on Election Review, Immunity and Rules of Procedure is authorized, in all cases in which judicial prosecution against a member of the Bundestag would not be carried out as a result of an already pronounced amnesty, to enable the judicial termination of the proceedings on the basis of the amnesty by

h) Zur zwangsweisen Vorführung des Schuldners oder Gemeinschuldners und zur Vollstreckung der Haft im Insolvenzverfahren (s. 21 Abs. 3 und s. 98 Abs. 2 InsO).
i) Zur einstweiligen Unterbringung in einer Heil- oder Pflegeanstalt (s. 126a CPC).
j) Zu freiheitsentziehenden Maßregeln der Besserung und Sicherung (ss. 61ff. StGB).
k) Zur zwangsweisen Vorführung (ss. 134, 230, 236, 329 und 387 CPC).
15. Schutzmaßnahmen nach dem Infektionsschutzgesetz [...]
16. Anhängige Strafverfahren
Bei Übernahme des Abgeordnetenmandats anhängige Strafverfahren sowie jede angeordnete Haft, Vollstreckung einer Freiheitsstrafe oder sonstige Beschränkung der persönlichen Freiheit (vgl. Nummer 14) sind von Amts wegen auszusetzen.
Soll ein Verfahren fortgesetzt werden, so ist vorher eine Entscheidung des Bundestages einzuholen, soweit nicht bereits die Genehmigung zur Durchführung von Ermittlungsverfahren wegen einer Straftat erteilt ist.
17. Behandlung von Amnestiefällen
Der Ausschuß für Wahlprüfung, Immunität und Geschäftsordnung ist ermächtigt, in allen Fällen, in denen eine gerichtliche Strafverfolgung gegen ein Mitglied des Bundestages infolge einer bereits ausgesprochenen Amnestie nicht zur Durchführung kommen würde, die gerichtliche Einstellung des Verfahrens

In such cases he declares that the Bundestag will not raise any objections to the application of the Law on Exemption from Punishment. Such cases do not need to be submitted to the plenary session of the Bundestag.	auf Grund der Amnestie dadurch zu ermöglichen, daß er in solchen Fällen erklärt, der Bundestag werde gegen die Anwendung des Straffreiheitsgesetzes keine Einwendungen erheben. Solche Fälle bedürfen nicht der Vorlage an das Plenum des Bundestages.
l) For arrest on the basis of an arrest warrant according to ss. 114, 125, 230, 236 or 329 CPC. B. Authorisation to prosecute according to s. 90b Abs. 2, s. 194 Abs. 4 StGB […] C. Approval for the hearing of witnesses according to s. 50 Abs. 3 CPC and s. 382 Abs. 3 ZPO Approval to deviate from Section 50 para. 1 of the Code of Criminal Procedure and Section 382 para. 2 of the Code of Civil Procedure, according to which the members of the Bundestag are to be heard at the seat of the assembly, can be granted by way of a preliminary decision in accordance with number 13 of the principles in immunity matters. The public prosecutor's offices and courts address their applications directly to the President of the Bundestag. Approval is not required if the date for questioning is outside of the session of the Bundestag.	l) Zur Verhaftung auf Grund Haftbefehls nach ss. 114, 125, 230, 236 oder 329 CPC. B. Ermächtigung zur Strafverfolgung nach s. 90b Abs. 2, s. 194 Abs. 4 StGB [...] C. Genehmigung zur Zeugenvernehmung nach s. 50 Abs. 3 CPC und s. 382 Abs. 3 ZPO Die Genehmigung zu einer Abweichung von s. 50 Abs. 1 CPC und s. 382 Abs. 2 ZPO, wonach die Mitglieder des Bundestages am Sitz der Versammlung zu vernehmen sind, kann im Wege der Vorentscheidung gemäß Nummer 13 der Grundsätze in Immunitätsangelegenheiten erteilt werden. Die Staatsanwaltschaften und Gerichte richten ihre Anträge unmittelbar an den Präsidenten des Bundestages. Einer Genehmigung bedarf es nicht, wenn der Termin zur Vernehmung außerhalb der Sitzungswochen des Bundestages liegt.

c) Immunities and Privileges under union law, para. 2

[Art. 29] 2. Where the investigations of the EPPO involve persons protected by privileges or immunities **under the Union law**, in particular the Protocol on the privileges and immunities of the European Union, and such privilege or immunity presents an obstacle to a specific investigation being conducted, the European Chief Prosecutor shall make a reasoned written request for its lifting in accordance with the procedures laid down by Union law. **31**

32 Cf. → Article 29 EPPO Regulation and the subsequent analysis. Union law differs from national law and is not researched here in-depth. **Union law contains a** protocol, which will apply if the immunity or a privilege of a Union official needs to be lifted. It is enshrined in the consolidated version of the Treaty on the Functioning of the European Union **Protocol (No 7) on the privileges and immunities of the European Union** (OJ C 326, 26.10.2012, p. 266–272)".

33 Example: European Stability Mechanism Contract

> **Article 35 Personal immunities** (1. In the interest of the ESM, the Chairperson of the Board of Governors, the Members of the Board of Governors, the alternate members of the Board of Governors, the members of the Board of Directors, the Alternate Members of the Board of Directors, the Managing Director and the other staff members of the ESM shall enjoy immunity from legal process in respect of their acts and inviolability in respect of their official papers and documents.
> (2. The Board of Governors may waive the immunities granted by this Article to the Chairman of the Board of Governors, the members of the Board of Governors, the alternate members of the Board of Governors, the members of the Management Committee, the deputy members of the Management Committee and the Executive Director to such extent and on such terms and conditions as it may determine.
> (3. The Managing Director may waive such immunity in respect of any official of the ESM other than himself.
> (4. Each ESM Member shall immediately take all measures necessary to give effect to this Article in its own law and shall inform the ESM accordingly.

34 Example 2: from the Working Arrangement with the European Parliament

> **Annex 3 – Request for the waiver of immunity**
> **EPPO EUROPEAN PUBLIC PROSECUTOR'S OFFICE**
> In accordance with Article 5 / Article 6 of the Working Arrangements, the European Public Prosecutor's Office herewith submits a request to waive the immunity of
> 1. EPPO case references
> 2. Name of the person concerned and all other identification details available (nationality,
> personnel number, place of employment)
> 3. Context and factual background of the EPPO investigation
> 4. Alleged offence(s) and applicable national law
> 5. Proposed legal basis for the waiver
> 6. In case the official / other servant of the EU cannot be informed of and heard on the request to waive the immunity, the detailed grounds for not hearing the person concerned, so as to enable the Parliament to proceed to the necessary evaluation

7. Any other relevant information

[signature of the requesting EPPO]

Source: https://www.europarl.europa.eu/resources/library/media/20241128RES25671/20241 128RES25671.pdf.

Example 3: from the Working Arrangement with the European Parliament **35**

Annex 4 – Request to lift the inviolability of the European Parliament's premises I buildings/ archives

In accordance with Article 7 of the Working Arrangements, the European Public Prosecutor's Office herewith submits a request to lift the inviolability of the European Parliament's
premises/buildings/archives:

1. EPPO Case references
2. Name of person(s) concerned by the request, all other identification details available (nationality, personnel number, place of employment) and their respective status in the investigation;
3. Context and factual background of the EPPO investigation
4. Alleged offence(s) and applicable national law
5. Documents requested and/or premises to be accessed
6. If applicable, an explanation as to why a waiver of immunity of the person against whom the investigation is directed is not necessary at this stage of the proceedings
7. If applicable, a specific motivation if any restriction under Article 25 of Regulation (EC) 2018/1725 shall be applied
8. Any other relevant information

[signature of the requesting EPPO]

Source: https://www.europarl.europa.eu/resources/library/media/20241128RES25671/20241128RE S25671.pdf. Accessed 31 March 2025.

III. National law applicable in EPPO investigation with special focus on investigation measures

SECTION 2
Rules on investigation measures and other measures

1. Article 30 Investigation measures and other measures

aa. Empowered to "order or request" 361
bb. Violation of CPC, and ban on taking evidence and on use of evidence 362
cc. Relevant suspicion 363
dd. Prior authorisation by a judge (*Ermittlungsrichter*) 364
ee. Adaption law of the Member State: EUStAG and GVG.....365
ff. Provision in the CPC, EUStAG and GVG 366
b) Investigation measures 368
aa. Para 1(a) 368
(1) Search measures ...368
(a) Search any premises or land 369
(b) Search any means of transport 372
(c) Search any private home.....372
(d) Search any clothes and any other personal property 374
(e) Search any computer system 374
(2) Conservatory measures 375
(a) Necessary to preserve their integrity 376
(b) Necessary to avoid the loss 376
(c) Necessary to avoid the contamination of evidence 377
bb. Para 1(b) 377
cc. Para 1(c).....378
(1) Obtainment of the production of stored computer data (encrypted or decrypted) 378
(a) General provisions in the CPC.....379
(b) Special provisions in the CPC and Tax code.....390
(2) Obtainment of banking account data and traffic data 391
(3) Exception of data specifically retained in accordance with national law 397
(a) Transposition of this Directive.....397
(b) National provision in relation to Art. 15 para. 1 s. 2 of this Directive 397

dd. Para. 1(d) Freezing measure 397
(1) Freezing instrumentalities or proceeds of crime, including assets 397
(2) National legislation and subject to confiscation Status by the trial court 410
ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person 410
ff. Para 1(f) Track & trace an object 418
c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29 419
aa. Right to refuse to testify 419
bb. Section 97 Prohibition on Seizure 421
cc. Special Restrictions that apply for lawyers 424
d) Para 3: Conditions/ thresholds for investigation measures 435
aa. Conditions and limitations for investigation measures of para. 1(c)–(f) 436
bb. Serious offences limitation for offences of para. 1(e) and (f) 438
cc. Notifications according to the last sentence of para. 3 441
e) Para 4: Any other measure(s) in the EDP's Member State 444
aa. Dragnet investigation and procedure, ss. 98a, b CPC 444
bb. Online-search, s. 100b CPC 446
cc. Acoustic surveillance of private premises 449
dd. Accoustic surveillance outside of private premises 451
ee. Undercover Investigators and their Actions 452
f) Para 5: National procedures and national modalities for taking investigative measures 453

1. At least in cases where the offence subject to the investigation is punishable by a maximum penalty of at least 4 years of imprisonment, Member States shall ensure that the European Delegated Prosecutors are entitled to order or request the following investigation measures:
(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;
(b) obtain the production of any relevant object or document either in its original form or in some other specified form;
(c) obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data with the exception of data specifically retained in accordance with national law pursuant to the second sentence of Article 15 para. 1 of Directive 2002/58/EC of the European Parliament and of the Council (20);
(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment ordering confiscation.
(e) intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;
(f) track and trace an object by technical means, including controlled deliveries of goods.
2. Without prejudice to Article 29, the investigation measures set out in paragraph 1 of this Article may be subject to conditions in accordance with the applicable national law if the national law contains specific restrictions that apply with regard to certain categories of persons or professionals who are legally bound by an obligation of confidentiality.
3. The investigation measures set out in points(c), (e) and (f) of paragraph 1 of this Article may be subject to further conditions, including limitations, provided for in the applicable national law. In particular, Member States may limit the application of points (e) and (f) of paragraph 1 of this Article to specific serious offences. A Member State intending to make use of such limitation shall notify the EPPO of the relevant list of specific serious offences in accordance with Article 117.
4. The European Delegated Prosecutors shall be entitled to request or to order any other measures in their Member State that are available to prosecutors under national law in similar national cases, in addition to the measures referred to in paragraph 1.
5. The European Delegated Prosecutors may only order the measures referred to in paragraphs 1 and 4 where there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation, and where there is no less intrusive measure available which could achieve the same objective. The

procedures and the modalities for taking the measures shall be governed by the applicable national law.

a) Member States shall ensure that the EDPs are entitled to order or request

The first part of para. 1 relates to the **PIF Aquis and the offences**, which are enshrined in the PIF Directive 2017/1371 (Artt. 3, 4, 5 and sanctions 7, 9).[617] The next step, if reading the text of the RG is to determine if the Member State has ensured that the EDPs can act. Germany had enacted the "**EUStAG**" **as an adoption law** (see above → A. "Sources of Law".) ensuring the environment for the EPPO. The investigation measures are enshrined in the German CPC. They enable EDPs to conduct – depending on the suspected offence – coercive measures, e.g. the order to inspect or seize data[618] against the suspect or third persons, which might involve the judicial authorisation by an investigating judge (*Ermitttlungsrichter*).[619] The defence measures are explained below see → B. III. 6. **1**

aa. Empowered to "order or request"

In the following it is important to know where national law entitles an EDP to "**order or request**".[620] Investigation measures, which includes open and secret investigative measures in the areas of tax offences[621], customs offences and all other PIF offences (see above → Art. 26 Mn. 40) conflicting with the protection of privacy in EPPO proceedings [622], must still be ordered and requested **lawfully** as they must otherwise fear to interfere with **basic rights of the accused**, which may result from the protection that **originates from the human dignity guarantee** in the Basic Law.[623] **2**

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[617] For the offences in Germany and other EU MS see Hauck 2025b, The PIF Directive, Art. 3, 4, 5, 7, 9 (overviews) before the main text.

[618] See Rückert 2024, p. 11 stating rightly that the lack of clarity of §§ 100a ff. CPC is an obstacle: "inadequate regulatory structure in terms of content and conformity with constitutional and European law." According to p. 19 he aimed at "develop[ing] guidelines and interpretation criteria for criminal procedural data access to obtain evidence [for the Germann debate]." He focuses not primarily on the investigation phase, but equally important for any judges in EPPO cases on the trial phase and the connection between the investigation and the trial phase, which is i.e. the admissibility of evidence in the (e.g. PIF case) trial, see 25 stating that: "Law on the evaluation of evidence of digital data and data processing methods in criminal proceedings" is still at the very beginning, pp. 651 et seq., pp. 728 et seq. on possible solutions.

[619] Zerbst 2025, p. 37–72 on all judge's authorisations in German CPC, pp. 155–189 enumeration of investigative measures subject to prior judicial authorization according to the wording of the EPPO Regulation. Jacobi & Theodorakakou 2025 citing Theodorakakou with the wish for harmonization of the role of the investigating judge.

[620] See already for a general interpretation Hauck 2026a, Art. 30.

[621] In great detail Kaligin 2022, pp. 531 et seq., 547 et seq.

[622] Rühs 2022, p. 12; Hauck 2014, pp. 1 et seq., 110 et seq.; Liebig 2015, pp. 12 et seq., 31 et seq., 51 et seq.; Keller and Braun 2019, pp. 46 et seq., 85 et seq.; Krey 2009, pp. 166 to the role of the prosecutor in the preliminary phase; *Schneider*, Strafprozessuale Ermittlungsmaßnahmen und Zeugnisverweigerungsrechte, 240 et seq.

[623] See e.g. FG Hessen, 13.02.2006 - 6 V 2275/05 [Criminal procedural prohibition of exploitation, § 136a CPC has validity in the normal proceedings according to the CPC and furthermore in criminal tax proceedings according to the FGO]. With emphasis Kroll 2021, p. 161 who criticizes that the core area protection is poorly regulated

bb. Violation of CPC, and ban on taking evidence and on use of evidence

3 Violation of the statutory law on investigations can result in a **ban on using the evidence**. According to German criminal law dogmatics, a distinction is made between **different types of bans** on the taking or the use of evidence for an EPPO investigation. On the one hand, the collection of evidence can be forbidden by bans on the prohibition on the collection or gathering of evidence (*Beweiserhebungsverbote*) and on the other hand the exclusion of evidence, which is governed by the prohibition on the use of evidence (*Beweisverwertungsverbote*).

4 It must be emphasized that the German CPC does **not** contain **a principle according to which every violation of a ban on taking evidence** also necessarily leads to a **ban on using evidence**.[624]

5 Roughly speaking, the collection and use of evidence by the EDPs must be distinguished.

First of all, there are **bans on taking evidence**, namely

- **bans on means of evidence**,
- **bans on subjects of evidence** and
- **bans on methods of evidence**.

6 Further **bans on the use of evidence** may then apply. There may be **an independent, absolute ban**. There is an absolute ban on the use of evidence, if the ban on the use is stipulated in the law. This is always the case when a violation is regulated in the CPC itself (see e.g. the ban on interrogation with prohibited interrogation methods, s. 136a para. 3 s. 2 CPC). **Typical bans** include the right to refuse to give evidence and the right to refuse to testify as well as the prohibition on the use of investigative measures against persons subject to professional secrecy pursuant to s. 160a CPC, the prohibition on the use of previous statements in the event of a refusal to testify until the main hearing, the use of self-disclosure in insolvency proceedings, or the prohibition on investigative measures contrary to international law pursuant to Art. 25 of the German Basic Law (GG) and the provisions of criminal law such as seizure under ss. 89, 100, 100a and 100e (surveillance of telecommunications), online searches under s. 100b, wiretapping under ss. 110c, h, i and searches under ss. 102, 105 and the use of undercover agents

when papers are examined by prosecutors during a search. This is due to the restrictive core area case law of the BVerfG and should therefore be changed and anchored in the laws in favor of a more extensive regulation aiming at the protection of the suspect and accused. He envisages an ex-ante core survey ban and a special *ex-post* ban (both proposals *de lege ferenda*).

[624] Haller and Conzen 2021, mn. 589. This can not be followed from Art. 6 ECHR, see ECtHR NJW 2020, 141 f; for mass surveillance in the EU see Panzavolta and Maes 2022, pp. 242–263.

under ss. 110a, b CPC. The rule *in dubio pro reo* does not apply to the question of prohibitions on the utilisation of evidence.[625]

Secondly, there can be a **relative, dependent ban on the use of evidence**. The aim of a ban on the use of evidence is to ensure that no evidence becomes part of the Judgment that was obtained in violation of a ban on the collection of evidence or that does not violate an explicit ban, but where the defendant's rights ultimately prevail when weighing up the interests of the prosecution and the defendant's interest in protecting his rights.[626] The prohibition is subject to an examination. It may exist if the gathering of evidence was unlawful. With this type of prohibition, it is not directly clear from the law whether an action is prohibited or not. The prohibition thus requires, for a clear violation, that the accused's legal status be balanced with the state's interest in prosecution (the viability of the criminal justice system). Instead, the public prosecutor's office must examine whether, on the one hand, they could have obtained the evidence lawfully or whether they would not have obtained the evidence lawfully in any case. The U.S. known **fruit of the poisonous tree-doctrine** is not followed in Germany in normal cases, but might apply in extraordinary cases.[627] A classic example is the spontaneous utterance of a person, because this will regularly be usable if there are no indications of an offence against ss. 136a para. 1, s. 2, 163a para. 4 s. 2 CPC, which is the case if the existing rights to protect the accused are deliberately circumvented.[628] **7**

cc. Relevant suspicion

For any investigation measure the **relevant suspicion** (*Tatverdachtsgrad*) must exist.[629] The **core area of the affected freedoms** is particularly protected (*Kernbereichsschutz*) and must not be affected, which is why it may be necessary to discontinue the measures.[630] **8**

[625] See e.g. Haller and Conzen 2021, pp. 267–268, 269, mn. 587.
[626] Ibid, mn. 589, 591.
[627] BGH, 24.08.1983 - 3 StR 136/83 =BGHSt 32, 68, mn. 17: Irrespective of the above considerations, the complainants wish to attribute a more far-reaching significance to the procedural offence which lies in the inadmissible telephone surveillance. They believe that it is forbidden to use the statements of the witnesses S. and Z. as evidence and to utilise the statements of the accused because it was only the telephone surveillance that led to the accused and made their arrest and thus their confessions and the statements of the witnesses S. and Z. after the meeting near Krefeld possible. However, such a far-reaching remote effect of the procedural error cannot be recognised - even if the principle of a fair trial is taken into account. As the Federal Court of Justice has already stated several times, a procedural error that leads to a ban on the use of evidence must not automatically lead to the entire criminal proceedings being paralysed (BGHSt 27, 355, 358). In particular, the confession in the main hearing, provided it is not directly based on an inadmissible allegation, can justify the accusation of guilt. However, earlier statements by witnesses which – as in this case – were made without the influence of inadmissible submissions may also be used as evidence. Such a limitation of the effect of procedural errors is necessary because a causal connection between such errors and the eventual conviction of the accused in the sense of a conditio sine qua non can hardly ever be established with certainty. This is also the case here"
[628] Haller and Conzen 2021, mn. 594.
[629] Kroll 2021, p. 46 et seq. citing BVerfG NJW 2018, 3572.
[630] Kroll 2021, pp. 124 et seq., 127 et seq.

9 It may be necessary for a third, independent body to filter out the information obtained by touching the core area before it is viewed by the investigating authority, as this is required by recent case law.[631] Regarding this problem the **confiscation and reading of diaries** or highly personal information documentation are particularly sensitive. It is also important that there is a **so-called rule-exception relationship** (*Regel-Ausnahmeverhältis*). The basic rules for investigative measures, for example, are mostly a reservation for actions by judge orders. However, there are exceptions to this. This is how the entire area of investigative procedure law is regulated and it can only be advised to **read the regulations in detail** – even if you have been on duty for many years – especially since some requirements are nowadays **constantly changing** in the CPC.

dd. Prior authorisation by a judge (*Ermittlungsrichter*)

10 In the investigation phase the EDPs will most likely use **intrusive means and tools**. If they need the **permission/authorisation** (*Richtervorbehalt*) of an investigating judge (*Ermittlungsrichter*) they will request it e.g. for searches by virtue of s. 162 CPC at the locally competent court of first instance (*Amtsgericht, "Ermittlungsgericht"*).[632] The Ermittlungsrichter has a very important task and is a normal judge (*Berufsrichter/Strafrichter am Amtsgericht*)[633], whose role is anchored by Art. 97 para. 1 of the German Basic Right in combination with s. 1 of the German Courts Constitution Act.[634]

11 The suspect has a right to a **legally determined, uninvolved third party judge**, Art. 101 para. 1 s. 2. German Basic Act. Actions and decisions of the investigating judge can be unlawful and challenged by the suspect.[635] In the districts of the courts of first instance (*Amtsgerichte*) most Directors of the competent courts decide on **judicial on-call services**, which may as well be exercised by judges of a country court (*richterliche Eildienste des Amts- und Landgerichts,* ss. 22c GVG). The investigating judges will most likely be frequently contacted for **coercive measures**. In addition to that they might be involved in EPPO investigations if they shall be present in a **questioning process** (*ermittlungsrichterliche Vernehmung*). The present chapter does not only focus on the rules and the **role of the investigating judge in an EPPO investigation** in Germany but points at the relevant sections of the CPC for EDPs and defence lawyers:

[631] Kroll 2021, pp. 127 et seq. citing BVerfG, Judgment of 20.04.2016 - 1 BvR 966/09, 1 BvR 1140/09 (Bundeskriminalamtsgesetz) =openJur 2016, 5619.
[632] The *Amtsgerichte* Frankfurt a.M.; Berlin Tiergarten; Köln; München and Hamburg will most likely decide a lot of these measures and request; von Kühlwein 2019, pp. 501–509; Kroll 2021, pp. 54 et seq. (*Nota bene*: See Art. 27 and 28 EPPO Regulation for urgent measure situations).
[633] See Decker 2021, Chapter 2, Chapter 8 pp. 113 et seq.
[634] *Krey* 2009, pp. 60 et seq.
[635] See LG Rostock, Beschl. v. 19.01.2021 - 11 Qs 192720.

Section 162 CPC[636] Investigating judge
(1) If the public prosecutor's office considers it necessary to take a judicial investigative measure, it shall submit its applications before the public action is brought to the local court in whose district it or its branch office making the application has its seat. If it also deems it necessary to issue an arrest or accommodation warrant, it may, without prejudice to sections 125, 126a, also file such an application with the court referred to in sentence 1. The local court in whose district these investigative acts are to be carried out shall have jurisdiction for judicial hearings and inspections if the public prosecutor's office applies for this there in order to expedite the proceedings or to avoid burdening the persons concerned.
(2) The court shall examine whether the requested action is legally permissible under the circumstances of the case.
(3) After the public action has been brought, the court which is seized of the case shall have jurisdiction. During the appeal proceedings, the court whose judgment is appealed against shall have jurisdiction. After final conclusion of the proceedings, paragraphs 1 and 2 shall apply mutatis mutandis. After an application for a retrial has been made, the court having jurisdiction to make the decisions in the retrial shall have jurisdiction.

ee. Adaption law of the Member State: EUStAG and GVG

For the whole text of this Act cf. above (before Section 1 and prior to Article 26). **12**

Nota bene: The authorisation of an EDP (the "handling" EDP in one of the MS) to order or request could/should or must be enshrined in the new adaption laws which the Member States enacted in order to be fully operational for the EPPO and its tasks. As most of the Member States either amended their Criminal Procedure Code or their Code of the Organisation of the Judiciary and/or the Prosecutors Act, the relevant provision(s) is (are) presented in the following. See → s. 142b GVG.

[636] **§ 162 Ermittlungsrichter StPO**
(1) Erachtet die Staatsanwaltschaft die Vornahme einer gerichtlichen Untersuchungshandlung für erforderlich, so stellt sie ihre Anträge vor Erhebung der öffentlichen Klage bei dem Amtsgericht, in dessen Bezirk sie oder ihre den Antrag stellende Zweigstelle ihren Sitz hat. Hält sie daneben den Erlass eines Haft- oder Unterbringungsbefehls für erforderlich, so kann sie, unbeschadet der §§ 125, 126a, auch einen solchen Antrag bei dem in Satz 1 bezeichneten Gericht stellen. Für gerichtliche Vernehmungen und Augenscheinnahmen ist das Amtsgericht zuständig, in dessen Bezirk diese Untersuchungshandlungen vorzunehmen sind, wenn die Staatsanwaltschaft dies zur Beschleunigung des Verfahrens oder zur Vermeidung von Belastungen Betroffener dort beantragt.
(2) Das Gericht hat zu prüfen, ob die beantragte Handlung nach den Umständen des Falles gesetzlich zulässig ist.
(3) Nach Erhebung der öffentlichen Klage ist das Gericht zuständig, das mit der Sache befasst ist. Während des Revisionsverfahrens ist das Gericht zuständig, dessen Urteil angefochten ist. Nach rechtskräftigem Abschluss des Verfahrens gelten die Absätze 1 und 2 entsprechend. Nach einem Antrag auf Wiederaufnahme ist das für die Entscheidungen im Wiederaufnahmeverfahren zuständige Gericht zuständig.

ff. Provision in the CPC, EUStAG and GVG

13 Before each investigation measure is researched separately the general provisions that relate to **"order or request"** in German law ("*befugt ... anzuordnen oder zu beantragen*") are presented on the following pages:

See → **s. 98 CPC**[637] **Seizure procedures**
(1) Confiscation may only be ordered by the court, in the event of imminent danger also by the public prosecutor's office and their investigators (s. 152 of the Courts Constitution Act). The confiscation pursuant to Section 97 Paragraph 5 Sentence 2 in the premises of an editorial office, a publishing house, a printing works or a broadcasting company may only be ordered by the court.

See → s. 100 CPC[638] **Procedures for seizure of mail and requests for information**
(1) Only the court, and in the event of imminent danger the public prosecutor's office, is authorized to order the measures pursuant to Section 99. [...]
(4) The court competent under S. 98 decides on a measure ordered by the public prosecutor's office according to S. 99. The court that ordered or confirmed the confiscation decides on the opening of a delivered postal item.
(5) Mail that has not been ordered to be opened must be forwarded immediately to the intended recipient. The same applies if retention is not required after opening.
s. 100e procedure for measures according to the ss. 100a to 100c
(1) Measures pursuant to section 100a may only be ordered by the court at the request of the public prosecutor. In the event of imminent danger, the order can also be issued by the public prosecutor's office. If the order of the public prosecutor's office is not confirmed by the court within three working days, it shall become ineffective. The order is to be limited to a maximum of three months. An extension of no more than three months is permitted insofar as the requirements of the order continue to exist, taking into account the investigation results obtained.
(2) Measures according to the ss. 100b and 100c may only be ordered at the request of the public prosecutor's office by the chamber of the regional court named in Section 74a

[637] **§ 98 Verfahren bei der Beschlagnahme**
(1) Beschlagnahmen dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) *angeordnet werden*. Die Beschlagnahme nach § 97 Abs. 5 Satz 2 in den Räumen einer Redaktion, eines Verlages, einer Druckerei oder einer Rundfunkanstalt darf nur durch das Gericht *angeordnet werden*. [...]

[638] **§ 100 Verfahren bei der Postbeschlagnahme und Auskunftsverlangen**
(1) Zur Anordnung der Maßnahmen nach § 99 ist nur das Gericht, bei Gefahr im Verzug auch die Staatsanwaltschaft *befugt*. [...]
(4) Über eine von der Staatsanwaltschaft verfügte Maßnahme nach § 99 entscheidet das nach § 98 zuständige Gericht. Über die Öffnung einer ausgelieferten Postsendung entscheidet das Gericht, das die Beschlagnahme angeordnet oder bestätigt hat.
(5) Postsendungen, deren Öffnung nicht angeordnet worden ist, sind unverzüglich an den vorgesehenen Empfänger weiterzuleiten. Dasselbe gilt, soweit nach der Öffnung die Zurückbehaltung nicht erforderlich ist.

paragraph 4 of the Courts Constitution Act in whose district the public prosecutor's office has its seat. In the event of imminent danger, this order can also be made by the chairman. Its order becomes ineffective if it is not confirmed by the Criminal Court within three working days. The order is to be limited to a maximum of one month. An extension by no more than one month is permitted insofar as the requirements continue to exist, taking into account the investigation results obtained. If the duration of the order has been extended to a total of six months, the Higher Regional Court will decide on further extensions.

And see the following **list of provisions**: **14**

- s. 100e CPC[639]
- s. 100j CPC[640]
- s. 101b CPC[641]
- s. 105 CPC[642]

[639] § 100e Verfahren bei Maßnahmen nach den §§ 100a bis 100c
(1) Maßnahmen nach § 100a dürfen nur auf Antrag der Staatsanwaltschaft durch das Gericht *angeordnet werden*. Bei Gefahr im Verzug kann die Anordnung auch durch die Staatsanwaltschaft getroffen werden. Soweit die Anordnung der Staatsanwaltschaft nicht binnen drei Werktagen von dem Gericht bestätigt wird, tritt sie außer Kraft. Die Anordnung ist auf höchstens drei Monate zu befristen. Eine Verlängerung um jeweils nicht mehr als drei Monate ist zulässig, soweit die Voraussetzungen der Anordnung unter Berücksichtigung der gewonnenen Ermittlungsergebnisse fortbestehen.
(2) Maßnahmen nach den §§ 100b und 100c dürfen nur auf Antrag der Staatsanwaltschaft durch die in § 74a Absatz 4 des Gerichtsverfassungsgesetzes genannte Kammer des Landgerichts *angeordnet werden*, in dessen Bezirk die Staatsanwaltschaft ihren Sitz hat. Bei Gefahr im Verzug kann diese Anordnung auch durch den Vorsitzenden getroffen werden. Dessen Anordnung tritt außer Kraft, wenn sie nicht binnen drei Werktagen von der Strafkammer bestätigt wird. Die Anordnung ist auf höchstens einen Monat zu befristen. Eine Verlängerung um jeweils nicht mehr als einen Monat ist zulässig, soweit die Voraussetzungen unter Berücksichtigung der gewonnenen Ermittlungsergebnisse fortbestehen. Ist die Dauer der Anordnung auf insgesamt sechs Monate verlängert worden, so entscheidet über weitere Verlängerungen das Oberlandesgericht.

[640] **§ 100j Bestandsdatenauskunft**
[...] (3) Auskunftsverlangen nach Absatz 1 Satz 2 und 3 dürfen nur auf Antrag der Staatsanwaltschaft durch das Gericht *angeordnet* werden. Im Fall von Auskunftsverlangen nach Absatz 1 Satz 2 kann die Anordnung bei Gefahr im Verzug auch durch die Staatsanwaltschaft oder ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) getroffen werden. In diesem Fall ist die gerichtliche Entscheidung unverzüglich nachzuholen. Die Sätze 1 bis 3 finden bei Auskunftsverlangen nach Absatz 1 Satz 2 keine Anwendung, wenn die betroffene Person vom Auskunftsverlangen bereits Kenntnis hat oder haben muss oder wenn die Nutzung der Daten bereits durch eine gerichtliche Entscheidung gestattet wird. Das Vorliegen der Voraussetzungen nach Satz 4 ist aktenkundig zu machen.

[641] **§ 101b Statistische Erfassung; Berichtspflichten**
(1) Die Länder und der Generalbundesanwalt berichten dem Bundesamt für Justiz kalenderjährlich jeweils bis zum 30. Juni des dem Berichtsjahr folgenden Jahres über in ihrem Zuständigkeitsbereich angeordnete Maßnahmen nach den §§ 100a, 100b, 100c, 100g und 100k Absatz 1 und 2. Das Bundesamt für Justiz erstellt eine Übersicht zu den im Berichtsjahr bundesweit angeordneten Maßnahmen und veröffentlicht diese im Internet. Über die im jeweils vorangegangenen Kalenderjahr nach § 100c angeordneten Maßnahmen berichtet die Bundesregierung dem Deutschen Bundestag vor der Veröffentlichung im Internet. [...]

[642] **§ 105 Verfahren bei der Durchsuchung**
(1) Durchsuchungen dürfen nur durch den Richter, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) *angeordnet werden*. Durchsuchungen nach § 103 Abs. 1 Satz 2 ordnet der Richter an; die Staatsanwaltschaft ist hierzu *befugt*, wenn Gefahr im Verzug ist. [...]

- s. 110 CPC[643]
- s. 111 CPC[644]
- s. 111j CPC[645]
- s. 161 CPC [646]
- s. 152 para. 2 GVG
- ss. 3, 7 EUStAG

b) Investigation measures

aa. Para 1(a)

> *(a) search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;*

(1) Search measures

15 Search measures – in tax, customs or "normal fraud cases"[647], which infringe the inviolability of a residential home are **frequently used EPPO measures**, whereby a search in principle requires a judge's order.[648] Any search must be distinguished from their

[643] **§ 110 Durchsicht von Papieren und elektronischen Speichermedien**
(1) Die Durchsicht der Papiere des von der Durchsuchung Betroffenen steht der Staatsanwaltschaft und auf deren Anordnung ihren Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) zu.
(2) Im Übrigen sind Beamte zur Durchsicht der aufgefundenen Papiere nur dann *befugt*, wenn der Inhaber die Durchsicht genehmigt. Andernfalls haben sie die Papiere, deren Durchsicht sie für geboten erachten, in einem Umschlag, der in Gegenwart des Inhabers mit dem Amtssiegel zu verschließen ist, an die Staatsanwaltschaft abzuliefern. [...] See above and Rühs 2022 for an in-depth analysis of para. 3 of § 110 CPC.

[644] **§ 111 Errichtung von Kontrollstellen an öffentlich zugänglichen Orten**
(2) Die Anordnung, eine Kontrollstelle einzurichten, trifft der Richter; die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) sind hierzu *befugt*, wenn Gefahr im Verzug ist. [...]

[645] **§ 111j Verfahren bei der Anordnung der Beschlagnahme und des Vermögensarrestes**
(1) Beschlagnahme und Vermögensarrest werden durch das Gericht angeordnet. Bei Gefahr im Verzug kann die Anordnung auch durch die Staatsanwaltschaft erfolgen. Unter der Voraussetzung des Satzes 2 sind zur Beschlagnahme einer beweglichen Sache auch die Ermittlungspersonen der Staatsanwaltschaft (§ 152 des Gerichtsverfassungsgesetzes) *befugt*. [...]

[646] **§ 161 Allgemeine Ermittlungsbefugnis der Staatsanwaltschaft [CPC]**
(1) Zu dem in § 160 Abs. 1 bis 3 bezeichneten Zweck ist die Staatsanwaltschaft *befugt*, von allen Behörden Auskunft zu verlangen und Ermittlungen jeder Art entweder selbst vorzunehmen oder durch die Behörden und Beamten des Polizeidienstes vornehmen zu lassen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln. Die Behörden und Beamten des Polizeidienstes sind verpflichtet, dem Ersuchen oder Auftrag der Staatsanwaltschaft zu genügen, und in diesem Falle *befugt*, von allen Behörden Auskunft zu verlangen.
(2) Soweit in diesem Gesetz die Löschung personenbezogener Daten ausdrücklich angeordnet wird, ist § 58 Absatz 3 des Bundesdatenschutzgesetzes nicht anzuwenden. [...]

[647] Kaligin 2022, pp. 552 et seq.

[648] Kroll 2021, pp. 1 et seq., 42 et seq. on the judicial requirements; Asholt 2022, § 30 Mn. 1 et seq.; Wisneth 2006, p. 284 mn. 693 with a form of a search order (*Durchsuchungsbeschlussformular*). He explains also on the inclusion of danger in delay (*Gefahr im Verzug*) when ordering a search measure for a criminal offence.

importance, **day or night time** and their **scope**[649] (Examination of **materials during the search**[650]), if they shall be effective tools in all areas of EU funding from shared to direct management structures – and thus they can be carried out by the investigative staff of the EDPs – such as the tax[651], the customs and the criminal police. It is important to read the **judicial authorisation requirements** as some measures require that the investigating judge takes a responded legal position and assesses in a proportionate way if the measure can be granted.[652] A search warrant can also be attacked – if necessary, it will be cancelled by the next instance, i.e. revoked.[653] In appeal proceedings, a prohibition on the utilisation of evidence can only be invoked if an obligation to issue a warrant for a search has been arbitrarily circumvented.[654]

(a) Search any premises or land

The following provisions are enshrined in the German Criminal Procedure Code: **16**

Section 102[655] **CPC Search of accused's premises and person** A body search, a search of the property and of the private and other premises of a person who, as an offender or participant, is suspected of committing an offence or of handling stolen data or is suspected of aiding after the fact or of obstructing prosecution or punishment or of handling stolen goods may be made for the purpose of his apprehension, as well as in cases where it may be presumed that the search will lead to the discovery of evidence.

Section 103 CPC Search of other persons' premises
(1)[656] Searches in respect of other persons shall be admissible only for the purpose of apprehending the accused or to follow up the traces of an offence or to seize certain

[649] Kroll 2021, pp. 45 et seq. on the judicial requirements differentinating between "*Befugnis- and Verfahrensnormen*" (Authority granting Rules and Rules of Procedure).
[650] BVerfG, Beschluss vom 30.01.2002 - 2 BvR 2248/00 =openJur 2011, 25050.
[651] See Matthes 2008, pp. 10 et seq.
[652] See Decker 2021, pp. 133 (seizure) et seq. and 141 et seq. (search). See Brockhaus, juris Praxisreport in relation to LG Osnabrück 1. Große Strafkammer, Beschluss vom 10.11.2022 -, 1 Qs24/22, LG Osnabrück 1. Große Strafkammer, Beschluss vom 10.11.2022 - 1 Qs 48/22: "Einer Behörde ist vor einer Durchsuchung ihrer Räumlichkeiten grundsätzlich die Gelegenheit zu geben, die Abgabe einer Sperrerklärung gemäß § 96 StPO zu prüfen. Hierzu ist ein schriftliches und begründetes Herausgabeverlangen erforderlich."
[653] In 2021 the Regional court of Osnabrück revoked a searc hwarrant that permitted to search the Bundesministerium der Justi: "Die 12. Große Strafkammer des Landgerichts Osnabrück hat nunmehr den Durchsuchungsbeschluss aufgehoben, Geschäftszeichen 12 Qs 32/21" This search concerned suspicions into the evasion of notification duties concerning § 43 Money Laundering Act.
[654] Haller and Conzen 2022, mn. 594.
[655] **§ 102 Durchsuchung bei Beschuldigten [CPC]**
Bei dem, welcher als Täter oder Teilnehmer einer Straftat oder der Datenhehlerei, Begünstigung, Strafvereitelung oder Hehlerei verdächtig ist, kann eine Durchsuchung der Wohnung und anderer Räume sowie seiner Person und der ihm gehörenden Sachen sowohl zum Zweck seiner Ergreifung als auch dann vorgenommen werden, wenn zu vermuten ist, daß die Durchsuchung zur Auffindung von Beweismitteln führen werde.
[656] **§ 103 Durchsuchung bei anderen Personen [CPC]**

objects and only if certain facts support the conclusion that the person, trace or object sought is located on the premises to be searched. For the purposes of apprehending an accused who is strongly suspected of having committed an offence under section 89a or section 89c paras. 1 to 4 of the Criminal Code or under section 129a, also in conjunction with section 129b para. 1 of the Criminal Code, or one of the offences designated in such provision, a search of private and other premises shall also be admissible if they are located in a building in which it may be assumed, on the basis of certain facts, that the accused is located.
(2) The restrictions of para. 1 sentence 1 shall not apply to premises where the accused was apprehended or which he entered during the pursuit.

17 These measures are **major disturbances of fundamental freedoms** and the rights of suspects deriving from these freedoms.[657]

18 Pursuant to s. 304 CPC, a judicial search order may be challenged by way of complaint (*Beschwerde*). The examination of materials obtained during the search such as VAT documentation remains part of the search procedure under ss. 105, 110 CPC. Where the search is conducted unlawfully or with procedural defects, the admissibility of the resulting evidence becomes an issue. According to the Federal Constitutional Court (BVerfG), evidence obtained through an unlawful search may be excluded only in cases of serious violations, particularly where the measure was arbitrary or grossly disproportionate. To invoke such a violation in appellate review (*Revision*), the defence must raise a procedural complaint (*Verfahrensrüge*) pursuant to s. 337 CPC, typically in conjunction with s. 261 CPC, and must object to the use of the evidence during the main hearing to preserve the claim.

(1) Bei anderen Personen sind Durchsuchungen nur zur Ergreifung des Beschuldigten oder zur Verfolgung von Spuren einer Straftat oder zur Beschlagnahme bestimmter Gegenstände und nur dann zulässig, wenn Tatsachen vorliegen, aus denen zu schließen ist, daß die gesuchte Person, Spur oder Sache sich in den zu durchsuchenden Räumen befindet. Zum Zwecke der Ergreifung eines Beschuldigten, der dringend verdächtig ist, eine Straftat nach § 89a oder § 89c Absatz 1 bis 4 des Strafgesetzbuchs oder nach § 129a, auch in Verbindung mit § 129b Abs. 1, des Strafgesetzbuches oder eine der in dieser Vorschrift bezeichneten Straftaten begangen zu haben, ist eine Durchsuchung von Wohnungen und anderen Räumen auch zulässig, wenn diese sich in einem Gebäude befinden, von dem auf Grund von Tatsachen anzunehmen ist, daß sich der Beschuldigte in ihm aufhält.
(2) Die Beschränkungen des Absatzes 1 Satz 1 gelten nicht für Räume, in denen der Beschuldigte ergriffen worden ist oder die er während der Verfolgung betreten hat.

[657] Kroll 2021, pp. 42 et seq. Art. 14 protects the property and may be relevant in addition, too (see BVerfG, Beschluss vom 30.01.2002 - 2 BvR 2248/00 =openJur 2011, 25050). Demands that it should be regulated de lege ferenda that the documents found during the search should be allowed to be taken away for inspection (i.e. exclusively for this purpose, see p. 61.

German Basic Law *(GG)* **19**

Article 13 Basic Law[658]

(1) The apartment is inviolable.

(2) Searches may only be ordered by the judge or, in the event of imminent danger, by the other bodies provided for in the law, and may only be carried out in the form prescribed there.

(3) If certain facts justify the suspicion that someone has committed a particularly serious criminal offence individually determined by law, technical means for acoustic monitoring of apartments in which the accused is presumably staying may be used to prosecute the offence on the basis of a judicial order, if investigating the facts would be disproportionately difficult or futile in any other way. The measure is to be limited. The order is made by a panel of three judges. In the event of imminent danger, it can also be made by a single judge.

(4) In order to avert urgent dangers to public safety, in particular a general danger or a danger to life, technical means for monitoring apartments may only be used on the basis of a judicial order. In the event of imminent danger, the measure can also be ordered by another statutory body; a judicial decision must be made up for immediately.

(5) If technical means are provided exclusively for the protection of people working in apartments, the measure can be ordered by a statutory authority. Any other use of the knowledge gained in this way is only permitted for the purpose of criminal prosecution

[658] **Art. 13 GG**
(1) Die Wohnung ist unverletzlich.
(2) Durchsuchungen dürfen nur durch den Richter, bei Gefahr im Verzuge auch durch die in den Gesetzen vorgesehenen anderen Organe angeordnet und nur in der dort vorgeschriebenen Form durchgeführt werden.
(3) Begründen bestimmte Tatsachen den Verdacht, daß jemand eine durch Gesetz einzeln bestimmte besonders schwere Straftat begangen hat, so dürfen zur Verfolgung der Tat auf Grund richterlicher Anordnung technische Mittel zur akustischen Überwachung von Wohnungen, in denen der Beschuldigte sich vermutlich aufhält, eingesetzt werden, wenn die Erforschung des Sachverhalts auf andere Weise unverhältnismäßig erschwert oder aussichtslos wäre. Die Maßnahme ist zu befristen. Die Anordnung erfolgt durch einen mit drei Richtern besetzten Spruchkörper. Bei Gefahr im Verzuge kann sie auch durch einen einzelnen Richter getroffen werden.
(4) Zur Abwehr dringender Gefahren für die öffentliche Sicherheit, insbesondere einer gemeinen Gefahr oder einer Lebensgefahr, dürfen technische Mittel zur Überwachung von Wohnungen nur auf Grund richterlicher Anordnung eingesetzt werden. Bei Gefahr im Verzuge kann die Maßnahme auch durch eine andere gesetzlich bestimmte Stelle *angeordnet werden*; eine richterliche Entscheidung ist unverzüglich nachzuholen.
(5) Sind technische Mittel ausschließlich zum Schutze der bei einem Einsatz in Wohnungen tätigen Personen vorgesehen, kann die Maßnahme durch eine gesetzlich bestimmte Stelle *angeordnet werden*. Eine anderweitige Verwertung der hierbei erlangten Erkenntnisse ist nur zum Zwecke der Strafverfolgung oder der Gefahrenabwehr und nur zulässig, wenn zuvor die Rechtmäßigkeit der Maßnahme richterlich festgestellt ist; bei Gefahr im Verzuge ist die richterliche Entscheidung unverzüglich nachzuholen.
(6) Die Bundesregierung unterrichtet den Bundestag jährlich über den nach Absatz 3 sowie über den im Zuständigkeitsbereich des Bundes nach Absatz 4 und, soweit richterlich überprüfungsbedürftig, nach Absatz 5 erfolgten Einsatz technischer Mittel. Ein vom Bundestag gewähltes Gremium übt auf der Grundlage dieses Berichts die parlamentarische Kontrolle aus. Die Länder gewährleisten eine gleichwertige parlamentarische Kontrolle.
(7) Eingriffe und Beschränkungen dürfen im übrigen nur zur Abwehr einer gemeinen Gefahr oder einer Lebensgefahr für einzelne Personen, auf Grund eines Gesetzes auch zur Verhütung dringender Gefahren für die öffentliche Sicherheit und Ordnung, insbesondere zur Behebung der Raumnot, zur Bekämpfung von Seuchengefahr oder zum Schutze gefährdeter Jugendlicher vorgenommen werden.

or averting danger and only if the legality of the measure has been previously determined by a judge; in the event of imminent danger, the judicial decision must be made up for immediately.
(6) The Federal Government shall inform the Bundestag annually of the use of technical means pursuant to Paragraph 3 and of the use of technical means within the Federal Government's area of responsibility pursuant to Paragraph 4 and, where there is a need for judicial review, pursuant to Paragraph 5. A body elected by the Bundestag exercises parliamentary control on the basis of this report. The states guarantee equivalent parliamentary control.
(7) Otherwise, interventions and restrictions may only be carried out to avert a general danger or a danger to life for individuals, also, on the basis of a law, to prevent urgent dangers to public safety and order, in particular to remedy the spatial emergency, to combat the risk of epidemics or to Protection of young people at risk are made."

(b) Search any means of transport

20 See above → ss. 102, 105 CPC.

(c) Search any private home

21

Section 104 CPC[659] Night-time search
(1) Private premises, business premises and enclosed property may be searched during the night only in pursuit of a person caught in the act, in exigent circumstances or for the purpose of re-apprehending an escaped prisoner.
(2) This restriction shall not apply to premises which are accessible at night to anyone or which are known to the police as shelters or gathering places of offenders, as depots of property obtained through offences, or as hiding places for gambling, illegal trafficking in narcotics or weapons, or prostitution.
(3) Night-time shall include, in the period from 1 April to 30 September, the hours between 9 pm and 4 am and, in the period from 1 October to 31 March, the hours between 9 pm and 6 am.

[659] **§ 104 Durchsuchung von Räumen zur Nachtzeit [CPC]**
(1) Zur Nachtzeit dürfen die Wohnung, die Geschäftsräume und das befriedete Besitztum nur bei Verfolgung auf frischer Tat oder bei Gefahr im Verzug oder dann durchsucht werden, wenn es sich um die Wiederergreifung eines entwichenen Gefangenen handelt.
(2) Diese Beschränkung gilt nicht für Räume, die zur Nachtzeit jedermann zugänglich oder die der Polizei als Herbergen oder Versammlungsorte bestrafter Personen, als Niederlagen von Sachen, die mittels Straftaten erlangt sind, oder als Schlupfwinkel des Glücksspiels, des unerlaubten Betäubungsmittel- und Waffenhandels oder der Prostitution bekannt sind.
(3) Die Nachtzeit umfaßt in dem Zeitraum vom ersten April bis dreißigsten September die Stunden von neun Uhr abends bis vier Uhr morgens und in dem Zeitraum vom ersten Oktober bis einunddreißigsten März die Stunden von neun Uhr abends bis sechs Uhr morgens"
See in-depth for the protection of fundamental rights in this area Kroll 2021, pp. 1 et seq., 44 et seq.

Section 105 CPC[660] Procedure for searches
(1) Searches may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Searches pursuant to section 103 para. 1 sentence 2 shall be ordered by the judge; in exigent circumstances, the public prosecution office shall be authorised to order such searches.
(2) If private premises, business premises or enclosed property are to be searched in the absence of the judge or public prosecutor, a municipal official or two members of the community in the district in which the search is carried out shall be called in, if possible, to assist. The persons called in as members of the community may not be police officers or the public prosecution office's investigators.
(3) If it is necessary to carry out a search in an official building or in an installation or facility of the Federal Armed Forces which is not open to the general public, the superior authority of the Federal Armed Forces shall be requested to carry out such a search. The requesting agency shall be entitled to participate. No such request shall be necessary if the search is to be carried out on premises which are inhabited exclusively by persons other than members of the Federal Armed Forces.

Section 106 CPC[661] Calling in occupant of premises to be searched
(1) The occupant of the premises or the possessor of the objects to be searched may be present at the search. If he is absent, his representative, an adult relative, a person living in his household or a neighbour shall, if possible, be called in to assist.
(2) In the cases under section 103 para. 1, the purpose of the search shall be made known to the occupant or to the person called in to assist in his absence before the search begins.

[660] "**§ 105 Verfahren bei der Durchsuchung [CPC]**
(1) Durchsuchungen dürfen nur durch den Richter, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) *angeordnet werden*. Durchsuchungen nach § 103 Abs. 1 Satz 2 ordnet der Richter an; die Staatsanwaltschaft ist hierzu *befugt*, wenn Gefahr im Verzug ist.
(2) Wenn eine Durchsuchung der Wohnung, der Geschäftsräume oder des befriedeten Besitztums ohne Beisein des Richters oder des Staatsanwalts stattfindet, so sind, wenn möglich, ein Gemeindebeamter oder zwei Mitglieder der Gemeinde, in deren Bezirk die Durchsuchung erfolgt, zuzuziehen. Die als Gemeindemitglieder zugezogenen Personen dürfen nicht Polizeibeamte oder Ermittlungspersonen der Staatsanwaltschaft sein.
(3) Wird eine Durchsuchung in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Durchsuchung von Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden"

[661] **§ 106 Hinzuziehung des Inhabers eines Durchsuchungsobjekts [CPC]**
(1) Der Inhaber der zu durchsuchenden Räume oder Gegenstände darf der Durchsuchung beiwohnen. Ist er abwesend, so ist, wenn möglich, sein Vertreter oder ein erwachsener Angehöriger, Hausgenosse oder Nachbar zuzuziehen.
(2) Dem Inhaber oder der in dessen Abwesenheit zugezogenen Person ist in den Fällen des § 103 Abs. 1 der Zweck der Durchsuchung vor deren Beginn bekanntzumachen. Diese Vorschrift gilt nicht für die Inhaber der in § 104 Abs. 2 bezeichneten Räume.

This provision shall not apply to the occupants of the premises indicated in section 104 para. 2.

Section 107 CPC[662] **Notification of reason for search; inventory**
Upon conclusion of the search, the person affected thereby shall, upon his request, be given written notification indicating the reason for the search (sections 102 and 103) and, in the case under section 102, the offence. Upon request, he shall also be given a list of the objects which were taken into custody or seized; if nothing suspicious was found, however, he shall be given a certificate to this effect.

(d) Search any clothes and any other personal property

22 Cf. already above → Section 102 of the German CPC. [663]

(e) Search any computer system

23 The search of any computer system does relate only to the inspection of electronic storage media and not directly to s. 100b (Online-Search) only, which is instead another measure under Art. 30 para. 4 EPPO Regulation:

24

Section 110 CPC[664] **Inspection of papers and electronic storage media**
(1) The public prosecutor's office and, if so instructed, its investigators (s. 152 of the Courts Constitution Act) are entitled to examine the papers of the person affected by the search.
(2) Incidentally, officials are only authorized to inspect the documents found if the owner approves the inspection. Otherwise, they must hand over to the public prosecutor the papers which they deem necessary to examine in an envelope which must be sealed with the official seal in the presence of the holder.

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[662] **§ 107 Durchsuchungsbescheinigung; Beschlagnahmeverzeichnis [CPC]**
Dem von der Durchsuchung Betroffenen ist nach deren Beendigung auf Verlangen eine schriftliche Mitteilung zu machen, die den Grund der Durchsuchung (§§ 102, 103) sowie im Falle des § 102 die Straftat bezeichnen muß. Auch ist ihm auf Verlangen ein Verzeichnis der in Verwahrung oder in Beschlag genommenen Gegenstände, falls aber nichts Verdächtiges gefunden wird, eine Bescheinigung hierüber zu geben.

[663] *Nota bene*: A so-called "*Durchsuchung*" needs to be distinguished from a so-called "*Untersuchung*".

[664] "**§ 110 Durchsicht von Papieren und elektronischen Speichermedien [CPC]**
(1) Die Durchsicht der Papiere des von der Durchsuchung Betroffenen steht der Staatsanwaltschaft und auf deren Anordnung ihren Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) zu.
(2) Im Übrigen sind Beamte zur Durchsicht der aufgefundenen Papiere nur dann *befugt*, wenn der Inhaber die Durchsicht genehmigt. Andernfalls haben sie die Papiere, deren Durchsicht sie für geboten erachten, in einem Umschlag, der in Gegenwart des Inhabers mit dem Amtssiegel zu verschließen ist, an die Staatsanwaltschaft abzuliefern.
(3) Die Durchsicht eines elektronischen Speichermediums bei dem von der Durchsuchung Betroffenen darf auch auf hiervon räumlich getrennte Speichermedien, soweit auf sie von dem Speichermedium aus zugegriffen werden kann, erstreckt werden, wenn andernfalls der Verlust der gesuchten Daten zu besorgen ist. Daten, die für die Untersuchung von Bedeutung sein können, dürfen gesichert werden; § 98 Abs. 2 gilt entsprechend"
See Kroll 2021, pp. 67 et seq. with the example of accessing Apple I-Cloud; Rühs 2022, pp. 11 et seq., 305 et seq.

(3) The inspection of an electronic storage medium at the person affected by the search may also be extended to storage media that are physically separate from this, insofar as they can be accessed from the storage medium, if the loss of the searched data is otherwise to be feared. Data that may be relevant to the investigation may be backed up; s. 98 para. 2 applies accordingly.

In relation to **smartphones and smart devices** the rules of the CPC that apply must be distinguished. S. 81 para. 1, alt. 1 CPC shall allow the **police to use the fingerprint** of the suspect to get access to the storage.[665] The search of the storage itself needs to be based on either s. 100 or section 100b. The ECJ has decided as well on the attempt by the police authorities to **unlock a mobile phone** in order to **gain access to the data stored** on it for the purposes of these investigations.[666] **25**

(2) Conservatory measures

German CPC distinguishes between special investigative measures, which are open and secret measures. Measures, which are preservative or may help to gather evidence, secure it or items or even lead to the possession of items of the **suspect of a PIF offence** are regulated in ss. 94, 95, 96, 98, 110a, 100g, 111b para. 2, 111e para. 5 and 102 et seq. (search measures), 111b para. 2 and the special measures of the ZFdG.[667] If conducted openly, e-mails may be stored and gathered via s. 94. If **electronic storages** such as **smartphones** are found, they can be secured and the data contained in them, may be secured if the data is stored on the medium. The data may be searched on the basis of s. 110 para. 3 CPC.[668] **Messenger apps** stored on these secured devices may be searched as well on the basis of s. 94 and later 110 para. 3 CPC.[669] The **disclosure of a lockscreen** of a smartphone or the **taking of fingerprints (to unlock a smart screen)** of the suspect **26**

[665] See LG Ravensburg, Beschl. vom 14.2.23, 2 Qs 9/23 jug; OLG Bremen, Beschl. v. 08.01.2025, Az. 1 ORs 26/24 confirming this constitutes a justified interference with the man's fundamental right to informational self-determination under Article 2(1) of the Basic Law, GG; in the same vein see recently BGH, Beschl. v. 13.03.2025, Az. 2 StR 232/24 allowing this "method" Accessing data on a mobile phone can now be legally based on § 81b para. 1 and ss. 94 et seq. CPC if a judge has ordered a search under §§ 102, 105 para. CPC to find mobile phones, and the data access is proportionate given the level of intrusion. From our point-of-view the EPPO defense counsel should still routinely object under s. 257 CPC, as every case is different. In this BGH-case, the defense claimed that forced decryption of mobile phones violated the defendant's rights, especially *nemo tenetur*. The court rejected this, finding the police acted lawfully under §§ 81b para. 1 and 94 para. 2 StPO, and ruled that the right against self-incrimination does not protect against coercive measures like forced data access. Now it is clear that using a suspect's fingerprint to unlock a phone does not breach the right against self-incrimination, because that right only protects from actively helping in one's conviction, not from being subject to (i.e. enduring) investigative actions like fingerprint use.

[666] ECJ, Case C-548/21, *C.G. v Bezirkshauptmannschaft Landeck*, Judgment of the Court (Grand Chamber) of 4 October 2024. The section of a national procedure must be sufficiently precise, respect the proportionality principle and ensure ex-ante judicial control except in urgent cases.

[667] Köhler 2023, before § 94 mn. 1–11.

[668] Köhler 2023, § 94 mn. 16, 16a, 16b, 16c explaining the new social media items, chat systems and the recent German doctrine as well as court decisions from 2022–2025.

[669] Köhler 2023, before § 94 mn. 16a.

may potentially infringe the right not to incriminate oneself[670] if the EDP does not obey the rights of the suspect under s. 136 para. 2, 163a para. 4 sentence 2 CPC, but may be as well be allowed under s. 105, 94 CPC. The gathering of evidence of e-mails is quite complicated if it comes to determine the right measure, which allows the seizure or the surveillance – as ss. 94 or 100a CPC may apply. S. 94 CPC is applicable if the e-mail is stored on server of the provider and s. 100a CPC is applicable if the **e-mail** is part of the sending.[671] As the unlocking of **encrypted data** would be cost expensive, the source-based telecommunications surveillance (*Quellen*-TKÜ) is allowed and may encompass the process of sending data (e.g. the sending of messaging data is under-way, WhatsApp-Chats).[672] Getting access to cloud-stored data is possible under s. 100b CPC if the targeted information is not part of the telecommunication, but stored locally online in the cloud.[673] The **admissibility of telecommunication surveillance** information obtained from foreign countries, is assessed under local law.[674] In case offences under s. 100a para. 2 number 2 a–c are suspected, such as offences under the Fiscal Law (Abgabenordnung), which can constitute PIF offences under the PIF Directive, telecommunication surveillance and the subsequent seizure of these data may be applicable.[675]

(a) Necessary to preserve their integrity

27

Section 94[676] **Seizure and confiscation of items for evidence purposes**
(1) Items that could be of importance as evidence for the investigation are to be taken into custody or secured in some other way.
(2) If the items are in the custody of a person and are not handed over voluntarily, confiscation is required.
(3) Paragraphs 1 and 2 also apply to driving licenses that are subject to confiscation.
(4) The release of movable property is based on the SS. 111n and 111o.

(b) Necessary to avoid the loss

28 See → s. 102, 105 CPC.

[670] See in-depth already Radtke 2001, p. 321.
[671] Köhler 2023, before § 100a mn. 6f.
[672] Köhler 2023, before § 100a mn. 14a, b.
[673] Köhler 2023, before § 100a mn. 6f., 7.
[674] Köhler 2023, before § 100a mn. 31.
[675] Köhler 2023, before § 100a mn. 10 "severe criminal offence".
[676] **§ 94 Sicherstellung und Beschlagnahme von Gegenständen zu Beweiszwecken**
(1) Gegenstände, die als Beweismittel für die Untersuchung von Bedeutung sein können, sind in Verwahrung zu nehmen oder in anderer Weise sicherzustellen.
(2) Befinden sich die Gegenstände in dem Gewahrsam einer Person und werden sie nicht freiwillig herausgegeben, so bedarf es der Beschlagnahme.
(3) Die Absätze 1 und 2 gelten auch für Führerscheine, die der Einziehung unterliegen.
(4) Die Herausgabe beweglicher Sachen richtet sich nach den §§ 111n und 111o.

(c) Necessary to avoid the contamination of evidence

See → ss. 102, 105 CPC. **29**

bb. Para 1(b)

(b) obtain the production of any relevant object or document either in its original form or in some other specified form;

The ss.94 and 108 CPC are the provisions for the production of any relevant object: **30**

Section 94 CPC[677] **Seizure and confiscation of items for evidence purposes**[678]
(1) Items that could be of importance as evidence for the investigation are to be taken into custody or secured in another way.
(2) If the items are in the custody of a person and are not handed over voluntarily, confiscation is required.
(3) Paragraphs 1 and 2 also apply to driving licenses that are subject to confiscation.
(4) The release of movable property is based on the ss. 111n and 111o.

Section 108 CPC[679] **Confiscation of other objects**
(1) If, during a search, objects are found which are not related to the investigation but indicate the commission of another criminal offence, they are to be confiscated for the time being. The public prosecutor's office must be informed of this. Sentence 1 does not apply if a search according to S. 103 Para. 1 Sentence 2 takes place.

[677] **§ 94 Sicherstellung und Beschlagnahme von Gegenständen zu Beweiszwecken [CPC]**
(1) Gegenstände, die als Beweismittel für die Untersuchung von Bedeutung sein können, sind in Verwahrung zu nehmen oder in anderer Weise sicherzustellen.
(2) Befinden sich die Gegenstände in dem Gewahrsam einer Person und werden sie nicht freiwillig herausgegeben, so bedarf es der Beschlagnahme.
(3) Die Absätze 1 und 2 gelten auch für Führerscheine, die der Einziehung unterliegen.
(4) Die Herausgabe beweglicher Sachen richtet sich nach den §§ 111n und 111o"

[678] Köhler 2023, § 94, mn. 9–11 explaining European legislative influence on the recent changes e.g. the E-evidence Regulation 2023/1543 of the 12th July 2023. The evidence Regulation concentrates on digital evidence (telegram and Whatsapp-chats, which are frequently used by German Regional EPPO centers); see Wisneth 2006, p. 298 mn. 722 with a form on a seizure order (*Beschlagnahmebeschlussformular*).

[679] **§ 108 Beschlagnahme anderer Gegenstände [CPC]**
(1) Werden bei Gelegenheit einer Durchsuchung Gegenstände gefunden, die zwar in keiner Beziehung zu der Untersuchung stehen, aber auf die Verübung einer anderen Straftat hindeuten, so sind sie einstweilen in Beschlag zu nehmen. Der Staatsanwaltschaft ist hiervon Kenntnis zu geben. Satz 1 findet keine Anwendung, soweit eine Durchsuchung nach § 103 Abs. 1 Satz 2 stattfindet.
(2) Werden bei einem Arzt Gegenstände im Sinne von Absatz 1 Satz 1 gefunden, die den Schwangerschaftsabbruch einer Patientin betreffen, ist ihre Verwertung zu Beweiszwecken in einem Strafverfahren gegen die Patientin wegen einer Straftat nach § 218 des Strafgesetzbuches unzulässig.
(3) Werden bei einer in § 53 Abs. 1 Satz 1 Nr. 5 genannten Person Gegenstände im Sinne von Absatz 1 Satz 1 gefunden, auf die sich das Zeugnisverweigerungsrecht der genannten Person erstreckt, ist die Verwertung des Gegenstandes zu Beweiszwecken in einem Strafverfahren nur insoweit zulässig, als Gegenstand dieses Strafverfahrens eine Straftat ist, die im Höchstmaß mit mindestens fünf Jahren Freiheitsstrafe bedroht ist und bei der es sich nicht um eine Straftat nach s. 353b des Strafgesetzbuches handelt"

(2) If objects within the meaning of paragraph 1 sentence 1 are found with a doctor that relate to the abortion of a patient, their use as evidence in criminal proceedings against the patient for a criminal offence under S. 218 of the Criminal Code is inadmissible.
(3) If objects within the meaning of para. 1 sentence 1 are found on a person named in section 53 para. 1 sentence 1 no only permissible insofar as the subject of this criminal proceeding is a criminal offence that carries a maximum penalty of at least five years imprisonment and which is not a criminal offence under s. 353b of the Criminal Code.

cc. Para 1(c)

(1) Obtainment of the production of stored computer data (encrypted or decrypted)

31 The **area of IT Forensic**[680] is particularly important in the so-called **digitized state and digital society**.[681] Public prosecutors work together with external service providers in this area. In this way, they can commission expert opinions to carry out evidence evaluations. In the case of the EPPO, there are certain limits to very expensive investigative measures. A breach of ordinary law or internal administrative agreements of the EPPO can lead to complaints directed at the supervisory authority (EP in Luxembourg). For the national investigative measures, an **external service provider** acquires a civil-law claim against the state, which this is based on the **Judicial Remuneration and Compensation Act** (JVEG[682]). There is also compensation for telecommunications surveillance according to s. 23 JVEG in conjunction with Annex III (see → Art. 30 para. 1 (e) below). Among the most frequented investigative measures – account enquiries, searches, seizures – the observation of telecommunication and the confiscation of phones as well as phone or email data are fundamental for EPPO investigations, since criminals are majorly using phones and computers to communicate. Of special importance is the obtainment of messages, emails and chats that can be used as evidence – especially to prove intent. For example, emails can be obtained in the different phases of a communication process – from the computer of the sender, the mail servers of the provider as well as from the mailbox and computer of the email recipient.[683]

[680] See in-depth Heinson 2015.
[681] See e.g. https://www.ecambria-experts.de/it-sachverstaendiger/gutachten-fuer-die-staatsanwaltschaft. Accessed 31 December 2024.
[682] The law is under criticism. Doubts regarding § 14 had already arisen in the last legislative period under the Cabinet of Merkel IV. For example, the association of sworn liaison interpreters has called for changes in an area relevant to EPPO procedures: "The extension of the JVEG to translation services at Police and customs: The low remuneration from state and federal police authorities, as well as customs administration, often leads to interpreting and translation services of inferior quality, because the quality purchased is far below the market price, the consequences of which have to be corrected at great expense in the subsequent court proceedings. This contradicts the requirements of Directive 2010/64/EU" . See VVU e.V., Mitteilungen, Mittteilungsblatt, N° 124, issue 5/2022, p. 11, file:///C:/Users/jmsmo/Downloads/VVU-Mitteilungen%20124.pdf.
[683] Brodowski 2009, pp. 402 et seq.

(a) General provisions in the CPC

See already → ss. 94, 95, 98 CPC above. 32

Section 98 CPC[684] Seizure procedure

(1) Confiscation may only be ordered by the court, in the event of imminent danger also by the public prosecutor's office and their investigators (s. 152 of the Courts Constitution Act). The confiscation pursuant to Section 97 para. 5 sentence 2 in the premises of an editorial office, a publishing house, a printer or a broadcasting company may only be ordered by the court.

(2) The official who has confiscated an object without a court order should apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of the confiscation or if the person concerned and, in the event of his absence, an adult relative of the person concerned has expressly objected to the confiscation. The person concerned can apply for a court decision at any time. The jurisdiction of the court is determined according to p. 162. The person concerned can also submit the application to the district court in whose district the seizure took place; this forwards the application to the competent court. The person concerned is to be instructed about his rights.

(3) If, after a public complaint has been filed, the public prosecutor or one of their investigators has confiscated the property, the court must be notified of the confiscation within three days; the confiscated objects are to be made available to him.

(4) If confiscation is required in an office building or in a Bundeswehr facility or facility that is not generally accessible, the superior Bundeswehr agency is asked to carry it out.

[684] **§ 98 Verfahren bei der Beschlagnahme [CPC]**
(1) Beschlagnahmen dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) *angeordnet werden*. Die Beschlagnahme nach § 97 Abs. 5 Satz 2 in den Räumen einer Redaktion, eines Verlages, einer Druckerei oder einer Rundfunkanstalt darf nur durch das Gericht *angeordnet werden*.
(2) Der Beamte, der einen Gegenstand ohne gerichtliche Anordnung beschlagnahmt hat, soll binnen drei Tagen die gerichtliche Bestätigung beantragen, wenn bei der Beschlagnahme weder der davon Betroffene noch ein erwachsener Angehöriger anwesend war oder wenn der Betroffene und im Falle seiner Abwesenheit ein erwachsener Angehöriger des Betroffenen gegen die Beschlagnahme ausdrücklichen Widerspruch erhoben hat. Der Betroffene kann jederzeit die gerichtliche Entscheidung beantragen. Die Zuständigkeit des Gerichts bestimmt sich nach § 162. Der Betroffene kann den Antrag auch bei dem Amtsgericht einreichen, in dessen Bezirk die Beschlagnahme stattgefunden hat; dieses leitet den Antrag dem zuständigen Gericht zu. Der Betroffene ist über seine Rechte zu belehren.
(3) Ist nach erhobener öffentlicher Klage die Beschlagnahme durch die Staatsanwaltschaft oder eine ihrer Ermittlungspersonen erfolgt, so ist binnen drei Tagen dem Gericht von der Beschlagnahme Anzeige zu machen; die beschlagnahmten Gegenstände sind ihm zur Verfügung zu stellen.
(4) Wird eine Beschlagnahme in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Beschlagnahme in Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

The requesting body is entitled to cooperate. The request is not required if the confiscation is to be carried out in rooms that are occupied exclusively by persons other than soldiers.

Section 99 CPC[685] Confiscation of mail
The confiscation of postal items and telegrams addressed to the suspect that are in the custody of persons or companies that provide postal or telecommunications services or are involved in them is permissible. It is also permissible to confiscate postal items and telegrams if it can be concluded from the available facts that they originate from the suspect or are intended for him and that their content is important for the investigation.

Section 100 CPC[686] Procedures for confiscation of mail
(1) Only the court, and in the event of imminent danger the public prosecutor's office, is authorized to confiscate (see 99).
(2) The confiscation ordered by the public prosecutor shall expire, even if it has not yet resulted in extradition, if it is not confirmed by a court within three working days.
(3) The court is entitled to open the delivered mail. It can transfer this authority to the public prosecutor's office, insofar as this is necessary in order not to jeopardize the success of the investigation through delay. The transfer is not contestable; it can be revoked at any time. As long as an order according to sentence 2 has not been issued, the public prosecutor's office shall present the mail items delivered to it immediately, and sealed mail items unopened, to the court.

[685] **§ 99 Postbeschlagnahme [CPC]** Zulässig ist die Beschlagnahme der an den Beschuldigten gerichteten Postsendungen und Telegramme, die sich im Gewahrsam von Personen oder Unternehmen befinden, die geschäftsmäßig Post- oder Telekommunikationsdienste erbringen oder daran mitwirken. Ebenso ist eine Beschlagnahme von Postsendungen und Telegrammen zulässig, bei denen aus vorliegenden Tatsachen zu schließen ist, daß sie von dem Beschuldigten herrühren oder für ihn bestimmt sind und daß ihr Inhalt für die Untersuchung Bedeutung hat.
[686] **§ 100 Verfahren bei der Postbeschlagnahme [CPC]** (1) Zu der Beschlagnahme (§ 99) ist nur das Gericht, bei Gefahr im Verzug auch die Staatsanwaltschaft *befugt*.
(2) Die von der Staatsanwaltschaft verfügte Beschlagnahme tritt, auch wenn sie eine Auslieferung noch nicht zur Folge gehabt hat, außer Kraft, wenn sie nicht binnen drei Werktagen gerichtlich bestätigt wird.
(3) Die Öffnung der ausgelieferten Postsendungen steht dem Gericht zu. Es kann diese Befugnis der Staatsanwaltschaft übertragen, soweit dies erforderlich ist, um den Untersuchungserfolg nicht durch Verzögerung zu gefährden. Die Übertragung ist nicht anfechtbar; sie kann jederzeit widerrufen werden. Solange eine Anordnung nach Satz 2 nicht ergangen ist, legt die Staatsanwaltschaft die ihr ausgelieferten Postsendungen sofort, und zwar verschlossene Postsendungen ungeöffnet, dem Gericht vor.
(4) Über eine von der Staatsanwaltschaft verfügte Beschlagnahme entscheidet das nach § 98 zuständige Gericht. Über die Öffnung einer ausgelieferten Postsendung entscheidet das Gericht, das die Beschlagnahme angeordnet oder bestätigt hat.
(5) Postsendungen, deren Öffnung nicht angeordnet worden ist, sind unverzüglich an den vorgesehenen Empfänger weiterzuleiten. Dasselbe gilt, soweit nach der Öffnung die Zurückbehaltung nicht erforderlich ist.
(6) Der Teil einer zurückbehaltenen Postsendung, dessen Vorenthaltung nicht mit Rücksicht auf die Untersuchung geboten erscheint, ist dem vorgesehenen Empfänger abschriftlich mitzuteilen.

(4) The court having jurisdiction pursuant to Section 98 shall decide on a confiscation ordered by the public prosecutor's office. The court that ordered or confirmed the confiscation decides on the opening of a delivered postal item.
(5) Mail that has not been ordered to be opened must be forwarded immediately to the intended recipient. The same applies if retention is not required after opening.
(6) A copy of the part of a detained postal item that does not appear necessary with regard to the investigation must be communicated to the intended recipient."

Section 100g Traffic data capture
(1)[687] If certain facts give rise to the suspicion that a person has, either as an offender or participant,

[687] **§ 100g StPO Erhebung von Verkehrsdaten**
(1) Begründen bestimmte Tatsachen den Verdacht, dass jemand als Täter oder Teilnehmer
1. eine Straftat von auch im Einzelfall erheblicher Bedeutung, insbesondere eine in § 100a Absatz 2 bezeichnete Straftat, begangen hat, in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat oder durch eine Straftat vorbereitet hat oder
2. eine Straftat mittels Telekommunikation begangen hat,
so dürfen Verkehrsdaten (§§ 9 und 12 des Telekommunikation-Telemedien-Datenschutz-Gesetzes und § 2a Absatz 1 des Gesetzes über die Errichtung einer Bundesanstalt für den Digitalfunk der Behörden und Organisationen mit Sicherheitsaufgaben) erhoben werden, soweit dies für die Erforschung des Sachverhalts erforderlich ist und die Erhebung der Daten in einem angemessenen Verhältnis zur Bedeutung der Sache steht. Im Fall des Satzes 1 Nummer 2 ist die Maßnahme nur zulässig, wenn die Erforschung des Sachverhalts auf andere Weise aussichtslos wäre. Die Erhebung gespeicherter (retrograder) Standortdaten ist nach diesem Absatz nur unter den Voraussetzungen des Absatzes 2 zulässig. Im Übrigen ist die Erhebung von Standortdaten nur für künftig anfallende Verkehrsdaten oder in Echtzeit und nur im Fall des Satzes 1 Nummer 1 zulässig, soweit sie für die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten erforderlich ist.
(2) Begründen bestimmte Tatsachen den Verdacht, dass jemand als Täter oder Teilnehmer eine der in Satz 2 bezeichneten besonders schweren Straftaten begangen hat oder in Fällen, in denen der Versuch strafbar ist, eine solche Straftat zu begehen versucht hat, und wiegt die Tat auch im Einzelfall besonders schwer, dürfen die nach § 176 des Telekommunikationsgesetzes gespeicherten Verkehrsdaten erhoben werden, soweit die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise wesentlich erschwert oder aussichtslos wäre und die Erhebung der Daten in einem angemessenen Verhältnis zur Bedeutung der Sache steht. Besonders schwere Straftaten im Sinne des Satzes 1 sind:
1. aus dem Strafgesetzbuch:
a) Straftaten des Hochverrats und der Gefährdung des demokratischen Rechtsstaates sowie des Landesverrats und der Gefährdung der äußeren Sicherheit nach den §§ 81, 82, 89a, nach den §§ 94, 95 Absatz 3 und § 96 Absatz 1, jeweils auch in Verbindung mit § 97b, sowie nach den §§ 97a, 98 Absatz 1 Satz 2, § 99 Absatz 2 und den §§ 100, 100a Absatz 4,
b) besonders schwerer Fall des Landfriedensbruchs nach § 125a sowie Betreiben krimineller Handelsplattformen im Internet in den Fällen des § 127 Absatz 3 und 4,
c) Bildung krimineller Vereinigungen nach § 129 Absatz 1 in Verbindung mit Absatz 5 Satz 3 sowie Bildung terroristischer Vereinigungen nach § 129a Absatz 1, 2, 4, 5 Satz 1 erste Alternative, jeweils auch in Verbindung mit § 129b Absatz 1,
d) Straftaten gegen die sexuelle Selbstbestimmung in den Fällen der §§ 176, 176c, 176d und, unter den in § 177 Absatz 6 Satz 2 Nummer 2 genannten Voraussetzungen, des § 177,
e) Verbreitung, Erwerb und Besitz kinder- und jugendpornographischer Inhalte in den Fällen des § 184b Absatz 1 Satz 1, Absatz 2 und 3 sowie des § 184c Absatz 2,
f) Mord und Totschlag nach den §§ 211 und 212,
g) Straftaten gegen die persönliche Freiheit in den Fällen der §§ 234, 234a Absatz 1, 2, §§ 239a, 239b und Zwangsprostitution und Zwangsarbeit nach § 232a Absatz 3, 4 oder 5 zweiter Halbsatz, § 232b Absatz 3 oder 4 in

1. committed an offence of substantial significance in the individual case as well, in particular one of the offences referred to in section 100a (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing another offence or
2. committed an offence by means of telecommunications,

Verbindung mit § 232a Absatz 4 oder 5 zweiter Halbsatz und Ausbeutung unter Ausnutzung einer Freiheitsberaubung nach § 233a Absatz 3 oder 4 zweiter Halbsatz,
h) Einbruchdiebstahl in eine dauerhaft genutzte Privatwohnung nach § 244 Absatz 4, schwerer Bandendiebstahl nach § 244a Absatz 1, schwerer Raub nach § 250 Absatz 1 oder Absatz 2, Raub mit Todesfolge nach § 251, räuberische Erpressung nach § 255 und besonders schwerer Fall einer Erpressung nach § 253 unter den in § 253 Absatz 4 Satz 2 genannten Voraussetzungen, gewerbsmäßige Bandenhehlerei nach § 260a Absatz 1, besonders schwerer Fall der Geldwäsche nach § 261 unter den in § 261 Absatz 5 Satz 2 genannten Voraussetzungen, wenn die Vortat eine der in den Nummern 1 bis 8 genannten besonders schweren Straftaten ist,
i) gemeingefährliche Straftaten in den Fällen der §§ 306 bis 306c, 307 Absatz 1 bis 3, des § 308 Absatz 1 bis 3, des § 309 Absatz 1 bis 4, des § 310 Absatz 1, der §§ 313, 314, 315 Absatz 3, des § 315b Absatz 3 sowie der §§ 316a und 316c,
2. aus dem Aufenthaltsgesetz:
a) Einschleusen von Ausländern nach § 96 Absatz 2,
b) Einschleusen mit Todesfolge oder gewerbs- und bandenmäßiges Einschleusen nach § 97,
3. aus dem Außenwirtschaftsgesetz: Straftaten nach § 17 Absatz 1 bis 3 und § 18 Absatz 7 und 8,
4. aus dem Betäubungsmittelgesetz:
a) besonders schwerer Fall einer Straftat nach § 29 Absatz 1 Satz 1 Nummer 1, 5, 6, 10, 11 oder 13, Absatz 3 unter der in § 29 Absatz 3 Satz 2 Nummer 1 genannten Voraussetzung,
b) eine Straftat nach den §§ 29a, 30 Absatz 1 Nummer 1, 2, 4, § 30a,
5. aus dem Grundstoffüberwachungsgesetz:
eine Straftat nach § 19 Absatz 1 unter den in § 19 Absatz 3 Satz 2 genannten Voraussetzungen,
6. aus dem Gesetz über die Kontrolle von Kriegswaffen:
a) eine Straftat nach § 19 Absatz 2 oder § 20 Absatz 1, jeweils auch in Verbindung mit § 21,
b) besonders schwerer Fall einer Straftat nach § 22a Absatz 1 in Verbindung mit Absatz 2,
7. aus dem Völkerstrafgesetzbuch:
a) Völkermord nach § 6,
b) Verbrechen gegen die Menschlichkeit nach § 7,
c) Kriegsverbrechen nach den §§ 8 bis 12,
d) Verbrechen der Aggression nach § 13,
8. aus dem Waffengesetz:
a) besonders schwerer Fall einer Straftat nach § 51 Absatz 1 in Verbindung mit Absatz 2,
b) besonders schwerer Fall einer Straftat nach § 52 Absatz 1 Nummer 1 in Verbindung mit Absatz 5.
(3) Die Erhebung aller in einer Funkzelle angefallenen Verkehrsdaten (Funkzellenabfrage) ist nur zulässig,
1. wenn die Voraussetzungen des Absatzes 1 Satz 1 Nummer 1 erfüllt sind,
2. soweit die Erhebung der Daten in einem angemessenen Verhältnis zur Bedeutung der Sache steht und
3. soweit die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise aussichtslos oder wesentlich erschwert wäre.
Auf nach § 176 des Telekommunikationsgesetzes gespeicherte Verkehrsdaten darf für eine Funkzellenabfrage nur unter den Voraussetzungen des Absatzes 2 zurückgegriffen werden.
(4) Die Erhebung von Verkehrsdaten nach Absatz 2, auch in Verbindung mit Absatz 3 Satz 2, die sich gegen eine der in § 53 Absatz 1 Satz 1 Nummer 1 bis 5 genannten Personen richtet und die voraussichtlich Erkenntnisse erbringen würde, über die diese das Zeugnis verweigern dürfte, ist unzulässig. Dennoch erlangte Erkenntnisse dürfen nicht verwendet werden. Aufzeichnungen hierüber sind unverzüglich zu löschen. Die Tatsache ihrer Erlangung und der Löschung der Aufzeichnungen ist aktenkundig zu machen. Die Sätze 2 bis 4 gelten entsprechend, wenn durch eine Ermittlungsmaßnahme, die sich nicht gegen eine in § 53 Absatz 1 Satz 1 Nummer 1 bis 5 genannte Person richtet, von dieser Person Erkenntnisse erlangt werden, über die sie das Zeugnis verweigern dürfte. § 160a Absatz 3 und 4 gilt entsprechend.
(5) Erfolgt die Erhebung von Verkehrsdaten nicht beim Erbringer von Telekommunikationsdiensten, bestimmt sie sich nach Abschluss des Kommunikationsvorgangs nach den allgemeinen Vorschriften.

then traffic data (section 96 para. 1 of the Telecommunications Act) may be captured insofar as this is necessary to establish the facts and capturing the data stands in appropriate relation to the importance of the matter. In the case under sentence 1 no. 2, the measure shall be permissible only if other means of establishing the facts would offer no prospect of success. The capture of location data pursuant to this paragraph shall be permissible only in respect of traffic data arising in the future or in real time and only in the case under sentence 1 no. 1 insofar as they are necessary to establish the facts or to determine the accused's whereabouts.
(2) If certain facts give rise to the suspicion that someone has, as an offender or participant, committed one of the especially serious crimes designated in sentence 2 or, in cases where there is criminal liability for attempt, has attempted to commit such a crime and the act weighs particularly heavily in the individual case as well, then traffic data stored in accordance with section 113b of the Telecommunications Act may be captured insofar as establishing the facts or determining the accused's whereabouts would be considerably difficult in some other way or would be futile and the data capture stands in appropriate relation to the importance of the matter. Particularly serious crimes within the meaning of sentence 1 shall be
1. under the Criminal Code:
a) offences of high treason, endangering the democratic state under the rule of law, treason and endangering external security under sections 81, 82 and 89a, section 94, section 95 para. 3 and section 96 para. 1, in each case also in conjunction with section 97b, as well as under section 97a, section 98 para. 1 sentence 2, section 99 para. 2, section 100 and section 100a (4),
b) especially serious cases of breach of the peace under section 125a, forming criminal organisations under section 129 para. 1 in conjunction with para. 5 sentence 3 and forming terrorist organisations under section 129a paras. 1, 2 and 4, and 5 sentence 1 alternative 1, in each case also in conjunction with section 129b para. 1,
c) offences against sexual self-determination in the cases under sections 176a and 176b and, under the conditions of section 177 para. 6 sentence 2 no. 2, in the cases under section 177,
d) dissemination, procurement and possession of child and youth pornography in the cases under section 184b para. 2 and section 184 para. 2,
e) murder under specific aggravating circumstances and murder under sections 211 and 212,
f) offences against personal liberty in the cases under section 234, section 234a paras. 1 and 2, sections 239a and 239b, forced prostitution and forced labour under section 232a paras. 3 or 4 or 5 half-sentence 2, section 232b paras. 3 or 4 in conjunction with section 232a paras. 4 or 5 half-sentence 2 and exploitation involving deprivation of liberty under section 233a paras. 3 or 4 half-sentence 2,

g) theft by burglary of dwellings under section 244 para. 4, aggravated gang theft under section 244a para. 1, aggravated robbery under section 250 para. 1 or 2, robbery resulting in death under section 251, extortion with use of force or threat of force under section 255 and an especially serious case of extortion under section 253 under the conditions of section 253 para. 4 sentence 2, commercial handling of stolen goods under section 260a para. 1, an especially serious case of money laundering and concealing unlawfully acquired assets under section 261 under the conditions of section 261 para. 4 sentence 2,
h) offences constituting a public danger in the cases under sections 306 to 306c, section 307 paras. 1 to 3, section 308 paras. 1 to 3, section 309 paras. 1 to 4, section 310 para. 1, sections 313 and 314, section 315 para. 3, section 315b para. 3 and sections 316a to 316c;
2. under the Residence Act:
a) smuggling of foreigners into the federal territory under section 96 para. 2,
b) smuggling of foreigners into the federal territory resulting in death or smuggling for gain and as an organised gang under section 97;
3. under the Foreign Trade and Payments Act:
offences under section 17 paras. 1 to 3 and section 18 paras. 7 and 8;
4. under the Narcotics Act:
a) an especially serious case of an offence under section 29 para. 1 sentence 1 no. 1, 5, 6, 10, 11 or 13 or (3), subject to the conditions of section 29 para. 3 sentence 2 no. 1,
b) an offence under section 29a, section 30 para. 1 nos. 1, 2 and 4 or section 30a;
5. under the Precursors Control Act:
an offence under section 19 para. 1 under the conditions of section 19 para. 3 sentence 2;
6. under the War Weapons Control Act:
a) an offence under section 19 para. 2 or section 20 para. 1, in each case in conjunction with section 21,
b) an especially serious crime under section 22a para. 1 in conjunction with para. 2;
7. under the Code of Crimes against International Law:
a) genocide under section 6,
b) crimes against humanity under section 7,
c) war crimes under sections 8 to 12,
d) crimes of aggression under section 13;
8. under the Weapons Act:
a) an especially serious case of an offence under section 51 para. 1 in conjunction with para. 2,
b) an especially serious case of an offence under section 52 para. 1 no. 1 in conjunction with para. 5;

(3) The capture of all traffic data acquired from a radio cell (radio cell inquiry) shall be permissible only
1. if the conditions of para. 1 sentence 1 no. 1 are met,
2. insofar as the data capture stands in appropriate relationship to the importance of the matter and
3. insofar as other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.
Recourse may be taken to traffic data stored pursuant to section 113b of the Telecommunications Act for the purposes of a radio cell inquiry only under the conditions of para. 2.
(4) Traffic data capture pursuant to para. 2, also in conjunction with para. 3 sentence 2, which is directed against one of the persons referred to in section 53 para. 1 sentence 1 nos. 1 to 5 and which will presumably produce findings about which that person is likely to be able to refuse to give evidence shall be inadmissible. Findings gained regardless may not be used in court. Recordings thereof shall be deleted without delay. The fact that the recordings were obtained and deleted shall be documented. Sentences 2 to 4 shall apply accordingly where an investigatory measure which is not directed against one of the persons referred to in section 53 para. 1 sentence 1 nos. 1 to 5 produces findings concerning that person about which the person is likely to be able to refuse to give evidence. Section 160a paras. 3 to 4 shall apply accordingly.
(5) If the telecommunications traffic data are not captured by the provider of publicly accessible telecommunications services, then general provisions shall apply after conclusion of the communication process.

Section 100j CPC[688] Subscriber data request

(1) Insofar as it is necessary to establish the facts or determine the whereabouts of an accused person, information on data collected pursuant to sections 95 and 111 of the Telecommunications Act may be requested from any person providing or collaborating in the provision of telecommunications services on a commercial basis (section 113 para. 1 sentence 1 of the Telecommunications Act). If the request for information under sentence 1 refers to data by means of which access to terminal equipment or to storage media installed in such terminal equipment or physically separate therefrom are protected (section 113 para. 1 sentence 2 of the Telecommunications Act), information may only be requested if the statutory requirements for the use of such data are met.

(2) The information referred to in para. 1 may also be requested by reference to an Internet Protocol address assigned to a specific time (section 113 para. 1 sentence 3, section 113c para. 1 no. 3 of the Telecommunications Act).

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[688] **§ 100j Bestandsdatenauskunft [CPC]**

(1) Soweit dies für die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes eines Beschuldigten erforderlich ist, darf Auskunft verlangt werden

1. über Bestandsdaten gemäß § 3 Nummer 6 des Telekommunikationsgesetzes und über die nach § 172 des Telekommunikationsgesetzes erhobenen Daten (§ 174 Absatz 1 Satz 1 des Telekommunikationsgesetzes) von demjenigen, der geschäftsmäßig Telekommunikationsdienste erbringt oder daran mitwirkt, und
2. über Bestandsdaten gemäß § 2 Absatz 2 Nummer 2 des Telekommunikation-Telemedien-Datenschutz-Gesetzes (§ 22 Absatz 1 Satz 1 des Telekommunikation-Telemedien-Datenschutz-Gesetzes) von demjenigen, der geschäftsmäßig eigene oder fremde Telemedien zur Nutzung bereithält oder den Zugang zur Nutzung vermittelt.

Bezieht sich das Auskunftsverlangen nach Satz 1 Nummer 1 auf Daten, mittels derer der Zugriff auf Endgeräte oder auf Speichereinrichtungen, die in diesen Endgeräten oder hiervon räumlich getrennt eingesetzt werden, geschützt wird (§ 174 Absatz 1 Satz 2 des Telekommunikationsgesetzes), darf die Auskunft nur verlangt werden, wenn die gesetzlichen Voraussetzungen für die Nutzung der Daten vorliegen. Bezieht sich das Auskunftsverlangen nach Satz 1 Nummer 2 auf als Bestandsdaten erhobene Passwörter oder andere Daten, mittels derer der Zugriff auf Endgeräte oder auf Speichereinrichtungen, die in diesen Endgeräten oder hiervon räumlich getrennt eingesetzt werden, geschützt wird (§ 23 des Telekommunikation-Telemedien-Datenschutz-Gesetzes), darf die Auskunft nur verlangt werden, wenn die gesetzlichen Voraussetzungen für ihre Nutzung zur Verfolgung einer besonders schweren Straftat nach § 100b Absatz 2 Nummer 1 Buchstabe a, c, e, f, g, h oder m, Nummer 3 Buchstabe b erste Alternative oder Nummer 5, 6, 9 oder 10 vorliegen.

(2) Die Auskunft nach Absatz 1 darf auch anhand einer zu einem bestimmten Zeitpunkt zugewiesenen Internetprotokoll-Addresse verlangt werden (§ 174 Absatz 1 Satz 3, § 177 Absatz 1 Nummer 3 des Telekommunikationsgesetzes und § 22 Absatz 1 Satz 3 und 4 des Telekommunikation-Telemedien-Datenschutz- Gesetzes). Das Vorliegen der Voraussetzungen für ein Auskunftsverlangen nach Satz 1 ist aktenkundig zu machen.

(3) Auskunftsverlangen nach Absatz 1 Satz 2 und 3 dürfen nur auf Antrag der Staatsanwaltschaft durch das Gericht angeordnet werden. Im Fall von Auskunftsverlangen nach Absatz 1 Satz 2 kann die Anordnung bei Gefahr im Verzug auch durch die Staatsanwaltschaft oder ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) getroffen werden. In diesem Fall ist die gerichtliche Entscheidung unverzüglich nachzuholen. Die Sätze 1 bis 3 finden bei Auskunftsverlangen nach Absatz 1 Satz 2 keine Anwendung, wenn die betroffene Person vom Auskunftsverlangen bereits Kenntnis hat oder haben muss oder wenn die Nutzung der Daten bereits durch eine gerichtliche Entscheidung gestattet wird. Das Vorliegen der Voraussetzungen nach Satz 4 ist aktenkundig zu machen.

(4) Die betroffene Person ist in den Fällen des Absatzes 1 Satz 2 und 3 und des Absatzes 2 über die Beauskunftung zu benachrichtigen. Die Benachrichtigung erfolgt, soweit und sobald hierdurch der Zweck der Auskunft nicht vereitelt wird. Sie unterbleibt, wenn ihr überwiegende schutzwürdige Belange Dritter oder der betroffenen Person selbst entgegenstehen. Wird die Benachrichtigung nach Satz 2 zurückgestellt oder nach Satz 3 von ihr abgesehen, sind die Gründe aktenkundig zu machen.

(5) Auf Grund eines Auskunftsverlangens nach Absatz 1 oder 2 hat derjenige, der geschäftsmäßig Telekommunikationsdienste oder Telemediendienste erbringt oder daran mitwirkt, die zur Auskunftserteilung erforderlichen Daten unverzüglich zu übermitteln. § 95 Absatz 2 gilt entsprechend.

(3) Requests for information as referred to in para. 1 sentence 2 may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the order may also be made by the public prosecution office or its investigators (section 152 of the Courts Constitution Act). In this case, a court decision is to be sought without delay. Sentences 1 to 3 shall not apply if the data subject already has or must have knowledge of the request for information or if the use of the data has already been permitted by a court decision. The fulfilment of the conditions of sentence 4 shall be documented.
(4) In the cases under para. 1 sentence 2 and para. 2, the data subject shall be notified of the request for information. Notification shall take place insofar as and as soon as this can be effected without thwarting the purpose of the information. It shall be dispensed with where overriding interests meriting protection of third parties or of the data subject himself constitute an obstacle thereto. Where notification is deferred pursuant to sentence 2 or dispensed with pursuant to sentence 3, the reasons therefor shall be documented.
(5) Based on a request for information pursuant to para. 1 or 2, any person providing or collaborating in the provision of telecommunications services on a commercial basis shall transmit, without delay, the data required for the provision of the information. Section 95 para. 2 shall apply accordingly.

Section 110 CPC[689] **Examination of identity papers and electronic storage media**
(1) The public prosecution office and, if it so orders, its investigators (section 152 of the Courts Constitution Act) shall have the authority to examine identity papers belonging to the person affected by the search.
(2) In all other respects, officials shall be authorised to examine identity papers found by them only if the holder permits such examination. Otherwise, they shall deliver any

[689] **§ 110 Durchsicht von Papieren und elektronischen Speichermedien**
(1) Die Durchsicht der Papiere des von der Durchsuchung Betroffenen steht der Staatsanwaltschaft und auf deren Anordnung ihren Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) zu.
(2) Im Übrigen sind Beamte zur Durchsicht der aufgefundenen Papiere nur dann befugt, wenn der Inhaber die Durchsicht genehmigt. Andernfalls haben sie die Papiere, deren Durchsicht sie für geboten erachten, in einem Umschlag, der in Gegenwart des Inhabers mit dem Amtssiegel zu verschließen ist, an die Staatsanwaltschaft abzuliefern.
(3) Nach Maßgabe der Absätze 1 und 2 ist auch die **Durchsicht von elektronischen Speichermedien bei dem von der Durchsuchung Betroffenen** zulässig. Diese Durchsicht darf auch auf hiervon räumlich getrennte Speichermedien erstreckt werden, soweit auf sie von dem elektronischen Speichermedium aus zugegriffen werden kann, wenn andernfalls der Verlust der gesuchten Daten zu befürchten ist. Daten, die für die Untersuchung von Bedeutung sein können, dürfen gesichert werden.
(4) Werden Papiere zur Durchsicht mitgenommen oder Daten vorläufig gesichert, gelten die §§ 95a und 98 Absatz 2 entsprechend.
See on this paragraph in-depth Rühs 2022 focusing on the examination of an electronic storage medium on the premises of the person affected by the search and which may be extended to also cover physically separate storage media insofar as they are accessible from the storage medium, p. 305 et seq. He presents his own ideas for amendments de lege ferenda at 419 et seq.

identity papers the examination of which they deem necessary to the public prosecution office in an envelope, which is to be sealed with the official seal in the presence of the holder.
(3) The examination of an electronic storage medium on the premises of the person affected by the search may be extended to also cover physically separate storage media insofar as they are accessible from the storage medium if there is a concern that the data sought would otherwise be lost. Data which may be of significance for the investigation may be secured; section 98 para. 2 shall apply accordingly.

Section 100k CPC Collection of usage data for tele media services
(1)[690] If certain facts justify the suspicion that someone, as perpetrator or accomplice, has committed a crime that is also of considerable importance in the individual case, in

[690] **§ 100k Erhebung von Nutzungsdaten bei Telemediendiensten**
(1) Begründen bestimmte Tatsachen den Verdacht, dass jemand als Täter oder Teilnehmer eine Straftat von auch im Einzelfall erheblicher Bedeutung, insbesondere eine in § 100a Absatz 2 bezeichnete Straftat, begangen hat, in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat oder durch eine Straftat vorbereitet hat, dürfen von demjenigen, der geschäftsmäßig eigene oder fremde Telemedien zur Nutzung bereithält oder den Zugang zur Nutzung vermittelt, Nutzungsdaten (§ 15 Absatz 1 des Telemediengesetzes) erhoben werden, soweit dies für die Erforschung des Sachverhalts erforderlich ist und die Erhebung der Daten in einem angemessenen Verhältnis zur Bedeutung der Sache steht. Die Erhebung gespeicherter (retrograder) Standortdaten ist nur unter den Voraussetzungen von § 100g Absatz 2 zulässig. Im Übrigen ist die Erhebung von Standortdaten nur für künftig anfallende Nutzungsdaten oder in Echtzeit zulässig, soweit sie für die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten erforderlich ist.
(2) Soweit die Straftat nicht von Absatz 1 erfasst wird, dürfen Nutzungsdaten auch dann erhoben werden, wenn bestimmte Tatsachen den Verdacht begründen, dass jemand als Täter oder Teilnehmer mittels Telemedien eine der folgenden Straftaten begangen hat und die Erforschung des Sachverhalts auf andere Weise aussichtslos wäre:
1. aus dem Strafgesetzbuch
a) Verwenden von Kennzeichen verfassungswidriger Organisationen nach § 86a,
b) Anleitung zur Begehung einer schweren staatsgefährdenden Gewalttat nach § 91,
c) Öffentliche Aufforderung zu Straftaten nach § 111,
d) Straftaten gegen die öffentliche Ordnung nach den §§ 126, 131 und 140,
e) Beschimpfung von Bekenntnissen, Religionsgesellschaften und Weltanschauungsvereinigungen nach § 166,
f) Verbreitung, Erwerb und Besitz kinderpornographischer Inhalte nach § 184b,
g) Beleidigung, üble Nachrede und Verleumdung nach den §§ 185 bis 187 und Verunglimpfung des Andenkens Verstorbener nach § 189,
h) Verletzungen des persönlichen Lebens- und Geheimbereichs nach den §§ 201a, 202a und 202c,
i) Nachstellung nach § 238,
j) Bedrohung nach § 241,
k) Vorbereitung eines Computerbetruges nach § 263a Absatz 3,
l) Datenveränderung und Computersabotage nach den §§ 303a und 303b Absatz 1,
2. aus dem Gesetz über Urheberrecht und verwandte Schutzrechte Straftaten nach den §§ 106 bis 108b,
3. aus dem Bundesdatenschutzgesetz nach § 42.
Satz 1 gilt nicht für die Erhebung von Standortdaten.
(3) Abweichend von Absatz 1 und 2 darf die Staatsanwaltschaft ausschließlich zur Identifikation des Nutzers Auskunft über die nach § 15 Absatz 1 Satz 2 Nummer 1 des Telemediengesetzes erhobenen Daten verlangen, wenn ihr der Inhalt der Nutzung des Telemediendienstes bereits bekannt ist.
(4) Die Erhebung von Nutzungsdaten nach Absatz 1 und 2 ist nur zulässig, wenn aufgrund von Tatsachen die Annahme gerechtfertigt ist, dass die betroffene Person den Telemediendienst nutzt, den derjenige, gegen den sich die Anordnung richtet, geschäftsmäßig zur Nutzung bereithält oder zu dem er den Zugang zur Nutzung vermittelt.

particular a crime referred to in section 100a paragraph 2, in cases in which the attempt to commit is a punishable offence attempted or prepared by committing a criminal offence, usage data (see Section 15 Paragraph 1 of the Telemedia Act) may be collected from anyone who commercially keeps their own or third-party tele media available for use or provides access to use, insofar as this is necessary for investigating the facts and the collection of the data is proportionate to the importance of the matter. The collection of stored (retrograde) location data is only permitted under the conditions of s. 100g paragraph 2. Incidentally, the collection of location data is only permitted for future usage data or in real time, insofar as it is necessary for investigating the facts or determining the whereabouts of the suspect.
(2) If the crime is not covered by paragraph 1, usage data may also be collected if certain facts justify the suspicion that someone committed one of the following crimes as a perpetrator or participant via tele media and there is no other way to investigate the facts would:
1. from the penal code
a) use of symbols of unconstitutional organisations according to section 86a,
b) Instructions for committing a serious violent act endangering the state according to p. 91,
c) Public incitement to commit criminal offences pursuant to p. 111,
d) crimes against public order according to the ss. 126, 131 and 140,
e) insults against denominations, religious communities and ideological associations according to p. 166,
f) dissemination, acquisition and possession of child pornographic content pursuant to Section 184b,
g) Insult, slander and defamation according to the SS. 185 to 187 and denigration of the memory of the deceased according to p. 189,
h) Violations of personal life and secret areas according to the ss. 201a, 202a and 202c,
i) adjustment according to p. 238,
j) threat according to p. 241,
k) Preparation of a computer fraud according to s. 263a paragraph 3,
l) Data modification and computer sabotage according to the ss. 303a and 303b paragraph 1,
2. from the law on copyright and related rights criminal offences according to the ss. 106 to 108b,
3. From the Federal Data Protection Act according to p. 42.
Sentence 1 does not apply to the collection of location data.

(5) Erfolgt die Erhebung von Nutzungsdaten oder Inhalten der Nutzung eines Telemediendienstes nicht bei einem Diensteanbieter, der geschäftsmäßig Telemedien zur Nutzung bereithält, bestimmt sie sich nach Abschluss des Kommunikationsvorgangs nach den allgemeinen Vorschriften.

(3) Deviating from paragraphs 1 and 2, the public prosecutor's office may request information about the data collected pursuant to Section 15 paragraph 1 sentence 2 number 1 of the Telemedia Act solely for the purpose of identifying the user if they are already aware of the content of the use of the tele media service.
(4) The collection of usage data in accordance with paragraphs 1 and 2 is only permissible if the assumption is justified on the basis of facts that the person concerned is using the tele media service that the person against whom the order is directed is commercially available for use or for which he provides access to use.
(5) If the usage data or content of the use of a tele media service is not collected from a service provider who commercially provides tele media for use, it is determined after the end of the communication process according to the general regulations.

33 There has been significant **case law on section 100k** since 2021/22. The regulation was newly added in December 2021 and thus after the adoption of the EUStAG. It could be classified under Art. 30 para. 1 (c) as well as under Art. 30 para. 4 EPPO Regulation. The case concerned a vehicle equipped with the Internet, which sends GPS data to a processor of the data for the purpose of improving use (e.g. the whereabouts and parking of the vehicle are documented). If the car is stolen, the owner can track his car again. A German public prosecutor's office took advantage of this function of the car and, based on the new paragraph, requested the transmission of the collected GPS location data, which was stored on the servers of a company that belonged to the manufacturer's company empire. The decisive factor here is that it is an act according to Section 100a (2) CPC, i.e. a serious criminal offence. The court had to clarify what the wording means "to enable and bill the use of tele media" and whether this really also includes the GPS location data. The court interpreted the term broadly and summarised all location data hereunder.[691] It did not see a violation of the right to informational self-determination.

(b) Special provisions in the CPC and Tax code

34 Germany has no special Digital Evidence Act yet. Instead common provisions from the analogue age, which are enshrined in the CPC apply in some cases as seen above. If the legislator proposes amendments they often relate to these provisions in the CPC. Digital evidence gathering is researched a lot these days in order to facilitate the handling of digital evidence in the 2020s.[692] Legislators and prosecutors need to talk about needs

[691] OLG Frankfurt, 20.07.2021 - 3 Ws 369/21 =ECLI:DE:OLGHE:2021:0720.3WS369.21.00 =openJur 2021, 33324 =MMR 2022, 141; OLG Frankfurt erlaubt PKW als Belastungszeugen: Wenn das Auto seinen Fahrer überführt. In: Legal Tribune Online, 21.07.2022, https://www.lto.de/persistent/a_id/49122/. Accessed 31 December 2024.
[692] See Brodowski and Jahn 2020, pp. 67–102; Brodowski and Thmana 2020, pp. 428–462 and see again Brodowski and Jahn 2018, pp. 409–422; but see recently Rückert 2023 within his habilitation project proposing changes and analysing the capabilities of the German CPC. Nevertheless problems remain, e.g. he does not focus on AI evidence problems specifically. The new anti-fraud architecture phase 2025-2030 will need to do this.

and harmonization at the Union level is highly recommended if it comes to PIF crime offences. Implementations will probably be introduced into the German Criminal Procedure Code by chance. The Digital Service Act of the EU does not provide for any requisites either.

(2) Obtainment of banking account data and traffic data

- See ss. 24 c, 25g, h Banking Act (Banking Act – KWG) **35**

Section 24c KWG[693] **Automated retrieval of account information**
(1) A credit institution shall maintain a file system in which the following data shall be stored immediately:

[693] **§ 24c Automatisierter Abruf von Kontoinformationen KWG**
(1) Ein Kreditinstitut hat ein Dateisystem zu führen, in dem unverzüglich folgende Daten zu speichern sind:
1. die Nummer eines Kontos, das der Verpflichtung zur Legitimationsprüfung nach § 154 Absatz 2 Satz 1 der Abgabenordnung unterliegt, eines Depots oder eines Schließfachs sowie der Tag der Eröffnung und der Tag der Beendigung oder Auflösung,
2. der Vor- und Nachname, sowie bei natürlichen Personen der Tag der Geburt, des Inhabers und eines Verfügungsberechtigten sowie in den Fällen des § 10 Absatz 1 Nummer 2 des Geldwäschegesetzes der Vor- und Nachname und, soweit erhoben, die Anschrift eines abweichend wirtschaftlich Berechtigten im Sinne des § 3 des Geldwäschegesetzes.
Bei jeder Änderung einer Angabe nach Satz 1 ist unverzüglich ein neuer Datensatz anzulegen. Die Daten sind nach Ablauf von zehn Jahren nach der Auflösung des Kontos oder Depots zu löschen. Im Falle des Satzes 2 ist der alte Datensatz nach Ablauf von drei Jahren nach Anlegung des neuen Datensatzes zu löschen. Das Kreditinstitut hat zu gewährleisten, dass die Bundesanstalt jederzeit Daten aus dem Dateisystem nach Satz 1 in einem von ihr bestimmten Verfahren automatisiert abrufen kann. Es hat durch technische und organisatorische Maßnahmen sicherzustellen, dass ihm Abrufe nicht zur Kenntnis gelangen. (2) Die Bundesanstalt darf einzelne Daten aus dem Dateisystem nach Absatz 1 Satz 1 abrufen, soweit dies zur Erfüllung ihrer aufsichtlichen Aufgaben nach diesem Gesetz oder dem Geldwäschegesetz, insbesondere im Hinblick auf unerlaubte Bankgeschäfte oder Finanzdienstleistungen oder den Missbrauch der Institute durch Geldwäsche, Terrorismusfinanzierung oder sonstige strafbare Handlungen, die zu einer Gefährdung des Vermögens der Institute führen können, erforderlich ist und besondere Eilbedürftigkeit im Einzelfall vorliegt. Die Zentralstelle für Finanztransaktionsuntersuchungen darf zur Erfüllung ihrer Aufgaben nach dem Geldwäschegesetz gleichermaßen einzelne Daten aus dem Dateisystem nach Absatz 1 Satz 1 abrufen.
(3) Die Bundesanstalt erteilt auf Ersuchen Auskunft aus dem Dateisystem nach Absatz 1 Satz 1
1. den Aufsichtsbehörden gemäß § 9 Abs. 1 Satz 4 Nr. 2, soweit dies zur Erfüllung ihrer aufsichtlichen Aufgaben unter den Voraussetzungen des Absatzes 2 erforderlich ist,
2. den für die Leistung der internationalen Rechtshilfe in Strafsachen sowie im Übrigen für die Verfolgung und Ahndung von Straftaten zuständigen Behörden oder Gerichten, soweit dies für die Erfüllung ihrer gesetzlichen Aufgaben erforderlich ist,
3. der für die Beschränkungen des Kapital- und Zahlungsverkehrs nach dem Außenwirtschaftsgesetz zuständigen nationalen Behörde, soweit dies für die Erfüllung ihrer sich aus dem Außenwirtschaftsgesetz oder Rechtsakten der Europäischen Union im Zusammenhang mit der Einschränkung von Wirtschafts- oder Finanzbeziehungen ergebenden Aufgaben erforderlich ist.
Die Bundesanstalt hat die in den Dateisystemen gespeicherten Daten im automatisierten Verfahren abzurufen und sie an die ersuchende Stelle weiter zu übermitteln. Die Bundesanstalt prüft die Zulässigkeit der Übermittlung nur, soweit hierzu besonderer Anlass besteht. Die Verantwortung für die Zulässigkeit der Übermittlung trägt die ersuchende Stelle. Die Bundesanstalt darf zu den in Satz 1 genannten Zwecken ausländischen Stellen Auskunft aus dem Dateisystem nach Absatz 1 Satz 1 nach Maßgabe der allgemeinen datenschutzrechtlichen Vorschriften erteilen. § 9 Abs. 1 Satz 5, 6 und Abs. 2 gilt entsprechend. Die Regelungen über die internationale Rechtshilfe in Strafsachen bleiben unberührt.

1. the number of an account that is subject to the obligation to verify legitimacy pursuant to Section 154 para. 2 sentence 1 of the Fiscal Code, a deposit or a safe deposit box and the day it was opened and the day it ended or was dissolved,
2. the first and last name and, in the case of natural persons, the date of birth, the owner and a person entitled to dispose of them, as well as in the cases of Section 10 paragraph 1 number 2 of the Money Laundering Act the first and last name and, if recorded, the address of a different beneficial owner in the Within the meaning of Section 3 of the Money Laundering Act.
A new data record must be created immediately for each change to a statement pursuant to sentence 1. The data must be deleted ten years after the account or custody account has been closed. In the case of sentence 2, the old data record is to be deleted three years after the creation of the new data record. The credit institution must ensure that BaFin can automatically retrieve data from the file system in accordance with sentence 1 at any time using a procedure determined by it. It must ensure through technical and organisational measures that it does not become aware of any retrievals.
(2) BaFin may call up individual data from the file system pursuant to para. 1 sentence 1 insofar as this is necessary to fulfil its supervisory tasks under this Act or the Money Laundering Act, in particular with regard to unauthorized banking transactions or financial services or the abuse of the institutions through money laundering, terrorist financing or other criminal acts that could endanger the assets of the institute is necessary and there is a particular urgency in the individual case. The Central Office for Financial Transaction Investigations may also retrieve individual data from the file system in accordance with paragraph 1 sentence 1 in order to fulfil its tasks under the Money Laundering Act.
(3) *Upon request, the Bundesanstalt shall provide information from the file system pursuant to para. 1 sentence 1 (to)*
1. the supervisory authorities pursuant to Section 9 Paragraph 1 Clause 4 No. 2, insofar as this is necessary to fulfil their supervisory tasks under the conditions of Paragraph 2,
2. *the authorities or courts responsible for the provision of international legal assistance in criminal matters and for the prosecution and punishment of criminal offences, insofar as this is necessary for the fulfillment of their statutory duties*,
3. the national authority responsible for the restrictions on capital and payment transactions under the Foreign Trade and Payments Act, insofar as this is necessary for the fulfillment of their tasks resulting from the Foreign Trade and Payments Act or legal acts of the European Union in connection with the restriction of economic or financial relationships.
The Federal Institute has to call up the data stored in the file systems in an automated process and forward them to the requesting body. BaFin only checks the admissibility of the transmission if there is a special reason for this. The requesting body is responsible for the admissibility of the transmission. For the purposes specified in sentence 1, BaFin

may provide foreign bodies with information from the file system in accordance with para. 1 sentence 1 in accordance with the general data protection regulations. Section 9 paragraph 1 sentence 5, 6 and paragraph 2 applies accordingly. The regulations on international legal assistance in criminal matters remain unaffected.
(3a)[694] Upon request, BaFin shall provide information from the file systems pursuant to para. 1 sentence 1

[694] (3a) Die Bundesanstalt erteilt auf Ersuchen Auskunft aus den Dateisystemen nach Absatz 1 Satz 1
1. an die inländischen benannten Behörden im Sinne des Artikel 3 Absatz 1 der Richtlinie (EU) 2019/1153 des Europäischen Parlamentes und des Rates vom 20. Juni 2019 zur Festlegung von Vorschriften zur Erleichterung der Nutzung von Finanz- und sonstigen Informationen für die Verhütung, Aufdeckung, Untersuchung oder Verfolgung bestimmter Straftaten und zur Aufhebung des Beschlusses 2000/642/JI des Rates, soweit dies zur Erfüllung ihrer gesetzlichen Aufgaben bei der Verhütung oder Verfolgung schwerer Straftaten im Sinne des Anhangs I der Verordnung (EU) 2016/794 des Europäischen Parlaments und des Rates vom 11. Mai 2016 über die Agentur der Europäischen Union für die Zusammenarbeit auf dem Gebiet der Strafverfolgung (Europol) und zur Ersetzung und Aufhebung der Beschlüsse 2009/371/JI, 2009/934/JI, 2009/935/JI, 2009/936/JI und 2009/968/JI des Rates (ABl. L 135 vom 24.5.2016, S. 53) erforderlich ist oder zur Unterstützung einer strafrechtlichen Ermittlung im Zusammenhang mit einer schweren Straftat;
2. an das Bundeskriminalamt in seiner Funktion als nationale Stelle nach § 1 Nummer 1 des Europol-Gesetzes zum Zwecke der Weitergabe an Europol, soweit dies zur Erfüllung der Aufgaben von Europol gemäß Artikel 4 der Verordnung (EU) 2016/794 im Rahmen der Zuständigkeit von Europol im Einzelfall erforderlich ist.
Die Bundesanstalt hat die Daten im automatisierten Verfahren abzurufen und sie unmittelbar an die ersuchende Stelle weiter zu übermitteln. Absatz 3 Sätze 4 und 6 gelten entsprechend.
(4) Die Bundesanstalt protokolliert bei jedem Abruf
1. das Aktenzeichen,
2. Datum und Uhrzeit des Abrufs,
3. die Art der bei der Durchführung des Abrufs verwendeten Daten,
4. die eindeutige Kennung der Ergebnisse,
5. die Person, die den Abruf durchgeführt hat.
Bei jedem Abruf zum Zweck der Auskunftserteilung auf Ersuchen nach Absatz 3 protokolliert sie zudem die ersuchende Stelle und das Aktenzeichen der ersuchenden Stelle. Bei einem Abruf nach Absatz 3a durch eine inländische benannte Behörde im Sinne des Artikel 3 Absatz 1 Richtlinie (EU) 2019/1153 ist zudem die eindeutige Benutzerkennung derjenigen Person zu protokollieren, die das Ersuchen an die Bundesanstalt gerichtet hat und – sofern abweichend – die Benutzerkennung derjenigen Person, die Ergebnisse weiterübermittelt erhält. Die Protokolle dienen ausschließlich dem Zweck der Datenschutzkontrolle sowie der Sicherstellung der Datensicherheit. Sie werden von der oder dem Datenschutzbeauftragten der Bundesanstalt regelmäßig überprüft und auf Anforderung der oder dem Bundesbeauftragten für den Datenschutz und die Informationssicherheit zur Verfügung gestellt. Protokolle nach Satz 1 und 2 sind 18 Monate, Protokolle nach Satz 3 sind fünf Jahre zugriffsgeschützt aufzubewahren. Nach Ablauf der Aufbewahrungsfrist sind die Protokolle zu löschen, sofern sie nicht für laufende Kontrollverfahren erforderlich sind. Die Bundesanstalt stellt durch besondere Schulungsprogramme sicher, dass das eingesetzte Personal mit den geltenden Bestimmungen unter Einschluss insbesondere der europäischen und nationalen Datenschutzbestimmungen vertraut ist. Die Bundesanstalt führt eine Statistik über Zahl und Bearbeitung von Ersuchen nach Absatz 3a.
(5) Das Kreditinstitut hat in seinem Verantwortungsbereich auf seine Kosten alle Vorkehrungen zu treffen, die für den automatisierten Abruf unter Sicherstellung des Datenschutzes und der Datensicherheit der Daten nach Absatz 1 Satz 1 nach dem jeweiligen Stand der Technik erforderlich sind. Dazu gehören auch, jeweils nach den Vorgaben der Bundesanstalt, die Anschaffung der zur Sicherstellung der Vertraulichkeit und des Schutzes vor unberechtigten Zugriffen erforderlichen Geräte, die Einrichtung eines geeigneten Telekommunikationsanschlusses und die Teilnahme an dem geschlossenen Benutzersystem sowie die laufende Bereitstellung dieser Vorkehrungen. Den Stand der Technik stellt die Bundesanstalt im Benehmen mit dem Bundesamt für Sicherheit in der Informationstechnik in einem von ihr bestimmten Verfahren fest.
(6) Die Bundesanstalt hat dem jeweiligen Stand der Technik entsprechende Maßnahmen zur Sicherstellung von Datenschutz und Datensicherheit zu treffen, die insbesondere die Vertraulichkeit und Unversehrtheit der Daten nach Absatz 1 Satz 1 beim Abruf durch die Bundesanstalt gewährleisten. Die Bundesanstalt hat entsprechende

1. to the domestic designated authorities within the meaning of Article 3 paragraph 1 of Directive (EU) 2019/1153 of the European Parliament and of the Council of June 20, 2019 laying down rules to facilitate the use of financial and other information for prevention, detection, investigation or prosecution of certain criminal offences and to repeal Council Decision 2000/642/JHA, insofar as this is necessary to fulfil their statutory tasks in the prevention or prosecution of serious criminal offences within the meaning of Annex I of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA of the Council (OJOJ L 135 of 24.05.2016, p. 53) or to support a criminal investigation in connection with a serious crime;
2. to the Federal Criminal Police Office in its function as a national agency according to Section 1 number 1 of the Europol Act for the purpose of forwarding to Europol, insofar as this is necessary to fulfil the tasks of Europol according to Article 4 of Regulation (EU) 2016/794 within the scope of Europol's competence is required in individual cases.
The Federal Institute has to call up the data in an automated process and forward it directly to the requesting body. Paragraph 3 sentences 4 and 6 apply accordingly.
(4) The Federal Institute logs every retrieval
1. the file number,
2. date and time of retrieval,
3. the type of data used to carry out the retrieval,
4. the unique identifier of the results,
5. the person who carried out the retrieval.
They are regularly checked by the Federal Agency's data protection officer and made available to the Federal Commissioner for data protection and information security upon request. Logs according to sentences 1 and 2 are 18 months, logs according to sentence 3 are to be kept access-protected for five years. After the retention period has expired, the logs must be deleted unless they are required for ongoing control procedures. The Federal Institute uses special training programs to ensure that the personnel deployed are familiar with the applicable regulations, including in particular the European and national data protection regulations. The Federal Agency keeps statistics on the number

Maßnahmen bei der Weiterübermittlung der Daten nach den Absätzen 3 und 3a zu treffen; diese Maßnahmen müssen im Falle von Ersuchen nach Absatz 3a bei den ersuchenden Behörden eine Zugangsbeschränkung auf einzelne Personen und deren eindeutige Benutzerkennung ermöglichender abgerufenen und weiter übermittelten Daten gewährleisten. Den Stand der Technik stellt die Bundesanstalt im Benehmen mit dem Bundesamt für Sicherheit in der Informationstechnik in einem von ihr bestimmten Verfahren fest.
(7) Das Bundesministerium der Finanzen kann durch Rechtsverordnung Näheres regeln zu den technischen Verfahren des automatisierten Abrufs sowie der Weiterübermittlung, zu Ausnahmen von der Verpflichtung zur Übermittlung im automatisierten Verfahren sowie zur Protokollierung der Abrufe und zur Statistik über Ersuchen. Es kann die Ermächtigung durch Rechtsverordnung auf die Bundesanstalt übertragen.
(8) Soweit die Deutsche Bundesbank Konten und Depots für Dritte führt, gilt sie als Kreditinstitut nach den Absätzen 1, 5 und 6.

and processing of requests under paragraph 3a. Protocols according to sentence 3 are to be kept access-protected for five years. After the retention period has expired, the logs must be deleted unless they are required for ongoing control procedures. The Federal Institute uses special training programs to ensure that the personnel deployed are familiar with the applicable regulations, including in particular the European and national data protection regulations. The Federal Agency keeps statistics on the number and processing of requests under paragraph 3a. Protocols according to sentence 3 are to be kept access-protected for five years. After the retention period has expired, the logs must be deleted unless they are required for ongoing control procedures. The Federal Institute uses special training programs to ensure that the personnel deployed are familiar with the applicable regulations, including in particular the European and national data protection regulations.
The Federal Agency keeps statistics on the number and processing of requests under paragraph 3a. that the staff deployed is familiar with the applicable regulations, including in particular the European and national data protection regulations. The Federal Agency keeps statistics on the number and processing of requests under paragraph 3a. that the staff deployed is familiar with the applicable regulations, including in particular the European and national data protection regulations. The Federal Agency keeps statistics on the number and processing of requests under paragraph 3a.
(5) Within its area of responsibility, the credit institution must take all precautions at its own expense that are required for automated retrieval while ensuring data protection and data security of the data in accordance with paragraph 1 sentence 1 according to the current state of the art. This also includes, in each case in accordance with the specifications of the Federal Institute, the acquisition of the devices required to ensure confidentiality and protection against unauthorized access, the establishment of a suitable telecommunications connection and participation in the closed user system as well as the ongoing provision of these precautions. The Federal Institute determines the state of the art in consultation with the Federal Office for Information Security in a procedure determined by it.
(6) BaFin must take state-of-the-art measures to ensure data protection and data security, which in particular guarantee the confidentiality and integrity of the data pursuant to para. 1 sentence 1 when BaFin retrieves them. The Federal Institute must take appropriate measures when forwarding the data in accordance with paragraphs 3 and 3a; in the case of requests under paragraph 3a, these measures must ensure that the requesting authorities restrict access to individual persons and to data retrieved and transmitted that enable their unique user ID. The Federal Institute determines the state of the art in consultation with the Federal Office for Information Security in a procedure determined by it.

(7) The Federal Ministry of Finance can issue statutory ordinances providing more details on the technical procedures for automated retrieval and onward transmission, exceptions to the obligation to transmit data using automated procedures, and logging of retrievals and statistics on requests. It can transfer the authorisation to the Federal Agency by statutory order.
(8) Insofar as the Deutsche Bundesbank manages accounts and custody accounts for third parties, it is deemed to be a credit institution in accordance with paragraphs 1, 5 and 6.

36 **Section 93b AO (Tax Code)[695] Automated retrieval of account information**

(1) Credit institutions must also maintain the file system to be maintained pursuant to Section 24c para. 1 of the Banking Act for retrievals pursuant to Section 93 paras. 7 and 8.
(1a) For account access requests pursuant to Section 93 paras. 7 or 8, in addition to the data specified in Section 24c para. 1 of the Banking Act, credit institutions shall also be entitled to the addresses and the data specified in Section 154 para. 2a for each person entitled to dispose of and each beneficial owner within the meaning of the Money Laundering Act to save. Section 154 paragraph 2d and Article 97 Section 26 paragraph 5 numbers 3 and 4 of the Introductory Act to the Fiscal Code remain unaffected.
(2) In the cases covered by Section 93 paras. 7 and 8, the Federal Central Tax Office may, upon request from the credit institutions, retrieve individual data from the file systems to be managed in accordance with paras. 1 and 1a in an automated process and transmit them to the requestor. The Federal Central Tax Office may only communicate the identification number according to s. 139b of a person entitled to dispose of or a beneficial owner to financial authorities.
(3) The requesting party is responsible for the admissibility of data retrieval and data transmission.
(4) Section 24c paragraph 1 sentences 2 to 6, paragraphs 4 to 8 of the Banking Act shall apply accordingly.

[695] **§ 93b Automatisierter Abruf von Kontoinformationen Abgabenordnung**
(1) Kreditinstitute haben das nach § 24c Absatz 1 des Kreditwesengesetzes zu führende Dateisystem auch für Abrufe nach § 93 Absatz 7 und 8 zu führen.
(1a) Kreditinstitute haben für Kontenabrufersuchen nach § 93 Absatz 7 oder 8 zusätzlich zu den in § 24c Absatz 1 des Kreditwesengesetzes bezeichneten Daten für jeden Verfügungsberechtigten und jeden wirtschaftlich Berechtigten im Sinne des Geldwäschegesetzes auch die Addressen sowie die in § 154 Absatz 2a bezeichneten Daten zu speichern. § 154 Absatz 2d und Artikel 97 § 26 Absatz 5 Nummer 3 und 4 des Einführungsgesetzes zur Abgabenordnung bleiben unberührt.
(2) Das Bundeszentralamt für Steuern darf in den Fällen des § 93 Absatz 7 und 8 auf Ersuchen bei den Kreditinstituten einzelne Daten aus den nach den Absätzen 1 und 1a zu führenden Dateisystemen im automatisierten Verfahren abrufen und sie an den Ersuchenden übermitteln. Die Identifikationsnummer nach § 139b eines Verfügungsberechtigten oder eines wirtschaftlich Berechtigten darf das Bundeszentralamt für Steuern nur Finanzbehörden mitteilen.
(3) Die Verantwortung für die Zulässigkeit des Datenabrufs und der Datenübermittlung trägt der Ersuchende.
(4) § 24c Abs. 1 Satz 2 bis 6, Abs. 4 bis 8 des Kreditwesengesetzes gilt entsprechend.

(3) Exception of data specifically retained in accordance with national law

This relates to the second sentence of Article 15 para. 1 of Directive 2002/58/EC of the European Parliament and of the Council). **37**

(a) Transposition of this Directive

1. Telekommunikationsgesetz (TKG) **38**
   Official publication: Bundesgesetzblatt Teil 1 (BGB 1); Number: 2004/29; Publication date: 2004-06-25; Page: 01190-01242
2. Gesetz gegen den unlauteren Wettebewerb (UWG)
   Official publication: Bundesgesetzblatt Teil 1 (BGB 1); Number: 2004/32; Publication date: 2004-07-07; Page: 01414-01421
3. Gesetz zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten
   Official publication: Bundesgesetzblatt Teil 1 (BGB 1); Number: 51; Publication date: 2015-12-17; Page: 02218-02228

(b) National provision in relation to Art. 15 para. 1 s. 2 of this Directive

(d) freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment ordering confiscation.

dd. Para. 1(d) Freezing measure

(1) Freezing instrumentalities or proceeds of crime, including assets

The freezing of instrumentalities or proceeds of crime, including assets[696] is very important for the whole investigation of the EPPO. In Bavaria e.g. the Country Legislator has decided to hand over the task to a long-established specialised organ (**Central and** **39**

[696] See for the German Law Area now El-Ghazi 2022, § 35 Mn. 1 et seq.

Coordination Office for Asset Recovery in Bavaria (ZKV[697]))[698], which shall provide official assistance (*Amtshilfe*) to the EPPO.

40 Therefore this task is mostly delegated to the **judicial assisstants** (*Rechtspfleger*)[699]:

Nota bene: **Section 9 "Applicability of the *Rechtspflegergesetz*" EPPO Adoption Act** Section 31 paragraph 1 of the Rechtspflegergesetz is **not applicable**. The European Delegated Public Prosecutor entrusted with the investigations ***can transfer*** the tasks mentioned in Section 31 para. 1 of the Rechtspflegergesetz to the *Rechtspfleger* ***in individual cases*.**

41

Section 31 Tasks of the criminal prosecution office in criminal proceedings and execution in criminal and regulatory fine cases, as well as of measures to maintain public order and means of coercion

(1) Of the tasks of the criminal prosecution office in the criminal proceedings, the following shall be assigned to the senior judicial officer:

1. the tasks in execution of seizure (section 111c subs. 3 first sentence and subs. 4 second and third sentences of the Code of Criminal Procedure),

2. the tasks in execution of seizure and in execution of the attachment of assets, as well as the ordering of distress sale and the further orders issued during implementation (sections 111k and 111p of the Code of Criminal Procedure), insofar as the corresponding tasks have been assigned to the senior judicial officer in compulsory execution and seizure proceedings,

[697] Since October 9, 2018, this special sub-department has existed at the Munich Public Prosecutor's Office as the so-called Central Coordination Office for Asset Recovery in Bavaria (ZKV BY). Since the renaming, it has simply been called: Central and Coordination Office for Asset Abduction in Bavaria (ZKV).
The background to the establishment was the law reforming the confiscation of assets under criminal law, which came into force on July 1, 2017. The scope of the confiscation of proceeds from criminal offences and the possibilities of compensating crime victims were significantly expanded even during the execution of sentences. The Central and Coordination Office for Asset Recovery Bavaria (ZKV) supports the Bavarian courts and public prosecutor's offices in the consistent confiscation of incriminated assets as the central instrument for effectively combating organized crime. See http://bit.ly/3WctQ6Y. Accessed 31 December 2024. Kilching 2023; Kilching 2025, pp. 52

[698] The Munich Public Prosecutor's Office, which houses the regional office of the EPPO (EDP Paitinger), announced that: "With effect from October 1, 2022, ***the scope of activities of the ZKV was expanded to include the following operational activities***: Carrying out independent confiscation proceedings in accordance with Section 76a Paragraphs 1 to 4 of the Criminal Code in Bavaria, provided the confiscation amount exceeds EUR 3,000. Enforcement of foreign legally binding confiscation orders in accordance with Regulation 2018/1805/EU in Bavaria. ***Administrative assistance for the Delegated European Public Prosecutor according to § 9 sentence 2 EUStAG***"

[699] Judicial officers /assisstants or magistrates are staff trained at state schools (Jurisprudence Academy and Judicial Schools of the Länder) to carry out important legal processing procedures (working with registers, preparing notifications, questions relating to property law, etc.). They are to be separated from public prosecutors by simple office (*Amtsanwälte*) and senior public prosecutors by simple office (*Oberamtsanwälte*), who carry out activities similar to those of a real public prosecutor, but are only allowed to accuse minor to moderate crimes in the session before the judge. If necessary, lawyers who are being trained or are studying in Germany with the aim of becoming a fully qualified lawyer with qualifications for judicial office may take over the representation at the court (*Referendarsitzungsdienst*).

3. transactions related to insolvency proceedings (section 111i of the Code of Criminal Procedure), and
4. transactions related to the administration of seized or attached objects (section 111m of the Code of Criminal Procedure).
(2) The tasks incumbent on the execution authority in criminal and regulatory fine cases shall be assigned to the senior judicial officer. Excluded therefrom shall be decisions in accordance with section 114 of the Youth Courts Act. Sentence 1 shall apply mutatis mutandis insofar as measures to maintain public order and means of coercion are implemented by the criminal prosecution office.
(2a) The senior judicial officer shall submit the cases assigned to him/her in accordance with subs. 2 sentence 1 to the public prosecutor if
1. he/she wishes to derogate from a view held by the public prosecutor known to him/her, or
2. such a close link exists between the assigned task and a task to be carried out by the public prosecutor that separate processing of the matters is not expedient, or
3. a measure to maintain public order or a means of coercion has been imposed by the public prosecutor and the latter has reserved the submission fully or in part.
(2b) The senior judicial officer may submit the tasks which have been assigned to him/her in accordance with subs. 2 sentence 1 to the public prosecutor if
1. reservations emerge during processing against the admissibility of execution, or
2. a judgment is to be executed which has been challenged by a co-accused by means of an appeal on points of law.
(2c) The cases that have been submitted shall be processed by the public prosecutor as long as he/she considers this to be necessary. He/she may return the cases to the senior judicial officer. The senior judicial officer shall be bound by a legal view or instructions thereby issued.
(3) The judicial execution of measures to maintain public order and means of coercion shall be assigned to the senior judicial officer unless, in individual cases, the judge reserves execution fully or in part.
(4) (repealed)
(5) Supervision of execution in the youth custody proceedings shall remain reserved to the judge. The execution of tasks by means of which a judicial execution order or a general administrative provision not concerning the supervision of execution are implemented shall be assigned to the senior judicial officer. The Federal Minister of Justice and Consumer Protection shall be empowered by means of a statutory instrument with the consent of the Federal Council in the field of execution in youth custody proceedings to assign non-judicial tasks to the senior judicial officer unless the supervision of execution by the youth court judge is impaired or the duty of execution must be reserved to the official charged with the supervision of execution because of its legal difficulty, because of what is at stake for the person concerned, above all for educational reasons,

or to safeguard uniform application of the law. The judge may order the submission of assigned execution duties.
(6) The remedy shall be available against the measures of the senior judicial officer which is admissible in accordance with the general provisions of procedural law. If no remedy is available according to these, the judge or public prosecutor in whose place the senior judicial officer acted shall decide on objections. He/she may issue instructions to the senior judicial officer. The powers of the head of the authority emerging from sections 145 and 146 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) shall remain unaffected thereby.
(7) Further, federal and *Land* law provisions which regulate the execution of property fines in administrative enforcement proceedings shall remain unaffected.[700]

42 The relevant provisions to be applied are enshrined in the German CPC:

Provisions of the Criminal Procedure Code and the Criminal Code

Cf. *in generali* already ss. 94, 98 CPC.
Section 111e CPC[701] **Asset seizure to secure confiscation of equivalent sum of money**
(1) If it is reasonable to assume that the conditions for confiscation of the equivalent sum of money are met, seizure of the person concern's movable and immovable assets may be ordered to secure enforcement. If there are cogent reasons justifying this assumption, such asset seizure shall be ordered.
(2) Asset seizure may also be ordered to secure enforcement of a fine and the anticipated costs of the criminal proceedings where a judgment or summary penalty order has been made against the accused.
(3) There shall be no seizure to secure the costs of enforcement.

[700] Translation provided by Neil Mussett, Translations may not be updated at the same time as the German legal provisions displayed on this website. To compare with the current status of the German version, see http://www.gesetze-im-internet.de/rpflg_1969/BJNR020650969.html. Accessed 31 December 2024.
[701] "**§ 111e Vermögensarrest zur Sicherung der Wertersatzeinziehung**
(1) Ist die Annahme begründet, dass die Voraussetzungen der Einziehung von Wertersatz vorliegen, so kann zur Sicherung der Vollstreckung der Vermögensarrest in das bewegliche und unbewegliche Vermögen des Betroffenen *angeordnet werden*. Liegen dringende Gründe für diese Annahme vor, so soll der Vermögensarrest *angeordnet werden*.
(2) Der Vermögensarrest kann auch zur Sicherung der Vollstreckung einer Geldstrafe und der voraussichtlichen Kosten des Strafverfahrens *angeordnet werden*, wenn gegen den Beschuldigten ein Urteil ergangen oder ein Strafbefehl erlassen worden ist.
(3) Zur Sicherung der Vollstreckungskosten ergeht kein Arrest.
(4) In der Anordnung ist der zu sichernde Anspruch unter Angabe des Geldbetrages zu bezeichnen. Zudem ist in der Anordnung ein Geldbetrag festzusetzen, durch dessen Hinterlegung der Betroffene die Vollziehung des Arrestes abwenden und die Aufhebung der Vollziehung des Arrestes verlangen kann; § 108 Absatz 1 der Zivilprozessordnung gilt entsprechend.
(5) Die §§ 102 bis 110 gelten entsprechend.
(6) Die Möglichkeit einer Anordnung nach § 324 der Abgabenordnung steht einer Anordnung nach Absatz 1 nicht entgegen" See for an analysis in English and all provisions printed in the annex as well Kilching 2023, Kilching 2025, p. 55 et seq.

(4) The claim to be secured, including the amount of money, shall be designated in the order. In addition, the order shall indicate a sum of money which the person concerned may deposit in order to avert enforcement of and demand the setting aside of the seizure; section 108 para. 1 of the Code of Civil Procedure shall apply accordingly.
(5) Sections 102 to 110 shall apply accordingly.
(6) The possibility of issuing an order pursuant to section 324 of the Fiscal Code shall prove no obstacle to issuing an order pursuant to para. 1.

- Application for an arrest order (see 111e paragraph 1 and paragraph 4, 111j CPC in connection with ss. 73 paragraph 1, 73c, 73d StGB)
- Cf. s. 111j CPC in conncetion with s. 73 para. 1, 73c and 73d Criminal Code (*Strafgesetzbuch*)

Section 111j CPC[702] **procedure for ordering confiscation and attachment of property**
(1) Confiscation and attachment of assets shall be ordered by the court. In the event of imminent danger, the order can also be issued by the public prosecutor's office. Under the condition of sentence 2, the investigators of the public prosecutor's office (s. 152 of the Courts Constitution Act) are also authorized to confiscate movable property.
(2) If the public prosecutor's office has ordered confiscation or arrest, they shall apply for court confirmation of the order within one week. This does not apply if confiscation of a movable item has been ordered. In all cases, the person concerned can apply for the decision of the court. The jurisdiction of the court is determined by page 162."

See **Section 73 para. 1 CC**[703] **Confiscation of crime proceeds from perpetrators and participants**
(1) If the perpetrator or accomplice obtained something through an illegal act or for them, the court shall order its confiscation. (2)–(3) [...]"

[702] "**§ 111j Verfahren bei der Anordnung der Beschlagnahme und des Vermögensarrestes**
(1) Beschlagnahme und Vermögensarrest werden durch das Gericht angeordnet. Bei Gefahr im Verzug kann die Anordnung auch durch die Staatsanwaltschaft erfolgen. Unter der Voraussetzung des Satzes 2 sind zur Beschlagnahme einer beweglichen Sache auch die Ermittlungspersonen der Staatsanwaltschaft (§ 152 des Gerichtsverfassungsgesetzes) *befugt*.
(2) Hat die Staatsanwaltschaft die Beschlagnahme oder den Arrest angeordnet, so beantragt sie innerhalb einer Woche die gerichtliche Bestätigung der Anordnung. Dies gilt nicht, wenn die Beschlagnahme einer beweglichen Sache angeordnet ist. Der Betroffene kann in allen Fällen die Entscheidung des Gerichts beantragen. Die Zuständigkeit des Gerichts bestimmt sich nach § 162"
[703] "**§ 73 Einziehung von Taterträgen bei Tätern und Teilnehmern**
(1) Hat der Täter oder Teilnehmer durch eine rechtswidrige Tat oder für sie etwas erlangt, so ordnet das Gericht dessen Einziehung an. (2)–(3) […]"

Section 73c CC[704] Confiscation of Value of Proceeds of Crime
If confiscation of an item is not possible due to the nature of what was obtained or for another reason, or if confiscation of a replacement item is refrained from pursuant to Section 73 Paragraph 3 or Section 73b Paragraph 3, the court shall order the confiscation of a sum of money, which corresponds to the value of the obtained. The court also makes such an order in addition to the confiscation of an object, insofar as its value falls short of the value of what was initially obtained.

Section 73d CC[705] Determination of the value of the obtained; estimate
(1) In determining the value of what has been obtained, the expenses incurred by the perpetrator, participant or other are to be deducted. What is disregarded, however, is what has been spent or used to commit the act or to prepare for it, insofar as it is not a question of services to fulfil a liability towards the injured party.
(2) The scope and value of what has been earned, including the expenses to be deducted, can be estimated"
See Section 73 et seq. Criminal Procedure Code (*Strafgesetzbuch*)[706]:
· "Seventh title confiscation

[704] "**§ 73c Einziehung des Wertes von Taterträgen**
Ist die Einziehung eines Gegenstandes wegen der Beschaffenheit des Erlangten oder aus einem anderen Grund nicht möglich oder wird von der Einziehung eines Ersatzgegenstandes nach § 73 Absatz 3 oder nach § 73b Absatz 3 abgesehen, so ordnet das Gericht die Einziehung eines Geldbetrages an, der dem Wert des Erlangten entspricht. Eine solche Anordnung trifft das Gericht auch neben der Einziehung eines Gegenstandes, soweit dessen Wert hinter dem Wert des zunächst Erlangten zurückbleibt"
[705] **§ 73d Bestimmung des Wertes des Erlangten; Schätzung**
(1) Bei der Bestimmung des Wertes des Erlangten sind die Aufwendungen des Täters, Teilnehmers oder des anderen abzuziehen. Außer Betracht bleibt jedoch das, was für die Begehung der Tat oder für ihre Vorbereitung aufgewendet oder eingesetzt worden ist, soweit es sich nicht um Leistungen zur Erfüllung einer Verbindlichkeit gegenüber dem Verletzten der Tat handelt.
(2) Umfang und Wert des Erlangten einschließlich der abzuziehenden Aufwendungen können geschätzt werden.
[706] "Siebenter Titel
Einziehung
§ 73 Einziehung von Taterträgen bei Tätern und Teilnehmern
§ 73a Erweiterte Einziehung von Taterträgen bei Tätern und Teilnehmern
§ 73b Einziehung von Taterträgen bei anderen
§ 73c Einziehung des Wertes von Taterträgen
§ 73d Bestimmung des Wertes des Erlangten; Schätzung
§ 73e Ausschluss der Einziehung des Tatertrages oder des Wertersatzes
§ 74 Einziehung von Tatprodukten, Tatmitteln und Tatobjekten bei Tätern und Teilnehmern
§ 74a Einziehung von Tatprodukten, Tatmitteln und Tatobjekten bei anderen
§ 74b Sicherungseinziehung
§ 74c Einziehung des Wertes von Tatprodukten, Tatmitteln
und Tatobjekten bei Tätern und Teilnehmern
§ 74d Einziehung von Verkörperungen eines Inhalts und Unbrauchbarmachung
§ 74e Sondervorschrift für Organe und Vertreter
§ 74f Grundsatz der Verhältnismäßigkeit
§ 75 Wirkung der Einziehung
§ 76 Nachträgliche Anordnung der Einziehung des Wertersatzes
§ 76a Selbständige Einziehung
§ 76b Verjährung der Einziehung von Taterträgen und des Wertes von Taterträgen"

- s. 73 Confiscation of crime proceeds from perpetrators and participants
- s. 73a Extended confiscation of crime proceeds from perpetrators and participants
- s. 73b Confiscation of Proceeds of Crime from Others
- s. 73c Confiscation of Value of Proceeds of Crime
- s. 73d Determining the Value of Earned; estimate
- s. 73e Exclusion of confiscation of the proceeds of the crime or compensation
- s. 74 Confiscation of crime products, means and objects of crime from perpetrators and participants
- s. 74a Confiscation of products, means and objects of crime from others
- s. 74b security confiscation
- s. 74c Confiscation of the value of crime products, crime means and crim objects in perpetrators and participants
- s. 74d Confiscation of incarnations of content and rendering unusable
- s. 74e special provision for organs and representatives
- s. 74f principle of proportionality
- s. 75 Effect of confiscation
- s. 76 Subsequent order for the confiscation of the replacement value
- s. 76a Independent confiscation
- s. 76b Statute of limitations on the confiscation of proceeds of crime and the value of proceeds of crime"

➢ The possibility of the execution of the arrest of assets through an attachment order (ss. 73 ff. StGB in connection with ss. 111b, 111d, 111e, 111f paragraph 3 sentence 3 CPC in connection with ss. 928, 930, 829, 840 ZPO) was analysed by the German Parliament in the draft process for the EPPO adoption law.[707]
➢ Cf. above for ss. 73 et seq Criminal Code (*Strafgesetzbuch*)

[707] Cf. RefE, pp. "Vollziehung des Vermögensarrestes durch einen Pfändungsbeschluss (§§ 73 ff. StGB in Verbindung mit §§ 111b, 111d, 111e, 111f Absatz 3 Satz 3 CPC in Verbindung mit den §§ 928, 930, 829, 840 ZPO)".

43

Criminal Procedure Code

Section 111b[708] **Seizure to secure confiscation or rendering unusable of object**

(1) If it is reasonable to assume that the conditions for the confiscation or rendering unusable of an object are met, the object may be seized to secure enforcement. If there are cogent reasons justifying this assumption, such seizure shall be ordered. Section 94 para. 3 shall remain unaffected.

(2) Sections 102 to 110 shall apply accordingly.

Section 111c[709] **Enforcement of seizure**

(1) The seizure of movable property shall be enforced by way of taking the property into custody. It may also be indicated by marking with a seal or in some other manner.

(2) The seizure of a claim or another property right which is not subject to the provisions governing compulsory enforcement against immovable property shall be enforced by way of attachment. The provisions of the Code of Civil Procedure governing compulsory enforcement in respect of claims and other property rights shall apply analogously. The request in respect of making the declarations referred to in section 840 para. 1 of the Code of Civil Procedure shall be included in the order of attachment.

(3) The seizure of land or of a right which is subject to the provisions governing compulsory enforcement against immovable property shall be enforced by way of making an entry in the Land Registry. The provisions of the Act on Enforced Auction and Receivership (Gesetz über die Zwangsversteigerung und Zwangsverwaltung) governing the scope of the seizure in the case of forced sale shall apply accordingly.

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[708] "**§ 111b Beschlagnahme zur Sicherung der Einziehung oder Unbrauchbarmachung**
(1) Ist die Annahme begründet, dass die Voraussetzungen der Einziehung oder Unbrauchbarmachung eines Gegenstandes vorliegen, so kann er zur Sicherung der Vollstreckung beschlagnahmt werden. Liegen dringende Gründe für diese Annahme vor, so soll die Beschlagnahme *angeordnet werden*. § 94 Absatz 3 bleibt unberührt.
(2) Die §§ 102 bis 110 gelten entsprechend"

[709] "**§ 111c Vollziehung der Beschlagnahme**
(1) Die Beschlagnahme einer beweglichen Sache wird dadurch vollzogen, dass die Sache in Gewahrsam genommen wird. Die Beschlagnahme kann auch dadurch vollzogen werden, dass sie durch Siegel oder in anderer Weise kenntlich gemacht wird.
(2) Die Beschlagnahme einer Forderung oder eines anderen Vermögensrechtes, das nicht den Vorschriften über die Zwangsvollstreckung in das unbewegliche Vermögen unterliegt, wird durch Pfändung vollzogen. Die Vorschriften der Zivilprozessordnung über die Zwangsvollstreckung in Forderungen und andere Vermögensrechte sind insoweit sinngemäß anzuwenden. Die Aufforderung zur Abgabe der in § 840 Absatz 1 der Zivilprozessordnung bezeichneten Erklärungen ist in den Pfändungsbeschluss aufzunehmen.
(3) Die Beschlagnahme eines Grundstücks oder eines Rechts, das den Vorschriften über die Zwangsvollstreckung in das unbewegliche Vermögen unterliegt, wird durch ihre Eintragung im Grundbuch vollzogen. Die Vorschriften des Gesetzes über die Zwangsversteigerung und Zwangsverwaltung über den Umfang der Beschlagnahme bei der Zwangsversteigerung gelten entsprechend.
(4) Die Beschlagnahme eines Schiffes, eines Schiffsbauwerks oder eines Luftfahrzeugs wird nach Absatz 1 vollzogen. Ist der Gegenstand im Schiffs- oder Schiffsbauregister oder im Register für Pfandrechte an Luftfahrzeugen eingetragen, ist die Beschlagnahme in diesem Register einzutragen. Zu diesem Zweck können eintragungsfähige Schiffsbauwerke oder Luftfahrzeuge zur Eintragung angemeldet werden; die Vorschriften, die bei der Anmeldung durch eine Person, die auf Grund eines vollstreckbaren Titels eine Eintragung im Register verlangen kann, anzuwenden sind, gelten hierbei entsprechend"

(4) The seizure of a ship, a ship construction or an aircraft shall be enforced pursuant to para. 1. If the property has been entered in the Register of Ships, the Register of Ship Constructions or in the Register of Liens on Aircraft, an entry in respect of the seizure shall be made in the relevant register. Registrable ship constructions or aircraft may be registered for entry to that end; the provisions governing applications by persons entitled to request entry in the register by virtue of an executory title shall apply accordingly in this case.

Section 111d[710] **Effect of enforcement of seizure; return of movable property**
(1) The enforcement of seizure of an object shall have the same effect as the prohibition of disposal within the meaning of section 136 of the Civil Code (Bürgerliches Gesetzbuch). The effect of the seizure shall not be affected by the opening of insolvency proceedings against the person concerned's assets; measures taken pursuant to section 111c cannot be contested in such proceedings.
(2) The seized movable property may be returned to the person concerned if he pays a sum of money equal to the value of the asset. The sum paid shall take the place of the asset. It may also be surrendered to the person concerned, subject to revocation at any time, for his further use until the conclusion of the proceedings; the measure can be made dependent on the person concerned providing security or complying with certain conditions.

[710] "**§ 111d Wirkung der Vollziehung der Beschlagnahme; Rückgabe beweglicher Sachen**
(1) Die Vollziehung der Beschlagnahme eines Gegenstandes hat die Wirkung eines Veräußerungsverbotes im Sinne des § 136 des Bürgerlichen Gesetzbuchs. Die Wirkung der Beschlagnahme wird von der Eröffnung des Insolvenzverfahrens über das Vermögen des Betroffenen nicht berührt; Maßnahmen nach § 111c können in einem solchen Verfahren nicht angefochten werden.
(2) Eine beschlagnahmte bewegliche Sache kann dem Betroffenen zurückgegeben werden, wenn er einen den Wert der Sache entsprechenden Geldbetrag beibringt. Der beigebrachte Betrag tritt an die Stelle der Sache. Sie kann dem Betroffenen auch unter dem Vorbehalt jederzeitigen Widerrufs zur vorläufigen weiteren Benutzung bis zum Abschluss des Verfahrens überlassen werden; die Maßnahme kann davon abhängig gemacht werden, dass der Betroffene Sicherheit leistet oder bestimmte Auflagen erfüllt"

Section 111e[711] **Asset seizure to secure confiscation of equivalent sum of money**
(1) If it is reasonable to assume that the conditions for confiscation of the equivalent sum of money are met, seizure of the person concerned's movable and immovable assets may be ordered to secure enforcement. If there are cogent reasons justifying this assumption, such asset seizure shall be ordered.
(2) Asset seizure may also be ordered to secure enforcement of a fine and the anticipated costs of the criminal proceedings where a judgment or summary penalty order has been made against the accused.
(3) There shall be no seizure to secure the costs of enforcement.
(4) The claim to be secured, including the amount of money, shall be designated in the order. In addition, the order shall indicate a sum of money which the person concerned may deposit in order to avert enforcement of and demand the setting aside of the seizure; section 108 (1) of the Code of Civil Procedure shall apply accordingly.
(5) Sections 102 to 110 shall apply accordingly.
(6) The possibility of issuing an order pursuant to section 324 of the Fiscal Code shall prove no obstacle to issuing an order pursuant to para. 1.

Section 111f[712] **Enforcement of asset seizure**
(1) Asset seizure in respect of movable property, of a claim or another property right which is not subject to compulsory enforcement against immovable property shall be

[711] "**§ 111e Vermögensarrest zur Sicherung der Wertersatzeinziehung**
(1) Ist die Annahme begründet, dass die Voraussetzungen der Einziehung von Wertersatz vorliegen, so kann zur Sicherung der Vollstreckung der Vermögensarrest in das bewegliche und unbewegliche Vermögen des Betroffenen *angeordnet werden*. Liegen dringende Gründe für diese Annahme vor, so soll der Vermögensarrest *angeordnet werden*.
(2) Der Vermögensarrest kann auch zur Sicherung der Vollstreckung einer Geldstrafe und der voraussichtlichen Kosten des Strafverfahrens *angeordnet werden*, wenn gegen den Beschuldigten ein Urteil ergangen oder ein Strafbefehl erlassen worden ist.
(3) Zur Sicherung der Vollstreckungskosten ergeht kein Arrest.
(4) In der Anordnung ist der zu sichernde Anspruch unter Angabe des Geldbetrages zu bezeichnen. Zudem ist in der Anordnung ein Geldbetrag festzusetzen, durch dessen Hinterlegung der Betroffene die Vollziehung des Arrestes abwenden und die Aufhebung der Vollziehung des Arrestes verlangen kann; § 108 Absatz 1 der Zivilprozessordnung gilt entsprechend.
(5) Die §§ 102 bis 110 gelten entsprechend.
(6) Die Möglichkeit einer Anordnung nach § 324 der Abgabenordnung steht einer Anordnung nach Absatz 1 nicht entgegen"

[712] "111f Vollziehung des Vermögensarrestes
(1) Der Vermögensarrest in eine bewegliche Sache, in eine Forderung oder ein anderes Vermögensrecht, das nicht der Zwangsvollstreckung in das unbewegliche Vermögen unterliegt, wird durch Pfändung vollzogen. Die §§ 928 und 930 der Zivilprozessordnung gelten sinngemäß. § 111c Absatz 2 Satz 3 gilt entsprechend.
(2) Der Vermögensarrest in ein Grundstück oder ein Recht, das den Vorschriften über die Zwangsvollstreckung in das unbewegliche Vermögen unterliegt, wird durch Eintragung einer Sicherungshypothek bewirkt. Die §§ 928 und 932 der Zivilprozessordung gelten sinngemäß.
(3) Der Vermögensarrest in ein Schiff, ein Schiffsbauwerk oder ein Luftfahrzeug wird nach Absatz 1 bewirkt. Ist der Gegenstand im Schiffs- oder Schiffsbauregister oder im Register für Pfandrechte an Luftfahrzeugen eingetragen, gelten die §§ 928 und 931 der Zivilprozessordung sinngemäß.
(4) In den Fällen der Absätze 2 und 3 Satz 2 wird auch das Veräußerungsverbot nach § 111h Absatz 1 Satz 1 in Verbindung mit § 136 des Bürgerlichen Gesetzbuchs eingetragen.

enforced by way of attachment. Sections 928 and 930 of the Code of Civil Procedure shall apply analogously. Section 111c para. 2 sentence 3 shall apply accordingly.
(2) Asset seizure in respect of land or of a right which is governed by the provisions on compulsory enforcement against immovable property shall be enforced by means of entering a debt-securing mortgage. Sections 928 and 932 of the Code of Civil Procedure shall apply analogously.
(3) Asset seizure in respect of a ship, a ship under construction or an aircraft shall be enforced pursuant to para. 1. If the property has been entered in the Register of Ships, the Register of Ship Constructions or in the Register of Liens on Aircraft, sections 928 and 931 of the Code of Civil Procedure shall apply analogously.
(4) In the cases under para. 2 and para. 3 sentence 2, an entry shall also be made regarding the prohibition of disposal pursuant to section 111h para. 1 sentence 1 in conjunction with section 136 of the Civil Code.

Provision of the [German] Code of Civil Procedure (*Zivilprozessordnung*, ZPO)[713]
Section 928[714] **Enforcement of the seizure**
The rules governing compulsory enforcement shall apply mutatis mutandis to the enforcement of the seizure unless otherwise provided for by the sections hereinbelow.

Section 930[715] **Enforcement against movable property and receivables**
(1) The seizure of movable property is enforced by attachment. The attachment shall be implemented in accordance with the same principles as any other attachment; it creates a security right having the effects set out in section 804. The court responsible for the seizure shall have jurisdiction, as execution court, for the attachment of receivables.
(2) Any money that has been attached, and any amount of the proceeds accruing to the creditor in the course of the proceedings for the distribution of assets available for creditors, will be lodged.

[713] Translation by (except book 10) Samson Übersetzungen GmbH, Dr. Carmen von Schöning.
[714] **§ 928 Vollziehung des Arrestes Zivilprozessordnung**
Auf die Vollziehung des Arrestes sind die Vorschriften über die Zwangsvollstreckung entsprechend anzuwenden, soweit nicht die nachfolgenden Paragraphen abweichende Vorschriften enthalten.
[715] **§ 930 Vollziehung in bewegliches Vermögen und Forderungen Zivilprozessordnung**
(1) Die Vollziehung des Arrestes in bewegliches Vermögen wird durch Pfändung bewirkt. Die Pfändung erfolgt nach denselben Grundsätzen wie jede andere Pfändung und begründet ein Pfandrecht mit den im § 804 bestimmten Wirkungen. Für die Pfändung einer Forderung ist das Arrestgericht als Vollstreckungsgericht zuständig.
(2) Gepfändetes Geld und ein im Verteilungsverfahren auf den Gläubiger fallender Betrag des Erlöses werden hinterlegt.
(3) Das Vollstreckungsgericht kann auf Antrag anordnen, dass eine bewegliche körperliche Sache, wenn sie der Gefahr einer beträchtlichen Wertverringerung ausgesetzt ist oder wenn ihre Aufbewahrung unverhältnismäßige Kosten verursachen würde, versteigert und der Erlös hinterlegt werde.
(4) Die Vollziehung des Arrestes in ein nicht eingetragenes Seeschiff ist unzulässig, wenn sich das Schiff auf der Reise befindet und nicht in einem Hafen liegt.

(3) The court responsible for execution may direct, upon corresponding application being made, that a movable asset of a physical nature be sold at auction if it is subject to the risk of a significant loss of value or if its storage would entail unreasonable costs, and that the proceeds be lodged.
(4) Enforcing seizure against an unregistered ocean-going vessel is inadmissible where the vessel is travelling and not lying at harbour.

Section 829[716] **Attachment of a monetary claim**
(1) In cases in which a monetary claim is to be attached, the court is to prohibit the third-party debtor from making payment to the debtor. Concurrently, the court is to issue an order to the debtor that he is to refrain from any disposition over the claim, in particular its collection. The attachment of several monetary claims against various third-party debtors is to be ordered by a uniform court order, upon the creditor filing a corresponding petition, provided that this appears to be mandated for the enforcement purpose and further provided that there is no reason to assume that interests warranting protection of the third-party debtor would contravene this.
(2) The creditor is to have the court order served on the third-party debtor. The court-appointed enforcement officer is to immediately serve the order, together with a copy of the record of service, on the debtor, unless service by publication is required. Where a debtor is located abroad, the order shall not be served and instead shall be mailed.
(3) Upon the order being served on the third-party debtor, the attachment is to be deemed as having been effected.
(4) The Federal Ministry of Justice is authorised to introduce forms serving the petition for the court to issue an order of attachment and transfer, such forms being subject to approval by the Bundesrat and being made by statutory instrument. To the extent forms

[716] **§ 829 Pfändung einer Geldforderung Zivilprozessordnung**
(1) Soll eine Geldforderung gepfändet werden, so hat das Gericht dem Drittschuldner zu verbieten, an den Schuldner zu zahlen. Zugleich hat das Gericht an den Schuldner das Gebot zu erlassen, sich jeder Verfügung über die Forderung, insbesondere ihrer Einziehung, zu enthalten. Die Pfändung mehrerer Geldforderungen gegen verschiedene Drittschuldner soll auf Antrag des Gläubigers durch einheitlichen Beschluss ausgesprochen werden, soweit dies für Zwecke der Vollstreckung geboten erscheint und kein Grund zu der Annahme besteht, dass schutzwürdige Interessen der Drittschuldner entgegenstehen.
(2) Der Gläubiger hat den Beschluss dem Drittschuldner zustellen zu lassen. Der Gerichtsvollzieher hat dem Schuldner den Beschluss mit dem Zustellungsnachweis sofort zuzustellen, sofern nicht eine öffentliche Zustellung erforderlich ist. An Stelle einer an den Schuldner im Ausland zu bewirkenden Zustellung erfolgt die Zustellung durch Aufgabe zur Post, sofern die Zustellung weder nach der Verordnung (EG) Nr. 1393/2007 noch nach dem Abkommen zwischen der Europäischen Gemeinschaft und dem Königreich Dänemark über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke in Zivil- und Handelssachen vom 19. Oktober 2005 (ABl. L 300 vom 17.11.2005, S. 55, L 120 vom 5.5.2006, S. 23) zu bewirken ist.
(3) Mit der Zustellung des Beschlusses an den Drittschuldner ist die Pfändung als bewirkt anzusehen.
(4) Das Bundesministerium der Justiz und für Verbraucherschutz wird ermächtigt, durch Rechtsverordnung mit Zustimmung des Bundesrates Formulare für den Antrag auf Erlass eines Pfändungs- und Überweisungsbeschlusses einzuführen. Soweit nach Satz 1 Formulare eingeführt sind, muss sich der Antragsteller ihrer bedienen. Für Verfahren bei Gerichten, die die Verfahren elektronisch bearbeiten, und für Verfahren bei Gerichten, die die Verfahren nicht elektronisch bearbeiten, können unterschiedliche Formulare eingeführt werden.

have been introduced in accordance with the first sentence, the petitioner must use them. Different types of forms may be introduced for proceedings before courts that process these matters electronically, and for proceedings before courts that do not process these matters electronically.

Section 840[717] **Obligation of the third-party debtor to make declarations**
(1) Upon the creditor so demanding, the third-party debtor is to declare to the creditor, within two (2) weeks of the date on which the attachment order was served:
1. Whether and to what extent he acknowledges the claim as being justified and is prepared to make payment;
2. Whether any other persons are pursuing any claims, and if so, which these claims are;
3. Whether any claims have already been attached for other creditors, and if so, which these claims are
4. Whether an order has been issued in the course of the past twelve (12) months instructing that the balance credited to the account of which the credit balance has been attached is exempted from attachment in accordance with section 850l, and
5. Whether or not the account of which the balance has been attached is an account exempted from attachment in the sense as defined by section 850k (7).
(2) The record of service must include the notice that such declarations are to be made. The third-party debtor shall be liable to the creditor for any damage arising from the failure to fulfil his obligations.
(3) The declarations by the third-party debtor may be made to the court-appointed enforcement officer at the time the attachment order is served or within the period determined in the first section.

[717] **§ 840 Erklärungspflicht des Drittschuldners Zivilprozessordnung**
(1) Auf Verlangen des Gläubigers hat der Drittschuldner binnen zwei Wochen, von der Zustellung des Pfändungsbeschlusses an gerechnet, dem Gläubiger zu erklären:
1. ob und inwieweit er die Forderung als begründet anerkenne und Zahlung zu leisten bereit sei;
2. ob und welche Ansprüche andere Personen an die Forderung machen;
3. ob und wegen welcher Ansprüche die Forderung bereits für andere Gläubiger gepfändet sei;
4.ob innerhalb der letzten zwölf Monate im Hinblick auf das Konto, dessen Guthaben gepfändet worden ist, nach § 907 die Unpfändbarkeit des Guthabens festgesetzt worden ist, und
5. ob es sich bei dem Konto, dessen Guthaben gepfändet worden ist, um ein Pfändungsschutzkonto im Sinne des § 850k oder ein Gemeinschaftskonto im Sinne des § 850l handelt; bei einem Gemeinschaftskonto ist zugleich anzugeben, ob der Schuldner nur gemeinsam mit einer oder mehreren anderen Personen verfügungsbefugt ist.
(2) Die Aufforderung zur Abgabe dieser Erklärungen muss in die Zustellungsurkunde aufgenommen werden; bei Zustellungen nach § 193a muss die Aufforderung als elektronisches Dokument zusammen mit dem Pfändungsbeschluss übermittelt werden. Der Drittschuldner haftet dem Gläubiger für den aus der Nichterfüllung seiner Verpflichtung entstehenden Schaden.
(3) Die Erklärungen des Drittschuldners können innerhalb der in Absatz 1 bestimmten Frist auch gegenüber dem Gerichtsvollzieher abgegeben werden. Werden die Erklärungen bei einer Zustellung des Pfändungsbeschlusses nach § 193 abgegeben, so sind sie in die Zustellungsurkunde aufzunehmen und von dem Drittschuldner zu unterschreiben.

(2) National legislation and subject to confiscation Status by the trial court

⚖ **National jurisprudence:**

- **Cum-ex-fraud**
- LG Bonn, 18.03.2020 – 62 KLs – 213 Js 41/19 – 1/19.
- BGH, 28.07.2021 – 1 StR 519/20 =NStZ 2022, 176 [cum ex-fraud constitutes punishable tax fraud, to confiscate the proceeds of a crime despite the statute of limitations having expired].
- BVerfG, 22.11.2021 – 2 BvR 1872/21 =NStZ–RR 2022, 19 [cum ex Judgments do not infringe the Constitution].
- BVerfG, 07.04.2022 – 2 BvR 2194/21.

ee. Para 1(e) Interception of electronic communications to and from the suspect or accused person

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

44 One of the **most intrusive and therefore highly sensitive** investigation measures in Germany is the interception of electronic communication to and from the suspect or accused person. The measure is restricted to certain **thresholds, crime catalogues and judicial authorisations** as well procedural steps and proportionality assessments.[718] The following part of the Compendium offers the reader the possibility to read in a synoptical style the relevant provisions. Relevant ***case law*** can be taken from above → "A. I. Leading Cases and Case Collection":

45 *Synopsis 7: Telecommunications Surveillance*

Section 100a Telecommunications Surveillance	**§ 100a Telekommunikationsüberwachung**
(1) Even without the knowledge of those affected, telecommunications may be monitored and recorded if	(1) Auch ohne Wissen der Betroffenen darf die Telekommunikation überwacht und aufgezeichnet werden, wenn
1. Certain facts give rise to the suspicion that someone as a perpetrator or participant has committed a serious crime referred to in paragraph 2, tried to commit in cases in which the attempt is punishable, or has prepared it by means of a criminal offence,	1. bestimmte Tatsachen den Verdacht begründen, dass jemand als Täter oder Teilnehmer eine in Absatz 2 bezeichnete schwere Straftat begangen, in Fällen, in denen der Versuch strafbar ist, zu begehen versucht, oder durch eine Straftat vorbereitet hat,

[718] See Decker 2021, Chapter 13 pp. 177 et seq; Asholt 2022, vol. 8, § 31, Mn. 1 et seq.; Vogel et al. 2021, pp. 771 et seq; see Wisneth 2006, pp. 319 et seq. mn. 778 on all requirements and with a sample draft for a decision/order on telecommunication surveillance on p. 327, mn. 796 (*TKÜ-Formularbeschluss*).

2. the act weighs heavily in individual cases and 3. the investigation of the facts or the determination of the whereabouts of the accused would otherwise be significantly more difficult or futile. The monitoring and recording of telecommunications may also take place in such a way that technical means are used to intervene in the information technology systems used by the person concerned, if this is necessary to enable monitoring and recording, especially in unencrypted form. The content and circumstances of the communication stored on the information technology system of the person concerned may be monitored and recorded if they could have been monitored and recorded in encrypted form during the ongoing transmission process in the public telecommunications network.	2. die Tat auch im Einzelfall schwer wiegt und 3. die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise wesentlich erschwert oder aussichtslos wäre. Die Überwachung und Aufzeichnung der Telekommunikation darf auch in der Weise erfolgen, dass mit technischen Mitteln in von dem Betroffenen genutzte informationstechnische Systeme eingegriffen wird, wenn dies notwendig ist, um die Überwachung und Aufzeichnung insbesondere in unverschlüsselter Form zu ermöglichen. Auf dem informationstechnischen System des Betroffenen gespeicherte Inhalte und Umstände der Kommunikation dürfen überwacht und aufgezeichnet werden, wenn sie auch während des laufenden Übertragungsvorgangs im öffentlichen Telekommunikationsnetz in verschlüsselter Form hätten überwacht und aufgezeichnet werden können.
(2) Serious criminal offences within the meaning of paragraph 1 No. 1 are: 1. from the Criminal Code: a) Offences of peace treason, high treason and endangering the democratic constitutional state as well as treason and endangering external security according to Sections 80a to 82, 84 to 86, 87 to 89a, 89c paragraphs 1 to 4, 94 to 100a, b) Bribery and bribery of mandate holders according to s. 108e, c) Offences against national defence according to Sections 109d to 109h,	(2) Schwere Straftaten im Sinne des Absatzes 1 Nr. 1 sind: 1. aus dem Strafgesetzbuch: a) Straftaten des Friedensverrats, des Hochverrats und der Gefährdung des demokratischen Rechtsstaates sowie des Landesverrats und der Gefährdung der äußeren Sicherheit nach den ss. 80a bis 82, 84 bis 86, 87 bis 89a, 89c Absatz 1 bis 4, 94 bis 100a, b) Bestechlichkeit und Bestechung von Mandatsträgern nach s. 108e, c) Straftaten gegen die Landesverteidigung nach den ss. 109d bis 109h,

d) Offences against public order in accordance with Sections 129 to 130,	d) Straftaten gegen die öffentliche Ordnung nach den ss. 129 bis 130,
e) Counterfeiting of money and stamps according to Sections 146 and 151, in each case also in conjunction with Section 152, as well as according to Section 152a Paragraph 3 and Section 152b Paragraph 1 to 4,	e) Geld- und Wertzeichenfälschung nach den ss. 146 und 151, jeweils auch in Verbindung mit s. 152, sowie nach s. 152a Abs. 3 und s. 152b Abs. 1 bis 4,
f) Offences against sexual self-determination in the cases of Sections 176a, 176b and, under the conditions specified in Section 177 para. 6 sentence 2 number 2, of Section 177,	f) Straftaten gegen die sexuelle Selbstbestimmung in den Fällen der ss. 176a, 176b und, unter den in s. 177 Absatz 6 Satz 2 Nummer 2 genannten Voraussetzungen, des s. 177,
g) Distribution, acquisition and possession of child and youth pornographic content in accordance with Section 184b Paragraph 1 and 2, Section 184c Paragraph 2,	g) Verbreitung, Erwerb und Besitz kinder- und jugendpornographischer Inhalte nach s. 184b Absatz 1 und 2, s. 184c Absatz 2,
h) Murder and manslaughter according to Sections 211 and 212,	h) Mord und Totschlag nach den ss. 211 und 212,
i) Offences against personal freedom under sections 232, 232a paras. 1 to 5, sections 232b, 233 para. 2, sections 233a, 234, 234a, 239a and 239b,	i) Straftaten gegen die persönliche Freiheit nach den ss. 232, 232a Absatz 1 bis 5, den ss. 232b, 233 Absatz 2, den ss. 233a, 234, 234a, 239a und 239b,
j) gang theft according to s. 244 paragraph 1 no.2, burglary according to s. 244 paragraph 4 and serious gang theft according to s. 244a,	j) Bandendiebstahl nach s. 244 Abs. 1 Nr. 2, Wohnungseinbruchdiebstahl nach s. 244 Absatz 4 und schwerer Bandendiebstahl nach s. 244a,
k) offences of robbery and extortion according to ss. 249 to 255,	k) Straftaten des Raubes und der Erpressung nach den ss. 249 bis 255,
l) professional stealing, gang stealing and professional gang stealing according to ss. 260 and 260a,	l) gewerbsmäßige Hehlerei, Bandenhehlerei und gewerbsmäßige Bandenhehlerei nach den ss. 260 und 260a,
m) Money laundering in accordance with Section 261, if the predicate offence is one of the serious crimes listed in numbers 1 to 11,	m) Geldwäsche nach s. 261, wenn die Vortat eine der in den Nummern 1 bis 11 genannten schweren Straftaten ist,
n) Fraud and computer fraud under the conditions specified in Section 263 para.	n) Betrug und Computerbetrug unter den in s. 263 Abs. 3 Satz 2 genannten

3 sentence 2 and in the case of Section 263 (5), in each case also in conjunction with Section 263a para. 2,	Voraussetzungen und im Falle des s. 263 Abs. 5, jeweils auch in Verbindung mit s. 263a Abs. 2,
o) Subsidy fraud under the conditions specified in Section 264 para. 2 sentence 2 and in the case of Section 264 para. 3 in conjunction with Section 263 (5),	o) Subventionsbetrug unter den in s. 264 Abs. 2 Satz 2 genannten Voraussetzungen und im Falle des s. 264 Abs. 3 in Verbindung mit s. 263 Abs. 5,
p) Sports betting fraud and manipulation of professional sports competitions under the conditions specified in Section 265e sentence 2,	p) Sportwettbetrug und Manipulation von berufssportlichen Wettbewerben unter den in s. 265e Satz 2 genannten Voraussetzungen,
q) Withholding and misappropriating pay under the conditions set out in Section 266a para. 4 sentence 2 number 4,	q) Vorenthalten und Veruntreuen von Arbeitsentgelt unter den in s. 266a Absatz 4 Satz 2 Nummer 4 genannten Voraussetzungen,
r) Offences of forgery of documents under the conditions specified in Section 267 para. 3 sentence 2 and in the case of Section 267 (4), in each case also in conjunction with Section 268 para. 5 or Section 269 (3), as well as in accordance with Section 275 (4). 2 and Section 276 para. 2,	r) Straftaten der Urkundenfälschung unter den in s. 267 Abs. 3 Satz 2 genannten Voraussetzungen und im Fall des s. 267 Abs. 4, jeweils auch in Verbindung mit s. 268 Abs. 5 oder s. 269 Abs. 3, sowie nach s. 275 Abs. 2 und s. 276 Abs. 2,
s) bankruptcy under the conditions specified in Section 283a sentence 2,	s) Bankrott unter den in s. 283a Satz 2 genannten Voraussetzungen,
t) criminal offences against competition according to s. 298 and, under the conditions specified in s. 300 sentence 2, according to s. 299,	t) Straftaten gegen den Wettbewerb nach s. 298 und, unter den in s. 300 Satz 2 genannten Voraussetzungen, nach s. 299,
u) Publicly dangerous offences in the cases of Sections 306 to 306c, 307 Paragraphs 1 to 3, Section 308 Paragraphs 1 to 3, Section 309 Paragraphs 1 to 4, Section 310 Paragraph 1, and Sections 313, 314, 315 Paragraph 3, Section 315b Paragraph 3 and Sections 316a and 316c,	u) gemeingefährliche Straftaten in den Fällen der ss. 306 bis 306c, 307 Abs. 1 bis 3, des s. 308 Abs. 1 bis 3, des s. 309 Abs. 1 bis 4, des s. 310 Abs. 1, der ss. 313, 314, 315 Abs. 3, des s. 315b Abs. 3 sowie der ss. 316a und 316c,
v) Bribery and bribery according to Sections 332 and 334,	v) Bestechlichkeit und Bestechung nach den ss. 332 und 334,
2. from the tax code:	2. aus der Abgabenordnung:

a) Tax evasion under the conditions set out in Section 370 Paragraph 3 Sentence 2 No. 5, b) commercial, violent and gang smuggling in accordance with Section 373, c) Tax stealing in the case of Section 374 para. 2, 3. from the anti-doping law: criminal offences according to s. 4 paragraph 4 number 2 letter b, 4. from the Asylum Act: a) Induction into abusive applications for asylum in accordance with Section 84 (3), b) commercial and gang-like induction to abusive applications for asylum according to s. 84a, 5. from the Residence Act: a) smuggling in foreigners in accordance with Section 96 para. 2, b) Smuggling in resulting in death and smuggling in as a commercial or gang-like smuggling in accordance with Section 97, 5a. from the Basic Materials Act: criminal offences Section 13(3), 6. from the Foreign Trade Act: intentional criminal offences according to Sections 17 and 18 of the Foreign Trade Act, 7. from the Narcotics Act: a) Criminal offences in accordance with one of the conditions set out in Section 29 Paragraph 3 Clause 2 No. 1 in conjunction with b) Offences under sections 29a and 30(1)	a) Steuerhinterziehung unter den in s. 370 Abs. 3 Satz 2 Nr. 5 genannten Voraussetzungen, b) gewerbsmäßiger, gewaltsamer und bandenmäßiger Schmuggel nach s. 373, c) Steuerhehlerei im Falle des s. 374 Abs. 2, 3. aus dem Anti-Doping-Gesetz: Straftaten nach s. 4 Absatz 4 Nummer 2 Buchstabe b, 4. aus dem Asylgesetz: a) Verleitung zur missbräuchlichen Asylantragstellung nach s. 84 Abs. 3, b) gewerbs- und bandenmäßige Verleitung zur missbräuchlichen Asylantragstellung nach s. 84a, 5. aus dem Aufenthaltsgesetz: a) Einschleusen von Ausländern nach s. 96 Abs. 2, b) Einschleusen mit Todesfolge und gewerbs- und bandenmäßiges Einschleusen nach s. 97, 5a. aus dem Ausgangsstoffgesetz: Straftaten nach s. 13 Absatz 3, 6. aus dem Außenwirtschaftsgesetz: vorsätzliche Straftaten nach den ss. 17 und 18 des Außenwirtschaftsgesetzes, 7. aus dem Betäubungsmittelgesetz: a) Straftaten nach einer in s. 29 Abs. 3 Satz 2 Nr. 1 in Bezug genommenen Vorschrift unter den dort genannten Voraussetzungen, b) Straftaten nach den ss. 29a, 30 Abs. 1 Nr. 1, 2 und 4 sowie den ss. 30a und 30b,

8. under the Basic Substances Monitoring Act (Grundstoffüberwachungsgesetz): offences pursuant to section 19(1) under the conditions specified in section 19(3), second sentence;	8. aus dem Grundstoffüberwachungsgesetz: Straftaten nach s. 19 Abs. 1 unter den in s. 19 Abs. 3 Satz 2 genannten Voraussetzungen,
9. under the War Weapons Control Act (Kriegswaffenkontrollgesetz): a) offences pursuant to sections 19(1)–(3) and section 20(1) and (2) as well as section 20a(1)–(3), each also in conjunction with section 21; b) offences pursuant to section 22a(1)–(3);	9. aus dem Gesetz über die Kontrolle von Kriegswaffen: a) Straftaten nach s. 19 Abs. 1 bis 3 und s. 20 Abs. 1 und 2 sowie s. 20a Abs. 1 bis 3, jeweils auch in Verbindung mit s. 21, b) Straftaten nach s. 22a Abs. 1 bis 3,
9a. under the New Psychoactive Substances Act (Neue-psychoaktive-Stoffe-Gesetz): offences pursuant to section 4(3) no. 1(a);	9a. aus dem Neue-psychoaktive-Stoffe-Gesetz: Straftaten nach s. 4 Absatz 3 Nummer 1 Buchstabe a,
10. under the Code of Crimes against International Law (Völkerstrafgesetzbuch): a) genocide pursuant to section 6, b) crimes against humanity pursuant to section 7, c) war crimes pursuant to sections 8–12, d) crime of aggression pursuant to section 13;	10. aus dem Völkerstrafgesetzbuch: a) Völkermord nach s. 6, b) Verbrechen gegen die Menschlichkeit nach s. 7, c) Kriegsverbrechen nach den ss. 8–12, d) Verbrechen der Aggression nach s. 13,
11. under the Weapons Act (Waffengesetz): a) offences pursuant to section 51(1)–(3), b) offences pursuant to section 52(1) nos. 1 and 2(c) and (d) as well as subsections (5) and (6).	11. aus dem Waffengesetz: a) Straftaten nach s. 51 Abs. 1 bis 3, b) Straftaten nach s. 52 Abs. 1 Nr. 1 und 2 Buchstabe c und d sowie Abs. 5 und 6.
(3) An order [for surveillance] may be directed only against the accused or against persons where specific facts justify the assumption that they receive or transmit communications intended for the accused or originating from him, or	(3) Die Anordnung darf sich nur gegen den Beschuldigten oder gegen Personen richten, von denen auf Grund bestimmter Tatsachen anzunehmen ist, dass sie für den Beschuldigten bestimmte oder von ihm herrührende Mitteilungen entgegennehmen oder weitergeben oder dass der Beschuldigte ihren Anschluss

that the accused uses their telecommunications connection or information technology system.
(4) On the basis of an order for the monitoring and recording of telecommunications, every person providing or participating in the provision of telecommunications services shall be obliged to enable these measures for the court, the public prosecutor's office, and their investigating officers acting in the police service (section 152 of the Courts Constitution Act) and to furnish the necessary information without delay.
The Telecommunications Act and the Telecommunications Surveillance Ordinance determine whether and to what extent technical arrangements must be made for this purpose. Section 95(2) shall apply mutatis mutandis.
(5) For measures pursuant to subsection (1), second and third sentences, it must be ensured by technical means that:
1. only the following may be monitored and recorded:
a) the current telecommunications (subsection 1, second sentence), or
b) the content and circumstances of communication which, as from the time of the order pursuant to section 100e(1), could also have been monitored and recorded during an ongoing transmission in the public telecommunications network (subsection 1, third sentence);

2. only those modifications are made to the information technology system that are indispensable for data collection;

oder ihr informationstechnisches System benutzt.

(4) Auf Grund der Anordnung einer Überwachung und Aufzeichnung der Telekommunikation hat jeder, der Telekommunikationsdienste erbringt oder daran mitwirkt, dem Gericht, der Staatsanwaltschaft und ihren im Polizeidienst tätigen Ermittlungspersonen (s. 152 des Gerichtsverfassungsgesetzes) diese Maßnahmen zu ermöglichen und die erforderlichen Auskünfte unverzüglich zu erteilen. Ob und in welchem Umfang hierfür Vorkehrungen zu treffen sind, bestimmt sich nach dem Telekommunikationsgesetz und der Telekommunikations-Überwachungsverordnung. s. 95 Absatz 2 gilt entsprechend.

(5) Bei Maßnahmen nach Absatz 1 Satz 2 und 3 ist technisch sicherzustellen, dass
1. ausschließlich überwacht und aufgezeichnet werden können:
a) die laufende Telekommunikation (Absatz 1 Satz 2), oder
b) Inhalte und Umstände der Kommunikation, die ab dem Zeitpunkt der Anordnung nach s. 100e Absatz 1 auch während des laufenden Übertragungsvorgangs im öffentlichen Telekommunikationsnetz hätten überwacht und aufgezeichnet werden können (Absatz 1 Satz 3),
2. an dem informationstechnischen System nur Veränderungen vorgenommen werden, die für die Datenerhebung unerlässlich sind, und

3. and such modifications are automatically reversed at the end of the measure, insofar as technically possible. The technical means employed must be protected against unauthorized use according to the state of the art. Copied data must likewise be protected against alteration, unauthorized deletion, and unauthorized access in accordance with the state of the art. (6) For each use of the technical device, the following must be logged: the designation of the technical means and the time of its use, details identifying the information technology system and any non-transitory modifications made to it, data enabling the determination of the I formation collected, and the organizational unit carrying out the measure.	3. die vorgenommenen Veränderungen bei Beendigung der Maßnahme, soweit technisch möglich, automatisiert rückgängig gemacht werden. Das eingesetzte Mittel ist nach dem Stand der Technik gegen unbefugte Nutzung zu schützen. Kopierte Daten sind nach dem Stand der Technik gegen Veränderung, unbefugte Löschung und unbefugte Kenntnisnahme zu schützen. (6) Bei jedem Einsatz des technischen Mittels sind zu protokollieren die Bezeichnung des technischen Mittels und der Zeitpunkt seines Einsatzes, die Angaben zur Identifizierung des informationstechnischen Systems und die daran vorgenommenen nicht nur flüchtigen Veränderungen, die Angaben, die die Feststellung der erhobenen Daten ermöglichen, und die Organisationseinheit, die die Maßnahme durchführt.
See above for the full wording of s. 100g Traffic data capture CPC, which may apply under Art. 30 para. 1 (e) EPPO Regulation, too.	
Section. 100g collection of traffic data (1) Certain facts justify the suspicion that someone is a perpetrator or participant 1. has committed a criminal offence of considerable importance in individual cases, in particular a criminal offence specified in Section 100a para. 2, in cases in which the attempt is punishable, has attempted to commit or has prepared for a criminal offence, or 2. has committed an offence using telecommunications, traffic data (Section 96 para. 1 of the Telecommunications Act and Section 2a para. 1 of the Act on the Establishment of a Federal Agency for	**s. 100g Erhebung von Verkehrsdaten** (1) Begründen bestimmte Tatsachen den Verdacht, dass jemand als Täter oder Teilnehmer 1. eine Straftat von auch im Einzelfall erheblicher Bedeutung, insbesondere eine in s. 100a Absatz 2 bezeichnete Straftat, begangen hat, in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat oder durch eine Straftat vorbereitet hat oder 2. eine Straftat mittels Telekommunikation begangen hat, so dürfen Verkehrsdaten (s. 96 Absatz 1 des Telekommunikationsgesetzes und s. 2a Absatz 1 des Gesetzes über die Errichtung

Digital Radio for Authorities and Organisations with Security Tasks) may be collected if this is necessary for research into the facts and the collection of the data in is proportionate to the importance of the matter. In the case of sentence 1 number 2, the measure is only permissible if research into the facts of the case in any other way would be futile. According to this paragraph, the collection of stored (retrograde) location data is only permitted under the conditions of paragraph 2. Incidentally, the collection of location data is only permitted for future traffic data or in real time and only in the case of sentence 1 number 1, insofar as it is necessary for researching the facts or determining the whereabouts of the accused. (2)–(3) [...]	einer Bundesanstalt für den Digitalfunk der Behörden und Organisationen mit Sicherheitsaufgaben) erhoben werden, soweit dies für die Erforschung des Sachverhalts erforderlich ist und die Erhebung der Daten in einem angemessenen Verhältnis zur Bedeutung der Sache steht. Im Fall des Satzes 1 Nummer 2 ist die Maßnahme nur zulässig, wenn die Erforschung des Sachverhalts auf andere Weise aussichtslos wäre. Die Erhebung gespeicherter (retrograder) Standortdaten ist nach diesem Absatz nur unter den Voraussetzungen des Absatzes 2 zulässig. Im Übrigen ist die Erhebung von Standortdaten nur für künftig anfallende Verkehrsdaten oder in Echtzeit und nur im Fall des Satzes 1 Nummer 1 zulässig, soweit sie für die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten erforderlich ist. (2)–(3) […]

ff. Para 1(f) Track & trace an object

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

46 Tracking & Tracing an object is a secret investigation measure that might be necessary to gather evidence. The measure is only used for investigative purposes and is more common in organised crime, e.g. smuggling or anti-dumping violations.[719]

47 **Relevant legislation:**

- s. 100g CPC
- s.100i CPC
- s. 163f CPC in connection with s. 100h CPC).
- Controlled delivery of goods: ss. 161, 163 CPC in conjunction with number 29a to d guidelines for criminal proceedings and fine proceedings (RiStBV).

[719] Decker 2021, pp. 165 et seq.

c) Para 2: Specific restrictions in national law that apply with regard to certain categories of persons or professionals with an LLP obligation, Art. 29

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

The specific restrictions in national law that apply with regard to certain categories of persons and professional with e.g. an LLP obligation must be taken into account seriously by prosecutors as they harbor the risk of breaches of evidence gathering and evidence utilization.[720] **48**

aa. Right to refuse to testify

Section 53 CPC Right to refuse testimony on professional grounds **49**
(1)[721] The following persons may also refuse to testify:

[720] See Kremer 2018, p. 15.
[721] § 53 Zeugnisverweigerungsrecht der Berufsgeheimnisträger
(1) Zur Verweigerung des Zeugnisses sind ferner berechtigt
1. Geistliche über das, was ihnen in ihrer Eigenschaft als Seelsorger anvertraut worden oder bekanntgeworden ist;
2. Verteidiger des Beschuldigten über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
3. Rechtsanwälte und Kammerrechtsbeistände, Patentanwälte, Notare, Wirtschaftsprüfer, vereidigte Buchprüfer, Steuerberater und Steuerbevollmächtigte, Ärzte, Zahnärzte, Psychotherapeuten, Psychologische Psychotherapeuten, Kinder- und Jugendlichenpsychotherapeuten, Apotheker und Hebammen über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist; für Syndikusrechtsanwälte (§ 46 Absatz 2 der Bundesrechtsanwaltsordnung) und Syndikuspatentanwälte (§ 41a Absatz 2 der Patentanwaltsordnung) gilt dies vorbehaltlich des § 53a nicht hinsichtlich dessen, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
3a. Mitglieder oder Beauftragte einer anerkannten Beratungsstelle nach den §§ 3 und 8 des Schwangerschaftskonfliktgesetzes über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
3b. Berater für Fragen der Betäubungsmittelabhängigkeit in einer Beratungsstelle, die eine Behörde oder eine Körperschaft, Anstalt oder Stiftung des öffentlichen Rechts anerkannt oder bei sich eingerichtet hat, über das, was ihnen in dieser Eigenschaft anvertraut worden oder bekanntgeworden ist;
4. Mitglieder des Deutschen Bundestages, der Bundesversammlung, des Europäischen Parlaments aus der Bundesrepublik Deutschland oder eines Landtages über Personen, die ihnen in ihrer Eigenschaft als Mitglieder dieser Organe oder denen sie in dieser Eigenschaft Tatsachen anvertraut haben, sowie über diese Tatsachen selbst;
5. Personen, die bei der Vorbereitung, Herstellung oder Verbreitung von Druckwerken, Rundfunksendungen, Filmberichten oder der Unterrichtung oder Meinungsbildung dienenden Informations- und Kommunikationsdiensten berufsmäßig mitwirken oder mitgewirkt haben.
Die in Satz 1 Nr. 5 genannten Personen dürfen das Zeugnis verweigern über die Person des Verfassers oder Einsenders von Beiträgen und Unterlagen oder des sonstigen Informanten sowie über die ihnen im Hinblick auf ihre Tätigkeit gemachten Mitteilungen, über deren Inhalt sowie über den Inhalt selbst erarbeiteter Materialien und den Gegenstand berufsbezogener Wahrnehmungen. Dies gilt nur, soweit es sich um Beiträge, Unterlagen, Mitteilungen und Materialien für den redaktionellen Teil oder redaktionell aufbereitete Informations- und Kommunikationsdienste handelt.
(2) Die in Absatz 1 Satz 1 Nr. 2 bis 3b Genannten dürfen das Zeugnis nicht verweigern, wenn sie von der Verpflichtung zur Verschwiegenheit entbunden sind. Die Berechtigung zur Zeugnisverweigerung der in Absatz 1 Satz 1 Nr.

1. clergy, concerning that information which was confided to them or which became known to them in their capacity as spiritual advisers;
2. defence counsel of the accused, concerning that information which was confided to them or which became known to them in this capacity;
3. lawyers and non-lawyer providers of legal services who have been admitted to a bar association, patent attorneys, notaries, certified public accountants, sworn auditors, tax consultants (Steuerberater) and tax representatives (Steuerbevollmächtigte), doctors, dentists, psychological psychotherapists, psychotherapists specialising in the treatment of children and juveniles, pharmacists and midwives, concerning that information which was confided to them or which became known to them in this capacity; subject to section 53a, the same shall not apply to in-house lawyers (section 46 para. 2 of the Federal Code for Lawyers) and in-house patent attorneys (section 41a para. 2 of the Federal Code for Patent Attorneys (Patentanwaltsordnung)) in respect of that which was confided to them or became known to them in this capacity;
3a. members or representatives of a recognised counselling agency under sections 3 and 8 of the Act on Pregnancies in Conflict Situations (Schwangerschaftskonfliktgesetz), concerning that information which was confided to them or which became known to them in this capacity;
3b. drug dependency counsellors in a counselling agency recognised or set up by an authority, a body, an institution or a foundation under public law, concerning that information which was confided to them or which became known to them in this capacity;
4. Members of the Bundestag, of the Federal Convention, of the European Parliament from the Federal Republic of Germany or of a Land parliament, concerning persons who have confided certain facts to them in their capacity as members of these bodies or to whom they have confided facts in this particular capacity, as well as concerning the facts themselves;

5 Genannten über den Inhalt selbst erarbeiteter Materialien und den Gegenstand entsprechender Wahrnehmungen entfällt, wenn die Aussage zur Aufklärung eines Verbrechens beitragen soll oder wenn Gegenstand der Untersuchung
1. eine Straftat des Friedensverrats und der Gefährdung des demokratischen Rechtsstaats oder des Landesverrats und der Gefährdung der äußeren Sicherheit (§§ 80a, 85, 87, 88, 95, auch in Verbindung mit § 97b, §§ 97a, 98 bis 100a des Strafgesetzbuches),
2. eine Straftat gegen die sexuelle Selbstbestimmung nach den §§ 174 bis 174c, 176a, 176b, 177 Absatz 2 Nummer 1 des Strafgesetzbuches oder
3. eine Geldwäsche nach § 261 des Strafgesetzbuches, deren Vortat mit einer im Mindestmaß erhöhten Freiheitsstrafe bedroht ist,
ist und die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise aussichtslos oder wesentlich erschwert wäre. Der Zeuge kann jedoch auch in diesen Fällen die Aussage verweigern, soweit sie zur Offenbarung der Person des Verfassers oder Einsenders von Beiträgen und Unterlagen oder des sonstigen Informanten oder der ihm im Hinblick auf seine Tätigkeit nach Absatz 1 Satz 1 Nr. 5 gemachten Mitteilungen oder deren Inhalts führen würde.

5. individuals who are or have been professionally involved in the preparation, production or dissemination of printed matter, broadcasts, film documentaries or in the information and communication services involved in instruction or in the formation of opinion.
The persons designated in sentence 1 no. 5 may refuse to testify concerning the author or contributor of comments and documentation or concerning any other informant or the information communicated to them in their professional capacity, including its content, as well as concerning the content of materials which they have produced themselves and matters which have received their professional attention. This shall only apply insofar as this concerns contributions, documentation, information and materials for the editorial element of their activity or information and communication services which have been editorially reviewed.
(2) The persons designated in para. 1 sentence 1 nos. 2 to 3b may not refuse to testify if they have been released from their obligation of secrecy. The right of the persons designated in para. 1 sentence 1 no. 5 to refuse to testify concerning the content of materials which they themselves have produced and matters which have received their professional attention shall lapse if the testimony is required to assist in investigating a serious criminal offence (Verbrechen) or if the subject of the investigation is
1. a crime against peace and of endangering the democratic state under the rule of law or of treason and of endangering external security (sections 80a, 85, 87, 88, 95, also in conjunction with sections 97b, 97a, 98 to 100a of the Criminal Code (Strafgesetzbuch)),
2. a crime against sexual self-determination under sections 174 to 176 and section 177 para. 2 no. 1 of the Criminal Code or
3. money laundering or concealing unlawfully acquired assets under section 261 paras. 1 to 4 of the Criminal Code
and an investigation of the facts and circumstances or an investigation as to the whereabouts of the accused would otherwise offer no prospect of success or would be much more difficult. The witness may refuse to testify even in such cases, however, where testimony would result in disclosure of the identity of the author or contributor of comments and documentation or of any other informant, or of the information communicated to him in his professional capacity pursuant to para. 1 sentence 1 no. 5 or of the content of such communications.

bb. Section 97 Prohibition on Seizure

The EDPs must bring about a resolution from the public prosecutor's office. This can be an indictment in a court in Germany (Art. 36 et seq. EPPO Regulation), a dismissal or an accelerated procedure (Art. 40). To do this, they must write an expert opinion on the substantive legal situation or at least carry out an analysis of the behaviour of an **50**

accused. They then have to implement the knowledge gained with the help of the investigative measures in a bill of indictment or a criminal offence. As part of the explanations on procedural steps up to the system, for example, it must be checked. whether there is a ban on confiscation under Section 97 CPC, because if this is the case, the evidence obtained cannot be used in criminal proceedings.

Section 97 CPC[722] Prohibition of seizure
(1) The following objects shall not be subject to seizure
1. written correspondence between the accused and the persons who, under section 52 or section 53 para. 1 sentence 1 nos. 1 to 3b may refuse to testify;
2. notes made by the persons referred to in section 53 para. 1 sentence 1 nos. 1 to 3b concerning confidential information confided to them by the accused or concerning other circumstances covered by the right of refusal to testify;
3. other objects, including the findings of medical examinations, which are covered by the right of the persons referred to in section 53 para. 1 sentence 1 nos. 1 to 3b to refuse to testify.

[722] § 97 Beschlagnahmeverbot
(1) Der Beschlagnahme unterliegen nicht
1. schriftliche Mitteilungen zwischen dem Beschuldigten und den Personen, die nach § 52 oder § 53 Abs. 1 Satz 1 Nr. 1 bis 3b das Zeugnis verweigern dürfen;
2. Aufzeichnungen, welche die in § 53 Abs. 1 Satz 1 Nr. 1 bis 3b Genannten über die ihnen vom Beschuldigten anvertrauten Mitteilungen oder über andere Umstände gemacht haben, auf die sich das Zeugnisverweigerungsrecht erstreckt;
3. andere Gegenstände einschließlich der ärztlichen Untersuchungsbefunde, auf die sich das Zeugnisverweigerungsrecht der in § 53 Abs. 1 Satz 1 Nr. 1 bis 3b Genannten erstreckt.
(2) Diese Beschränkungen gelten nur, wenn die Gegenstände im Gewahrsam der zur Verweigerung des Zeugnisses Berechtigten sind, es sei denn, es handelt sich um eine elektronische Gesundheitskarte im Sinne des § 291a des Fünften Buches Sozialgesetzbuch. Die Beschränkungen der Beschlagnahme gelten nicht, wenn bestimmte Tatsachen den Verdacht begründen, dass die zeugnisverweigerungsberechtigte Person an der Tat oder an einer Datenhehlerei, Begünstigung, Strafvereitelung oder Hehlerei beteiligt ist, oder wenn es sich um Gegenstände handelt, die durch eine Straftat hervorgebracht oder zur Begehung einer Straftat gebraucht oder bestimmt sind oder die aus einer Straftat herrühren.
(3) Die Absätze 1 und 2 sind entsprechend anzuwenden, soweit die Personen, die nach § 53a Absatz 1 Satz 1 an der beruflichen Tätigkeit der in § 53 Absatz 1 Satz 1 Nummer 1 bis 3b genannten Personen mitwirken, das Zeugnis verweigern dürfen.
(4) Soweit das Zeugnisverweigerungsrecht der in § 53 Abs. 1 Satz 1 Nr. 4 genannten Personen reicht, ist die Beschlagnahme von Gegenständen unzulässig. Dieser Beschlagnahmeschutz erstreckt sich auch auf Gegenstände, die von den in § 53 Abs. 1 Satz 1 Nr. 4 genannten Personen den an ihrer Berufstätigkeit nach § 53a Absatz 1 Satz 1 mitwirkenden Personen anvertraut sind. Satz 1 gilt entsprechend, soweit die Personen, die nach § 53a Absatz 1 Satz 1 an der beruflichen Tätigkeit der in § 53 Absatz 1 Satz 1 Nummer 4 genannten Personen mitwirken, das Zeugnis verweigern dürften.
(5) Soweit das Zeugnisverweigerungsrecht der in § 53 Abs. 1 Satz 1 Nr. 5 genannten Personen reicht, ist die Beschlagnahme von Verkörperungen eines Inhalts (§ 11 Absatz 3 des Strafgesetzbuches), die sich im Gewahrsam dieser Personen oder der Redaktion, des Verlages, der Druckerei oder der Rundfunkanstalt befinden, unzulässig. Absatz 2 Satz 2 und § 160a Abs. 4 Satz 2 gelten entsprechend, die Beteiligungsregelung in Absatz 2 Satz 2 jedoch nur dann, wenn die bestimmten Tatsachen einen dringenden Verdacht der Beteiligung begründen; die Beschlagnahme ist jedoch auch in diesen Fällen nur zulässig, wenn sie unter Berücksichtigung der Grundrechte aus Artikel 5 Abs. 1 Satz 2 des Grundgesetzes nicht außer Verhältnis zur Bedeutung der Sache steht und die Erforschung des Sachverhaltes oder die Ermittlung des Aufenthaltsortes des Täters auf andere Weise aussichtslos oder wesentlich erschwert wäre.

(2) These restrictions shall only apply if these objects are in the custody of a person entitled to refuse to testify, unless the object concerned is an electronic health card as defined in section 291a of the Fifth Book of the Social Code (Sozialgesetzbuch V). The restrictions on seizure shall not apply if certain facts give rise to the suspicion that the person entitled to refuse to testify participated in the offence or in handling stolen data, aiding after the fact, obstructing prosecution or punishment, or handling stolen goods, or if the objects concerned were derived from an offence or have been used or are intended for use in committing an offence or if they emanate from an offence.
(3) Paras. 1 and 2 shall apply accordingly insofar as those persons who are involved, pursuant to section 53a para. 1 sentence 1 in the professional activity of the persons referred to in section 53 para. 1 sentence 1 nos. 1 to 3b have the right to refuse to testify.
(4) The seizure of objects shall be inadmissible insofar as they are covered by the right of the persons referred to in section 53 para. 1 sentence 1 no. 4 to refuse to testify. This protection from seizure shall also extend to objects which have been entrusted by the persons referred to in section 53 para. 1 sentence 1 no. 4 to the persons involved in their professional activity pursuant to section 53a para. 1 sentence 1. Sentence 1 shall apply accordingly insofar as the persons who are involved, pursuant to section 53a para. 1 sentence 1 in the professional activity of those persons referred to in section 53 para. 1 sentence 1 no. 4 are entitled to refuse to testify.
(5) The seizure of papers, audio and video media, data carriers, images or other depictions in the custody of persons referred to in section 53 para. 1 sentence 1 no. 5 or of the editorial office, the publishing house, the printing works or the broadcasting company shall be inadmissible insofar as they are covered by the right of such persons to refuse to testify. Para. 2 sentence 3 and section 160a para. 4 sentence 2 shall apply accordingly, the provision on participation in para. 2 sentence 3, however, only where the particular facts give rise to a strong suspicion of participation; in these cases, too, seizure shall only be admissible, however, where it is not disproportionate to the importance of the case having regard to the basic rights arising out of Article 5 para. 1 sentence 2 of the Basic Law (Grundgesetz) and the investigation of the factual circumstances or the establishment of the whereabouts of the offender would otherwise offer no prospect of success or would be much more difficult.

Section 108 CPC[723] Seizure of other objects
(1) If objects which indicate that another offence has been committed are found during a search, they shall be provisionally seized even though they are not connected with the ongoing investigation. The public prosecution office shall be informed thereof. Sentence 1 shall not apply to searches carried out pursuant to section 103 para. 1 sentence 2.
(2) If objects as defined in para. 1 sentence 1 which relate to the termination of a patient's pregnancy are found on the premises of a physician, their use for evidential purposes in criminal proceedings against the patient shall be inadmissible in respect of an offence under section 218 of the Criminal Code.
(3) If objects as defined in para. 1 sentence 1 are found on the premises of a person indicated in section 53 para. 1 sentence 1 no. 5, such objects being covered by the right of the person indicated to refuse to testify, the object shall only be admissible as evidence in criminal proceedings insofar as the subject of these criminal proceedings is an offence which is punishable by a minimum sentence of imprisonment of at least five years and is not an offence under section 353b of the Criminal Code.

cc. Special Restrictions that apply for lawyers

51 **Section 160a CPCMeasures directed at persons entitled to refuse testimony on professional grounds**
(1)[724] An investigation measure directed at a person designated in section 53 para. 1 sentence 1 no. 1, 2 or 4, a lawyer or a non-lawyer provider of legal services who has

[723] § 108 StPO Beschlagnahme anderer Gegenstände
(1) Werden bei Gelegenheit einer Durchsuchung Gegenstände gefunden, die zwar in keiner Beziehung zu der Untersuchung stehen, aber auf die Verübung einer anderen Straftat hindeuten, so sind sie einstweilen in Beschlag zu nehmen. Der Staatsanwaltschaft ist hiervon Kenntnis zu geben. Satz 1 findet keine Anwendung, soweit eine Durchsuchung nach § 103 Abs. 1 Satz 2 stattfindet.
(2) Werden bei einem Arzt Gegenstände im Sinne von Absatz 1 Satz 1 gefunden, die den Schwangerschaftsabbruch einer Patientin betreffen, ist ihre Verwertung zu Beweiszwecken in einem Strafverfahren gegen die Patientin wegen einer Straftat nach § 218 des Strafgesetzbuches unzulässig.
(3) Werden bei einer in § 53 Abs. 1 Satz 1 Nr. 5 genannten Person Gegenstände im Sinne von Absatz 1 Satz 1 gefunden, auf die sich das Zeugnisverweigerungsrecht der genannten Person erstreckt, ist die Verwertung des Gegenstandes zu Beweiszwecken in einem Strafverfahren nur insoweit zulässig, als Gegenstand dieses Strafverfahrens eine Straftat ist, die im Höchstmaß mit mindestens fünf Jahren Freiheitsstrafe bedroht ist und bei der es sich nicht um eine Straftat nach § 353b des Strafgesetzbuches handelt.
[724] s. 160a Maßnahmen bei zeugnisverweigerungsberechtigten Berufsgeheimnisträgern
(1) Eine Ermittlungsmaßnahme, die sich gegen eine in s. 53 Absatz 1 Satz 1 Nummer 1, 2 oder Nummer 4 genannte Person, einen Rechtsanwalt oder einen Kammerrechtsbeistand richtet und voraussichtlich Erkenntnisse erbringen würde, über die diese das Zeugnis verweigern dürfte, ist unzulässig. Dennoch erlangte Erkenntnisse dürfen nicht verwendet werden. Aufzeichnungen hierüber sind unverzüglich zu löschen. Die Tatsache ihrer Erlangung und der Löschung der Aufzeichnungen ist aktenkundig zu machen.Die Sätze 2 bis 4 gelten entsprechend, wenn durch eine Ermittlungsmaßnahme, die sich nicht gegen eine in Satz 1 in Bezug genommene Person richtet, von dieser Person Erkenntnisse erlangt werden, über die sie das Zeugnis verweigern dürfte.
(2) Soweit durch eine Ermittlungsmaßnahme eine in s. 53 Abs. 1 Satz 1 Nr. 3 bis 3b oder Nr. 5 genannte Person betroffen wäre und dadurch voraussichtlich Erkenntnisse erlangt würden, über die diese Person das Zeugnis verweigern dürfte, ist dies im Rahmen der Prüfung der Verhältnismäßigkeit besonders zu berücksichtigen; betrifft das

been admitted to a bar association shall be inadmissible if it is expected to produce information in respect of which such person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any recording of such information is to be deleted without delay. The fact that the information was obtained and deleted shall be included in the records. If information about a person referred to in sentence 1 is obtained through an investigation measure which is not aimed at such person and in respect of which such person may refuse to testify, sentences 2 to 4 shall apply accordingly.
(2) Insofar as a person designated in section 53 para. 1 sentence 1 nos. 3 to 3b or no. 5 might be affected by an investigation measure and it is to be expected that information would thereby be obtained in respect of which the person would have the right to refuse to testify, this shall be given particular consideration in the context of examining proportionality; if the proceedings do not concern an offence of substantial significance, then, in principle, no overriding interest in prosecuting the offence is to be presumed. Insofar as is expedient, the measure should be dispensed with or, to the extent possible for this type of measure, restricted. Sentence 1 shall apply accordingly to the use of information for evidential purposes. Sentences 1 to 3 shall not apply to lawyers and non-lawyer providers of legal services who have been admitted to a bar association.
(3) Paras. 1 and 2 shall apply accordingly insofar as the persons designated in section 53a would have the right to refuse to testify.
(4) Paras. 1 to 3 shall not apply if certain facts give rise to the suspicion that the person who is entitled to refuse to testify participated in the offence or in handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling stolen goods. If the offence may be prosecuted only upon request or only upon authorisation, sentence 1 shall apply in the cases under section 53 para. 1 sentence 1 no. 5 as soon as and insofar as the request to prosecute has been filed or the authorisation granted.
(5) Section 97, section 100d para. 5 and section 100g para. 4 shall remain unaffected.

Verfahren keine Straftat von erheblicher Bedeutung, ist in der Regel nicht von einem Überwiegen des Strafverfolgungsinteresses auszugehen. Soweit geboten, ist die Maßnahme zu unterlassen oder, soweit dies nach der Art der Maßnahme möglich ist, zu beschränken. Für die Verwertung von Erkenntnissen zu Beweiszwecken gilt Satz 1 entsprechend. Die Sätze 1 bis 3 gelten nicht für Rechtsanwälte und Kammerrechtsbeistände.
(3) Die Absätze 1 und 2 sind entsprechend anzuwenden, soweit die in s. 53a Genannten das Zeugnis verweigern dürften.
(4) Die Absätze 1 bis 3 sind nicht anzuwenden, wenn bestimmte Tatsachen den Verdacht begründen, dass die zeugnisverweigerungsberechtigte Person an der Tat oder an einer Datenhehlerei, Begünstigung, Strafvereitelung oder Hehlerei beteiligt ist. Ist die Tat nur auf Antrag oder nur mit Ermächtigung verfolgbar, ist Satz 1 in den Fällen des § 53 Abs. 1 Satz 1 Nr. 5 anzuwenden, sobald und soweit der Strafantrag gestellt oder die Ermächtigung erteilt ist.
(5) Die §§ 97, 100d Absatz 5 und § 100g Absatz 4 bleiben unberührt.

Section 160 CPC[725] Obligation to clarify facts

(1) As soon as the public prosecution office obtains knowledge of a suspected offence, either through a report of an offence or by other means, it shall investigate the facts in order to decide whether public charges are to be preferred.

(2) The public prosecution office shall ascertain both incriminating and exonerating circumstances and shall ensure that evidence the loss of which is to be feared is taken.

(3) The public prosecution office shall also investigate those circumstances which are important for the determination of the legal consequences of the act. To that end, it may avail itself of the services of the court assistance agency.

(4) A measure shall be inadmissible if special provisions regulating its application, being provisions under federal law or under the corresponding Land law, present an obstacle thereto.

52 **Relevant sections from the German General Tax Code (*Abgabenordnung*)**

Section 30[726] Tax secrecy

(1) Public officials shall be obliged to observe tax secrecy.

(2) Public officials shall be in breach of tax secrecy if they

[725] § 160 StPO Pflicht zur Sachverhaltsaufklärung
(1) Sobald die Staatsanwaltschaft durch eine Anzeige oder auf anderem Wege von dem Verdacht einer Straftat Kenntnis erhält, hat sie zu ihrer Entschließung darüber, ob die öffentliche Klage zu erheben ist, den Sachverhalt zu erforschen.
(2) Die Staatsanwaltschaft hat nicht nur die zur Belastung, sondern auch die zur Entlastung dienenden Umstände zu ermitteln und für die Erhebung der Beweise Sorge zu tragen, deren Verlust zu besorgen ist.
(3) Die Ermittlungen der Staatsanwaltschaft sollen sich auch auf die Umstände erstrecken, die für die Bestimmung der Rechtsfolgen der Tat von Bedeutung sind. Dazu kann sie sich der Gerichtshilfe bedienen.
(4) Eine Maßnahme ist unzulässig, soweit besondere bundesgesetzliche oder entsprechende landesgesetzliche Verwendungsregelungen entgegenstehen.

[726] § 30 AO Steuergeheimnis
(1) Amtsträger haben das Steuergeheimnis zu wahren.
(2) Ein Amtsträger verletzt das Steuergeheimnis, wenn er
1. personenbezogene Daten eines anderen, die ihm
a) in einem Verwaltungsverfahren, einem Rechnungsprüfungsverfahren oder einem gerichtlichen Verfahren in Steuersachen,
b) in einem Strafverfahren wegen einer Steuerstraftat oder einem Bußgeldverfahren wegen einer Steuerordnungswidrigkeit,
c) im Rahmen einer Weiterverarbeitung nach § 29c Absatz 1 Satz 1 Nummer 4, 5 oder 6 oder aus anderem dienstlichen Anlass, insbesondere durch Mitteilung einer Finanzbehörde oder durch die gesetzlich vorgeschriebene Vorlage eines Steuerbescheids oder einer Bescheinigung über die bei der Besteuerung getroffenen Feststellungen, bekannt geworden sind, oder
2. ein fremdes Betriebs- oder Geschäftsgeheimnis, das ihm in einem der in Nummer 1 genannten Verfahren bekannt geworden ist, (geschützte Daten) unbefugt offenbart oder verwertet oder
3. geschützte Daten im automatisierten Verfahren unbefugt abruft, wenn sie für eines der in Nummer 1 genannten Verfahren in einem automationsgestützten Dateisystem gespeichert sind.
(3) Den Amtsträgern stehen gleich
1. die für den öffentlichen Dienst besonders Verpflichteten (§ 11 Abs. 1 Nr. 4 des Strafgesetzbuchs),
1a. die in § 193 Abs. 2 des Gerichtsverfassungsgesetzes genannten Personen,
2. amtlich zugezogene Sachverständige,
3. die Träger von Ämtern der Kirchen und anderen Religionsgemeinschaften, die Körperschaften des öffentlichen Rechts sind.

1. disclose or make use of, without authorisation, a third person's personal data that they have gained access to
a) in the course of an administrative procedure, an auditing procedure or judicial proceedings in tax matters,
b) in the course of criminal proceedings for tax crimes or administrative fine proceedings for tax-related administrative offences,
c) for other reasons, based on a notification from a revenue authority or based on the legally required submission of a tax assessment notice or of a certification of findings made during the taxation process
or
2. disclose or make use of, without authorisation, a corporate or commercial secret that has become known to them in the course of procedures/proceedings specified under number 1 above,
(the data under numbers 1 and 2 above are hereinafter referred to as "protected data")
or
3. electronically retrieve, without authorisation, protected data that have been stored in an automated filing system for procedures/proceedings specified under number 1 above.
(3) The following shall be deemed to be of equivalent status to public officials:
1. persons under special obligations to the civil service (section 11 para. 1 number 4 of the Criminal Code),
1a. the persons designated in section 193 para. 2 of the Act on the Constitution of Courts,
2. officially consulted experts,
3. holders of offices of the churches and other religious communities being public-law entities.
(4)[727] The disclosure or use of protected data shall be permissible insofar as

[727] (4) Die Offenbarung oder Verwertung geschützter Daten ist zulässig, soweit
1. sie der Durchführung eines Verfahrens im Sinne des Absatzes 2 Nr. 1 Buchstaben a und b dient,
1a. sie einer Verarbeitung durch Finanzbehörden nach Maßgabe des § 29c Absatz 1 Satz 1 Nummer 4 oder 6 dient,
1b. sie der Durchführung eines Bußgeldverfahrens nach Artikel 83 der Verordnung (EU) 2016/679 im Anwendungsbereich dieses Gesetzes dient,
2. sie durch Bundesgesetz ausdrücklich zugelassen ist,
2a. sie durch Recht der Europäischen Union vorgeschrieben oder zugelassen ist,
2b. sie der Erfüllung der gesetzlichen Aufgaben des Statistischen Bundesamtes oder für die Erfüllung von Bundesgesetzen durch die Statistischen Landesämter dient,
2c. sie der Gesetzesfolgenabschätzung dient und die Voraussetzungen für eine Weiterverarbeitung nach § 29c Absatz 1 Satz 1 Nummer 5 vorliegen,
3 die betroffene Person zustimmt,
4. sie der Durchführung eines Strafverfahrens wegen einer Tat dient, die keine Steuerstraftat ist, und die Kenntnisse a) in einem Verfahren wegen einer Steuerstraftat oder Steuerordnungswidrigkeit erlangt worden sind; dies gilt jedoch nicht für solche Tatsachen, die der Steuerpflichtige in Unkenntnis der Einleitung des Strafverfahrens oder des Bußgeldverfahrens offenbart hat oder die bereits vor Einleitung des Strafverfahrens oder des Bußgeldverfahrens im Besteuerungsverfahren bekannt geworden sind, oder

1. such disclosure or use facilitates procedures/proceedings within the meaning of para. 2 number 1(a) and (b) above,

b) ohne Bestehen einer steuerlichen Verpflichtung oder unter Verzicht auf ein Auskunftsverweigerungsrecht erlangt worden sind,
5. für sie ein zwingendes öffentliches Interesse besteht; ein zwingendes öffentliches Interesse ist namentlich gegeben, wenn
a) die Offenbarung erforderlich ist zur Abwehr erheblicher Nachteile für das Gemeinwohl oder einer Gefahr für die öffentliche Sicherheit, die Verteidigung oder die nationale Sicherheit oder zur Verhütung oder Verfolgung von Verbrechen und vorsätzlichen schweren Vergehen gegen Leib und Leben oder gegen den Staat und seine Einrichtungen,
b) Wirtschaftsstraftaten verfolgt werden oder verfolgt werden sollen, die nach ihrer Begehungsweise oder wegen des Umfangs des durch sie verursachten Schadens geeignet sind, die wirtschaftliche Ordnung erheblich zu stören oder das Vertrauen der Allgemeinheit auf die Redlichkeit des geschäftlichen Verkehrs oder auf die ordnungsgemäße Arbeit der Behörden und der öffentlichen Einrichtungen erheblich zu erschüttern, oder
c) die Offenbarung erforderlich ist zur Richtigstellung in der Öffentlichkeit verbreiteter unwahrer Tatsachen, die geeignet sind, das Vertrauen in die Verwaltung erheblich zu erschüttern; die Entscheidung trifft die zuständige oberste Finanzbehörde im Einvernehmen mit dem Bundesministerium der Finanzen; vor der Richtigstellung soll der Steuerpflichtige gehört werden.
(5) Vorsätzlich falsche Angaben der betroffenen Person dürfen den Strafverfolgungsbehörden gegenüber offenbart werden.
(6) Der Abruf geschützter Daten, die für eines der in Absatz 2 Nummer 1 genannten Verfahren in einem automationsgestützten Dateisystem gespeichert sind, ist nur zulässig, soweit er der Durchführung eines Verfahrens im Sinne des Absatzes 2 Nummer 1 Buchstabe a und b oder der zulässigen Übermittlung geschützter Daten durch eine Finanzbehörde an die betroffene Person oder Dritte dient. Zur Wahrung des Steuergeheimnisses kann das Bundesministerium der Finanzen durch Rechtsverordnung mit Zustimmung des Bundesrates bestimmen, welche technischen und organisatorischen Maßnahmen gegen den unbefugten Abruf von Daten zu treffen sind. Insbesondere kann es nähere Regelungen treffen über die Art der Daten, deren Abruf zulässig ist, sowie über den Kreis der Amtsträger, die zum Abruf solcher Daten berechtigt sind. Die Rechtsverordnung bedarf nicht der Zustimmung des Bundesrates, soweit sie die Kraftfahrzeugsteuer, die Luftverkehrsteuer, die Versicherungsteuer sowie Einfuhr- und Ausfuhrabgaben und Verbrauchsteuern, mit Ausnahme der Biersteuer, betrifft.
(7) Werden dem Steuergeheimnis unterliegende Daten durch einen Amtsträger oder diesem nach Absatz 3 gleichgestellte Personen nach Maßgabe des § 87a Absatz 4 oder 7 über De-Mail-Dienste im Sinne des § 1 des De-Mail-Gesetzes versendet, liegt keine unbefugte Offenbarung, Verwertung und kein unbefugter Abruf von dem Steuergeheimnis unterliegenden Daten vor, wenn beim Versenden eine kurzzeitige automatisierte Entschlüsselung durch den akkreditierten Diensteanbieter zum Zweck der Überprüfung auf Schadsoftware und zum Zweck der Weiterleitung an den Addressaten der De-Mail-Nachricht stattfindet.
(8) Die Einrichtung eines automatisierten Verfahrens, das den Abgleich geschützter Daten innerhalb einer Finanzbehörde oder zwischen verschiedenen Finanzbehörden ermöglicht, ist zulässig, soweit die Weiterverarbeitung oder Offenbarung dieser Daten zulässig und dieses Verfahren unter Berücksichtigung der schutzwürdigen Interessen der betroffenen Person und der Aufgaben der beteiligten Finanzbehörden angemessen ist.
(9) Die Finanzbehörden dürfen sich bei der Verarbeitung geschützter Daten nur dann eines Auftragsverarbeiters im Sinne von Artikel 4 Nummer 8 der Verordnung (EU) 2016/679 bedienen, wenn diese Daten ausschließlich durch Personen verarbeitet werden, die zur Wahrung des Steuergeheimnisses verpflichtet sind.
(10) Die Offenbarung besonderer Kategorien personenbezogener Daten im Sinne des Artikels 9 Absatz 1 der Verordnung (EU) 2016/679 durch Finanzbehörden an öffentliche oder nicht-öffentliche Stellen ist zulässig, wenn die Voraussetzungen der Absätze 4 oder 5 und ein Ausnahmetatbestand nach Artikel 9 Absatz 2 der Verordnung (EU) 2016/679 oder nach § 31c vorliegen.
(11) Wurden geschützte Daten
1. einer Person, die nicht zur Wahrung des Steuergeheimnisses verpflichtet ist,
2. einer öffentlichen Stelle, die keine Finanzbehörde ist, oder
3. einer nicht-öffentlichen Stelle
nach den Absätzen 4 oder 5 offenbart, darf der Empfänger diese Daten nur zu dem Zweck speichern, verändern, nutzen oder übermitteln, zu dem sie ihm offenbart worden sind. Die Pflicht eines Amtsträgers oder einer ihm nach Absatz 3 gleichgestellten Person, dem oder der die geschützten Daten durch die Offenbarung bekannt geworden sind, zur Wahrung des Steuergeheimnisses bleibt unberührt.

1a. such disclosure or use facilitates processing by revenue authorities in accordance with section 29c para. 1, first sentence, number 4 or 6,
1b. such disclosure or use facilitates administrative fine proceedings in accordance with Article 83 of Regulation (EU) 2016/679 within the scope of this Code,2. such disclosure or use is expressly permitted by federal law,
2a. such disclosure or use is prescribed or permitted by European Union law,
2b. such disclosure or use helps the Federal Statistical Office perform its statutory functions,
2c. such disclosure or use facilitates regulatory impact assessments, and the conditions for further processing under section 29c para. 1, first sentence, number 5 have been met,
3. the persons concerned give their consent,
4. such disclosure or use facilitates criminal proceedings for a crime other than a tax crime, and such information
a) was obtained in the course of proceedings for tax crimes or tax-related administrative offences; however, this shall not apply in relation to facts which a taxpayer has disclosed while unaware that criminal proceedings or administrative fine proceedings have commenced or which have already become known in the course of the taxation procedure before the commencement of such proceedings, or
b) was obtained in the absence of any tax liability or by waiver of a right to withhold information,
5. there is a compelling public interest in such disclosure or use; such compelling public interest shall be deemed to exist in particular if
a) such disclosure is necessary to prevent significant harm to the public interest, to avert threats to public security, defence or national security, or to prevent or prosecute crimes or deliberate serious offences that aim to cause human injury or loss of life or that aim to cause damage to the state and its institutions,
b) economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are likely to substantially disrupt the economic order or to substantially undermine general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions, or
c) such disclosure is necessary to correct publicly disseminated incorrect facts which are likely to substantially undermine confidence in the administration; such decision shall be taken by the highest revenue authority responsible in mutual agreement with Federal Ministry of Finance; the taxpayer is to be consulted before correction of the facts.
(5) Wilfully false statements by the person concerned may be disclosed to the law enforcement authorities.
(6) The retrieval of protected data that have been stored in an automated filing system for one of the procedures/proceedings specified under para. 2 number 1 above shall be permissible only insofar as such retrieval facilitates a procedure/proceedings described

under para. 2 number 1a or 1b above or facilitates the permissible transmission of protected data by a revenue authority to the data subject or to a third party. To protect tax secrecy, the Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, which technical and organisational measures must be adopted to prevent the unauthorised retrieval of data. In particular, the Federal Ministry of Finance may adopt more detailed rules on the type of data that are permissible to retrieve and on the set of public officials who are authorised to retrieve such data. Ordinances pertaining to motor vehicle tax, aviation tax, insurance tax, import and export duties, and excise duties with the exception of beer duty shall not require the consent of the Bundesrat.

(7) In the event that data subject to tax secrecy are transmitted in accordance with section 87a para. 4 or 7 by a public official or persons of equivalent status under para. 3 above using DE-Mail services within the meaning of section 1 of the DE-Mail Act, no unauthorised disclosure or use and no unauthorised retrieval of data subject to tax secrecy shall be deemed to have occurred if during transmission a temporary automated decryption is performed by an accredited service provider for the purpose of checking for malware and for the purpose of forwarding the data to the addressee of the DE-Mail message.

(8) The establishment of an automated procedure that enables protected data to be cross-checked within a revenue authority or among various revenue authorities shall be permissible insofar as the further processing or the disclosure of such data is permissible and such procedure is suitable in light of the legitimate interests of the data subject and the functions to be performed by the participating revenue authorities.

(9) When personal data are to be processed, revenue authorities may use the services of a processor as defined in Article 4 para. 8 of Regulation (EU) 2016/679 only if the data in question are processed exclusively by persons who are required to observe tax secrecy.

(10) Revenue authorities shall be permitted to disclose special categories of personal data as described in Article 9 para. 1 of Regulation (EU) 2016/679 to public or non-public entities if the conditions stipulated in para. 4 or 5 above have been met and an exception under Article 9 para. 2 of Regulation (EU) 2016/679 or under section 31c applies.

(11) If protected data have been disclosed in accordance with paras. 4 or 5 above to

1. a person who is not required to observe tax secrecy,
2. a public entity that is not a revenue authority, or
3. a non-public entity,

the recipient may store, alter, use or transmit these data only for the purpose for which they were disclosed to him. In cases where such protected data become known to public officials or persons of equivalent status under para. 3 above on the basis of such a disclosure, their obligation to observe tax secrecy shall remain unaffected.

Sections from the German Social Code I (SGB I) **53**

Section 35 Social Code I[728] Social secrecy

(1) Everyone is entitled to the fact that the social data concerning him (Section 67, Paragraph 2, Tenth Book) are not processed by the service providers without authorisation (social secrecy). The maintenance of social secrecy includes the obligation to ensure within the service provider that the social data is only accessible to authorized persons or is only passed on to them. Social data of employees and their relatives may not be

[728] Sozialgesetzbuch (SGB) Erstes Buch (I) – Allgemeiner Teil – (Artikel I des Gesetzes vom 11. Dezember 1975, BGBl. I S. 3015)
§ 35 Sozialgeheimnis Sozialgesetzbuch I (SGB I)
(1) Jeder hat Anspruch darauf, dass die ihn betreffenden Sozialdaten (§ 67 Absatz 2 Zehntes Buch) von den Leistungsträgern nicht unbefugt verarbeitet werden (Sozialgeheimnis). Die Wahrung des Sozialgeheimnisses umfasst die Verpflichtung, auch innerhalb des Leistungsträgers sicherzustellen, dass die Sozialdaten nur Befugten zugänglich sind oder nur an diese weitergegeben werden. Sozialdaten der Beschäftigten und ihrer Angehörigen dürfen Personen, die Personalentscheidungen treffen oder daran mitwirken können, weder zugänglich sein noch von Zugriffsberechtigten weitergegeben werden. Der Anspruch richtet sich auch gegen die Verbände der Leistungsträger, die Arbeitsgemeinschaften der Leistungsträger und ihrer Verbände, die Datenstelle der Rentenversicherung, die in diesem Gesetzbuch genannten öffentlich-rechtlichen Vereinigungen, Integrationsfachdienste, die Künstlersozialkasse, die Deutsche Post AG, soweit sie mit der Berechnung oder Auszahlung von Sozialleistungen betraut ist, die Behörden der Zollverwaltung, soweit sie Aufgaben nach § 2 des Schwarzarbeitsbekämpfungsgesetzes und § 66 des Zehnten Buches durchführen, die Versicherungsämter und Gemeindebehörden sowie die anerkannten Adoptionsvermittlungsstellen (§ 2 Absatz 3 des Adoptionsvermittlungsgesetzes), soweit sie Aufgaben nach diesem Gesetzbuch wahrnehmen, und die Stellen, die Aufgaben nach § 67c Absatz 3 des Zehnten Buches wahrnehmen. Die Beschäftigten haben auch nach Beendigung ihrer Tätigkeit bei den genannten Stellen das Sozialgeheimnis zu wahren.
(2) Die Vorschriften des Zweiten Kapitels des Zehnten Buches und der übrigen Bücher des Sozialgesetzbuches regeln die Verarbeitung von Sozialdaten abschließend, soweit nicht die Verordnung (EU) 2016/679 des Europäischen Parlaments und des Rates vom 27. April 2016 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten, zum freien Datenverkehr und zur Aufhebung der Richtlinie 95/46/EG (Datenschutz-Grundverordnung) (ABl. L 119 vom 4.5.2016, S. 1; L 314 vom 22.11.2016, S. 72; L 127 vom 23.5.2018, S. 2) in der jeweils geltenden Fassung unmittelbar gilt. Für die Verarbeitungen von Sozialdaten im Rahmen von nicht in den Anwendungsbereich der Verordnung (EU) 2016/679 fallenden Tätigkeiten finden die Verordnung (EU) 2016/679 und dieses Gesetz entsprechende Anwendung, soweit nicht in diesem oder einem anderen Gesetz Abweichendes geregelt ist.
(2a) Die Verpflichtung zur Wahrung gesetzlicher Geheimhaltungspflichten oder von Berufs- oder besonderen Amtsgeheimnissen, die nicht auf gesetzlichen Vorschriften beruhen, bleibt unberührt.
(3) Soweit eine Übermittlung von Sozialdaten nicht zulässig ist, besteht keine Auskunftspflicht, keine Zeugnispflicht und keine Pflicht zur Vorlegung oder Auslieferung von Schriftstücken, nicht automatisierten Dateisystemen und automatisiert verarbeiteten Sozialdaten.
(4) Betriebs- und Geschäftsgeheimnisse stehen Sozialdaten gleich.
(5) Sozialdaten Verstorbener dürfen nach Maßgabe des Zweiten Kapitels des Zehnten Buches verarbeitet werden. Sie dürfen außerdem verarbeitet werden, wenn schutzwürdige Interessen des Verstorbenen oder seiner Angehörigen dadurch nicht beeinträchtigt werden können.
(6) Die Absätze 1 bis 5 finden neben den in Absatz 1 genannten Stellen auch Anwendung auf solche Verantwortliche oder deren Auftragsverarbeiter,
1. die Sozialdaten im Inland verarbeiten, sofern die Verarbeitung nicht im Rahmen einer Niederlassung in einem anderen Mitgliedstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum erfolgt, oder
2. die Sozialdaten im Rahmen der Tätigkeiten einer inländischen Niederlassung verarbeiten.
Sofern die Absätze 1 bis 5 nicht gemäß Satz 1 anzuwenden sind, gelten für den Verantwortlichen oder dessen Auftragsverarbeiter nur die §§ 81 bis 81c des Zehnten Buches.
(7) Bei der Verarbeitung zu Zwecken gemäß Artikel 2 der Verordnung (EU) 2016/679 stehen die Vertragsstaaten des Abkommens über den Europäischen Wirtschaftsraum und die Schweiz den Mitgliedstaaten der Europäischen Union gleich. Andere Staaten gelten insoweit als Drittstaaten.

accessible to persons who make or participate in personnel decisions, nor may they be passed on by authorized persons. The claim is also directed against the associations of the service providers, the working groups of the service providers and their associations, the data center of the pension insurance, the public-law associations named in this code, Integration specialist services, the artists' social insurance fund, Deutsche Post AG, insofar as it is entrusted with the calculation or payment of social benefits, the customs administration authorities, insofar as they carry out tasks according to Section 2 of the Anti-Illicit Work Act and Section 66 of Book 10, the insurance offices and municipal authorities as well as the recognized ones Adoption placement agencies (Section 2, Paragraph 3 of the Adoption Placement Act), insofar as they perform tasks under this Code, and the bodies that perform tasks according to Section 67c, Paragraph 3 of Book 10. The employees must maintain social secrecy even after they have finished their work at the above-mentioned offices. insofar as they carry out tasks according to Section 2 of the Act to Combat Undeclared Work and Section 66 of Book 10, the insurance offices and municipal authorities as well as the recognized adoption placement agencies (Section 2 para. 3 of the Adoption Placement Act), insofar as they perform tasks according to this Code, and the bodies that perform tasks according to Section 67c Perceive paragraph 3 of the tenth book. The employees must maintain social secrecy even after they have finished their work at the above-mentioned offices. insofar as they carry out tasks according to Section 2 of the Act to Combat Undeclared Work and Section 66 of Book 10, the insurance offices and municipal authorities as well as the recognized adoption placement agencies (Section 2 para. 3 of the Adoption Placement Act), insofar as they perform tasks according to this Code, and the bodies that perform tasks according to Section 67c Perceive paragraph 3 of the tenth book. The employees must maintain social secrecy even after they have finished their work at the above-mentioned offices. perform the tasks according to s. 67c paragraph 3 of the tenth book. The employees must maintain social secrecy even after they have finished their work at the above-mentioned offices. perform the tasks according to s. 67c paragraph 3 of the tenth book. The employees must maintain social secrecy even after they have finished their work at the above-mentioned offices.

(2) The provisions of Chapter Two of Book 10 and the other books of the Social Code regulate the processing of social data conclusively, unless Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons the processing of personal data, the free movement of data and the repeal of Directive 95/46 / EC (General Data Protection Regulation) (OJ L 119 of 4.5.2016, p. 1; L 314 of 22.11.2016, p. 72; L 127 of 23.5.2018, p. 2) in the currently valid version applies immediately. For the processing of social data in the context of activities that do not fall within the scope of Regulation (EU) 2016/679, Regulation (EU) 2016/679 and this Act apply accordingly,

(2a) The obligation to observe statutory confidentiality obligations or professional or special official secrets that are not based on statutory provisions remains unaffected.
(3) Insofar as the transmission of social data is not permitted, there is no obligation to provide information, no obligation to provide evidence and no obligation to present or deliver documents, non-automated file systems and automatically processed social data.
(4) Company and trade secrets are equal to social data.
(5) Social data of the deceased may be processed in accordance with the second chapter of the tenth book. They may also be processed if the legitimate interests of the deceased or his relatives cannot be impaired as a result.
(6) Paragraphs 1 to 5 also apply to those responsible or their processors, in addition to the bodies named in paragraph 1,
1. process the social data domestically, unless the processing takes place within the framework of a branch in another member state of the European Union or in another contracting state of the Agreement on the European Economic Area, or
2. process the social data in the context of the activities of a domestic branch.
If paragraphs 1 to 5 are not to be applied in accordance with sentence 1, only Sections 81 to 81c of Book 10 apply to the person responsible or his processor.
(7) When processing for purposes in accordance with Article 2 of Regulation (EU) 2016/679, the contracting states of the Agreement on the European Economic Area and Switzerland are the same as the Member States of the European Union. In this respect, other countries are considered third countries.

54

Relevant sections from the German Social Code X

Section 67a Social Code X[729] Collection of Social Data Information

(1) The collection of social data by the bodies named in Section 35 of the First Book is permitted if knowledge thereof is required for the performance of a task of the collecting body under this Code. This also applies to the collection of special categories of personal data within the meaning of Article 9 para. 1 of Regulation (EU) 2016/679. Section 22 para. 2 of the Federal Data Protection Act applies accordingly.

(2) Social data are to be collected from the data subject. Without their participation, they may only be raised

1. at the offices named in Section 35 of Book One or in Section 69 para. 2, if

a) they are authorized to transmit the data to the collecting body,

b) the collection from the data subject would require a disproportionate effort and

c) there are no indications that overriding legitimate interests of the data subject are impaired,

2. with other people or bodies, if

a) a legal provision permits the collection from them or expressly prescribes the transfer to the collecting body or

b) aa) the nature of the tasks under this Code requires a survey from other persons or bodies, or

bb) the collection from the data subject would require a disproportionate effort and there are no indications that overriding legitimate interests of the data subject are impaired.

[729] § 67a Erhebung von Sozialdaten

(1) Die Erhebung von Sozialdaten durch die in § 35 des Ersten Buches genannten Stellen ist zulässig, wenn ihre Kenntnis zur Erfüllung einer Aufgabe der erhebenden Stelle nach diesem Gesetzbuch erforderlich ist. Dies gilt auch für die Erhebung der besonderen Kategorien personenbezogener Daten im Sinne des Artikels 9 Absatz 1 der Verordnung (EU) 2016/679. § 22 Absatz 2 des Bundesdatenschutzgesetzes gilt entsprechend.

(2) Sozialdaten sind bei der betroffenen Person zu erheben. Als Erhebung nach Satz 1 gilt auch die Entscheidung der betroffenen Person nach § 67f Absatz 1 Satz 1 Nummer 1 in Verbindung mit Absatz 4 Satz 2 oder ein ausdrückliches Ersuchen im Anwendungsbereich des § 77a. Ohne ihre Mitwirkung dürfen sie nur erhoben werden

1. bei den in § 35 des Ersten Buches oder in § 69 Absatz 2 genannten Stellen, wenn

a) diese zur Übermittlung der Daten an die erhebende Stelle befugt sind,

b) die Erhebung bei der betroffenen Person einen unverhältnismäßigen Aufwand erfordern würde und

c) keine Anhaltspunkte dafür bestehen, dass überwiegende schutzwürdige Interessen der betroffenen Person beeinträchtigt werden,

2. bei anderen Personen oder Stellen, wenn

a) eine Rechtsvorschrift die Erhebung bei ihnen zulässt oder die Übermittlung an die erhebende Stelle ausdrücklich vorschreibt oder

b) aa) die Aufgaben nach diesem Gesetzbuch ihrer Art nach eine Erhebung bei anderen Personen oder Stellen erforderlich machen oder

bb) die Erhebung bei der betroffenen Person einen unverhältnismäßigen Aufwand erfordern würde

und keine Anhaltspunkte dafür bestehen, dass überwiegende schutzwürdige Interessen der betroffenen Person beeinträchtigt werden.

Section 73 Social Code X[730] Transmission for the implementation of criminal proceedings

(1) The transmission of social data is permitted insofar as it is necessary to carry out criminal proceedings for a crime or for another criminal offence of considerable importance.

(2) A transmission of social data for the implementation of criminal proceedings for another criminal offence is permissible as long as the transmission is limited to the information specified in Section 72 para. 1 sentence 2 and the information on cash benefits that have been or will be made soon.

(3) The judge shall order the transmission in accordance with paragraphs 1 and 2.

d) Para 3: Conditions/thresholds for investigation measures

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

[730] § 67 Begriffsbestimmungen SGB X

(1) Die nachfolgenden Begriffsbestimmungen gelten ergänzend zu Artikel 4 der Verordnung (EU) 2016/679 des Europäischen Parlaments und des Rates vom 27. April 2016 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten, zum freien Datenverkehr und zur Aufhebung der Richtlinie 95/46/EG (Datenschutz-Grundverordnung) (ABl. L 119 vom 4.5.2016, S. 1; L 314 vom 22.11.2016, S. 72; L 127 vom 23.5.2018, S. 2) in der jeweils geltenden Fassung.

(2) Sozialdaten sind personenbezogene Daten (Artikel 4 Nummer 1 der Verordnung (EU) 2016/679), die von einer in § 35 des Ersten Buches genannten Stelle im Hinblick auf ihre Aufgaben nach diesem Gesetzbuch verarbeitet werden. Betriebs- und Geschäftsgeheimnisse sind alle betriebs- oder geschäftsbezogenen Daten, auch von juristischen Personen, die Geheimnischarakter haben.

(3) Aufgaben nach diesem Gesetzbuch sind, soweit dieses Kapitel angewandt wird, auch

1. Aufgaben auf Grund von Verordnungen, deren Ermächtigungsgrundlage sich im Sozialgesetzbuch befindet,
2. Aufgaben auf Grund von über- und zwischenstaatlichem Recht im Bereich der sozialen Sicherheit,
3. Aufgaben auf Grund von Rechtsvorschriften, die das Erste und das Zehnte Buch für entsprechend anwendbar erklären, und
4. Aufgaben auf Grund des Arbeitssicherheitsgesetzes und Aufgaben, soweit sie den in § 35 des Ersten Buches genannten Stellen durch Gesetz zugewiesen sind. § 8 Absatz 1 Satz 3 des Arbeitssicherheitsgesetzes bleibt unberührt.

(4) Werden Sozialdaten von einem Leistungsträger im Sinne von § 12 des Ersten Buches verarbeitet, ist der Verantwortliche der Leistungsträger. Ist der Leistungsträger eine Gebietskörperschaft, so sind der Verantwortliche die Organisationseinheiten, die eine Aufgabe nach einem der besonderen Teile dieses Gesetzbuches funktional durchführen.

(5) Nicht-öffentliche Stellen sind natürliche und juristische Personen, Gesellschaften und andere Personenvereinigungen des privaten Rechts, soweit sie nicht unter § 81 Absatz 3 fallen.

aa. Conditions and limitations for investigation measures of para. 1(c)–(f)

55 Germany has **restrictions of very intrusive** investigation **measures** for special catalogue crimes, which follow the national procedure rules.[731] In the following we highlight particularities and add important jurisprudence, which is essential for any EDP:

56

Section 100a CPC[732] Telecommunications surveillance

[…] (3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for or originating from the accused, or that the accused is using their telephone connection or information technology system.

(4) On the basis of the order for the interception or recording of telecommunications, all those providing or collaborating in the provision of telecommunications services on a commercial basis shall enable the court, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) to take these measures and shall provide the necessary information without delay. Whether and to what extent precautionary measures are to be taken in this respect shall follow from the Telecommunications Act (Telekommunikationsgesetz) and from the Telecommunications Interception Ordinance

[731] Krauß 2022, § 142b GVG mn. 22.

[732] § 100a CPC Telekommunikationsüberwachung

[...] (3) Die Anordnung darf sich nur gegen den Beschuldigten oder gegen Personen richten, von denen auf Grund bestimmter Tatsachen anzunehmen ist, dass sie für den Beschuldigten bestimmte oder von ihm herrührende Mitteilungen entgegennehmen oder weitergeben oder dass der Beschuldigte ihren Anschluss oder ihr informationstechnisches System benutzt.

(4) Auf Grund der Anordnung einer Überwachung und Aufzeichnung der Telekommunikation hat jeder, der Telekommunikationsdienste erbringt oder daran mitwirkt, dem Gericht, der Staatsanwaltschaft und ihren im Polizeidienst tätigen Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) diese Maßnahmen zu ermöglichen und die erforderlichen Auskünfte unverzüglich zu erteilen. Ob und in welchem Umfang hierfür Vorkehrungen zu treffen sind, bestimmt sich nach dem Telekommunikationsgesetz und der Telekommunikations-Überwachungsverordnung. § 95 Absatz 2 gilt entsprechend.

(5) Bei Maßnahmen nach Absatz 1 Satz 2 und 3 ist technisch sicherzustellen, dass

1. ausschließlich überwacht und aufgezeichnet werden können:

a) die laufende Telekommunikation (Absatz 1 Satz 2), oder

b) Inhalte und Umstände der Kommunikation, die ab dem Zeitpunkt der Anordnung nach § 100e Absatz 1 auch während des laufenden Übertragungsvorgangs im öffentlichen Telekommunikationsnetz hätten überwacht und aufgezeichnet werden können (Absatz 1 Satz 3),

2. an dem informationstechnischen System nur Veränderungen vorgenommen werden, die für die Datenerhebung unerlässlich sind, und

3. die vorgenommenen Veränderungen bei Beendigung der Maßnahme, soweit technisch möglich, automatisiert rückgängig gemacht werden.

Das eingesetzte Mittel ist nach dem Stand der Technik gegen unbefugte Nutzung zu schützen. Kopierte Daten sind nach dem Stand der Technik gegen Veränderung, unbefugte Löschung und unbefugte Kenntnisnahme zu schützen.

(6) Bei jedem Einsatz des technischen Mittels sind zu protokollieren

1. die Bezeichnung des technischen Mittels und der Zeitpunkt seines Einsatzes,

2. die Angaben zur Identifizierung des informationstechnischen Systems und die daran vorgenommenen nicht nur flüchtigen Veränderungen,

3. die Angaben, die die Feststellung der erhobenen Daten ermöglichen, und

4. die Organisationseinheit, die die Maßnahme durchführt.

(Telekommunikations-Überwachungsverordnung) issued thereunder. Section 95 para. 2 shall apply accordingly.
(5) In the case of measures under para. 1 sentences 2 and 3, it must be ensured that technical means are in place so that
1. only the following can be intercepted and recorded:
a) ongoing telecommunications (para. 1 sentence 2) or
b) the content and circumstances of the communication which could also have been intercepted and recorded from the date on which the order was made pursuant to section 100e para. 1 during ongoing transmission processes in the public telecommunications network (para. 1 sentence 3);
2. only those changes are made to the information technology system which are essential in order to capture the data; and
3. the changes made are automatically reversed once the measure is concluded, insofar as this is technically possible.
The means used shall provide protection against unauthorised access using methods reflecting the state of the art. Copied data shall be protected against modification, unauthorised deletion and authorised inspection using methods reflecting the state of the art.
(6) A record is to be made of the following each time technical means are used:
1. the designation of the technical means and the time of their use,
2. information required to identify the information technology system and changes made which are not only transient,
3. information enabling the identification of the data captured and
4. the unit implementing the measure.

bb. Serious offences limitation for offences of para. 1(e) and (f)

57

Section 100a CPC Telecommunications surveillance

[…] (2) ***Serious crimes*** for the purposes of para. 1 no. 1 shall be[733]

1. under the Criminal Code:

a) offences against peace, high treason, endangering the democratic state under the rule of law, treason and endangering external security under sections 80a to 82, 84 to 86, 87 to 89a, section 89c paras. 1 to 4 and sections 94 to 100a,

b) ***taking of bribes by and giving of bribes to elected officials under section 108e,***

[733] Relevant paras for the German PIF Aquis are highlighted in bold and presented in italics in the English version.
(2) Schwere Straftaten im Sinne des Absatzes 1 Nr. 1 sind:
1. aus dem Strafgesetzbuch:
a) Straftaten des Friedensverrats, des Hochverrats und der Gefährdung des demokratischen Rechtsstaates sowie des Landesverrats und der Gefährdung der äußeren Sicherheit nach den §§ 80a bis 82, 84 bis 86, 87 bis 89a, 89c Absatz 1 bis 4, 94 bis 100a,
b) Bestechlichkeit und Bestechung von Mandatsträgern nach § 108e,
c) Straftaten gegen die Landesverteidigung nach den §§ 109d bis 109h,
d) Straftaten gegen die öffentliche Ordnung nach den §§ 129 bis 130,
e) Geld- und Wertzeichenfälschung nach den §§ 146 und 151, jeweils auch in Verbindung mit § 152, sowie nach § 152a Abs. 3 und § 152b Abs. 1 bis 4,
f) Straftaten gegen die sexuelle Selbstbestimmung in den Fällen der §§ 176, 176c, 176d und, unter den in § 177 Absatz 6 Satz 2 Nummer 2 genannten Voraussetzungen, des § 177,
g) Verbreitung, Erwerb und Besitz kinder- und jugendpornographischer Inhalte nach § 184b, § 184c Absatz 2,
h) Mord und Totschlag nach den §§ 211 und 212,
i) Straftaten gegen die persönliche Freiheit nach den §§ 232, 232a Absatz 1 bis 5, den §§ 232b, 233 Absatz 2, den §§ 233a, 234, 234a, 239a und 239b,
j) Bandendiebstahl nach § 244 Abs. 1 Nr. 2, Wohnungseinbruchdiebstahl nach § 244 Absatz 4 und schwerer Bandendiebstahl nach § 244a,
k) Straftaten des Raubes und der Erpressung nach den §§ 249 bis 255,
l) gewerbsmäßige Hehlerei, Bandenhehlerei und gewerbsmäßige Bandenhehlerei nach den §§ 260 und 260a,
m) Geldwäsche nach § 261, wenn die Vortat eine der in den Nummern 1 bis 11 genannten schweren Straftaten ist,
n) Betrug und Computerbetrug unter den in § 263 Abs. 3 Satz 2 genannten Voraussetzungen und im Falle des § 263 Abs. 5, jeweils auch in Verbindung mit § 263a Abs. 2,
o) Subventionsbetrug unter den in § 264 Abs. 2 Satz 2 genannten Voraussetzungen und im Falle des § 264 Abs. 3 in Verbindung mit § 263 Abs. 5,
p) Sportwettbetrug und Manipulation von berufssportlichen Wettbewerben unter den in § 265e Satz 2 genannten Voraussetzungen,
q) Vorenthalten und Veruntreuen von Arbeitsentgelt unter den in § 266a Absatz 4 Satz 2 Nummer 4 genannten Voraussetzungen,
r) Straftaten der Urkundenfälschung unter den in § 267 Abs. 3 Satz 2 genannten Voraussetzungen und im Fall des § 267 Abs. 4, jeweils auch in Verbindung mit s. 268 Abs. 5 oder s. 269 Abs. 3, sowie nach § 275 Abs. 2 und s. 276 Abs. 2,
s) Bankrott unter den in § 283a Satz 2 genannten Voraussetzungen,
t) Straftaten gegen den Wettbewerb nach § 298 und, unter den in § 300 Satz 2 genannten Voraussetzungen, nach § 299,
u) gemeingefährliche Straftaten in den Fällen der §§ 306 bis 306c, 307 Abs. 1 bis 3, des s. 308 Abs. 1 bis 3, des s. 309 Abs. 1 bis 4, des s. 310 Abs. 1, der §§ 313, 314, 315 Abs. 3, des s. 315b Abs. 3 sowie der §§ 316a und 316c,
v) Bestechlichkeit und Bestechung nach den §§ 332 und 334,
2. aus der Abgabenordnung:
a) Steuerhinterziehung unter den in s. 370 Absatz 3 Satz 2 Nummer 1 genannten Voraussetzungen, sofern der Täter als Mitglied einer Bande, die sich zur fortgesetzten Begehung von Taten nach s. 370 Absatz 1 verbunden hat, handelt, oder unter den in s. 370 Absatz 3 Satz 2 Nummer 5 genannten Voraussetzungen,
b) gewerbsmäßiger, gewaltsamer und bandenmäßiger Schmuggel nach s. 373,
c) Steuerhehlerei im Falle des s. 374 Abs. 2,

c) offences against national defence under sections 109d to 109h,
d) ***offences against public order under sections 129 to 130,***
e) ***counterfeiting of money and official stamps under sections 146 and 151, in each case also in conjunction with section 152, as well as section 152a para. 3 and section 152b paras. 1 to 4,***
f) offences against sexual self-determination in cases under sections 176a and 176b and, under the conditions of section 177 para. 6 sentence 2 no. 2, in cases under section 177,
g) dissemination, procurement and possession of child and youth pornography under section 184b paras. 1 and 2 and section 184c para. 2,
h) murder under specific aggravating circumstances (*Mord*) and murder (*Totschlag*) under sections 211 and 212,
i) offences against personal liberty under section 232, section 232a paras. 1 to 5, section 232b, section 233 para. 2, sections 233a, 234, 234a, 239a and 239b,
j) gang theft under section 244 para. 1 no. 2 and aggravated gang theft under section 244a,
k) robbery or extortion under sections 249 to 255,
l) commercial handling of stolen goods, handling as a member of a gang and commercial handling as a member of a gang under sections 260 and 260a,
m) ***money laundering or concealing unlawfully acquired assets under section 261 paras. 1, 2 and 4; if criminal liability is based on the fact that impunity pursuant to section 261 para. 9 sentence 2 is ruled out under section 261 para. 9 sentence 3, then only where the object is derived from one of the serious crimes referred to in nos. 1 to 11***,
n) ***fraud and computer fraud under the conditions of section 263 para. 3 sentence 2 and in the case under section 263 para. 5, in each case also in conjunction with section 263a para. 2,***
o) ***subsidy fraud under the conditions of section 264 para. 2 sentence 2 and in the case under section 264 para. 3 in conjunction with section 263 para. 5,***
p) sports betting fraud and manipulation of professional sports competitions under the conditions of section 265e sentence 2,
q) ***withholding and misappropriation of wages or salaries under the conditions of section 266a para. 4 sentence 2 no. 4,***
r) ***offences involving forgery of documents under the conditions of section 267 para. 3 sentence 2 and in the case under section 267 para. 4, in each case also in conjunction with section 268 para. 5 or section 269 para. 3, as well as under section 275 para. 2 and section 276 (2),***
s) ***bankruptcy under the conditions of section 283a sentence 2,***
t) ***offences against competition under section 298 and, under the conditions of section 300 sentence 2, under section 299,***

u) offences constituting a public danger in the cases under sections 306 to 306c, section 307 paras. 1 to 3, section 308 paras. 1 to 3, section 309 paras. 1 to 4, section 310 para. 1, sections 313 and 314, section 315 (3), section 315b (3), as well as sections 361a and 361c,
v) taking and giving of a bribe under sections 332 and 334;
2. ***under the General Tax Code (Abgabenordnung):***
a) ***tax evasion under the conditions of section 370 para. 3 sentence 2 no. 5,***
b) ***commercial, violent and gang smuggling under section 373,***
c) ***handling goods obtained by tax evasion as defined in section 374 para. 2;***
3.[734] under the Anti-Doping Act (*Anti-Doping-Gesetz*):
offences under section 4 para. 4 no. 2 (b);
4. under the Asylum Act (*Asylgesetz*):
a) inducement to submit fraudulent applications for asylum under section 84 (3),
b) commercial and organised incitement to submit fraudulent applications for asylum under section 84a;
5. under the Residence Act:
a) smuggling of foreigners into the federal territory under section 96 para. 2,

[734] 3. aus dem Anti-Doping-Gesetz:
Straftaten nach § 4 Absatz 4 Nummer 2 Buchstabe b,
4. aus dem Asylgesetz:
a) Verleitung zur missbräuchlichen Asylantragstellung nach § 84 Abs. 3,
b) gewerbs- und bandenmäßige Verleitung zur missbräuchlichen Asylantragstellung nach § 84a,
5. aus dem Aufenthaltsgesetz:
a) Einschleusen von Ausländern nach § 96 Abs. 2,
b) Einschleusen mit Todesfolge und gewerbs- und bandenmäßiges Einschleusen nach § 97,
5a. aus dem Ausgangsstoffgesetz:
Straftaten nach § 13 Absatz 3,
6. aus dem Außenwirtschaftsgesetz:
vorsätzliche Straftaten nach den §§ 17 und 18 des Außenwirtschaftsgesetzes,
7. aus dem Betäubungsmittelgesetz:
a) Straftaten nach einer in § 29 Abs. 3 Satz 2 Nr. 1 in Bezug genommenen Vorschrift unter den dort genannten Voraussetzungen,
b) Straftaten nach den §§ 29a, 30 Abs. 1 Nr. 1, 2 und 4 sowie den §§ 30a und 30b,
8. aus dem Grundstoffüberwachungsgesetz:
Straftaten nach § 19 Abs. 1 unter den in § 19 Abs. 3 Satz 2 genannten Voraussetzungen,
9. aus dem Gesetz über die Kontrolle von Kriegswaffen:
a) Straftaten nach § 19 Abs. 1 bis 3 und § 20 Abs. 1 und 2 sowie § 20a Abs. 1 bis 3, jeweils auch in Verbindung mit s. 21,
b) Straftaten nach § 22a Abs. 1 bis 3,
9a. aus dem Neue-psychoaktive-Stoffe-Gesetz:
Straftaten nach § 4 Absatz 3 Nummer 1 Buchstabe a,
10. aus dem Völkerstrafgesetzbuch:
a) Völkermord nach § 6,
b) Verbrechen gegen die Menschlichkeit nach § 7,
c) Kriegsverbrechen nach den §§ 8 bis 12,
d) Verbrechen der Aggression nach § 13,
11. aus dem Waffengesetz:
a) Straftaten nach § 51 Abs. 1 bis 3,
b) Straftaten nach § 52 Abs. 1 Nr. 1 und 2 Buchstabe c und d sowie Abs. 5 und 6. [...]

b) smuggling of foreigners into the federal territory resulting in death and smuggling for gain and as an organised gang under section 97;
6. under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*):
intentional offences under sections 17 and 18;
7. under the Narcotics Act (*Betäubungsmittelgesetz*):
a) offences under one of the provisions referred to in section 29 para. 3 sentence 2 no. 1, subject to the conditions set out therein,
b) offences under section 29a, section 30 para. 1 nos. 1, 2 and 4, and sections 30a and 30b;
8. under the Precursors Control Act (*Grundstoffüberwachungsgesetz*):
offences under section 19 para. 1, subject to the conditions of section 19 para. 3 sentence 2;
9. under the War Weapons Control Act (*Gesetz über die Kontrolle von Kriegswaffen*):
a) offences under section 19 paras. 1 to 3, section 20 paras. 1 and 2, and section 20a paras. 1 to 3, each also in conjunction with section 21,
b) offences under section 22a paras. 1 to 3;
9a. under the New Psychoactive Substances Act (*Neue-psychoaktive-Stoffe-Gesetz*):
offences under section 4 para. 3 no. 1 (a);
10. under the Code of Crimes against International Law (*Völkerstrafgesetzbuch*):
a) genocide under section 6,
b) crimes against humanity under section 7,
c) war crimes under sections 8 to 12,
d) crimes of aggression under section 13;
11. under the Weapons Act (*Waffengesetz*):
a) offences under section 51 paras. 1 to 3,
b) offences under section 52 para. 1 no. 1 and no. 2 (c) and (d), and section 52 para. 5 and (6).

cc. Notifications according to the last sentence of para. 3

Cf. in Sections 100a, 100c, 100f, 100g, 100h und 100i CPC. **58**

Nota bene: The German Federal Government (*Bundesregierung)* intends to make use of this regulation and will send the corresponding list to the EPPO in accordance with Article 117 of the EPPO Regulation. [735] The EPPO received the notification in June 2021. The Notification states the following (unofficial translation):

[735] RefE EuStA-G-E 2019: "Die Bundesregierung beabsichtigt, von dieser Regelung Gebrauch zu machen, und wird die entsprechende Liste der EUStA gemäß Artikel 117 der EUStA-Verordnung übermitteln." The list was finished on 18th June 2021 and afterwards send to the EPPO.

59 *Sources and national sections 4: National provisions for Art. 30 para. 3 EPPO Reg.*

Art. 30 para. 1 (e)	
§ 100a CPC: Telecommunication surveillance - if a serious crime (catalogue act according to para. 2) exists, - the act is difficult in individual cases weighs and - the investigation of the facts or the determination of the whereabouts of the accused is significantly more difficult or hopeless in any other way. § 100g Abs. 1 CPC: Collection of traffic data according to § 96 paragraph 1 TKG	Catalog offences according to § 100a Abs. 2 CPC: § 108e StGB: Bribery and corruptibility of elected officials (§ 100a para. 2 No. 1b CPC) § 129 StGB: Formation of a criminal organisation (§ 100a Paragraph 2 No. 1d CPC) § 261 StGB (money laundering); if the predicate one of the provisions in Section 100a Paragraph 2 Nos. 1 to 11 CPC mentioned serious criminal offences (§ 100a Para. 2 No. 1m CPC) Catalog offences according to § 100a Abs. 2 CPC (see above) or - Other criminal offences within the competence of the EUStA (e.g. § 263 Para. 1 StGB or § 266 paragraph 1 StGB), if it is a criminal offence of considerable importance in the individual case (§ 100g Abs. 1 S. 1 Nr. 1 CPC), - each also, if the attempt indeed is punishable and the EUPO for the prosecution the experimental act is responsible (see notification of substantive jurisdiction). - In addition, all criminal offences (those in falls within the competence of the EPPO) committed by means of telecommunications (§ 100g para. 1 sentence 1 no. 2).
§ 100g Abs. 2 CPC: Collection of traffic data according to § 113b TKG	Catalog offences according to § 100a Abs. 2 CPC: ss. 129 CC (criminal gang) and s. 261 CC (money laundering), only in case of Section 261 para. 5 sentence 2 of the Criminal Code if the predicate offence is a one of the particularly serious criminal offences specified in Section 100g Paragraph 2 Nos. 1 to 8 CPC (§

	100g Abs. 2 S. 2 Nr. 1g CPC); no jurisdiction of the EPPO for the attempted money laundering (see notification of substantive jurisdiction)
§ 100g paragraph 3 sentence 1 CPC: cell query – if the conditions of § 100g Para. 1 S. 1 No. 1 CPC are fulfilled (offence of considerable importance in individual cases, in particular one Catalog offence according to § 100a paragraph 2 CPC) and – the collection of data in a reasonable proportion to the importance of the matter and – the investigation of the facts or the determination of the whereabouts of the accused would be hopeless or significantly more difficult in any other way.	Catalog offences according to § 100a Abs. 2 CPC as well as other criminal offences of considerable importance in individual cases, for which the EUStA is responsible (see above) – even in the case of an attempted offence
§ 100g paragraph 3 sentence 2 CPC: Cell request for after § 113b TKG stored traffic data	Catalog offences according to § 100a Abs. 2 2 CPC
Art. 30 para. 1 (f)	
§ 100g Abs. 1 CPC	Catalog offences according to § 100a Abs. 2 CPC as well as other criminal offences of considerable importance in individual cases, for which the EUStA is responsible (see above)
§ 100g Abs 2 CPC	Catalog offences according to § 100a Abs. 2 2 CPC
§ 100g Abs. 3 S. 1 CPC	Catalog offences according to § 100a Abs. 2 CPC as well as other criminal offences of considerable importance in individual cases, for which the EUStA is responsible (see above)
§ 100g Abs. 3 S. 2 CPC	Catalog offences according to § 100a Abs. 2 2 CPC
s. 100i CPC: Technical investigative measures mobile devices Offence of also in individual cases significant importance, in particular one in	Catalog offences according to § 100a Abs. 2 CPC as well as other criminal of-

s. 100a para. 2 criminal offence designated CPC.	fences of considerable importance in individual cases, for which the EUStA is responsible (see above)

Source: Notification of the German Federal Ministry of Justice/Federal Government of the Bundesrepublik Deutschland to the EPPO, 18 June 2021.

e) Para 4: Any other measure(s) in the EDP's Member State

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

60 In the following part all measures that might be in single cases available and necessary will be presented. This can include undercover investigators, sceneries of the use of dragnet searches, residential surveillance (eavesdropping), observation over a longer period of time etc.:[736]

aa. Dragnet investigation and procedure, ss. 98a, b CPC

61

Section 98a CPC[737] Dragnet investigation
(1) Notwithstanding sections 94, 110 and 161, if there are sufficient factual indications to show that an offence of substantial significance has been committed
1. relating to the illegal trade in narcotics or weapons or the counterfeiting of money or official stamps,
2. relating to national security (sections 74a and 120 of the Courts Constitution Act),
3. relating to offences constituting a public danger,

[736] See Hauck 2022, vol. 8, § 32, Mn. 1 et seq.

[737] § 98a Rasterfahndung
(1) Liegen zureichende tatsächliche Anhaltspunkte dafür vor, daß eine Straftat von erheblicher Bedeutung
1. auf dem Gebiet des unerlaubten Betäubungsmittel- oder Waffenverkehrs, der Geld- oder Wertzeichenfälschung,
2. auf dem Gebiet des Staatsschutzes (§§ 74a, 120 des Gerichtsverfassungsgesetzes),
3. auf dem Gebiet der gemeingefährlichen Straftaten,
4. gegen Leib oder Leben, die sexuelle Selbstbestimmung oder die persönliche Freiheit,
5. gewerbs- oder gewohnheitsmäßig oder
6. von einem Bandenmitglied oder in anderer Weise organisiert
begangen worden ist, so dürfen, unbeschadet §§ 94, 110, 161, personenbezogene Daten von Personen, die bestimmte, auf den Täter vermutlich zutreffende Prüfungsmerkmale erfüllen, mit anderen Daten maschinell abgeglichen werden, um Nichtverdächtige auszuschließen oder Personen festzustellen, die weitere für die Ermittlungen bedeutsame Prüfungsmerkmale erfüllen. Die Maßnahme darf nur *angeordnet werden*, wenn die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Täters auf andere Weise erheblich weniger erfolgversprechend oder wesentlich erschwert wäre.
(2) Zu dem in Absatz 1 bezeichneten Zweck hat die speichernde Stelle die für den Abgleich erforderlichen Daten aus den Datenbeständen auszusondern und den Strafverfolgungsbehörden zu übermitteln.
(3) Soweit die zu übermittelnden Daten von anderen Daten nur mit unverhältnismäßigem Aufwand getrennt werden können, sind auf Anordnung auch die anderen Daten zu übermitteln. Ihre Nutzung ist nicht zulässig.
(4) Auf Anforderung der Staatsanwaltschaft hat die speichernde Stelle die Stelle, die den Abgleich durchführt, zu unterstützen.
(5) § 95 Abs. 2 gilt entsprechend.

4. relating to the endangering of life or limb, sexual self-determination or personal liberty,
5. on a commercial or habitual basis or
6. by a member of a gang or in some other organised way,
personal data relating to individuals who manifest certain significant features which may be presumed to apply to the offender may be automatically matched against other data in order to exclude individuals who are not under suspicion or to identify individuals who manifest other significant features relevant to the investigations. This measure may be ordered only if other means of establishing the facts or determining the offender's whereabouts would offer much less prospect of success or would be much more difficult.
(2) For the purposes of para. 1, the storing agency shall extract from the database the data required for matching purposes and shall transmit them to the prosecuting authorities.
(3) Insofar as isolating the data for transmission from other data requires disproportionate effort, the other data shall, upon order, also be transmitted. Their use shall not be admissible.
(4) Upon request by the public prosecution office, the storing agency shall assist the agency effecting the data match.
(5) Section 95 para. 2 shall apply accordingly.

Section 98b CPC[738] **Procedure for dragnet investigation**
(1) Matching and transmission of data may be ordered only by the court and, in exigent circumstances, also by the public prosecution office. Where the public prosecution office has made the order, it shall request court confirmation without delay. The order shall become ineffective if it is not confirmed by the court within three working days. The order shall be made in writing. It shall name the person obliged to transmit the data and shall be limited to the data and matching features required for the particular case.

[738] § 98b Verfahren bei der Rasterfahndung
(1) Der Abgleich und die Übermittlung der Daten dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft *angeordnet werden*. Hat die Staatsanwaltschaft die Anordnung getroffen, so beantragt sie unverzüglich die gerichtliche Bestätigung. Die Anordnung tritt außer Kraft, wenn sie nicht binnen drei Werktagen vom Gericht bestätigt wird. Die Anordnung ergeht schriftlich. Sie muß den zur Übermittlung Verpflichteten bezeichnen und ist auf die Daten und Prüfungsmerkmale zu beschränken, die für den Einzelfall benötigt werden. Die Übermittlung von Daten, deren Verwendung besondere bundesgesetzliche oder entsprechende landesgesetzliche Verwendungsregelungen entgegenstehen, darf nicht *angeordnet werden*. Die §§ 96, 97, 98 Abs. 1 Satz 2 gelten entsprechend.
(2) Ordnungs- und Zwangsmittel (§ 95 Abs. 2) dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft *angeordnet werden*; die Festsetzung von Haft bleibt dem Gericht vorbehalten.
(3) Sind die Daten auf Datenträgern übermittelt worden, so sind diese nach Beendigung des Abgleichs unverzüglich zurückzugeben. Personenbezogene Daten, die auf andere Datenträger übertragen wurden, sind unverzüglich zu löschen, sobald sie für das Strafverfahren nicht mehr benötigt werden.
(4) Nach Beendigung einer Maßnahme nach § 98a ist die Stelle zu unterrichten, die für die Kontrolle der Einhaltung der Vorschriften über den Datenschutz bei öffentlichen Stellen zuständig ist.

The transmission of data may not be ordered where special rules on use, being provisions under federal law or under the corresponding *Land* law, present an obstacle to their use. Sections 96, 97 and section 98 para. 1 sentence 2 shall apply accordingly.
(2) Administrative measures and means of compulsion (section 95 para. 2) may be ordered only by the court and, in exigent circumstances, also by the public prosecution office; the imposition of detention shall be reserved to the court.
(3) Where data were transmitted on data media, these shall be returned without delay once the data matching has been completed. Personal data transferred to other data media shall be deleted without delay once they are no longer required for the criminal proceedings.
(4) Upon completion of a measure under section 98a, the agency responsible for monitoring compliance with data protection rules by public bodies shall be notified.

bb. Online-search, s. 100b CPC

62 The Online-Search allowing any access to information technology systems is a highly sensitive and very intrusive investigation measure that is carried out secretly by state authorities.[739] It involves IT-staff and special branches of the prosecution service. As the EDPs are annexed, linked in Frankfurt a.M. to the Office of the Advocate General of the Land Hesse, they profit from the highly skilled staff that might be available as well as the sources to the County Crime Bureau (*Landeskriminalamt*) and the Service Providers. The costs for such investigative measures are still high and they can only be used if the case allows it (material offence must fit into the catalogue of allowed offences) and offers no other possibilities to gather evidence more easily.

63

Section 100b CPC [Online-Search]
(1)[740] Even without the knowledge of the data subject, technical means may be used to intervene in an information technology system used by the data subject and data may be collected from it (online search) if

[739] See Hauck 2014, pp. 21, 83 et seq., 205 et seq., 418, 423 et seq., Schlegel 2019, pp. 154 et seq.
[740] § 100b StPO Online-Durchsuchung
(1) Auch ohne Wissen des Betroffenen darf mit technischen Mitteln in ein von dem Betroffenen genutztes informationstechnisches System eingegriffen und dürfen Daten daraus erhoben werden (Online-Durchsuchung), wenn 1.bestimmte Tatsachen den Verdacht begründen, dass jemand als Täter oder Teilnehmer eine in Absatz 2 bezeichnete besonders schwere Straftat begangen oder in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat,
2. die Tat auch im Einzelfall besonders schwer wiegt und
3.die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes des Beschuldigten auf andere Weise wesentlich erschwert oder aussichtslos wäre.
(2) Besonders schwere Straftaten im Sinne des Absatzes 1 Nummer 1 sind:
1. aus dem Strafgesetzbuch:

1. certain facts justify the suspicion that someone has committed a particularly serious criminal offence referred to in para. 2 as a perpetrator or participant or, in cases in which the attempt is a punishable offence, attempted to commit it,

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[...] b) Bildung krimineller Vereinigungen nach § 129 Absatz 1 in Verbindung mit Absatz 5 Satz 3 und Bildung terroristischer Vereinigungen nach § 129a Absatz 1, 2, 4, 5 Satz 1 erste Alternative, jeweils auch in Verbindung mit § 129b Absatz 1,
c) Geld- und Wertzeichenfälschung nach den §§ 146 und 151, jeweils auch in Verbindung mit § 152, sowie nach § 152a Absatz 3 und § 152b Absatz 1 bis 4,
[...] g) Straftaten gegen die persönliche Freiheit in den Fällen der §§ 234, 234a Absatz 1, 2, der §§ 239a, 239b und Menschenhandel nach § 232 Absatz 3, Zwangsprostitution und Zwangsarbeit nach § 232a Absatz 3, 4 oder 5 zweiter Halbsatz, § 232b Absatz 3 oder 4 in Verbindung mit § 232a Absatz 4 oder 5 zweiter Halbsatz und Ausbeutung unter Ausnutzung einer Freiheitsberaubung nach § 233a Absatz 3 oder 4 zweiter Halbsatz,
h) Bandendiebstahl nach § 244 Absatz 1 Nummer 2 und schwerer Bandendiebstahl nach § 244a,
i) schwerer Raub und Raub mit Todesfolge nach § 250 Absatz 1 oder Absatz 2, § 251,
j) räuberische Erpressung nach § 255 und besonders schwerer Fall einer Erpressung nach § 253 unter den in § 253 Absatz 4 Satz 2 genannten Voraussetzungen,
k) gewerbsmäßige Hehlerei, Bandenhehlerei und gewerbsmäßige Bandenhehlerei nach den §§ 260, 260a,
l) besonders schwerer Fall der Geldwäsche nach § 261 unter den in § 261 Absatz 5 Satz 2 genannten Voraussetzungen, wenn die Vortat eine der in den Nummern 1 bis 7 genannten besonders schweren Straftaten ist,
m) Computerbetrug in den Fällen des § 263a Absatz 2 in Verbindung mit § 263 Absatz 5,
n) besonders schwerer Fall der Bestechlichkeit und Bestechung nach § 335 Absatz 1 unter den in § 335 Absatz 2 Nummer 1 bis 3 genannten Voraussetzungen,
2. aus dem Asylgesetz:
a) Verleitung zur missbräuchlichen Asylantragstellung nach § 84 Absatz 3,
b) gewerbs- und bandenmäßige Verleitung zur missbräuchlichen Asylantragstellung nach § 84a Absatz 1,
3. aus dem Aufenthaltsgesetz:
a) Einschleusen von Ausländern nach § 96 Absatz 2,
b) Einschleusen mit Todesfolge oder gewerbs- und bandenmäßiges Einschleusen nach § 97,
4. aus dem Außenwirtschaftsgesetz:
a) Straftaten nach § 17 Absatz 1, 2 und 3, jeweils auch in Verbindung mit Absatz 6 oder 7,
b) Straftaten nach § 18 Absatz 7 und 8, jeweils auch in Verbindung mit Absatz 10,
5. aus dem Betäubungsmittelgesetz:
a) besonders schwerer Fall einer Straftat nach § 29 Absatz 1 Satz 1 Nummer 1, 5, 6, 10, 11 oder 13, Absatz 3 unter der in § 29 Absatz 3 Satz 2 Nummer 1 genannten Voraussetzung,
b) eine Straftat nach den §§ 29a, 30 Absatz 1 Nummer 1, 2, 4, § 30a,
6. aus dem Gesetz über die Kontrolle von Kriegswaffen:
a) eine Straftat nach § 19 Absatz 2 oder § 20 Absatz 1, jeweils auch in Verbindung mit § 21,
b) besonders schwerer Fall einer Straftat nach § 22a Absatz 1 in Verbindung mit Absatz 2,
7. aus dem Grundstoffüberwachungsgesetz: Straftaten nach § 19 Absatz 3,
8. aus dem Neue-psychoaktive-Stoffe-Gesetz: Straftaten nach § 4 Absatz 3 Nummer 1,
9. aus dem Völkerstrafgesetzbuch:
a) Völkermord nach § 6,
b) Verbrechen gegen die Menschlichkeit nach § 7,
c) Kriegsverbrechen nach den §§ 8 bis 12,
d) Verbrechen der Aggression nach § 13,
10. aus dem Waffengesetz:
a) besonders schwerer Fall einer Straftat nach § 51 Absatz 1 in Verbindung mit Absatz 2,
b) besonders schwerer Fall einer Straftat nach § 52 Absatz 1 Nummer 1 in Verbindung mit Absatz 5.
(3) Die Maßnahme darf sich nur gegen den Beschuldigten richten. Ein Eingriff in informationstechnische Systeme anderer Personen ist nur zulässig, wenn auf Grund bestimmter Tatsachen anzunehmen ist, dass
1. der in der Anordnung nach § 100e Absatz 3 bezeichnete Beschuldigte informationstechnische Systeme der anderen Person benutzt, und
2. die Durchführung des Eingriffs in informationstechnische Systeme des Beschuldigten allein nicht zur Erforschung des Sachverhalts oder zur Ermittlung des Aufenthaltsortes eines Mitbeschuldigten führen wird.
Die Maßnahme darf auch durchgeführt werden, wenn andere Personen unvermeidbar betroffen werden.
(4) § 100a Absatz 5 und 6 gilt mit Ausnahme von Absatz 5 Satz 1 Nummer 1 entsprechend.

2. the offence is particularly serious in the individual case and
3. investigating the facts or determining the whereabouts of the accused would be significantly more difficult or hopeless in any other way.
(2) Particularly serious criminal offences within the meaning of para. 1 number 1 are:
1. from the Penal Code:
a) [...]
b) Formation of criminal organisations pursuant to Section 129 Paragraph 1 in conjunction with Paragraph 5 Clause 3 and formation of terrorist organisations pursuant to Section 129a Paragraph 1, 2, 4, 5 Clause 1 first alternative, each also in conjunction with Section 129b Paragraph 1,
c) Counterfeiting money and stamps according to SS. 146 and 151, each also in connection with p. 152, as well as according to p. 152a paragraph 3 and p. 152b paragraph 1 to 4,
[...] l) a particularly serious case of money laundering according to p. 261 under the conditions specified in p. 261 paragraph 5 sentence 2, if the predicate offence is one of the particularly serious criminal offences specified in numbers 1 to 7,
m) computer fraud in the cases of section 263a paragraph 2 in conjunction with section 263 paragraph 5,
n) a particularly serious case of corruption and bribery under section 335 paragraph 1 under the conditions specified in section 335 paragraph 2 numbers 1 to 3,
2. from the Asylum Act:
a) temptation to abusively file an asylum application pursuant to Section 84 (3),
b) commercial and gang-like inducement to abusively file an asylum application pursuant to Section 84a paragraph 1,
3. from the Residence Act:
a) Smuggling of foreigners according to section 96 paragraph 2,
b) Smuggling resulting in death or commercial and gang smuggling according to p. 97,
4. from the Foreign Trade Act:
a) criminal offences under section 17 paragraphs 1, 2 and 3, each also in conjunction with paragraph 6 or 7,
b) criminal offences under section 18 paragraphs 7 and 8, each also in conjunction with paragraph 10,
5. from the Narcotics Act:
a) a particularly serious case of a criminal offence pursuant to Section 29 Paragraph 1 Clause 1 Number 1, 5, 6, 10, 11 or 13 Paragraph 3 under the condition specified in Section 29 Paragraph 3 Clause 2 Number 1,
b) a crime according to the ss. 29a, 30 paragraph 1 number 1, 2, 4, p. 30a,
6.–10. […]

(3) **The measure may only be directed against the accused.** An intervention in the information technology systems of **other people is only permitted if it can be assumed on the basis of certain facts that**
1. the accused named in the order under section 100e paragraph 3 uses the other person's information technology systems, and
2. Carrying out the intervention in the accused's information technology systems alone will not lead to investigating the facts or determining the whereabouts of a co-accused.
The measure may also be carried out if other people are unavoidably affected.
(4) See 100a paragraphs 5 and 6 applies with the exception of paragraph 5 sentence 1 number 1 accordingly.

Nota bene: Section 102 of the German CPC does not encompass online searches.

cc. Acoustic surveillance of private premises

With regard to acoustic surveillance of private premises exist certain restrictions that are regulated by s. 100c para. 6 s. 2 CPC and must be overserved:[741] **64**

Section 100c CPC[742] **Acoustic surveillance of private premises** **65**
(1) Private speech on private premises may be intercepted and recorded using technical means even without the knowledge of the person concerned if
1. certain facts give rise to the suspicion that a person has, either as an offender or participant, committed an especially serious crime as referred to in section 100b para. 2 or, in cases where there is criminal liability for attempt, has attempted to commit such an offence,
2. the offence is one of particular severity in the individual case as well,

[741] Kremer 2018, p. 17.
[742] § 100c Akustische Wohnraumüberwachung
(1) Auch ohne Wissen der Betroffenen darf das in einer Wohnung nichtöffentlich gesprochene Wort mit technischen Mitteln abgehört und aufgezeichnet werden, wenn
1. bestimmte Tatsachen den Verdacht begründen, dass jemand als Täter oder Teilnehmer eine in § 100b Absatz 2 bezeichnete besonders schwere Straftat begangen oder in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat,
2. die Tat auch im Einzelfall besonders schwer wiegt,
3. auf Grund tatsächlicher Anhaltspunkte anzunehmen ist, dass durch die Überwachung Äußerungen des Beschuldigten erfasst werden, die für die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes eines Mitbeschuldigten von Bedeutung sind, und
4. die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes eines Mitbeschuldigten auf andere Weise unverhältnismäßig erschwert oder aussichtslos wäre.
(2) Die Maßnahme darf sich nur gegen den Beschuldigten richten und nur in Wohnungen des Beschuldigten durchgeführt werden. In Wohnungen anderer Personen ist die Maßnahme nur zulässig, wenn auf Grund bestimmter Tatsachen anzunehmen ist, dass
1. der in der Anordnung nach § 100e Absatz 3 bezeichnete Beschuldigte sich dort aufhält und
2. die Maßnahme in Wohnungen des Beschuldigten allein nicht zur Erforschung des Sachverhalts oder zur Ermittlung des Aufenthaltsortes eines Mitbeschuldigten führen wird.
Die Maßnahme darf auch durchgeführt werden, wenn andere Personen unvermeidbar betroffen werden.

3. on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused which would be of significance in establishing the facts or determining the whereabouts of a co-accused; and
4. other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or would offer no prospect of success.
(2) The measure may be directed only against the accused and may be implemented only on the private premises of the accused. The measure shall be admissible on the private premises of other persons only if it can be assumed, on the basis of certain facts, that
1. the accused named in the order made pursuant to section 100e para. 3 is present on those premises and
2. applying the measure on the accused's premises alone will not lead to the establishment of the facts or to the determination of a co-accused person's whereabouts.
The measure may be taken even if it unavoidably affects other persons.

Section 100d para. 4, 5 CPC[743] Core area of private conduct of life; persons authorised to refuse to give evidence

[…] (4) Measures pursuant to section 100c may be ordered only if on the basis of factual indications it may be assumed that statements concerning the core area of the private conduct of life will not be covered by the surveillance. The interception and recording is to be interrupted without delay if during the surveillance indications arise that statements concerning the core area of the private conduct of life are being recorded. Where a measure has been interrupted, it may be recommenced subject to the conditions of sentence 1. In cases of doubt, the public prosecution office shall seek a decision from the court without delay concerning the interruption or continuation of the measure; section 100e para. 5 shall apply accordingly. If it is considered a possibility that the use of

[743] § 100d Kernbereich privater Lebensgestaltung; Zeugnisverweigerungsberechtigte
[...] (4) Maßnahmen nach § 100c dürfen nur *angeordnet werden*, soweit auf Grund tatsächlicher Anhaltspunkte anzunehmen ist, dass durch die Überwachung Äußerungen, die dem Kernbereich privater Lebensgestaltung zuzurechnen sind, nicht erfasst werden. Das Abhören und Aufzeichnen ist unverzüglich zu unterbrechen, wenn sich während der Überwachung Anhaltspunkte dafür ergeben, dass Äußerungen, die dem Kernbereich privater Lebensgestaltung zuzurechnen sind, erfasst werden. Ist eine Maßnahme unterbrochen worden, so darf sie unter den in Satz 1 genannten Voraussetzungen fortgeführt werden. Im Zweifel hat die Staatsanwaltschaft über die Unterbrechung oder Fortführung der Maßnahme unverzüglich eine Entscheidung des Gerichts herbeizuführen; § 100e Absatz 5 gilt entsprechend. Auch soweit für bereits erlangte Erkenntnisse ein Verwertungsverbot nach Absatz 2 in Betracht kommt, hat die Staatsanwaltschaft unverzüglich eine Entscheidung des Gerichts herbeizuführen. Absatz 3 Satz 3 gilt entsprechend.
(5) In den Fällen des § 53 sind Maßnahmen nach den §§ 100b und 100c unzulässig; ergibt sich während oder nach Durchführung der Maßnahme, dass ein Fall des § 53 vorliegt, gilt Absatz 2 entsprechend. In den Fällen der §§ 52 und 53a dürfen aus Maßnahmen nach den §§ 100b und 100c gewonnene Erkenntnisse nur verwertet werden, wenn dies unter Berücksichtigung der Bedeutung des zugrunde liegenden Vertrauensverhältnisses nicht außer Verhältnis zum Interesse an der Erforschung des Sachverhalts oder der Ermittlung des Aufenthaltsortes eines Beschuldigten steht. § 160a Absatz 4 gilt entsprechend.

findings already made pursuant to para. 2 will be prohibited, the public prosecution office must also apply to the court for a decision without delay. Para. 3 sentence 3 shall apply accordingly.
(5) In the cases under section 53, measures under sections 100b and 100c shall be inadmissible; if during or after implementation of the measure it becomes apparent that a case under section 53 exists, then para. 2 shall apply accordingly. In the cases under sections 52 and 53a, information acquired through measures under sections 100b and 100c may be used only if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in establishing the facts or determining the whereabouts of an accused person. Section 160a para. 4 shall apply accordingly.

dd. Accoustic surveillance outside of private premises

Section 100f CPC[744] **Acoustic surveillance outside of private premises** **66**
(1) Words spoken in a non-public context outside of private premises may be intercepted and recorded by technical means even without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person has, either as an offender or participant, committed one of the offences referred to in section 100a para. 2, which may in an individual case also be a serious crime or, in cases where there is criminal liability for attempt, has attempted to commit such an offence and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.
(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.
(3) The measure may be taken even if it unavoidably affects third parties.

[744] § 100f Akustische Überwachung außerhalb von Wohnraum
(1) Auch ohne Wissen der betroffenen Personen darf außerhalb von Wohnungen das nichtöffentlich gesprochene Wort mit technischen Mitteln abgehört und aufgezeichnet werden, wenn bestimmte Tatsachen den Verdacht begründen, dass jemand als Täter oder Teilnehmer eine in § 100a Ab§ 2 bezeichnete, auch im Einzelfall schwerwiegende Straftat begangen oder in Fällen, in denen der Versuch strafbar ist, zu begehen versucht hat, und die Erforschung des Sachverhalts oder die Ermittlung des Aufenthaltsortes eines Beschuldigten auf andere Weise aussichtslos oder wesentlich erschwert wäre.
(2) Die Maßnahme darf sich nur gegen einen Beschuldigten richten. Gegen andere Personen darf die Maßnahme nur *angeordnet werden*, wenn auf Grund bestimmter Tatsachen anzunehmen ist, dass sie mit einem Beschuldigten in Verbindung stehen oder eine solche Verbindung hergestellt wird, die Maßnahme zur Erforschung des Sachverhalts oder zur Ermittlung des Aufenthaltsortes eines Beschuldigten führen wird und dies auf andere Weise aussichtslos oder wesentlich erschwert wäre.
(3) Die Maßnahme darf auch durchgeführt werden, wenn Dritte unvermeidbar betroffen werden.
(4) § 100d Absatz 1 und 2 sowie § 100e Absatz 1, 3, 5 Satz 1 gelten entsprechend.

(4) Section 100e paras. 1 and 3, and para. 5 sentence 1 shall apply accordingly.

ee. Undercover Investigators and their Actions

67 **Section 110a CPC Undercover investigators**

(1)[745] Undercover investigators may be used to investigate offences if there are sufficient factual indications showing that an offence of substantial significance has been committed

1. in the sphere of the illegal trade in drugs or weapons, of counterfeiting of money or official stamps,
2. in the sphere of state security (sections 74a and 120 of the Courts Constitution Act),
3. on a commercial or habitual basis or
4. by a member of a gang or in some other organised way.

Undercover investigators may also be used to investigate serious criminal offences if certain facts substantiate the risk of a repetition. Their use shall be admissible only if other means of investigating the serious criminal offence would offer no prospect of success or would be much more difficult. Undercover investigators may also be used to investigate serious criminal offences if the special significance of the offence makes the operation necessary and other measures offer no prospect of success.

(2) Undercover investigators shall be police officers who carry out investigations using a changed and lasting identity (legend) which is conferred on them. They may take part in legal transactions using their legend.

(3) Where it is indispensable for building up or maintaining a legend, relevant documents may be drawn up, altered and used.

[745] § 110a Verdeckter Ermittler
(1) Verdeckte Ermittler dürfen zur Aufklärung von Straftaten eingesetzt werden, wenn zureichende tatsächliche Anhaltspunkte dafür vorliegen, daß eine Straftat von erheblicher Bedeutung
1. auf dem Gebiet des unerlaubten Betäubungsmittel- oder Waffenverkehrs, der Geld- oder Wertzeichenfälschung,
2. auf dem Gebiet des Staatsschutzes (§§ 74a, 120 des Gerichtsverfassungsgesetzes),
3. gewerbs- oder gewohnheitsmäßig oder
4. von einem Bandenmitglied oder in anderer Weise organisiert

begangen worden ist. Zur Aufklärung von Verbrechen dürfen Verdeckte Ermittler auch eingesetzt werden, soweit auf Grund bestimmter Tatsachen die Gefahr der Wiederholung besteht. Der Einsatz ist nur zulässig, soweit die Aufklärung auf andere Weise aussichtslos oder wesentlich erschwert wäre. Zur Aufklärung von Verbrechen dürfen Verdeckte Ermittler außerdem eingesetzt werden, wenn die besondere Bedeutung der Tat den Einsatz gebietet und andere Maßnahmen aussichtslos wären. § 100d Absatz 1 und 2 gilt entsprechend.
(2) Verdeckte Ermittler sind Beamte des Polizeidienstes, die unter einer ihnen verliehenen, auf Dauer angelegten, veränderten Identität (Legende) ermitteln. Sie dürfen unter der Legende am Rechtsverkehr teilnehmen.
(3) Soweit es für den Aufbau oder die Aufrechterhaltung der Legende unerläßlich ist, dürfen entsprechende Urkunden hergestellt, verändert und gebraucht werden.
For details from the legal interpretation see Hauck 2022, vol. 8, § 33, Mn. 19 et seq.

f) Para 5: National procedures and national modalities for taking investigative measures

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

German EPPO Adoption law[746] There are special procedures for measures due to Sections 100a and c CPC stipulated by Section 100e CPC: **68**

Section 100e CPC Procedure for measures under sections 100a to 100c
(1)[747] Measures under section 100a may be ordered by the court only upon the application of the public prosecution office. In exigent circumstances, the public prosecution

[746] § 3 Absatz 3 EUStAG

[747] § 100e Verfahren bei Maßnahmen nach den §§ 100a bis 100c CPC
(1) Maßnahmen nach § 100a dürfen nur auf Antrag der Staatsanwaltschaft durch das Gericht angeordnet werden. Bei Gefahr im Verzug kann die Anordnung auch durch die Staatsanwaltschaft getroffen werden. Soweit die Anordnung der Staatsanwaltschaft nicht binnen drei Werktagen von dem Gericht bestätigt wird, tritt sie außer Kraft. Die Anordnung ist auf höchstens drei Monate zu befristen. Eine Verlängerung um jeweils nicht mehr als drei Monate ist zulässig, soweit die Voraussetzungen der Anordnung unter Berücksichtigung der gewonnenen Ermittlungsergebnisse fortbestehen.
(2) Maßnahmen nach den §§ 100b und 100c dürfen nur auf Antrag der Staatsanwaltschaft durch die in § 74a Absatz 4 des Gerichtsverfassungsgesetzes genannte Kammer des Landgerichts angeordnet werden, in dessen Bezirk die Staatsanwaltschaft ihren Sitz hat. Bei Gefahr im Verzug kann diese Anordnung auch durch den Vorsitzenden getroffen werden. Dessen Anordnung tritt außer Kraft, wenn sie nicht binnen drei Werktagen von der Strafkammer bestätigt wird. Die Anordnung ist auf höchstens einen Monat zu befristen. Eine Verlängerung um jeweils nicht mehr als einen Monat ist zulässig, soweit die Voraussetzungen unter Berücksichtigung der gewonnenen Ermittlungsergebnisse fortbestehen. Ist die Dauer der Anordnung auf insgesamt sechs Monate verlängert worden, so entscheidet über weitere Verlängerungen das Oberlandesgericht.
(3) Die Anordnung ergeht schriftlich. In ihrer Entscheidungsformel sind anzugeben:
1. soweit möglich, der Name und die Anschrift des Betroffenen, gegen den sich die Maßnahme richtet,
2. der Tatvorwurf, auf Grund dessen die Maßnahme angeordnet wird,
3. Art, Umfang, Dauer und Endzeitpunkt der Maßnahme,
4. die Art der durch die Maßnahme zu erhebenden Informationen und ihre Bedeutung für das Verfahren,
5. bei Maßnahmen nach § 100a die Rufnummer oder eine andere Kennung des zu überwachenden Anschlusses oder des Endgerätes, sofern sich nicht aus bestimmten Tatsachen ergibt, dass diese zugleich einem anderen Endgerät zugeordnet ist; im Fall des § 100a Absatz 1 Satz 2 und 3 eine möglichst genaue Bezeichnung des informationstechnischen Systems, in das eingegriffen werden soll,
6. bei Maßnahmen nach § 100b eine möglichst genaue Bezeichnung des informationstechnischen Systems, aus dem Daten erhoben werden sollen,
7. bei Maßnahmen nach § 100c die zu überwachende Wohnung oder die zu überwachenden Wohnräume.
(4) In der Begründung der Anordnung oder Verlängerung von Maßnahmen nach den §§ 100a bis 100c sind deren Voraussetzungen und die wesentlichen Abwägungsgesichtspunkte darzulegen. Insbesondere sind einzelfallbezogen anzugeben:
1. die bestimmten Tatsachen, die den Verdacht begründen,
2. die wesentlichen Erwägungen zur Erforderlichkeit und Verhältnismäßigkeit der Maßnahme,

office may also make the order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension of no more than three months in each case shall be admissible if, taking into account the information obtained in the course of the investigation, the conditions for the order continue to exist.
(2) Measures pursuant to sections 100b and 100c may be ordered only upon the application of the public prosecution office by the division of the regional court stipulated in section 74a para. 4 of the Courts Constitution Act in the district in which the public prosecution office is located. In exigent circumstances, the order may also be made by the presiding judge. His order shall become ineffective unless it is confirmed by the criminal division within three working days. The order shall be limited to a maximum duration of one month. An extension of the measure for subsequent periods of no more than one month shall be admissible provided the conditions for the measure continue to exist, taking into account the information obtained in the course of the investigation. If the duration of the order has been extended for a total period of six months, the higher regional court shall decide on any further extension orders.
(3) The order shall be given in writing. The operative part of the order shall indicate
1. the name and address of the person against whom the measure is directed, where known,
2. the alleged offence on the basis of which the measure is being ordered,

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3. bei Maßnahmen nach § 100c die tatsächlichen Anhaltspunkte im Sinne des § 100d Absatz 4 Satz 1.
(5) Liegen die Voraussetzungen der Anordnung nicht mehr vor, so sind die auf Grund der Anordnung ergriffenen Maßnahmen unverzüglich zu beenden. Das anordnende Gericht ist nach Beendigung der Maßnahme über deren Ergebnisse zu unterrichten. Bei Maßnahmen nach den §§ 100b und 100c ist das anordnende Gericht auch über den Verlauf zu unterrichten. Liegen die Voraussetzungen der Anordnung nicht mehr vor, so hat das Gericht den Abbruch der Maßnahme anzuordnen, sofern der Abbruch nicht bereits durch die Staatsanwaltschaft veranlasst wurde. Die Anordnung des Abbruchs einer Maßnahme nach den §§ 100b und 100c kann auch durch den Vorsitzenden erfolgen.
(6) Die durch Maßnahmen nach den §§ 100b und 100c erlangten und verwertbaren personenbezogenen Daten dürfen für andere Zwecke nach folgenden Maßgaben verwendet werden:
1. Die Daten dürfen in anderen Strafverfahren ohne Einwilligung der insoweit überwachten Personen nur zur Aufklärung einer Straftat, auf Grund derer Maßnahmen nach § 100b oder § 100c angeordnet werden könnten, oder zur Ermittlung des Aufenthalts der einer solchen Straftat beschuldigten Person verwendet werden.
2. Die Verwendung der Daten, auch solcher nach § 100d Absatz 5 Satz 1 zweiter Halbsatz, zu Zwecken der Gefahrenabwehr ist nur zur Abwehr einer im Einzelfall bestehenden Lebensgefahr oder einer dringenden Gefahr für Leib oder Freiheit einer Person, für die Sicherheit oder den Bestand des Staates oder für Gegenstände von bedeutendem Wert, die der Versorgung der Bevölkerung dienen, von kulturell herausragendem Wert oder in § 305 des Strafgesetzbuches genannt sind, zulässig. Die Daten dürfen auch zur Abwehr einer im Einzelfall bestehenden dringenden Gefahr für sonstige bedeutende Vermögenswerte verwendet werden. Sind die Daten zur Abwehr der Gefahr oder für eine vorgerichtliche oder gerichtliche Überprüfung der zur Gefahrenabwehr getroffenen Maßnahmen nicht mehr erforderlich, so sind Aufzeichnungen über diese Daten von der für die Gefahrenabwehr zuständigen Stelle unverzüglich zu löschen. Die Löschung ist aktenkundig zu machen. Soweit die Löschung lediglich für eine etwaige vorgerichtliche oder gerichtliche Überprüfung zurückgestellt ist, dürfen die Daten nur für diesen Zweck verwendet werden; für eine Verwendung zu anderen Zwecken sind sie zu sperren.
3. Sind verwertbare personenbezogene Daten durch eine entsprechende polizeirechtliche Maßnahme erlangt worden, dürfen sie in einem Strafverfahren ohne Einwilligung der insoweit überwachten Personen nur zur Aufklärung einer Straftat, auf Grund derer die Maßnahmen nach § 100b oder § 100c angeordnet werden könnten, oder zur Ermittlung des Aufenthalts der einer solchen Straftat beschuldigten Person verwendet werden.

3. the type, extent, duration and end date of the measure,
4. the type of information to be obtained by carrying out the measure and its relevance for the proceedings,
5. in the case of measures under section 100a, the telephone number or another identifier of the connection to be intercepted or the end device, insofar as certain facts do not lead to the assumption that it is assigned to another end device; in the case under section 100a para. 1 sentences 2 and 3, as precise a designation as possible of the information technology system to be interfered with,
6. in the case of measures under section 100b, as precise a designation as possible of the information technology system from which data are to be captured,
7. in the case of measures under section 100c, the private premises or rooms to be surveyed.
(4) The reasons for the ordering or extension of measures under sections 100a to 100c shall specify the requirements and main considerations underlying the decision. In particular, the following shall be stated in relation to each individual case:
1. the particular facts on which the suspicion is based,
2. the essential considerations concerning the necessity and proportionality of the measure,
3. the factual indications as stated in section 100d para. 4 sentence 1 in the case of measures under section 100c.
(5) If the conditions on which the order was based are no longer met, the measures taken on the basis of the order shall be terminated without delay. The court which made the order shall be informed about the results of the measure following its termination. In the case of measures under sections 100b and 100c, the court ordering the measure shall also be informed about the course of the measure. If the conditions for the order no longer exist, the court shall order the termination of the measures, unless termination has already been initiated by the public prosecution office. Termination of a measure under sections 100b and 100c may also be ordered by the presiding judge.
(6) Personal data which have been obtained and are usable on the basis of measures under sections 100b and 100c may be used for other purposes subject to the following conditions:
1. The data may be used in other criminal proceedings without the consent of the persons being kept under surveillance only for the purposes of investigating an offence in respect of which measures under section 100b or 100c could be ordered or to establish the whereabouts of a person accused of such an offence.
2. The use of the data, even such data as are acquired pursuant to section 100d para. 5 sentence 1 half-sentence 2 for the purposes of averting danger, is only admissible to avert an existing danger of death in an individual case or to avert an imminent danger to the life or liberty of a person or to the security or existence of the state or to objects of significant value which serve to supply the population, are of culturally outstanding

value or are referred to in section 305 of the Criminal Code. The data may also be used to avert an imminent danger to other significant assets in individual cases. If the data are no longer required for the purposes of averting the danger or for a pre-judicial or judicial review of the measures implemented to avert the danger, recordings of such data are to be deleted without delay by the authority responsible for averting the danger. The fact of deletion is to be documented. If deletion is postponed merely for the purposes of a pre-judicial or judicial review, the data may be used solely for this purpose; access is to be denied for any use for other purposes

3. If usable personal data have been obtained by means of a relevant police measure, such data may not be used in criminal proceedings without the consent of the person under surveillance by virtue of such measure, except for the purpose of investigating an offence in respect of which measures under section 100b or 100c could be ordered or to determine the whereabouts of a person accused of such offence.

69 Next, special procedural rules exist for undercover measures:

Section 101 CPC Procedural rules for undercover measures

(1)[748] Unless otherwise provided, measures under sections 98a, 99, 100a to 100f, 100h, 100i, 110a and 163d to 163f shall be subject to the following regulations.

[748] § 101 Verfahrensregelungen bei verdeckten Maßnahmen
(1) Für Maßnahmen nach den §§ 98a, 99, 100a bis 100f, 100h, 100i, 110a, 163d bis 163g gelten, soweit nichts anderes bestimmt ist, die nachstehenden Regelungen.
(2) Entscheidungen und sonstige Unterlagen über Maßnahmen nach den §§ 100b, 100c, 100f, 100h Ab§ 1 Nr. 2 und § 110a werden bei der Staatsanwaltschaft verwahrt. Zu den Akten sind sie erst zu nehmen, wenn die Voraussetzungen für eine Benachrichtigung nach Absatz 5 erfüllt sind.
(3) Personenbezogene Daten, die durch Maßnahmen nach Absatz 1 erhoben wurden, sind entsprechend zu kennzeichnen. Nach einer Übermittlung an eine andere Stelle ist die Kennzeichnung durch diese aufrechtzuerhalten.
(4) Von den in Absatz 1 genannten Maßnahmen sind im Falle
1. des § 98a die betroffenen Personen, gegen die nach Auswertung der Daten weitere Ermittlungen geführt wurden,
2. des § 99 der Absender und der Addressat der Postsendung,
3. des § 100a die Beteiligten der überwachten Telekommunikation,
4. des § 100b die Zielperson sowie die erheblich mitbetroffenen Personen,
5. des § 100c
a) der Beschuldigte, gegen den sich die Maßnahme richtete,
b) sonstige überwachte Personen,
c) Personen, die die überwachte Wohnung zur Zeit der Durchführung der Maßnahme innehatten oder bewohnten,
6. des § 100f die Zielperson sowie die erheblich mitbetroffenen Personen,
7. des § 100h Ab§ 1 die Zielperson sowie die erheblich mitbetroffenen Personen,
8. des § 100i die Zielperson,
9. des § 110a
a) die Zielperson,
b) die erheblich mitbetroffenen Personen,
c) die Personen, deren nicht allgemein zugängliche Wohnung der Verdeckte Ermittler betreten hat,
10. des § 163d die betroffenen Personen, gegen die nach Auswertung der Daten weitere Ermittlungen geführt wurden,
11. des § 163e die Zielperson und die Person, deren personenbezogene Daten gemeldet worden sind,
12. des § 163f die Zielperson sowie die erheblich mitbetroffenen Personen,

(2) Decisions and other documentation concerning measures under sections 100b, 100c and 100f, section 100h para. 1 no. 2 and section 110a shall be deposited at the public prosecution office. They shall be added to the files only if the conditions concerning notification under para. 5 are met.
(3) Personal data which were collected by means of measures under para. 1 are to be labelled accordingly. Following transfer of the data to another agency, the labelling is to be maintained by such agency.
(4) The following persons shall be notified of measures under para. 1:
1. in the case under section 98a, the persons concerned in respect of whom further investigations were carried out following evaluation of the data,
2. in the case under section 99, the sender and the addressee of the postal item,
3. in the case under section 100a, the participants in the telecommunications under surveillance,
4. in the case under section 100b, the person targeted and other persons significantly affected thereby,
5. in the case under section 100c,

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13. des § 163g die Zielperson
zu benachrichtigen. Dabei ist auf die Möglichkeit nachträglichen Rechtsschutzes nach Absatz 7 und die dafür vorgesehene Frist hinzuweisen. Die Benachrichtigung unterbleibt, wenn ihr überwiegende schutzwürdige Belange einer betroffenen Person entgegenstehen. Zudem kann die Benachrichtigung einer in Satz 1 Nummer 2 und 3 bezeichneten Person, gegen die sich die Maßnahme nicht gerichtet hat, unterbleiben, wenn diese von der Maßnahme nur unerheblich betroffen wurde und anzunehmen ist, dass sie kein Interesse an einer Benachrichtigung hat. Nachforschungen zur Feststellung der Identität einer in Satz 1 bezeichneten Person sind nur vorzunehmen, wenn dies unter Berücksichtigung der Eingriffsintensität der Maßnahme gegenüber dieser Person, des Aufwands für die Feststellung ihrer Identität sowie der daraus für diese oder andere Personen folgenden Beeinträchtigungen geboten ist.
(5) Die Benachrichtigung erfolgt, sobald dies ohne Gefährdung des Untersuchungszwecks, des Lebens, der körperlichen Unversehrtheit und der persönlichen Freiheit einer Person und von bedeutenden Vermögenswerten, im Fall des § 110a auch der Möglichkeit der weiteren Verwendung des Verdeckten Ermittlers möglich ist. Wird die Benachrichtigung nach Satz 1 zurückgestellt, sind die Gründe aktenkundig zu machen.
(6) Erfolgt die nach Absatz 5 zurückgestellte Benachrichtigung nicht binnen zwölf Monaten nach Beendigung der Maßnahme, bedürfen weitere Zurückstellungen der gerichtlichen Zustimmung. Das Gericht bestimmt die Dauer weiterer Zurückstellungen. Es kann dem endgültigen Absehen von der Benachrichtigung zustimmen, wenn die Voraussetzungen für eine Benachrichtigung mit an Sicherheit grenzender Wahrscheinlichkeit auch in Zukunft nicht eintreten werden. Sind mehrere Maßnahmen in einem engen zeitlichen Zusammenhang durchgeführt worden, so beginnt die in Satz 1 genannte Frist mit der Beendigung der letzten Maßnahme. Bei Maßnahmen nach den §§ 100b und 100c beträgt die in Satz 1 genannte Frist sechs Monate.
(7) Gerichtliche Entscheidungen nach Absatz 6 trifft das für die Anordnung der Maßnahme zuständige Gericht, im Übrigen das Gericht am Sitz der zuständigen Staatsanwaltschaft. Die in Absatz 4 Satz 1 genannten Personen können bei dem nach Satz 1 zuständigen Gericht auch nach Beendigung der Maßnahme bis zu zwei Wochen nach ihrer Benachrichtigung die Überprüfung der Rechtmäßigkeit der Maßnahme sowie der Art und Weise ihres Vollzugs beantragen. Gegen die Entscheidung ist die sofortige Beschwerde statthaft. Ist die öffentliche Klage erhoben und der Angeklagte benachrichtigt worden, entscheidet über den Antrag das mit der Sache befasste Gericht in der das Verfahren abschließenden Entscheidung.
(8) Sind die durch die Maßnahme erlangten personenbezogenen Daten zur Strafverfolgung und für eine etwaige gerichtliche Überprüfung der Maßnahme nicht mehr erforderlich, so sind sie unverzüglich zu löschen. Die Löschung ist aktenkundig zu machen. Soweit die Löschung lediglich für eine etwaige gerichtliche Überprüfung der Maßnahme zurückgestellt ist, dürfen die Daten ohne Einwilligung der betroffenen Personen nur zu diesem Zweck verwendet werden; ihre Verarbeitung ist entsprechend einzuschränken.

a) the accused person against whom the measure was directed,
b) other persons under surveillance,
c) persons who owned or lived on the private premises under surveillance at the time the measure was effected,
6. in the case under section 100f, the person targeted and other persons significantly affected thereby,
7. in the case under section 100h para. 1, the person targeted and other persons significantly affected thereby,
8. in the case under section 100i, the person targeted,
9. in the case under section 110a,
a) the person targeted,
b) persons significantly affected thereby,
c) persons whose private premises which are not generally accessible to the public were entered by the undercover investigator,
10. in the case under section 163d, the data subjects in respect of whom further investigations were carried out following evaluation of the data,
11. in the case under section 163e, the person targeted and the person whose personal data were reported,
12. in the case under section 163f, the person targeted and other persons significantly affected thereby.
Mention is to be made in the notification of the option of subsequent legal protection pursuant to para. 7 and of the applicable time limit. Notification shall be dispensed with where overriding interests of a person concerned meriting protection constitute an obstacle thereto. Furthermore, notification of a person referred to in sentence 1 no. 2 and no. 3 who was not the target of the measure may be dispensed with if such person was only tangentially affected by the measure and it may be assumed that the person has no interest in being notified. Inquiries to determine the identity of one of the persons referred to in sentence 1 are only to be made if this appears necessary, taking into account the degree of invasiveness of the measure in respect of the person concerned, the effort associated with establishing their identity, as well as the resulting detriment for such person or other persons.
(5) Notification shall be given as soon as it can be effected without endangering the purpose of the investigation, the life, physical integrity and personal liberty of another or significant assets, in the case under section 110a including the possibility of the continued use of the undercover investigator. If notification is deferred pursuant to sentence 1, the reasons shall be documented.
(6) If notification is deferred pursuant to para. 5 and has not been given within 12 months after completion of the measure, any further deferral of notification shall be subject to the approval of the court. The court shall decide upon the duration of any further deferrals. The court may approve the permanent dispensation with notification if there is a

probability bordering on certainty that the requirements for notification will not be fulfilled, even in the future. If several measures have been taken within a short period of time, the time period referred to in sentence 1 shall begin to run upon conclusion of the last measure. In the case of measures under sections 100b and 100c, the time period referred to in sentence 1 shall be six months.
(7) Court decisions pursuant to para. 6 shall be taken by the court competent to order the measure. In all other cases, the court situated where the competent public prosecution office is located shall be competent. Even after completion of the measure and for up to two weeks following their notification, the persons referred to in para. 4 sentence 1 may apply to the court competent pursuant to sentence 1 for a review of the lawfulness of the measure as well as of the manner and means of its implementation. An immediate complaint against the decision shall be admissible. If public charges have been preferred and the defendant has been notified, the court seized of the matter shall decide upon the application in its concluding decision.
(8) Personal data acquired by means of the measure which are no longer necessary for the purposes of criminal prosecution or a possible court review of the measure shall be deleted without delay. The fact of the deletion is to be documented. Insofar as deletion of the data has been deferred merely for the purposes of a possible court review of the measure, the data shall not be used for any other purpose without the consent of the data subjects; access to the data is to be restricted accordingly.

There are e.g. special procedures and modalities for Section 102 CPC "Search of accused's premises and person": **70**

Section 104 CPC[749] Night-time search
(1) Private premises, business premises and enclosed property may be searched during the night only in pursuit of a person caught in the act, in exigent circumstances or for the purpose of re-apprehending an escaped prisoner.

[749] § 104 Durchsuchung von Räumen zur Nachtzeit
(1) Zur Nachtzeit dürfen die Wohnung, die Geschäftsräume und das befriedete Besitztum nur in folgenden Fällen durchsucht werden:
1. bei Verfolgung auf frischer Tat,
2. bei Gefahr im Verzug,
3. wenn bestimmte Tatsachen den Verdacht begründen, dass während der Durchsuchung auf ein elektronisches Speichermedium zugegriffen werden wird, das als Beweismittel in Betracht kommt, und ohne die Durchsuchung zur Nachtzeit die Auswertung des elektronischen Speichermediums, insbesondere in unverschlüsselter Form, aussichtslos oder wesentlich erschwert wäre oder
4. zur Wiederergreifung eines entwichenen Gefangenen.
(2) Diese Beschränkung gilt nicht für Räume, die zur Nachtzeit jedermann zugänglich oder die der Polizei als Herbergen oder Versammlungsorte bestrafter Personen, als Niederlagen von Sachen, die mittels Straftaten erlangt sind, oder als Schlupfwinkel des Glücksspiels, des unerlaubten Betäubungsmittel- und Waffenhandels oder der Prostitution bekannt sind.
(3) Die Nachtzeit umfasst den Zeitraum von 21 bis 6 Uhr.

(2) This restriction shall not apply to premises which are accessible at night to anyone or which are known to the police as shelters or gathering places of offenders, as depots of property obtained through offences, or as hiding places for gambling, illegal trafficking in narcotics or weapons, or prostitution.
(3) Night-time shall include, in the period from 1 April to 30 September, the hours between 9 pm and 4 am and, in the period from 1 October to 31 March, the hours between 9 pm and 6 am.

Section 105 CPC[750] Procedure for searches
(1) Searches may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Searches pursuant to section 103 para. 1 sentence 2 shall be ordered by the judge; in exigent circumstances, the public prosecution office shall be authorised to order such searches.
(2) If private premises, business premises or enclosed property are to be searched in the absence of the judge or public prosecutor, a municipal official or two members of the community in the district in which the search is carried out shall be called in, if possible, to assist. The persons called in as members of the community may not be police officers or the public prosecution office's investigators.
(3) If it is necessary to carry out a search in an official building or in an installation or facility of the Federal Armed Forces which is not open to the general public, the superior authority of the Federal Armed Forces shall be requested to carry out such a search. The requesting agency shall be entitled to participate. No such request shall be necessary if the search is to be carried out on premises which are inhabited exclusively by persons other than members of the Federal Armed Forces.

[750] **§ 105 Verfahren bei der Durchsuchung**
(1) Durchsuchungen dürfen nur durch den Richter, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden. Durchsuchungen nach § 103 Ab§ 1 Satz 2 ordnet der Richter an; die Staatsanwaltschaft ist hierzu befugt, wenn Gefahr im Verzug ist.
(2) Wenn eine Durchsuchung der Wohnung, der Geschäftsräume oder des befriedeten Besitztums ohne Beisein des Richters oder des Staatsanwalts stattfindet, so sind, wenn möglich, ein Gemeindebeamter oder zwei Mitglieder der Gemeinde, in deren Bezirk die Durchsuchung erfolgt, zuzuziehen. Die als Gemeindemitglieder zugezogenen Personen dürfen nicht Polizeibeamte oder Ermittlungspersonen der Staatsanwaltschaft sein.
(3) Wird eine Durchsuchung in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Durchsuchung von Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

Section 106 CPC[751] Calling in occupant of premises to be searched
(1) The occupant of the premises or the possessor of the objects to be searched may be present at the search. If he is absent, his representative, an adult relative, a person living in his household or a neighbour shall, if possible, be called in to assist.
(2) In the cases under section 103 para. 1, the purpose of the search shall be made known to the occupant or to the person called in to assist in his absence before the search begins. This provision shall not apply to the occupants of the premises indicated in section 104 para. 2.

Section 107 CPC[752] Notification of reason for search; inventory
Upon conclusion of the search, the person affected thereby shall, upon his request, be given written notification indicating the reason for the search (sections 102 and 103) and, in the case under section 102, the offence. Upon request, he shall also be given a list of the objects which were taken into custody or seized; if nothing suspicious was found, however, he shall be given a certificate to this effect.

Section 109 CPC[753] Marking of seized objects
Objects taken into custody or seized shall be precisely recorded and, in order to prevent mistakes arising, shall be marked with an official seal or in some other appropriate manner.

[751] **§ 106 Hinzuziehung des Inhabers eines Durchsuchungsobjekts**
(1) Der Inhaber der zu durchsuchenden Räume oder Gegenstände darf der Durchsuchung beiwohnen. Ist er abwesend, so ist, wenn möglich, sein Vertreter oder ein erwachsener Angehöriger, Hausgenosse oder Nachbar zuzuziehen.
(2) Dem Inhaber oder der in dessen Abwesenheit zugezogenen Person ist in den Fällen des § 103 Abs. 1 der Zweck der Durchsuchung vor deren Beginn bekanntzumachen. Diese Vorschrift gilt nicht für die Inhaber der in § 104 Abs. 2 bezeichneten Räume.
[752] **§ 107 Durchsuchungsbescheinigung; Beschlagnahmeverzeichnis**
Dem von der Durchsuchung Betroffenen ist nach deren Beendigung auf Verlangen eine schriftliche Mitteilung zu machen, die den Grund der Durchsuchung (§§ 102, 103) sowie im Falle des § 102 die Straftat bezeichnen muß. Auch ist ihm auf Verlangen ein Verzeichnis der in Verwahrung oder in Beschlag genommenen Gegenstände, falls aber nichts Verdächtiges gefunden wird, eine Bescheinigung hierüber zu geben.
[753] **§ 109 Kenntlichmachung beschlagnahmter Gegenstände**
Die in Verwahrung oder in Beschlag genommenen Gegenstände sind genau zu verzeichnen und zur Verhütung von Verwechslungen durch amtliche Siegel oder in sonst geeigneter Weise kenntlich zu machen.

71 There is another example for a special procedure mechanism for Section 110a CPC:

Section 110b CPC[754] **Procedure for deployment of undercover investigators**
(1) The use of an undercover investigator shall be admissible only after the consent of the public prosecution office has been obtained. In exigent circumstances and if the decision of the public prosecution office cannot be obtained in time, such decision shall be obtained without delay; the measure shall be terminated if the public prosecution office does not give its consent within three working days. Consent shall be given in writing and for a specified period. Extensions shall be admissible provided the conditions for the use of undercover investigators continue to apply.
(2) Use of undercover investigators
1. concerning a specific accused or
2. which involve the undercover investigator entering private premises which are not generally accessible
shall require the consent of the court. In exigent circumstances, the consent of the public prosecution office shall suffice. If the public prosecution office's decision cannot be obtained in time, such decision shall be obtained without delay. The measure shall be terminated if the court does not give its consent within three working days. Para. 1 sentences 3 and 4 shall apply accordingly.
(3) The identity of the undercover investigator may be kept secret even after the operation has ended. The public prosecution office and the court responsible for the decision as to whether to consent to the use of the undercover investigator may require the identity to be revealed to them. In all other cases, maintaining the secrecy of identity in criminal proceedings shall be admissible pursuant to section 96, in particular if there is reason to fear that revealing the identity would endanger the life, limb or liberty of the

[754] **§ 110b Verfahren beim Einsatz eines Verdeckten Ermittlers**
(1) Der Einsatz eines Verdeckten Ermittlers ist erst nach Zustimmung der Staatsanwaltschaft zulässig. Besteht Gefahr im Verzug und kann die Entscheidung der Staatsanwaltschaft nicht rechtzeitig eingeholt werden, so ist sie unverzüglich herbeizuführen; die Maßnahme ist zu beenden, wenn nicht die Staatsanwaltschaft binnen drei Werktagen zustimmt. Die Zustimmung ist schriftlich zu erteilen und zu befristen. Eine Verlängerung ist zulässig, solange die Voraussetzungen für den Einsatz fortbestehen.
(2) Einsätze,
1. die sich gegen einen bestimmten Beschuldigten richten oder
2. bei denen der Verdeckte Ermittler eine Wohnung betritt, die nicht allgemein zugänglich ist,
bedürfen der Zustimmung des Gerichts. Bei Gefahr im Verzug genügt die Zustimmung der Staatsanwaltschaft. Kann die Entscheidung der Staatsanwaltschaft nicht rechtzeitig eingeholt werden, so ist sie unverzüglich herbeizuführen. Die Maßnahme ist zu beenden, wenn nicht das Gericht binnen drei Werktagen zustimmt. Absatz 1 Satz 3 und 4 gilt entsprechend.
(3) Die Identität des Verdeckten Ermittlers kann auch nach Beendigung des Einsatzes geheimgehalten werden. Die Staatsanwaltschaft und das Gericht, die für die Entscheidung über die Zustimmung zu dem Einsatz zuständig sind, können verlangen, daß die Identität ihnen gegenüber offenbart wird. Im übrigen ist in einem Strafverfahren die Geheimhaltung der Identität nach Maßgabe des s. 96 zulässig, insbesondere dann, wenn Anlaß zu der Besorgnis besteht, daß die Offenbarung Leben, Leib oder Freiheit des Verdeckten Ermittlers oder einer anderen Person oder die Möglichkeit der weiteren Verwendung des Verdeckten Ermittlers gefährden würde.

undercover investigator or of another person or would jeopardise the continued use of the undercover investigator.

Section 162 CPC[755] Investigating judge
(1) If the public prosecution office considers a judicial investigation to be necessary, it shall submit its applications prior to the preferment of public charges to the local court in the district of which it is located or in which the branch of the public prosecution office submitting the application is located. If the public prosecution office additionally considers it necessary that a warrant of arrest be issued or an order for placement be made, it may also, without prejudice to sections 125 and 126a, submit such an application before the court designated in sentence 1. The local court in the district of which the investigation procedures are to be carried out shall be competent to undertake examinations and inspections if the public prosecution office submits its application to such court in order to expedite proceedings or to avoid inconvenience to the persons concerned.
(2) The court shall examine whether, given the circumstances of the case, the investigation applied for is permitted by law.
(3) After the preferment of public charges, the court seized of the matter shall be the competent court. During proceedings on an appeal on points of law, the court whose judgment is being contested shall be the competent court. After final conclusion of the proceedings, paras. 1 and 2 shall apply accordingly. Following an application for the reopening of proceedings, the court competent to decide in the reopened proceedings shall be the competent court.

[755] **§ 162 Ermittlungsrichter**
(1) Erachtet die Staatsanwaltschaft die Vornahme einer gerichtlichen Untersuchungshandlung für erforderlich, so stellt sie ihre Anträge vor Erhebung der öffentlichen Klage bei dem Amtsgericht, in dessen Bezirk sie oder ihre den Antrag stellende Zweigstelle ihren Sitz hat. Hält sie daneben den Erlass eines Haft- oder Unterbringungsbefehls für erforderlich, so kann sie, unbeschadet der §§ 125, 126a, auch einen solchen Antrag bei dem in Satz 1 bezeichneten Gericht stellen. Für gerichtliche Vernehmungen und Augenscheinnahmen ist das Amtsgericht zuständig, in dessen Bezirk diese Untersuchungshandlungen vorzunehmen sind, wenn die Staatsanwaltschaft dies zur Beschleunigung des Verfahrens oder zur Vermeidung von Belastungen Betroffener dort beantragt.
(2) Das Gericht hat zu prüfen, ob die beantragte Handlung nach den Umständen des Falles gesetzlich zulässig ist.
(3) Nach Erhebung der öffentlichen Klage ist das Gericht zuständig, das mit der Sache befasst ist. Während des Revisionsverfahrens ist das Gericht zuständig, dessen Urteil angefochten ist. Nach rechtskräftigem Abschluss des Verfahrens gelten die Absätze 1 und 2 entsprechend. Nach einem Antrag auf Wiederaufnahme ist das für die Entscheidungen im Wiederaufnahmeverfahren zuständige Gericht zuständig.

2. Article 31 Cross-border investigations

a) Overview of general national codes and provisions applicable in cross border-cases.....466
b) Para 2, 3: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS 466
c) Availability of measures to the EDP 469
aa. Art. 30 para. 1 a: search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;.....473
bb. Art. 30 para. 1 a & d: seizure and freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment ordering confiscation. ... 486
cc. Art. 30 para. 1 e: intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using; 502
dd. Justification and adoption of such measures governed by the law of the MS' of the handling EDP 519
ee. Applicability of general national investigative measures according to national provisions in relevant Codes and the CPC 521
d) Para 8: Decision by the chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP 521
e) Relevant examples and precedents (from mutual legal assistance) 522

1. The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross-border cases. Where a measure needs to be undertaken in a Member State other than the Member State of the handling European Delegated Prosecutor, the latter European Delegated Prosecutor shall decide on the adoption of the necessary measure and assign it to a European Delegated Prosecutor located in the Member State where the measure needs to be carried out.
2. The handling European Delegated Prosecutor may assign any measures, which are available to him/her in accordance with Article 30. **The justification and adoption of such measures shall be governed by the law of the Member States' of the handling European Delegated Prosecutor.** Where the handling European Delegated Prosecutor assigns an investigation measure to one or several European Delegated Prosecutors from another Member State, he/she shall at the same time inform his supervising European Prosecutor.
3. If judicial authorisation for the measure is required under the law of the Member State of the assisting European Delegated Prosecutor, the assisting European Delegated Prosecutor shall obtain that authorisation in accordance with the law of that Member State.
If judicial authorisation for the assigned measure is refused, the handling European Delegated Prosecutor shall withdraw the assignment.
However, where the law of the Member State of the assisting European Delegated Prosecutor does not require such a judicial authorisation, but the law of the Member State of the handling European Delegated Prosecutor requires it, the authorisation shall be obtained by the latter European Delegated Prosecutor and submitted together with the assignment.
4. The assisting European Delegated Prosecutor shall undertake the assigned measure, or instruct the competent national authority to do so.
5. Where the assisting European Delegated Prosecutor considers that:
(a) the assignment is incomplete or contains a manifest relevant error;
(b) the measure cannot be undertaken within the time limit set out in the assignment for justified and objective reasons;
(c) an alternative but less intrusive measure would achieve the same results as the measure assigned; or
(d) the assigned measure does not exist or would not be available in a similar domestic case under the law of his/her Member State,
he/she shall inform his supervising European Prosecutor and consult with the handling European Delegated Prosecutor in order to resolve the matter bilaterally.
6. If the assigned measure does not exist in a purely domestic situation, but would be available in a cross-border situation covered by legal instruments on mutual recognition or cross-border cooperation, the European Delegated Prosecutors concerned may, in agreement with the supervising European Prosecutors concerned, have recourse to such instruments.

7. If the European Delegated Prosecutors cannot resolve the matter within 7 working days and the assignment is maintained, the matter shall be referred to the competent Permanent Chamber. The same applies where the assigned measure is not undertaken within the time limit set out in the assignment or within a reasonable time.
8. The competent Permanent Chamber shall to the extent necessary hear the European Delegated Prosecutors concerned by the case and then decide without undue delay, in accordance **with applicable national law** as well as this Regulation, whether and by when the assigned measure needed, or a substitute measure, shall be undertaken by the assisting European Delegated Prosecutor, and communicate this decision to the said European Delegated Prosecutors through the competent European Prosecutor.

1 Art. 31 of the EPPO Regulation, see as a "a **centrepiece of the EPPO Regulation**"[756] is already part of a Preliminary Ruling of the ECJ.[757] It is questioned whether a double assessment of a search warrant in both states is necessary to comply with the Regulation or if it suffices that only the handling EDP obtains the necessary judicial authorisation.[758]

a) Overview of general national codes and provisions applicable in cross border-cases

2 The Criminal Procedure Code (*Strafprozessordnung StPO*) and the Laws on mutual legal assistance of the Member States (*Rechtshilfegesetze der Mitgliedstaaten*) are applicable in cross border-cases. In Germany it is the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen IRG*).

b) Para 2, 3: Assignment of measures by a handling EDP to an assisting EDP in another, foreign MS

3 GER (handling EDP) → all EPPO Member States (assisting EDP)

[756] On point Franssen 2024; see as well Krauß 2022, § 142b GVG mn. 23.
[757] See Mayr 2024, pp. 459–460; Wimmer and Wuschko 2024, pp. 189–195 (195 rightly emphasizing: "Alarmingly, the ECJ's decision means that an ordered measure must also be enforced if a mandatory judicial reservation in the issuing state has been disregarded in accordance with Section 3 para. [German] EUStAG. In this respect, the judge's reservations in the executing state are undermined. This undoubtedly serves the practicability of investigations. From the perspective of the person concerned, however, this means an increased effort in cross-border criminal defence. In particular, it must be clarified in which state the person concerned can defend himself and how. If the 'whether' of a measure is to be challenged, this must take place in the issuing state. If the person concerned is resident in the executing state, he or she will be burdened with examining the requirements for an order under a legal system that is foreign to him or her. This will regularly result in the person concerned also having to employ a lawyer in the issuing state."); Franssen 2024 "undoubtedly a milestone"; critical Herrnfeld 2023, pp. 229–237 questioning it was "contra legem"; seing his critical arguments supported Herrnfeld 2024, pp. 370–380: "truly remarkable judgment, debatable, several questions remain open" and discussing "matters concerning the enforcement"."
[758] See Venegoni 2022, pp. 282–285.

Assignement → (concrete) measure → transfer to foreign EDP → acceptance & receipt by foreign EDP

Figure 13: Assignment of measures by handling EDP to assisting EDP (scheme) © P.H.

The following part of the compendium explores the three most common measures in an EPPO investigation with regard to Art. 31 and the assignment of measures from the German EDP to an assisting EDP in another Member State.[759] To gain more use from the overview, the presented information shall be concentrated, firstly, on the provisions of **house search** as house searches are amongst the most frequented und effective measures in cross-border investigations,[760] secondly, **seizure measures** serve as a comparative example and lastly the very intrusive measures such as **telecommunications surveillance** or **digital evidence gathering methods** shall be viewed. **4**

Table 15: Art. 31 and 32 EPPO – Comparative overview of the investigative "sui-generis" scheme in Art. 31 and 32 EPPO Regulation **5**

∗[761]	Perspective and list of provisions of measures that are available in the **MS of the *handling* EDP**	Assigned Measure (Art. 31 para. 1 and 2)	**Assisting Member State** Perspective: Existence of the assigned measure and Execution in conformity with the ***law of the assisting* Member State**	**Art. 31 para. 3 EPPO Regulation**[764]	**Art. 31 para. 4 EPPO Regulation**	**Art. 32 EPPO Regulation (Enforcement of assigned measures)**
"The ***handling*** EDP may assign *any measures, which are available to him/her*		"Where a measure needs to be undertaken in a Member	- Are there any peculiarities?	Art. 31 para. 3: "the ***assisting*** European Delegated	"4. The assisting European Delegated Prosecutor **shall**	"shall be carried out

[759] Comments by Herrnfeld, in Hernnfeld/Brodowski/Burchard (eds) EPPO, Art. 31, p. 282 et seq.

[760] See Tsambikakis 2019, § 102 CPC, Margin Number 7 et seq.

[761] In this comparative table all depends on who is the handling and who is the assissting EDP. In an EPPO investigation this will be clear as the handling will contact the assisting EDP via mail/telephone/videoconferencing systems, etc. and tell him/her what he/she is dealing with at the moment. The words do not indicate a form of subordination in any way. Both EDPs are colleagues who reside in two foreign MS, which are part of the Union and the EPPO (territory, cf. Art. 23 EPPO Regulation). If not otherwise indicated, referring to codes, we refer mainly to ss./Artt. of the Criminal Procedure Codes of the concerned MS. See Zerbst 2025 for a monographic study on this matter. A conference at Villa Vigoni underscored the need to reform Art. 31 para. 3 EPPO Regulation to codify a dual judicial authorisation requirement in cross-border investigations. A broader reform of the EPPO Regulation should address institutional independence, resolve conflicts of competence, and ensure effective legal protection in transnational proceedings, Jakobi and Theodorakakou, eucrim 2025, https://shorturl.at/Q8WHj.

[764] See mainly now Zerbst 2025, 193 et seq. on the options comparing GER and ESP, pp. 247–295 on the scope of the judges assessement of fundamental rights, concluding remarks on p. 331 et seq. In cross-border EPPO investigations, effective protection of fundamental rights can only be ensured if both national judicial authorisations of the handling and assisting Member States are obtained, even though Art. 31 para. 3 EPPO Regulation does not require this explicitly. The ECJ confirmed this dual safeguard approach in Case C-281/22, aligning it with the logic of the EIO Directive. A comparative view of national systems reveals divergent traditions e.g., Germany's prosecution-led urgency model vs. Spain's investigating judge model. Spain's implementation of the EPPO Regulation (Ley Orgánica 9/2021) reflects a structural shift towards a prosecutorial system, highlighting the EPPO's harmonising effect on procedural cultures. Codifying dual judicial review more clearly at EU and national levels would enhance legal certainty and rights protection in cross-border enforcement.

[the ***handling*** EDP] **in accordance with Article 30**[762] …" (Art. 31 para. 2) EPPO Regulation	**[Germany in this Chapter of the CNP]** according to Art. 30 EPPO Regulation:[763]	State other than the Member State of the handling [***scil. i.e. all participating MS***] European Delegated Prosecutor, the latter [***handling***] European Delegated Prosecutor **shall decide on the adoption of the necessary measure** and **assign it** to [a foreign, ***assisting*** EDP]"	- Fundamental principles of law of the assisting MS e.g. Judges' reservations, reservations for an investigating judge, special thresholds for measures according to Art. 30 (intrusive investigative measures, protection of privacy) *Follow-up*: If judicial authorisation for the assigned measure **is refused,** the ***handling*** European Delegated Prosecutor **shall withdraw the assignment.** *Argumentum e contrario*: If it is not denied/refused, the EDP continues to enforce the assignement.	Prosecutor **shall obtain that authorisation in accordance with the law of that Member State**."	**undertake** the assigned measure, ***or*** **instruct** the **competent national authority** to do so. * → mainly based on the Notifications of the MS' Governments to the EPPO by virtue of Art. 117 EPPO Regulation (November 2021)	in accordance with this Regulation **and the law of the Member State of the *assisting*** European Delegated Prosecutor. Formalities and procedures **expressly indicated by the handling** European Delegated Prosecutor shall be complied with unless such formalities and procedures **are contrary to the fundamental principles of law of the Member State of the *assisting*** EDP."

[762] See the text of Art. 30 EPPO Regulation above or cf here: https://eur-lex.europa.eu/eli/reg/2017/1939/oj#d1e2624-1-1. Accessed 31 December 2024.

[763] *Nota bene*: handling MS can be each MS that is listed in the previous and far right column. He/She could assign a measure to any European MS and herewith any EDP in the MS that take part in enhanced cooperation. The list cannot present every possibility and theoretical assignement here in full-depth. But it tries to present the "mechanism of Art. 30, 31 and 32" by presenting at least a neighbouring state. For every other Member State the CPM pinpoints to the separate country chapters that list under the heading of Art. 30 EPPO Regulation every measure that is available to the EDP of this concerned MS.

c) Availability of measures to the EDP

Sources and national sections 5: Art. 31 EPPO Regulation **6**

"The handling European Delegated Prosecutor may assign any measures, which are available to him/her **in accordance with Article 30** [EPPO Regulation]…"	List of provisions that are printed in full length above under Art. 30: **Art. 30 para. 1 (a)** ss. 104 et seq., 105 para. 1 (1) CPC (so-called *Richtervorbehalt*) **Art. 30 para. 1 (a) and (d)** DE=Chapter 8, ss. 94, 97 (prohibition), 108b, 111b, 111c, 443 CPC and cf. s. 73 CC (forfeiture, seizure of assets). Authorisations by competent body: ss. 97, 160a CPC, 111f, 112 and cf. in the Civil Procedure Code ss. 928, 930, 829, 840 **Art. 30 para. 1 (e)** See ss. 110a, 110e para. 1, 100d, 100g, 101f CPC Etc. (see above)

For example in an investigation of an German EDP with relevance to Austrian territory, the Austrian EDP, which resides in one of the two centers of the EPPO headquarters in Austria, will be the assisting EDP and the German EDP the handling EDP. Thus the justification and adoption of "such measures" (see Art. 30 and table above) will be governed by the law of Germany, where the German EDP handles the case for the Austrian EDP and his/her investigation. **7**

There is a high probability that Germany will conduct many investigations in not so far **neighbouring countries** such as Austria, France, Luxembourg or Czech Republic. Poland and Denmark, which do not take part in the enhanced cooperation will need to be addressed under mutual assistance agreements and e.g. JITs organized under the head of Eurojust. **8**

If the **search of premises** would be adopted as a standard measure for purposes of displaying the scheme of Art. 31 in the following, the upcoming provisions in the neighbouring states are important for the German EDP: **9**

> **AT**=ss.119–122 et seq. CPC (search measures), 144 and 157 CPC may restrict certain search measures. **10**
>
> **LUX**=Art. 33, 65 CPC: "(1)Searches are carried out in all places where objects may be found, the discovery of which would be useful for establishing the truth." Authorisations by competent body: Art. 65 para. 2 CPC "(2) The investigating judge gives prior notice to the State prosecutor."

FR=Art. 54 et seq. (search measures), 706 et seq. CPC, more depends on the EPPO Adoption Act, i.e. the Art. 696-112 et seq. CPC, but cf. the main provisions in Art. 92–96 (*perquisitions*) CPC, 59, 77-4 (preliminary investigation), 122 CPC
Authorisations by competent body: Art. 77-4 CPC: "[…]the public prosecutor may issue a search warrant against any person against whom there is a or there are more reasonable grounds for suspecting that he has committed or attempted to commit the offence."
Art. 122 CPC: "The investigating judge may, depending on the case, issue a search, appearance, arrest or arrest warrant. The liberties and detention judge can issue a warrant of committal. […]"
Art. 97 CPC stipulates various thresholds for searches in the Instruction phase (*Des juridictions d'instruction*, Articles 79–230).
CZ=ss. 82–85c, 113–118 CPC

11 If the **seizure of objects and documents** would be adopted as a standard measure for purposes of displaying the scheme of Art. 31 in the following, the upcoming provisions in the neighbouring states are important for the German EDP:

12 **AT**=ss. 110, 110 para. 2, 111, 112, 113, 114, 115, 122, and the restrictions in 157 CPC.
LUX=Art. 47, 31 para. 2, 3, 33, 34, 35, 65, 66 para. 1: "of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)", 66 para. 3 (entry into stored, processed and automated data) 67, 68, 67 (return/release of seized things), 194-1, 194-7 CPC.
Authorisations by competent body: Art. 63 para. 1 CPC "(1)The investigating judge may go to the site to make any useful findings. He notifies the State prosecutor who has the option of accompanying him."
Art. 66 para. 1 CPC "(1)The investigating judge operates the seizure of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)."
Art. 66-1 para. 1 CPC "the order of the investigating judge".
FR=Mainly Art. 97 CPC, but during searches see Art. 92–94 CPC in connection with Art. 131-21 et seq. CC, Art. 41-4, 41-5 (return of objects).
Authorisations by competent body: Art. 97 "[…]With the agreement of the investigating judge, the judicial police officer only maintains the seizure of objects, documents and computer data useful for the manifestation of the truth, as well as property whose confiscation is provided for in article 131-21 of the penal code.
If the seizure relates to cash, ingots, effects or securities whose preservation in kind is not necessary for the manifestation of the truth or the safeguard of the rights of

the parties, he may authorize their deposit at the Caisse des dépôts et consignations. or at the Banque de France or on an account opened with a banking establishment by the Agency for the management and recovery of seized and confiscated assets. When the seizure relates to banknotes or coins denominated in counterfeit euros, the investigating judge or the judicial police officer appointed by him must transmit, for analysis and identification, at least one copy of each type of banknote or parts suspected of being false to the national analysis center authorized for this purpose. The national analysis center can open the seals. He draws up an inventory of them in a report which must mention any opening or reopening of the seals. When the operations are completed, the report and the seals are deposited with the clerk of the competent court. This deposit is recorded in the minutes."
CZ=ss. 78–79g CPC

If the **surveillance of telecommunications** (lawful interception) **or the gathering of digital evidence** would be adopted as a standard measure for purposes of displaying the scheme of Art. 31 in the following, the upcoming provisions in the neighbouring states are important for the German EDP: **13**

AT=ss. 135 para. 3, 137–138 CPC, 144, 157 CPC and the Federal Constitution. **14**
LUX=Art. 65–67 (general information on interception of communications), especially 67-1, 88, 88-1, 88-2 (special provisions on the interception of communications and technical means of surveillance) CPC and Art. 7 of the law of July 5, 2016.[765]
(Nota bene: all of these provisions are under review as they become more and more outdated with the ongoing "cybercriminalité"[766]) and see Art. 32, 33 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European investigation order in criminal matters;
2° amendment of the Code of Criminal Procedure;
3° modification of the amended law of 8 August 2000 on international legal assistance in criminal matters.)
Authorisations /enforcement/restrictions/exceptions by competent body:
Art. 67-1 CPC: *the investigating judge (judge d'instruction) is competent to proceed with such a measure* if he/she "considers that there are circumstances which make the tracking of telecommunications or the location of the origin or destination of telecommunications necessary for the manifestation of the truth, and if the

[765] See Law of 5 July 2016 1. reorganizing the State Intelligence Service; 2. amending – the Code of Criminal Investigation, – the law of June 15, 2004 relating to the classification of documents and security clearances, and – the law of March 25, 2015 establishing the salary regime and the conditions for advancement of state officials.
[766] See Putz 2019, 1.2 passim.

facts entail a criminal penalty or correctional sentence, the maximum of which is equal to or greater than one year's imprisonment".
Art. 88- 1 para. 1: "(1) *The investigating judge may*, under the conditions provided for in articles 88-2 and 88-4, *order the use of technical means of surveillance* and control of all forms of communication. […]"
Art. 32 para. 3 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the Europe-an investigation order in criminal matters "(3)The Luxembourg judicial authority may make its consent subject to compliance with the conditions which would have to be complied with in the context of a similar national procedure.".
FR=Art. 57-1, 60-2 (during preliminary investigations), 100, 100-1 to 100-8 CPC and Art. 230-46 CPC.
Authorisations by competent body: Art. 100: "the investigating judge may, where the needs of the information so require, order the interception, recording and transcription of correspondence transmitted by electronic communications. These operations shall be carried out under his authority and control.
The interception decision shall be in writing. It has no jurisdictional character and is not subject to appeal."
Art. 60-2 CPC: "[…] previously authorized by order of the judge of freedoms and detention, may require telecommunications operators, and in particular those mentioned in 1 of I of article 6 of law 2004-575 of June 21, 2004 on confidence in the digital economy, to take, without delay, all appropriate measures to ensure the preservation, for a duration not exceeding one year, of the content of the information consulted by the users of the services provided by the operators."
Art. 74-2 (*juge des libertés et détention*) and another possibility in purely domestic cases is that the *juge d'instruction* issues a warrant by him/herself. In urgent cases "judges on duty" can issue an urgent and/or immediate access.
CZ=s. 88–88a CPC.[767]

For all sections, statutes, framework or provisions stemming from national criminal procedural law, please refer to the respective CNP volume within the series for a detailed compilation.

[767] See Polcák 2016, 260. et seq. In the national language these measures are known as "*Odposlech a záznam telekomunikačního provozu(§ 88–§ 88a)*".

Still the **investigations are not limited to the neighbouring countries, but may encompass "any country"**, which takes part under the enhanced cooperation and any other non-participating or even non-EU country (cf. the wording of Art. 31 EPPO Regulation). Thus the **following tables** shall at least **give the German EDP a rough idea of the availability of measures** in the other participating Member States: 15

aa. Art. 30 para. 1 a: search any premises, land, means of transport, private home, clothes and any other personal property or computer system, and take any conservatory measures necessary to preserve their integrity or to avoid the loss or contamination of evidence;

Sources and national sections 6: Art. 30 para. 1 (a) 16

"The handling EDP may assign any measures, which are available to him/her [the assisting EDP] **in accordance with Article 30** …" (Art. 31 para. 2) DE=ss. 102, 103, 104, 105, 110 CPC and Art. 2 para. 1 in connection with Art. 1 para. 1 German Basic Law[768].

Assigned Measure	**Assisting Member State** Perspective: Existence of the assigned measure and execution in conformity with the law of the assisting Member State Are there any peculiarities? Fundamental principles of law of the assisting MS e.g. Judges' reservations, reservations for an investigating judge, special thresholds for measures according to Art. 30 (intrusive investigative measures, protection of privacy)
Art. 30 para. 1 a: House search	Countries of assisting EDPs AT=ss.119–122 et seq. CPC (search measures), 144 and 157 may restrict certain search measures[769] BE[770]=Art. 62 (Art. 56), Art. 90*coties* search on premises of professionals e.g. lawyers (*juge d'Instruction* Art.90*octies* § 3[771])

[768] Cf. already quite exstensively on this matter for Germany Niedernhuber 2022, § 7 Margin Number 102–111.
[769] Cf. Ibid, 102–109.
[770] Art. 47quaterdecies CPC.1 In the exercise of their powers, as provided for in Article 156/1 of the Judicial Code, the European Public Prosecutor and the European Delegated Public Prosecutors appointed in accordance with Article 309/2 of the same Code have all the powers that the law confers on the public prosecutor. Within the framework of these, they can carry out or cause to be carried out all acts of information or instruction falling within their attributions on the whole of the territory of the Kingdom, as well as exercising public action.
When exercising their powers, this European Public Prosecutor and these [Belgian] European Delegated Public Prosecutors ***may only seize the specialized investigating judges referred to in Article 79, paragraph 6, of the same Code [Judicial Code] to hear about the offences referred to in Article 156/1, § 1***,
[771] Art. 90octies CPC [...] § 3. The ***investigating judge assesses***, after consultation with the President of the Bar or the representative of the provincial order of doctors, ***which parts of the communications non-accessible to the***

BG=Art. 159 et seq., 164
Authorisations by competent body: s. 161 para. 1 CPC: "(1) The chairman of the senate is entitled to order a house search and a judge in the preparatory proceedings on the proposal of the public prosecutor. In urgent cases, the chairman of the senate or the judge in whose district the inspection is to be carried out may do so instead of the relevant chairman of the senate or the judge (§ 18)."

CY=ss. 11 (for an arrest), 25 (search without a warrant), 26 CPC (Power for means of transport research).
Authorisations by competent body: ss. 27, 28 para. 2 CPC: "(2) Any such warrant is usually addressed to all police officers in general, but the Judge who issues such a warrant may, if immediate execution is necessary, and there is no police officer immediately available, address it to any other servant or persons, and this person or persons execute it, and when the warrant is addressed to more than one police officer or more than one person, it can be executed by all, or by any or more of one of them."

CZ=mainly ss. 82, 83, but see as well 112, 113, 114, 115 CPC.
Authorisations by competent body:
s. 83 para. 1 CPC: "(1) The chairman of the senate is entitled to order a house search and a judge in the preparatory proceedings on the proposal of the public prosecutor. In urgent cases, the chairman of the senate or the judge in whose district the inspection is to be carried out may do so instead of the relevant chairman of the senate or the judge (§ 18).

DE=[handling MS]

DK*opted out of AFSJ=Chapter 73 *Retsplejeloven*: s. 793 "Dwellings and other housing, documents, papers and the like, as well as the contents of locked objects and 2) other objects as well as locations outside housing spaces."
Authorisations by competent body:

public or data from a computer system referred to in Article 90sexies, § 3, which he considers relevant for the investigation, ***are subject to professional secrecy and which are not***.
Only the parts of the communications or data referred to in the first paragraph which are deemed not to be covered by professional secrecy are transcribed or reproduced and, if necessary, translated. The investigating judge has a report drawn up. The files containing these communications or data are deposited at the registry in a sealed envelope.
All other communications or data are filed with the registry in another separate sealed file.]

ss. 794: “Searches of housing, other premises or objects at the disposal of a suspect may only be carried out if
1) the person concerned is reasonably suspected of an offence subject to public prosecution, and
2) the search must be assumed to be of significant importance to the investigation.”
And s. 796 para. 2, 4 and 5 *Retsplejeloven*: “A decision on a search in other cases is made by a court order, cf. 5 and 6. The ruling states the specific circumstances of the case, on which it is based that the conditions for the intervention have been met. The ruling can be reversed at any time. [… 4, 5:] Before *the court makes a decision* pursuant to para. 3, 2nd sentence, the person against whose premises, premises or objects the search is directed must be given access to express an opinion. § 748, para. 5 and 6 shall apply mutatis mutandis.
(5) If the search is directed at housing, premises or objects that a suspect has at his disposal, and he gives written consent for the search to be carried out, a decision on the search can also be made by the police. S. 796 para. 3 request no court order in urgent cases.

EE=ss. 91, 92, 470 para. 5 CPC.
Authorisations by competent body:
s. 91 para. 2: “(2) A search shall be conducted at the request of a Prosecutor’s Office on the basis of an order of a preliminary investigation judge or on the basis of a court ruling, taking into account the exceptions listed in paras. 2 and 3 of this section.
s. 91 para. 3 provides for the possibility of an urgent search “on the basis of an order of an investigative body without the permission of a court”, but needs an ex-post verification within 24 hours

EL=Art. 243 in combination with Art. 253, Art. 256 (night search in a house) CPC.
Authorisations by competent body:
Art. 253: “always in the presence of representatives of the judiciary”
Art. 243 para. 2: Exceptionally, if a preliminary examination is carried out for the acts of articles 187 and 187A of the Penal Code, the special investigative acts referred to in paragraph 1 of article 254 and the special investigative acts referred to in paragraph 1 of this article may be ordered, after by a written order of the prosecutor acting in accordance with the provisions of paragraph 3 (c) to (f) of Article 254.

ES=Art. 46, 47 Organic Law 9/2021 (EPPO Adoption law, see Chapter on Spain), Art. 326 (description of the crime scene), 364 (special evidence gathering in cases of theft or fraud); and cf. mainly Art. 545 et seq. CPC.
Authorisations by competent body:
Art. 326 (investigating judge, Juez)
Art. 546 The Judge or Court hearing the case may order the entry and search, day or night, in all buildings and public places, regardless of the territory in which they reside, when there are indications that the defendant or effects or instruments are there. of the crime, or books, papers or other objects that can be used for its discovery and verification
Art. 548 (in case of entry into legislative building the judge needs permission from the President of the legislative body)
Art. 555, 556 (entrance to royal places may be requested by the *Mayordomo Mayor de Su Majestad*)
Art. 559
Art. 562 (entrance to foreign consuls is possible in case of prior notice)

FI=Chapter 8 ss. 1–34 Coercive Measures Act; see ss. 2, 3, 4, 5, 6–14 searches on premises.
Authorisations by competent body:
Chapter 8 s. 15 Coercive Measures Act "Deciding on a site search
The general search of the house and the search for a place shall be decided by the official authorized to detain. The court shall decide on the special search of the home and the appointment of a search officer.
If a general home search or a place search reveals that the search is for the information referred to in section 1 (3), or if a special home search is urgently needed, the arresting officer shall decide to carry out a special search and appoint a search warrant.
A police officer may, without the decision of an officer in charge of arrest, carry out a general search of the house or a place to locate an object or seize an object which may have been traced or traced from the commission of a crime. A police officer may, without the decision of the detention officer, carry out a general search of the home and a search of the place even if the urgency of the search makes it necessary."
Chapter 8 s. 17 Coercive Measures Act "s. 17 Special home search court proceedings
To carry out a special home search is decided by the court, which is competent to prosecute. Before prosecuting, the search may also be decided by the district court in whose jurisdiction the place to be searched is located. The

district court hearing the case also has a quorum when it has a sole president […].
Chapter 8 s. 29 Coercive Measures Act "s. 29 Deciding on a device search
The search for equipment shall be decided by an official entitled to detention and, in an emergency situation referred to in section 15 (3), by a police officer in accordance with the provisions of section 16, as applicable. In the case of the information referred to in section 1 (3), sections 15 paras. 1 and 2 and section 17 concerning special home searches shall apply mutatis mutandis."

FR=Art. 54 et seq. CPC (search measures), Art. 696-126 CPC, Art. 706 et seq. CPC.

HR=Art. 240 et seq., 251 (for a person) CPC, Art. 252 et seq. (Search of home and other premises), Art. 255 (search on a military facility), Art. 257 (search of computers), Art. 258 (search on a ship/aircraft).
Authorisations by competent body:
Art. 242 CPC "1) designation of the object of search (person, home, other premises or movable property),
2) the purpose of the search,
3) the body that will conduct the search.
(2) The *investigating judge shall decide on the request for search* immediately, and no later than within four hours from the receipt of the request. If he does not accept the request, the investigating judge will issue a decision. The State Attorney has the right to appeal against the decision of the investigating judge within eight hours. The Council shall decide on the appeal within twelve hours.
(3) The search judge's order referred to in paragraph 1 of this Article, on search, shall be executed within three days from the day of issuance. After that period, the search can no longer be performed on that order. The order is returned without delay to the investigating judge, who annuls it with a note on the order.
(4) The search shall be conducted by the state attorney, investigator or police.
(5) When the investigation is conducted by the investigating judge, he shall determine in the search warrant the investigator who will conduct the search. The investigator is obliged to conduct a search according to the order and immediately submit to the investigating judge the minutes and items that he has temporarily seized.

Exceptions
Art. 244
The search may *exceptionally be approached without prior submission of an order* (Article 243, paragraph 1) and instruction on rights (Article 239, paragraph 1), or a summons to hand over a person or thing (Article 243, paragraph 2) if: […]

Article 246
(1) The search may be carried out without a warrant by the State Attorney, investigator or police when conducting an investigation of the crime scene for which he is prosecuted ex officio, immediately, and no later than eight hours after the crime is discovered, unless it is a search of the home or space referred to in Article 256 of this Law.
(2) The police may search a home or other premises without a warrant:
1) when, according to a special law, she is authorized to enter someone else's home or other premises, and there are conditions referred to in Article 240, paragraph 2 of this Act,
2) if it is absolutely necessary for the execution of an arrest warrant or for the arrest of the perpetrator of a criminal offence (Article 107, item 2) for which a prison sentence of at least three years is prescribed.
(3) In the case of the search referred to in paragraph 2 of this Article, if the search is undertaken in the home or other premises of the perpetrator of the criminal offence, the search may also be undertaken to find or secure evidence. This search may be undertaken only in the presence of at least two witnesses.
(4) The police may search a person without a search warrant when executing an arrest warrant or arrest if it is likely that the person possesses a weapon or weapon of attack or if it is likely to discard, hide or destroy items or traces required of him. seized as evidence of proceedings.
(5) When the police perform a search without a warrant, they are obliged to submit the record of the search and the report immediately to the competent state attorney."

HU=ss. 306, 307, 820.

IE=s. 48 Criminal Justice (Theft And Fraud Offences) Act 2001 Revised – Updated to 22 November 2021,

s. 6 Criminal Law Act 1997; s. 6 (Search warrants in relation to arrestable offences) Criminal Justice Act 2006 amending Criminal Justice (Miscellaneous Provisions) Act 1997.
Authorisations by competent body:
s. 48 paras 2, 3 Criminal Justice (Theft and Fraud Offences) Act 2001 Revise – Updated to 22 November 2021:
"[(2) *If a Judge of the District Court is satisfied by information on oath of a member of the Garda Síochána* that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, *the judge may issue a warrant for the search of that place and any person found there.*]
(3) A warrant under this section shall be expressed and shall operate to authorise a named member of the Garda Síochána, alone or accompanied by such other persons as may be necessary—
(a) to enter, within 7 days from the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant,
(b) to search it and any persons found there,
(c) to examine, seize and retain anything found there, or in the possession of a person present there at the time of the search, which the member reasonably believes to be evidence of or relating to the commission of an offence to which this section applies, and
(d) to take any other steps which may appear to the member to be necessary for preserving any such thing and preventing interference with it."
s. 6 para. 1 Criminal Law Act, 1997: "*a member of the Garda Síochána may enter* (if need be, by use of reasonable force) *and search any premises (including a dwelling)*" where the person is or where the member, with reasonable cause, suspects that person to be, and such warrant or order may be executed in accordance with section 5.
Nota bene: For entering premises without a warrant see e.g. the Intoxicating Liquor Acts, the Public Dance Halls Act, and the Health Acts (all do not relate to EPPO investigations).
s. 6 Criminal Justice Act 2006 amending Criminal Justice (Miscellaneous Provisions) Act 1997 "10.–(1) *If a judge of the District Court* is satisfied by information on oath of a member not below the rank of sergeant that there are reasonable grounds for suspecting that evidence of, or relating to, the commission of an arrestable offence is to be found in any place, the judge may issue a warrant for the search of that place and any persons found at that place."
** Not part of the EPPO yet.*

IT=Art. 244 et seq. stipulates provisions for inspections but Art. 247 et seq. stipulate provisions for searches (*Perquisizioni*) CPC,
Art. 247 – Cases and forms of searches
Art. 248 – Request for delivery
Art. 249 – Personal searches
Art. 250 – Local searches
Art. 251 – House searches. Time limits
Art. 252 – Seizure following a search

Authorisations / enforcement by competent body:
Art. 247 para. 3 "The judicial authority can proceed personally or arrange for the act to be carried out by judicial police officers delegated with the same decree."

Art. 343 If authorisation to proceed is envisaged [by virtue of Art. 68 of the Constitution; Art. 313 of the Criminal Code], the public prosecutor requests it pursuant to article 344.

2. *Until the authorisation has been granted, it is forbidden to order the arrest or personal precautionary measures* [Artt. 272–315] against the person for whom the authorisation is envisaged as well as *to subject him to a personal or home search [Artt. 247–252]*, personal inspection [Art. 245], reconnaissance [Art. 213], identification [Art. 361], comparison [Art. 211], interception of conversations or communications [Art. 266]. The questioning can only be carried out if the person concerned requests it.
3. The acts provided for in paragraph 2 are permitted, even before the request for authorisation, when the person is caught in the act [Art. 382] of one of the crimes indicated in article 380 paragraphs 1 and 2. However, when the authorisation to proceed on the authorisation to carry out certain acts are prescribed by provisions of the Constitution or constitutional laws, these provisions apply, as well as, as far as compatible with them, those referred to in articles 344, 345 and 346.
4. Acts carried out in violation of the provisions of paragraphs 2 and 3 cannot be used [Art. 191].
5. Once the authorisation to proceed has been granted, it cannot be revoked.

LT=mainly Art. 145 (search any premise or other place), 146 (search of a person), 147, 148, 149 CPC and see Art. 169 and 170 CPC in the pre-trial investigation phase, Art. 205, 206, 207 CPC.

Authorisations /enforcement by competent body:
Art. 135 para. 2–5 CPC: "3. The search is carried out *by a motivated order of the pre-trial investigation judge*." The order shall specify which of the objects referred to in paragraphs 1 and 2 of this Article will be searched.
4. The owner, lessor, manager, adult member or close relative of the apartment, house or other premises where the search is carried out must be present during the search, and a representative of that company, institution or organisation must be involved in the search of the company, institution or organisation. When it is not possible to ensure the participation of these persons, the search shall be carried out in the presence of a guest or a representative of the municipal authority. If necessary, the invitees may be invited to participate in the search in other cases as well.
5. A search of land, forest or water bodies may be carried out without the participation of the owner, lessor or manager, but these persons shall be subsequently notified in writing of the search carried out.
Art. 146 para. 1 CPC: "1. A search of a person is carried out according to the same rules as a search of an apartment, house or other premises."
Art. 148: "1. The seizure of postal items is allowed only by the order of the pre-trial investigation judge. […]
2. The prosecutor, the judge and the court have the right to inspect the contents of seized postal items."
Exceptions:
Art. 150 (diplomatic premises)
Art. 150^1 (special professions)
Art. 173 CPC (for the pre-trial investigation phase)

LUX=Art. 33, 65 CPC: "(1)Searches are carried out in all places where objects may be found, the discovery of which would be useful for establishing the truth."
Authorisations by competent body:
Art. 65 para. 2 CPC "(2)The investigating judge gives prior notice to the State prosecutor."

LV=ss. 159, 160 (inspection, which may lead to an investigation), 163 (inspection of other places, vehicles etc.); but mainly ss. 179–188 CPC will apply.
Section 179. Searches
Section 180. Decision on a Search
Section 181. Persons Present at a Search

Section 182. Procedures for Conducting a Search
Section 183. Search of a Person
Section 184. Search in the Premises of Diplomatic or Consular Representative Offices
Section 185. Issuance of a Copy of the Minutes of a Search
Section 186. Removal
Section 188. Removal Procedures
Authorisations by competent body:
s. 180 paras 1, 3 CPC: "(1) A search shall be conducted with a decision of an investigating judge or a court decision. An investigating judge shall take a decision based on a proposal of the person directing the proceedings and materials attached thereto. […]
(3) In emergency cases where, due to a delay, sought objects or documents may be destroyed, hidden, or damaged, or a person being sought may escape, a search shall be performed with a decision of the person directing the proceedings. If a decision is taken by an investigator then a search shall be performed with the consent of a prosecutor. […]."

MT=ss. 351, 354, 355K., 355L., 355P. ("when lawfully on a premise")
ss. 351 para. 2 in a flagrante delito situation: "(2) For the purposes of subarticle (1), the Police may stop a person or a vehicle until the search is performed and shall seize anything discovered during the search and the possession of which is prohibited or which may be connected with an offence",
s. 354 in a flagrante delicto situation: "354. Anything seized as a result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the search and including a detailed list of the things so seized".
And see the following ss. 355E, G (search of premises, which may lead to seizure of things on the premises e.g. s. 355 E (3)(b): "discovering and seizing any property in respect of which an alert has been entered in the Schengen Information System.") in the real investigative phase.
Next see ss. 355AF (person) and 355AR. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Procedure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions
Authorisations by competent body:

See foremost s. 355E. para. 1 Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Proce-dure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions, which clearly states: "(1) Saving the cases where the law provides otherwise, *no police officer shall, without a warrant from a Magistrate*, enter any premises, house, building or enclosure for the purpose of effecting any search therein or arresting any person who has committed or is reasonably suspected of having committed or of being about to commit any offence unless […]."
It follows a list in s. 355E. para. 1 (a)–(g) and by bringing forward an *argumentum e contrario* it can be judged that only if one of the reasons in this list applies, no warrant is needed for a search under Maltese criminal procedural law. This is underpinned by s. 355K., which states that "[*a]ny police officer may enter and search without a warrant any premises*, house, building or enclosure in the circumstances laid down in article 355E(1)(a) to (e). [scil. Cases of imminent danger or an *inflagrante delicto* situation]"
Limitation:
s. 355J. "A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued: Provided that if, in the course of the search, offences other than the offence or offences mentioned in the warrant are discovered, the search may extend to the extent required for the purposes of such other offences"

NL=36e, 94 et seq., 96a, 96b CPC
Authorisations by competent body: Investigating officer needs to contact examining magistrate or prosecutor

PL*=Chapter 25, Art. 219, 220, 221, 222, 223 (search a person), 224, 225, 226, 227, 228 CPC.
Authorisations by competent body:
Art. 220 "[Search – authorized body, approval]
§ 1. The search *may be carried out by the prosecutor or by order of the court or prosecutor by the Police*, and in cases specified in the Act - also by another authority.
§ 2. The decision of the court or the public prosecutor should be presented to the person who is to be searched.
§ 3. In *urgent cases, if the decision of the court or the public prosecutor could not be issued, the body conducting the search presents the order of*

the head of its unit or the official ID, and then immediately requests the court or the prosecutor to approve the search. The decision of the court or public prosecutor on approval must be delivered to the person who was searched within 7 days from the date of the action on the request of that person reported in the protocol. She should be instructed about the right to submit a request.
Limitations/Formalities etc.:
Chapter 25 Art. 221 et seq. CPC
** Not part of the EPPO (yet).*

PT=Art. 173, 174, 176 et seq., 251 (preliminary investigation) CPC.

RO=Art. 156 CPC: "Common provisions
(1) The search may be house, body, computer or vehicle search.
(2) The search shall be carried out with respect for dignity, without constituting disproportionate interference with private life."; 157 (home search), 159 (formalities), 161 (report), 165, 166 (body search related provisions) CPC, 167 CPC (vehicle search), 168 (computer search), 192 (on-the-spot search)
Authorisations by competent body:
Art. 158 para. 1 CPC: "(1) The home search may be ordered during the criminal investigation, a*t the request of the prosecutor, by the judge of rights and liberties from the court which would have jurisdiction to judge the case in the first instance or from the corresponding court* in its degree in whose district is the headquarters of the prosecutor's office of which the prosecutor who conducts or supervises the criminal investigation is part. During the trial, the search is ordered, ex officio or at the request of the prosecutor, by the court invested with the trial of the case. […]"
Art. 168 para. 2 CPC: "(2) During the criminal investigation, *the judge of rights and liberties from the court which would have jurisdiction to judge the case in the first instance or from the corresponding court in its degree in whose district the headquarters of the prosecutor's office of which the prosecutor belongs performs or supervises the criminal investigation may order a computer search*, at the request of the prosecutor, when for the discovery and gathering of evidence it is necessary to search for a computer system or a computer data storage medium."

SE=Chapter 28 Swedish Code of Judicial Procedure, ss. 1 et seq.;
Authorisations by competent body:

Chapter 27, ss. 3a, 4, 5: “Section 3 at the house search may only be decided if the reasons for the measure outweigh the intrusion or otherwise that the measure entails for the suspect or for any other opposing interest. *Lag (1989:650)*.

Section 4 An order on a house search *is issued, except in cases referred to in the third paragraph, by the head of the investigation, the prosecutor or the court*. An order for a *house search for service* must *always be issued by the court*. If, in other cases, the search of the house can be assumed to be of a large extent or cause particular inconvenience to the person with whom the measure is carried out, the measure *should not, if there is no danger in delay, be taken without the court’s order*.

The court may raise the question of the house search at the request of the head of the investigation or the prosecutor. After the prosecution, the court may also, at the request of the plaintiff or voluntarily, raise such an issue. The question of whether the house search for service is taken up by the court voluntarily or at the request of the Police Authority or the prosecutor.

Ordinance on house search for search of the person to be detained in accordance with the decision referred to in Ch. Section 17, third paragraph, or is summoned to a court hearing is issued by the Police Authority or a police officer in accordance with the provisions of the Police Act (1984:387). *Lag (2014:649)*.

Section 5 A *police officer may carry out a house search without an appointment in accordance with section 4, if there is a danger of delay*. However, this does not apply to house searches for service. Lag (1995:637).”

SI=Art. 164 but see mainly Art. 214, 215, 216, 217, 218 CPC.
Authorisations by competent body:
Art. 215 paras 1, 2 CPC: “Article 215 (1) The investigation *shall be ordered by the investigating judge upon a reasoned written proposal of the entitled prosecutor* with a reasoned written order. If the investigating judge does not agree with the written proposal of the eligible prosecutor, he shall request a reasoned opinion from the senate (sixth paragraph of Article 25), which must decide within 72 hours of receiving the written proposal and reasoned opinion and communicate its decision without delay. eligible prosecutor.

	(2) The order on the investigation shall be handed over before the commencement of the investigation to the person to whom the investigation is to be conducted or who is to be investigated. In doing so, he is instructed that he has the right to inform a lawyer who may be present during the investigation. If the person to whom the investigation order applies requires a lawyer to be present during the investigation, the commencement of the investigation shall be postponed until the arrival of the lawyer, but for a maximum of two hours. […]" SK=ss. 99 et seq., 101, 102, 103, 104, 105 (Inspection and entry into the dwelling, other premises and land) CPC. Authorisations by competent body: s. 101 para. 1 CPC: "(1) An inspection of other premises or an inspection of land *may be ordered by the chairman of the senate, before the commencement of criminal prosecution or in preparatory proceedings by the prosecutor* or, with his consent, by the police officer. The order must be issued in writing and must be substantiated. It shall be delivered to the owner or user of the premises or land, or to his staff member at the inspection and, if that is not possible, no later than 24 hours after the removal of the obstacle preventing service. […]" s. 102 para. 1 CPC: "(1) A personal search is authorized *to be ordered by the chairman of the senate and, before the commencement of criminal prosecution or in preparatory proceedings, by the prosecutor* or, with his consent, by the police officer. […]"

bb. Art. 30 para. 1 a & d: seizure and freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to frustrate the Judgment ordering confiscation.

17 DE=Chapter 8, ss. 94, 97 (prohibition), 108b, 111b, 111c,. 443 CPC and cf. ss. 73 CC (forfeiture, seizure of assets) Authorisations by competent body: ss. 97, 160a CPC, 111f, 112 and cf. in the Civil Procedure Code ss. 928, 930, 829, 840[772]

[772] Cf. already quite exstensively on this matter for Germany Niedernhuber 2022, § 7 Margin Number 102–109.

Sources and national sections 7: Art. 30 para. 1 (a) & (d)

	Seizure, Art. 30 para. 1 b AT=ss. 110, 110 para. 2, 111, 112, 113, 114, 115, 122, and the restrictions in s. 157 CPC BE=Art. 35, 35*bis* (immovable property)s, 35*ter* (seizure of substitutes), 36, 37, 38, 39*bis* (computers) CPC Authorisations by competent body: cf. (*juge d'instruction)* Art. 28*quater,* Art. 28*septies,* Art. 28*novies § 1*, Art. 39*bis §§ 4–6*) BG=Art. 159 et seq. Authorisations by competent body: s. 161 para. 1[773] CPC "Search and seizure in the pre-trial procedures shall be carried out with the permission of a judge of the respective Court of first instance or of a judge of the Court of first instance where the action shall be performed, upon request of the prosecutor." CY=s. 33 CPC. Authorisations by competent body: "Confiscation of property not mentioned in the warrant s. 33. If during the search of a place under a warrant, the person authorized to conduct the search finds property not mentioned in the warrant but in respect of which there is a reasonable reason to believe that a criminal offence has been committed or is intended to be committed, he may seize the property *and bring it before the Judge who issued the warrant*, who may issue such an order regarding the withholding or disposition of the property as he pleases." Our Interpretation: This seems more to be an *ex-post* judicial approval. CZ=ss. 77b para. 3, 78 (obligation to submit things with evidential value), 79, 79a[774] (Securing crime tools and proceeds of crime), 79b CPC.

[773] Органи, които вземат решение за претърсването и изземването
Чл. 161. (1) В досъдебното производство претърсване и изземване се извършват с разрешение на съдия от съответния първоинстанционен съд или от първоинстанционния съд, в района на който се извършва действието, по искане на прокурора [...].
[774] § 79b
Doručení rozhodnutí o zajištění a vyrozumění o něm
(1) Orgán činný v trestním řízení, který rozhodl o zajištění, bezodkladně doručí rozhodnutí o zajištění orgánu nebo osobě, které jsou příslušné k provedení zajištění, a poté, co orgán nebo osoba provedou zajištění, i osobě, jíž byla věc zajištěna. Současně orgány nebo osoby příslušné k provedení zajištění vyzve, aby, pokud zjistí, že se s věcí,

Authorisations by competent body:
s. 79b "the President of the Senate and in the preparatory proceedings the public prosecutor or the police authority may decide to secure such a thing. The police authority needs the prior consent of the public prosecutor for such a decision. Prior consent of the public prosecutor is not required in urgent cases that cannot be postponed. […]"

[DE=handling MS, see above].

DK*=Chapter 74 ss. 801, 802, 802 para. 3 (all of the suspect's property) 803, 803a (an association's assets), 807 (formalities during a seizure operation), 807a (seizure by everyone), 807b–807f (special rules on seizure e.g. in AML cases) *Retsplejeloven*;
Authorisations by competent body:
s. 802: "Items that a suspect has at his disposal can be seized if
1) the person concerned is reasonably suspected of an offence subject to public prosecution, and
2) there is reason to assume that the object may serve as evidence or should be confiscated, cf. 2, or by the offence is departed someone who can claim it back."
s. 806: "Decisions on seizure and on orders for edition are made at the request of the police. Requests for seizure to secure claims can also be made by the injured party.
s. 802 para. 3 can only be ordered if s. 806 para. 6 is obeyed: "[seizure] can only take place after a court order."

** Opted out of AFJS.*

EE=ss. 89 (Seizure and examination of postal or telegraphic items); 123, 142 (Seizure of property), 143, 470 (handing over of property to a foreign state) CPC.
Authorisations by competent body:
s. 89 para. 1: "at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling."
s. 142 para. 2: "Property is seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling."

která byla zajištěna, nakládá tak, že hrozí zmaření nebo ztížení účelu zajištění, mu tuto skutečnost neprodleně oznámily. [...]

s. 142 para. 3 allows seizure of property ("except property which is the object of money laundering") without an authorisation in urgent cases. The investigating judge needs to be informed within 24 hours.
s. 142 para. 8 and 9: "(8) For the seizure of an immovable, a Prosecutor's Office shall submit an order on seizure to the land registry department of the location of such immovable in order for a prohibition on the disposal of the immovable to be made in the land register.
(9) For the seizure of an immovable or right entered in the state register, a Prosecutor's Office shall submit an order on seizure to the relevant state register."

EL=Art. 260 (seizure of securities in banks other public or private institutions, see para. 2: "In case of refusal, they search and seize the useful documents and things."), Art. 261 (asset freezing), Art. 263 (obligation of civil servants to deliver documents), Art. 264 (General confiscation of documents), Art. 265 (confiscation of digital data).
Authorisations by competent body:
Art. 261 para. 1: "with the consent of the prosecutor, may order the seizure of bank accounts"
Art. 264: "The Minister has the right either to allow the seizure or not, subject to criminal and any other liability, if the statement proves to be false."
Art. 265 para. 5: "5. The access and reproduction of the confiscated digital data is allowed only to those who exercise judicial, prosecutorial and investigative duties in the case or the secretaries."
Art. 266 applies subsidiarily: "Article 266 Seizure after the end of the interrogation.
1. If during the course of the investigation the seizure of items or documents related to the crime was not possible or was not considered necessary, the seizure may be ordered by the court at any stage of the trial and on its own initiative, in which case the investigator acting for it acts employee as soon as it is possible to carry it out."

ES=Art. 334, 367bis, 545 et seq. CPC.
Authorisations by competent body:
Art. 334 para. 1 CPC: "The investigating judge will order to collect in the first moments the weapons, instruments or effects of any kind that may be related to the crime and are found in the place where it was committed, or in its vicinity, or in the possession of the accused, or in another known part. The Clerk of the Court will issue expressive diligence of the place, time and

occasion in which they are found, describing them in detail so that a full idea of them and the circumstances of their discovery can be formed […]"
Art. 367sexies
Art. 367septies CPC: "Article 367f.
The *judge or court, ex officio or at the request of the Public Prosecutor or the Asset Recovery and Management Office* itself, may order the location, conservation and administration of effects, goods, instruments and proceeds from criminal activities committed in the framework of a criminal organisation to the Office of Asset Recovery and Management.
The organisation and operation of said Office will be regulated by regulation."
Art. 579 CPC: "Article 579. Written or telegraphic correspondence.
1. *The judge may order the detention of private, postal and telegraphic correspondence, including faxes, Buro faxes and money orders*, that the investigated party sends or receives, as well as its opening or examination, if there are indications of obtaining by these means the discovery or verification of any fact or circumstance relevant to the case, provided that the investigation is aimed at any of the following crimes:
1. Intentional crimes punishable by a maximum limit of at least three years in prison.
2nd Crimes committed within a criminal group or organisation.
3rd Crimes of terrorism. […]"

FI=Chapter 2, s. 15 (dangerous objects) Police Act;[775] Chapter 6 Seizure with the aim to secure property or payments, Chapter 7 Seizure and reproduction of the document, ss. 1, 5 (Seizure and reproduction of parcels, etc.), 6, Coercive Measures Act.
Authorisations by competent body:
Chapter 2, s. 15 Police Act: "police officer has the right to temporarily seize explosives and other dangerous objects or substances from a person who, on the basis of his or her age, intoxication, state of mind or other circumstances, poses an immediate threat to public order and safety.
Chapter 7, s. 1 Coercive Measures Act "s. 1 Conditions for confiscation
An object, property or document may be seized if there is reason to believe that:
1) it may be used as evidence in criminal proceedings;
2) it has been taken from someone by crime; or
3) it is forfeited. […]"

[775] See Poliisilaki 22.7.2011/872, cf. https://www.finlex.fi/fi/lainsaadanto/2011/872. Accessed 31 December 2024.

Chapter 7, s. 7 Coercive Measures Act "s. 7 Authority deciding on the seizure and reproduction of the document
Seizure or reproduction of the document *shall be decided by the official* authorized to detain it. The *court may decide on this* when considering the charge."
Chapter 7, s. 8 Coercive Measures Act "s. 8 Seizure for confiscation and reproduction of the document
A police officer may, in connection with the arrest or search of a suspect, seize an object, property or document for the purpose of seizure or reproduction *without the order of the official authorized* to detain him. A police officer may do so without a prescription in other cases as well, if the matter does not tolerate delay. […]"

FR=Mainly Art. 97 CPC, but during searches see Art. 92–94 CPC in connection with Art. 131-21 et seq. CC, Art. 41-4, 41-5 (return of objects).
Authorisations by competent body:
Art. 97 "[…]With the agreement of the investigating judge, the judicial police officer only maintains the seizure of objects, documents and computer data useful for the manifestation of the truth, as well as property whose confiscation is provided for in article 131-21 of the penal code.
If the seizure relates to cash, ingots, effects or securities whose preservation in kind is not necessary for the manifestation of the truth or the safeguard of the rights of the parties, he may authorize their deposit at the Caisse des dépôts et consignations. or at the Banque de France or on an account opened with a banking establishment by the Agency for the management and recovery of seized and confiscated assets.
When the seizure relates to banknotes or coins denominated in counterfeit euros, the investigating judge or the judicial police officer appointed by him must transmit, for analysis and identification, at least one copy of each type of banknote or parts suspected of being false to the national analysis center authorized for this purpose. The national analysis center can open the seals. He draws up an inventory of them in a report which must mention any opening or reopening of the seals. When the operations are completed, the report and the seals are deposited with the clerk of the competent court. This deposit is recorded in the minutes."

HR=Art. 206i, 261 et seq., 262 (special reference to computers and data storage).
Authorisations by competent body:

"Art. 261 para. 2:
(2) Whoever holds such items shall be obliged to hand them over at the request of the state attorney, investigator or police. The public prosecutor, investigator or police shall warn the holder of the case of the consequences of refusing to act on the request."
Exceptions: Art. 262, 264 (state bodies and legal persons with certain secrecies), Art. 265 (relation to bank secrecy).

HU*=ss. 308 et seq., 313, 315, Sec. 820 CPC.
* *Not part of the EPPO (yet).* The EPPO has a Working Arrangement with the Hungarian General Public Prosecutor's Office in Budapest.

IE=Part 7, ss. 48 paras 3 (c), 4, 5, 6, and 50 (Forfeiture of seized property) Criminal Justice (Theft and Fraud Offences) Act 2001.
Authorisations by competent body:
s. 48 paras 2, 3 Criminal Justice (Theft and Fraud Offences) Act 2001:
"2) *If a Judge of the District Court is satisfied by information on oath of a member of the Garda Síochána* that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, *the judge may issue a warrant for the search of that place and any person found there.*
(3) A warrant under this section shall be expressed and shall operate to authorise a named member of the Garda Síochána, alone or accompanied by such other persons as may be necessary–
(a) to enter, within 7 days from the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant,
(b) to search it and any persons found there,
(c) to *examine, seize and retain anything found there*, or in the possession of a person present there at the time of the search, which the member reasonably believes to be evidence of or relating to the commission of an offence to which this section applies, and
(d) to take any other steps which may appear to the member to be necessary *for preserving any such thing and preventing interference with it*.";

IT=Art. 253, 252, 254, 262, 316–321 (Chapter 1 and 2), 368, 671 CPC. En detail the following provisions should be consulted by an Austrian EDP in a case, which involves Italy. Art. 253 (Object and formality of the seizure), Art. 254 (Seizure of correspondence), Art. 254*bis* (Seizure of IT data from IT, telematic and telecommunication service providers), Art. 255 (Seizure

from banks), Art. 256 (Duty of exhibition and secrets), Art. 256*bis* (Acquisition of documents, deeds or other things by the judicial authority at the offices of the security information services), Art. 256*ter* (Acquisition of deeds, documents or other things for which state secrecy is raised), Art. 257 (Review of the seizure decree), Art. 258 (Copies of the documents seized), Art. 259 (Custody of seized things), Art. 260 (Affixing of seals to seized things. Perishable things. Destruction of seized things), Art. 261 (Removal and re-affixing of seals), Art. 262 (Duration of the seizure and return of the seized things), Art. 263 (Procedure for the restitution of seized things).

Authorisations by competent body:
Art. 316 CPC: "the public prosecutor (2), in every state and grade of the trial on the merits, requests the conservation seizure".
Art. 321 CPC: "at the request of the public prosecutor the *judge competent to rule on the merits* [allows] seizure with motivated decree [262 3]. Before the prosecution [405] the judge provides for the preliminary investigations.
2. The *judge can also order* the seizure of things which may be confiscated [acc. to Art. 240 of the Italian Criminal Code]).
3-bis. During the preliminary investigations, when it is not possible, due to the *urgent situation, to wait for the judge's ruling, the seizure is ordered by decree motivated by the public prosecutor*. In the same cases, before the intervention of the public prosecutor, *judicial police officers* proceed to the seizure, who, in the following forty-eight hours, transmit the report to the public prosecutor of the place where the seizure was carried out [386]."
Art. 368 CPC: "1. When, during the preliminary investigations, the public prosecutor considers that the seizure requested by the interested party should not be ordered [acc. to 253 CPC], he transmits the request with his opinion to the judge for the preliminary investigations."

LT=Art. 17-4 in conncetion with Art. 133 (security), 134 (seizure of documents), 149 (search and seizure) and in special cases of a pre-trial investigation see Art. 170^1 (Powers of the prosecutor to secure the confiscation of property) *Lietuvos Respublikos baudžiamojo proceso kodeksas*, Art. 170 para. 5 CPC in pre-trial investigations.
Authorisations by competent body:
Art. 130 para. 2 CPC "In order to achieve the objectives, the prosecutor issuing the bail, the pre-trial investigation judge or the court shall set a time limit of three days for the payment of the bail in the amount specified in the ruling or ruling."

Art. 170 para. 6 CPC: "6. The senior prosecutor shall identify violations of procedural law committed by prosecutors, overturn illegal or unreasonable rulings thereof, and give binding instructions to prosecutors, except as to what decision to prosecute."

Art. 134 CPC: "The seizure of documents as a remand measure *may be ordered by a resolution of a prosecutor or a court order, and in urgent cases - by a resolution of a pre-trial investigation officer.*

Art. 170 para. 7 CPC: "7. Only a prosecutor may apply to a pre-trial judge for the performance of acts falling within the competence of that judge. In the cases provided for in Articles 214 and 217 of this Code, the decisions of the prosecutor regarding the termination of the pre-trial investigation and regarding the resumption of the terminated pre-trial investigation shall be approved by the pre-trial investigation judge."
Article 173 CPC "Powers of the pre-trial judge
1. The pre-trial judge shall, in accordance with the procedure established by this Code:
1) appoint and authorize the application of procedural coercive measures;
2) swear and interrogate witnesses and victims;
3) question the suspects;
4) take decisions regarding the termination of the pre-trial investigation in the cases provided for in Paragraph 1 of Article 214 of this Code; […]"

LUX=Art. 47, 31 para. 2, 3, 33, 34, 35, 65, 66 para. 1: "of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)", 66 para. 3 (entry into stored, processed and automated data) 67, 68, 67 (return/release of seized things), 194-1, 194-7 CPC.
Authorisations by competent body:
Art. 63 para. 1 CPC "(1)The investigating judge may go to the site to make any useful findings. He notifies the State prosecutor who has the option of accompanying him."
Art. 66 para. 1 CPC "(1)The investigating judge operates the seizure of all objects, documents, effects, data stored, processed or transmitted in an automated data processing or transmission system and other things referred to in Article 31 (3)."
Art. 66-1 para. 1 CPC "the order of the investigating judge"

LV=ss. 361, Section 361[1] (Sending for Execution of the Decision on the Seizure of a Property), 363, 364 CPC (issuing of copies of the protocol on a seizure).
Authorisations by competent body:
s. 361 paras 3, 4 CPC: "(3) In pre-trial proceedings, property shall be seized with a decision of the person directing the proceedings that has been approved by an investigating judge, but during trial a court shall take a decision.
(4) In emergency cases when property may be alienated, destroyed, or hidden due to a delay, the person directing the proceedings may seize the property with the consent of a prosecutor. The person directing the proceedings shall notify an investigating judge of the seizure not later than on the next working day by presenting the protocol and other materials that justify the necessity and emergency of the seizure. If the investigating judge does not approve the decision of the person directing the proceedings on the seizure of a property, the seizure of the property must be revoked. […]"
Restriction: Art. 122 para. 1 2) CPC.

MT=s. 355P. (General rules of seizure.): "355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence or it is the subject of an alert in the Schengen Information System and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed."
And see s. 355Q. (Computer data), and see s. 628B. para. 1 (f) in mutual assistance cases (criminal law).
Authorisations /enforcement by competent body:
s. 355Q. "*The Police may*, in addition to the power of seizing a computer machine, require any information which is contained in a computer to be delivered in a form in which it can be taken away and in which it is visible and legible."
Judicial follow-up:
s. 355T. A person who is the rightful owner of a thing seized and retained may, unless criminal proceedings in the course of which the thing seized has been exhibited or is to be exhibited are pending before any court, make an application to a Magistrate for its restitution, and the Magistrate may, after hearing the Police, by a decree order its release either unconditionally, or

under such conditions as may be necessary to preserve the evidential aspects of the thing.

NL=ss. 95, 96[776], 96a, 96b CPC.
Authorisations by competent body:
s. 96 para. 2 CPC allows the investigating officer in urgent cases to search and seize objects related to a suspected offence. In the case of an offence by virtue of s. 323a Wetboek van Strafrecht (embezzlement detrimental to the EU's financial interests) the investigation officer may order the suspect to surrender objects subject to seizure.

PL=Chapter 25, Art. 217, 218 [stop and control of correspondence], 218a [securing sorted IT data]; 219 § 1: "as well as to find items that may constitute evidence in the case or subject to seizure in criminal proceedings, […]" CPC.
Authorisations by competent body:
Art. 217 § 1 CPC: "should be issued *at the request of the court or the prosecutor*, and in *urgent cases - also at the request of the Police or another authorized person* authority."

PT=Art. 178 et seq. (*Capítulo III* Das apreensões *Objeto e pressupostos da apreensão*), 186 (return), 252 (preliminary investigation phase).

RO=Art. 158 para. 13 CPC, 168 para. 10 CPC; 171 but cf. mainly s. 252, 252[1], 252[2] CPC.
Authorisations by competent body:
Art. 249 para. 1, 2 CPC: "Article 249 General conditions for taking precautionary measures
(1) The prosecutor, during the criminal investigation, *the judge of the preliminary chamber or the court, ex officio or at the request of the prosecutor, in the preliminary chamber procedure or during the trial, may take precautionary measures*, by order or, as the case may be, by conclusion motivated, in order to avoid hiding, destroying, alienating or evading the pursuit of goods that may be subject to special confiscation or extended confiscation

[776] § 2. Inbeslagneming door opsporingsambtenaren of bijzondere personen Artikel 96 CPC 1. In geval van ontdekking op heterdaad van een strafbaar feit of in geval van verdenking van een misdrijf als omschreven in artikel 67, eerste lid, is de opsporingsambtenaar bevoegd de daarvoor vatbare voorwerpen in beslag te nemen en daartoe elke plaats te betreden. 2. De opsporingsambtenaar kan, in afwachting van de komst van de rechter of ambtenaar die bevoegd is ter inbeslagneming de plaats te doorzoeken, de maatregelen nemen die redelijkerwijs nodig zijn om wegmaking, onbruikbaarmaking, onklaarmaking of beschadiging van voor inbeslagneming vatbare voorwerpen te voorkomen. Deze maatregelen kunnen de vrijheid van personen die zich ter plaatse bevinden beperken.

or that may serve to guarantee the execution of the fine or legal costs or to repair the damage caused by the crime.
(2) The precautionary measures consist in making unavailable some movable or immovable goods, *by instituting a seizure on them*. […]"

Art. 252[3] "Capitalization of movable property seized during the trial
(1) During the trial, *the court, ex officio or at the request of the prosecutor*, of one of the parties or of the custodian, *may order the capitalization of the seized movable property*."

SE[777]=Chapters 26 and 27 1942:740 Swedish Code of Judicial Procedure; Chapter 27, s. 1: "Section 1 Objects that can reasonably be assumed to be important for the investigation of a crime or have been disposed of by someone through a crime or confiscated due to a crime may be seized. The same applies to objects that can reasonably be assumed to be important for an investigation into the confiscation of the exchange of criminal activity according to Ch. 36. 1 b § Criminal Code.
What is said in this chapter about objects also applies to written documents, insofar as nothing else is prescribed.
Coercive measures under this chapter may only be decided if the reasons for the measure outweigh the intrusion or otherwise that the measure entails for the suspect or for any other opposing interest. Lag (2008:376)."

Authorisations by competent body:
Chapter 27, s. 4: "A person who legally seizes or arrests a suspect or carries out an arrest, house search, body search or body inspection may seize objects that are found in seizure.
Objects *that are otherwise found may be seized by decision of the head of the investigation or the prosecutor*. In the event of danger in delay, even without such a decision, the measure may be taken by a police officer, unless it is a question of a consignment referred to in section 3.

[777] Sweden has already been involved in an EPPO case in 2021–2022. Eurojust provided help for setting-up an JIT team, cf. Eurojust, Press release, 28 Febraury 2022, Eurojust assists in setting up first joint investigation team with EPPO at request of Swedish authorities: "Cross-border VAT or carrousel frauds of over EUR 10 million fall under the competence of the EPPO. As Sweden does not participate in the EPPO, cross-border cooperation in these kind of cases may be enabled by Eurojust. The JIT agreement was signed by Sweden and the French European Delegated Prosecutor at the EPPO, with the participation of Eurojust, to support investigations between the Swedish authorities and the EPPO. The case concerns long-term investigations into a large-scale VAT fraud conducted from amongst others France, among other countries. The fraud damages the Swedish tax office and also involves other EU Member States."

If the seizure is carried out by someone other than the head of the investigation or the prosecutor and the latter has not decided on the seizure, the report must be made promptly to him, who must immediately examine whether the seizure should last. Lag (1993:1408)."
Chapter 27, s. 5: "The *court may order the seizure of an object*, which is presented at the court or is otherwise available for seizure.
The *question of seizure may be taken up by the court at the request of the head of the investigation or the prosecutor*. After the prosecution, the court also has the right to demand a question about it at the request of the plaintiffs. If a question is raised in court about seizure, a hearing about it shall, as soon as possible, take place before the court. If such negotiation applies in applicable parts, what in Ch. Section 17 is stipulated. If there is a danger of delay, the court may immediately order seizures to apply, until otherwise ordered."

SI=Art. 148, but see mainly Art. 156 CPC and 220, 221, 222, 222a CPC.
Authorisations by competent body:
Art. 156 para. 1 CPC: "(1) *At the reasoned proposal of the public prosecutor, the investigating judge may order* a bank, savings bank, payment institution, electronic money institution or branch or agent representing payment services or electronic money for them, or a company for issuing, managing or operating virtual currency to, but may also, to the competent authority, communicate confidential information and send documentation on the balance of deposits and on the balance and transactions on the accounts or other transactions of the suspect, accused and other persons who may reasonably be involved in financial transactions suspect or accused, if this information could be evidence in criminal proceedings or if it is necessary due to the seizure of objects or the protection of a claim for confiscation of property or property worth property. […]"
Art. 172 CPC: "(1) During the investigation, the investigating judge may leave individual investigative acts to the investigating judge of the court in whose area they are to be performed.
(2) The state prosecutor who is competent for the proceedings before the court to which the investigative act has been transferred may be present if the competent state prosecutor does not state that he will be present alone.
(3) *The investigating judge may leave the execution of the order on house or personal search or seizure of objects to the police in the manner specified in this Act.*

(4) At the request or permission of the investigating judge, the police may photograph the accused or take his or her fingerprints if this is necessary for criminal proceedings. […]"
Art. 220:
"(4) Police officers may seize objects referred to in the first paragraph of this Article when acting in accordance with Articles 148 and 164 of this Act or when executing a court order.
(5) In the case of seizure of objects, the place where they were found shall be stated and the objects shall be described, and if necessary, the establishment of their identity shall be secured in another way. Minutes shall be issued for seized items.
(6) A court order on the basis of which objects or files are seized from a lawyer, candidate or lawyer trainee must contain an explanation stating that it does not refer to the files or objects referred to in point 1 of the first paragraph of Article 222.a of this Article. of the Act, and an explanation from which it is evident that the information sought, which must be clearly or definitively defined in the order and relating to a particular pre-trial or criminal procedure, cannot in fact be effectively obtained in any other way. Before the seizure, the court order is also served on the Bar Association of Slovenia, which must ensure the presence of its representative during the seizure within a maximum of two hours from the notification of the investigative act. If the seizure is carried out as part of an investigation by a law firm, […]"

SK=ss. 89 et seq. (Securing things important for criminal proceedings), ss. 95 et seq. (Securing crime instruments and proceeds of crime),
Part Four - Seizure of Matters Important for Criminal Proceedings (ss. 89–98a), Section 1 – Case relevant to criminal proceedings s. 89 (Matter important for criminal proceedings), Section 2 – Seizure of Evidence (ss. 89a–94), s. 89a (Obligation to issue a thing), s. 90 (Withdrawal of the case), s. 91 (Preservation, release and withdrawal of computer data), s. 92 (Acceptance of the seized thing), s. 93 (Common provisions), s. 94 (Custody of issued, confiscated, taken over or otherwise seized items). Section 3 – Seizure of criminal instruments and proceeds of crime (ss. 95–98a), s. 95 (Securing funds), ss. 95a–96 (Securing book-entry securities), s. 96a (Securing real estate), s. 96b (Real estate inspection), s. 96c (Ensuring ownership interest in a legal entity), s. 96d (Securing virtual currency), s. 96e (Securing other

property value), s. 96f (Securing a movable thing), s. 96g (Ensuring substitute value), Return of case (ss. 97–98a – Common provisions for securing property, things and other property values)
Authorisations by competent body:
s. 95 para. 1 CPC: "Securing funds
(1) If the facts indicate that the funds in an account in a bank or a branch of a foreign bank or other funds are an instrument of crime or the proceeds of crime, *the President of the Senate and the preparatory prosecutor may issue an order for the funds to be seized*. The seizure order pursuant to the first sentence may also relate to funds subsequently received on this account, including accessories, if the reason for the seizure also applies to them.
(2) If the *matter cannot be postponed, the prosecutor may issue an order pursuant to paragraph 1 even before the commencement of criminal prosecution*. Such an order must be confirmed by the judge for the preparatory proceedings within 48 hours at the latest, otherwise it expires. […]"
s. 96 paras 1, 2 CPC: "(1) If the ascertained facts indicate that the book-entry security is an instrument of crime or the proceeds of crime, the *President of the Senate and in the preparatory proceedings the prosecutor may issue an order* to register the suspension of the right to dispose of the security.
(2) If the matter cannot be postponed, *the prosecutor may issue an order* pursuant to paragraph 1 even before the commencement of criminal prosecution. Such an order must be confirmed by the judge for the preparatory proceedings within 48 hours at the latest, otherwise it expires."
s. 96a paras 1, 2 CPC: "(1) If the ascertained facts indicate that the real estate is an instrument of criminal activity or the proceeds of criminal activity, *the chairman of the senate and in the preparatory proceedings the prosecutor may issue an order* to seize the real estate.
(2) If the matter cannot be postponed, the *prosecutor may issue an order* pursuant to paragraph 1 even before the commencement of criminal prosecution. Such an order must be confirmed by the judge for the preparatory proceedings within 48 hours at the latest, otherwise it expires."
s. 96 para. 1 CPC: "Real estate inspection
(1) If it is necessary to verify the condition of the real estate and assess the effectiveness of its detention, the *chairman of the senate* and before the commencement of criminal proceedings or in the preparatory proceedings on the proposal of the *prosecutor the judge for the preparatory proceedings may issue an order* to inspect the real estate. […]"
s. 96 paras 1, 2 CPC: "§ 96c Ensuring ownership interest in a legal entity

(1) If the ascertained facts indicate that the ownership interest in a legal entity (hereinafter referred to as "ownership interest") is an instrument of crime or the proceeds of crime, the *President of the Senate and the prosecutor may issue an orde*r to secure ownership interest.
(2) If the matter cannot be postponed, the *prosecutor may issue an order* pursuant to paragraph 1 even before the commencement of criminal prosecution. *Such an order must be confirmed by the judge* for the preparatory proceedings within 48 hours at the latest, otherwise it expires"
s. 96d paras 1, 2 CPC: "Securing virtual currency
(1) If the established facts indicate that the virtual currency is an instrument of crime or the proceeds of crime, the *President of the Senate and in the preparatory proceedings the prosecutor may issue an order to seize* the virtual currency.
(2) If the matter cannot be postponed, the *prosecutor may issue an order* pursuant to paragraph 1 even before the commencement of criminal prosecution. Such an order *must be confirmed by the judge for the preparatory proceedings* within 48 hours at the latest, otherwise it expires.
s. 96e paras 1, 2 CPC: "Securing other assets
(1) If the ascertained facts indicate that another property value, which is a property right or other value valued in money, is an instrument of crime or proceeds of crime, the *President of the Senate and in the preparatory proceedings the prosecutor may issue an order to seize* another property value.
(2) If the matter cannot be postponed, the *prosecutor may issue an order* pursuant to paragraph 1 even before the commencement of criminal prosecution. Such an order *must be confirmed by the judge for the preparatory proceedings* within 48 hours at the latest, otherwise it expires. […]"
s. 96f CPC: "Securing a movable thing
If the established facts indicate that the movable thing is an instrument of crime or the proceeds of crime, t*he President of the Senate and in the preparatory proceedings the prosecutor may issue an order to seize* the movable thing. Section 96e shall apply to the procedure for securing a movable thing."

s. 96g CPC: "Ensuring replacement value
If it is not possible to seize a movable thing, cash, book-entry securities, real estate, virtual currency, other property or participation, which is an instrument of crime or proceeds of crime, the *President of the Senate and before the prosecution and in the preparatory proceedings may be prosecutor issue an order* to secure a substitute value that corresponds at least in part to their

	value; the relevant provisions governing its issue, withdrawal or seizure shall apply in the same way."

Source: The Authors.

cc. Art. 30 para. 1 e: intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using;

18 *Sources and national sections 8: Art. 30 para. 1 (e)*

GER=Art. 30 para. 1 (e) See → ss. 110a, 110e para. 1, 100d, 100g, 101f CPC.

Art. 30 para. 1 e: Telecommunications surveillance	AT=ss. 135 para. 3 CPC, 135a (recently declared unconstitutional!) Authorisations by competent body/enforcement: See ss. 137, 138 CPC BE=Art. 39bis, 46bis, but mainly Art. 90ter,[778] cf. Art. 56*bis* for the authorisations of the *juge*), Art. 90*ter* § 1. BG=Art. 165, 172. Authorisations by competent body: Art. 165 para. 2 (judge at first instance), Art. 173 para. 1: "a written motivated request is submitted to the court by the supervising prosecutor. Before submitting the request, the supervising prosecutor shall notify the administrative head of the respective prosecutor's office." Art. 174 para. 1: "The permission for the use of special intelligence means shall be given in advance by the chairman of the respective district court or by a person expressly authorized by him.eg a Vice Chairman." Procedures acc. to Art. 175 et seq. CPC. CY=ss. 4, 5, 5a, 6, 6a The Protection of the Privacy of Private Communication (Interception of Conversations and Access to Recorded Content of Private Communication) Law of 1996[779]/ see as well Law on the Regulation of Electronic Communications and Postal Services.[780] Authorisations by competent body:

[778] "Art. 90ter.<Inséré par L 1994-06-30/49, art. 3; En vigueur: 03-02-1995> § 1. [5 Sans préjudice de l'application des articles 39bis, 87, 88, 89bis et 90, le juge d'instruction peut, dans un but secret, intercepter, prendre connaissance, explorer et enregistrer, à l'aide de moyens techniques, des communications non accessibles au public ou des données d'un système informatique ou d'une partie de celui-ci, ou étendre la recherche dans un système informatique ou une partie de celui-ci. [...]". Art.90quater et seq. describe the procedure, which Art. 90ter provides for. See e.g. Tatiana Tropina in Ulrich Sieber/Nicolas von zur Mühlen, Access to Telecommunication Data in Criminal Jurstice A Comparative Analysis of European Legal Orders, Duncker & Humblot, 2016, 29 et seq.

[779] Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996 (92(I)/1996).

[780] Ρυθμίσεως Ηλεκτρονικών Επικοινωνιών και Ταχυδρομικών Υπηρεσιών Νόμου.

ss. 6, 8 para. (1) (a)[781] and 8 para. 1 (e) Law of 1996
Our Interpretation:
This clearly indicates that Cyprus does not allow the interception of telecommunications, if there is no suspicion for an offence against the security of the Republic. S. 8 para. 1 (e) only requests that "it is in the interest of justice to issue the above court order." This is a very wide provision that may unfold for EPPO actions.

CZ=s. 88 CPC.
Authorisations by competent body:
s. 88 para. 2[782] (judge at first instance): "(2) The chairman of the senate is entitled to order the interception and recording of telecommunication traffic and the judge in the preparatory proceedings on the proposal of the public prosecutor. The interception and recording order must be issued in writing and must be substantiated, including a specific reference to the declared international treaty in the case of criminal proceedings for an intentional criminal offence which this international treaty is obliged to prosecute."

DE=[handling MS, see above.]

DK=**opted out of AFSJ**=but see the Fourth Book of the Code of Judicial Procedure (Retsplejeloven) Chapter 67 and 68 provide for investigative rules and measures; Chapter 71 finally introduces special investigative measures such as telecommunications surveillance. (Kapitel 71: *Indgreb i meddelelseshemmeligheden, observation, dataaflæsning, forstyrrelse eller afbrydelse af radio- eller telekommunikation, blokering af hjemmesider og overtagelse af tv-overvågning*)

[781] 8.- (1) The Judge may issue a surveillance warrant as requested by the application or such amendments or on such terms as he deems necessary to authorize the monitoring of private communication, if he is satisfied that on the basis of the facts submitted by the applicant;
(a) there is a reasonable suspicion that a person has committed, committed or is expected to commit an offence or there is a reasonable suspicion that the security of the Republic is endangered; [...].

[782] Tatiana Tropina/Radim Polcák in Ulrich Sieber/Nicolas von zur Mühlen, Access to Telecommunication Data in Criminal Jurstice A Comparative Analysis of European Legal Or-ders, Duncker & Humblot, 2016, 59, 369. And see the original text:
§ 88 [...] (2) Nařídit odposlech a záznam telekomunikačního provozu je oprávněn předseda senátu a v přípravném řízení na návrh státního zástupce soudce. Příkaz k odposlechu a záznamu telekomunikačního provozu musí být vydán písemně a musí být odůvodněn, včetně konkrétního odkazu na vyhlášenou mezinárodní smlouvu v případě, že se vede trestní řízení pro úmyslný trestný čin, k jehož stíhání tato mezinárodní smlouva zavazuje. [...]

s. 780 Book Four of the Code of Judicial Procedure allows the interception of telecommunications in certain cases. S. 781 presents certain thresholds for the process of interception and the assignement if these measures.
s. 786 stipulates the responsibility of telecommunication service providers to assist the police.
s. 791c and d provide for very interesting measures. The police may interrupt the radio and telecommunication services in a region/or block a website. Overall these measures seem to be limited to the prevention of offences.
Authorisations by competent body:
s. 783 "Intervention in the secrecy of communications takes place after the court's order. The order shall state the telephone numbers, locations, addressees or consignments to which the intervention relates, cf. 2. Furthermore, the specific circumstances of the case are stated, on which it is based that the conditions for the intervention have been met. The ruling can be reversed at any time.;

EE=ss. 126^{1} et seq. CPC.
Authorisations by competent body:
ss. 126^{2} et seq. CPC
s. 126^{2} para. 1: "(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Military Police and the Prisons Department of the Ministry of Justice and prisons (hereinafter surveillance agency) may conduct surveillance activities on the following bases:
1) a need to collect information about the preparation of a criminal offence for the purpose of detection and prevention thereof;
2) the execution of a ruling on declaring a person a fugitive;
3) a need to collect information in confiscation proceedings pursuant to the provisions of Chapter 161 of this Code;
4) a need to collect information in a criminal proceeding about a criminal offence."
Mainly s. 126^{4} issues special authorisation restrictions etc: "(1) Surveillance activities may be *conducted with a written permission of a Prosecutor's Office or a preliminary investigation judge*. The preliminary investigation judge shall decide the grant of permission by a ruling on the basis of a reasoned application of the Prosecutor's Office. The preliminary investigation judge shall immediately review a reasoned request submitted by a Prosecutor's Office and grant or refuse to grant permission for the conduct of the surveillance activities by a ruling. […]"

EL=Art. 3, 4 Law 2225/1994 For the protection of freedom and response and communication and other provisions as amended Law 4871/2021/ *ΝΟΜΟΣ ΥΠ'ΑΡΙΘ. 2225 ΦΕΚ 121/20.07.1994 Για την προστασία της ελευθερίας και ανταπόκρισης και επικοινωνίας και άλλες διατάξεις.*
Authorisations by competent body:
Art. 4 para. 2 Law 2225/1994 as amended: "2. Removal in these cases is permissible only if the competent judicial council finds that the investigation of the case or the verification of the place of residence of the accused is impossible or substantially difficult without it.
Art. 4 para. 6 Law 2225/1194 as amended: "In extremely urgent cases, the removal [of the privacy protection ie. the interception] may be ordered by the prosecutor conducting the preliminary investigation or preliminary examination and the investigator conducting the regular interrogation. In any case, however, the prosecutor or the investigator is obliged to submit the matter with a relevant request to the Council within a period of three (3) days. The order of the Prosecutor or the investigator for the removal shall expire automatically upon the expiration of this three-day period or, if the matter is introduced in time, from the issuance of the relevant order of the Council."

ES=Art. 588 bis et seq., 588ter et seq. CPC and *lex specialis* is provided for in Art. 48 Organic Law 9/2021[783].
Authorisations by competent body: "Article 588 bis a. Guiding principles.
1. During the investigation of the cases, *any of the investigative measures regulated in this chapter may be agreed upon, provided that there is judicial authorisation* issued in full compliance with the principles of speciality, suitability, exceptionality, necessity and proportionality of the measure.[…]"[784]

"Article 588 bis b. Request for judicial authorisation.
1. The judge may order the measures regulated in this chapter ex officio or at the request of the Public Prosecutor or the Judicial Police.
2. When the Public Prosecutor or the Judicial Police request a technological investigation measure from the investigating judge, the request must contain: […]."

[783] Artículo 48. Interceptación de las comunicaciones y medidas de investigación tecnológica. See https://www.boe.es/buscar/act.php?id=BOE-A-2021-10957#da. Accessed 31 December 2024.
[784] Artículo 588 bis b. Solicitud de autorización judicial.

"Article 588 bis c. Court resolution. 1. The investigating judge will authorize or deny the measure requested by reasoned order, after hearing the Public Prosecutor's Office. This resolution will be issued within a maximum period of twenty-four hours from the filing of the request. […]"

FI=Chapter 5, s. 1 et seq., Chapter 6, ss. 6 et seq. Police Act[785]; Chapter 3, s. 3, Subs. 1 of the Preliminary Investigation Act, Act on the Prevention of Crime in Customs (623/2015), Chapter 10 ss. 1–4 of the Coercive Measures Act.
Authorisations by competent body:
Chapter 10 s. 5 Coercive Measures Act
"Deciding on interception of telecommunications and other similar information
The court shall decide on the interception of telecommunications and the acquisition of information referred to in section 4 at the request of the official authorized to detain.
Permission to intercept telecommunications and to obtain information referred to in section 4 (2) may be granted for a maximum of one month at a time. […]."

Chapter 10, s. 9 Coercive Measures Act
"Decision on telecommunication surveillance and acquisition of location information
The court shall decide on the telecommunications surveillance referred to in section 6, section 7 para. 1 sentences 1, 4 and 5 and para. 2 and on the acquisition of location information referred to in section 8 at the request of an official authorized to detain. If the case is not tolerated, the arresting officer may decide on telemonitoring and the acquisition of location data until the court has ruled on the request for authorisation. The matter shall be brought before a court as soon as possible, but not later than 24 hours after the start of the coercive measures. […]."
Chapter 10, s. 11 Coercive Measures Act
"Deciding to obtain base station information
The court shall decide on the acquisition of base station information at the request of the arresting officer.[…]."
Chapter 10, s. 13 Coercive Measures Act
"Deciding on planned monitoring
The official authorized to detain shall decide on the planned monitoring.

[785] See Poliisilaki 22.7.2011/872, cf. https://www.finlex.fi/fi/lainsaadanto/2011/872. Accessed 31 December 2024.

A decision on planned monitoring may be taken for a maximum of six months at a time.[…].”
Chapter 10, s. 18 Coercive Measures Act
Deciding on a technical hearing
The court shall decide on the interception of the apartment and on the request of the official entitled to detain the suspect who has been deprived of his liberty as a result of the crime.
An official entitled to arrest shall decide on a technical hearing other than that referred to in para. 1.
The permit can be issued and the decision made for a maximum of one month at a time […].”
Chapter 10, s. 22 Coercive Measures Act.

Chapter 5, s. 3 Police Act restricts the interception to a list of crimes (mostly terrorist offences),
Chapter 5, s. 4 Police Act: “Continuation of secret intelligence to investigate the crime
However, if, during the course of a secret investigation into the prevention or detection of a criminal offence, there is reason to suspect that the offence is being committed, the investigation may continue for three days, up to the duration of the authorisation. If it is necessary to use a secret coercive measure within the meaning of Chapter 10 of the Coercive Measures Act in order to investigate a criminal offence, the matter shall be referred to the authority competent to decide on the use of the coercive measure in question within that period.”
Chapter 5 s. 6 Police Act obtaining information from the provider.
Chapter 5 s. 7 Police Act is highly important: “s. 7
Deciding on interception of telecommunications and other similar information
The court decides on wiretapping and obtaining information instead of wiretapping on the basis of a police officer referred to in Chapter 2, Section 9, Subsection 1 (1) of the Coercive Measures Act (a police officer entitled to arrest) or a chief of police,
Permission to intercept telecommunications and to obtain information referred to in section 6 (2) may be granted for a maximum of one month at a time.”
Chapter 5 s. 8 Police Act offers the possibility of telemonitoring: “s. 8 Telecommunication surveillance and its conditions”

s. 10 Police Act is highly important for authorisation matters: s. 10 Deciding on telemonitoring
The court shall decide on the telemonitoring referred to in section 8 paras. 2 and 5 and section 9 paras. 1, 4 and 5 and on telemonitoring in the cases referred to in section 3 at the request of a police officer entitled to arrest or a police officer."
Chapter 5 s. 11 Police Act "Acquisition of base station information and its conditions" and s. 12 "Deciding to obtain base station information" (a court's decision is required).
Chapter 5 s. 17 Police Act "Technical listening and its conditions" […] It is also a precondition for technical questioning that, on the basis of statements, threats or conduct, or otherwise, a person can reasonably be expected to be guilty of:
1) an offence punishable *by a maximum term of imprisonment of at least four years*;
2) a drug offence;
3) the preparation for or training for a terrorist offence for the purpose of committing a terrorist offence, travel for the purpose of committing a terrorist offence or public provocation in connection with a terrorist offence, if the seriousness of the offence would require imprisonment; or
4) a *serious customs clearance offence*.
Chapter 5 s. 18 Police Act "The court decides on the technical interrogation of a person deprived of his liberty as a result of a criminal offence at the request of a police officer or a police officer who is a member of the security police.
A police officer entitled to arrest or a police officer belonging to the officers of the security police shall decide on the technical interrogation referred to in section 17 para. 5 and other than that referred to in para. 1. […]"

FR=Art. 57-1, 60-2, Art. 100-1 to Art. 100-8 CPC and Art. 230-46 CPC.
Authorisations by competent body:
Art. 100: "the investigating judge may, where the needs of the information so require, order the interception, recording and transcription of correspondence transmitted by electronic communications. These operations shall be car-ried out under his authority and control.
The interception decision shall be in writing. It has no jurisdictional character and is not subject to appeal."
Art. 60-2 […] "previously authorized by order of the judge of freedoms and detention, may require telecommunications operators, and in particular those

mentioned in 1 of I of article 6 of law 2004-575 of June 21, 2004 on confidence in the digital economy, to take, without delay, all appropriate measures to ensure the preservation, for a duration not exceeding one year, of the content of the information consulted by the users of the services provided by the operators."
Art. 74-2 (juge des libertés et détention) and another possibility in purely domestic cases is that the juge d'instruction issues a warrant by him/herself. In urgent cases "judges on duty" can issue an urgent and/or immediate access.

FR=Art. 57-1, 60-2 (during preliminary investigations), 100, 100-1–100-8 and 230-46 CPC.
Authorisations by competent body:
Art. 100: "the investigating judge may, where the needs of the information so require, order the interception, recording and transcription of correspondence transmitted by electronic communications. These operations shall be carried out under his authority and control.
The interception decision shall be in writing. It has no jurisdictional character and is not subject to appeal."
Art. 60-2 […] "previously authorized by order of the judge of freedoms and detention, may require telecommunications operators, and in particular those mentioned in 1 of I of article 6 of law 2004-575 of June 21, 2004 on confidence in the digital economy, to take, without delay, all appropriate measures to ensure the preservation, for a duration not exceeding one year, of the content of the information consulted by the users of the services provided by the operators."
Art. 74-2 (juge des libertés et détention) and another possibility in purely domestic cases is that the juge d'instruction issues a warrant by him/herself. In urgent cases "judges on duty" can issue an urgent and/or immediate access.

HR=Art. 195, 196.
Authorisations by competent body: Investigating Judge.

HU*=ss. 261 et seq. Hungary Act XV. 2017;
Authorisations by competent body:

** Not part of the EPPO.*

IE*=Criminal Justice (Mutual Assistance) Act 2008
Request to State for interception.

24. (1) This section applies where–
(a) a criminal investigation is taking place in a member state,
(b) a lawful interception order or warrant for the interception of telecommunications messages to or from a specified person or telecommunications address has been issued in the member state in connection with the investigation,
(c) a competent authority in the member state makes a request to the Minister for–
(i) the interception and immediate transmission to the authority or a person nominated by it of telecommunications messages to or from the telecommunications address concerned, or
(ii) the interception and recording of the messages and the transmission of the recording to the authority or the person nominated by it, and
(d) the specified person–
(i) is present in the member state or another member state and the competent authority in the former member state needs the technical assistance of the State to intercept the telecommunications messages, or
(ii) is present in the State and the interception can be made therein.
(2) The request shall–
(a) indicate the name of the competent authority,
(b) confirm that a lawful interception order or warrant has been issued in connection with a criminal investigation,
(c) give sufficient information to identify the person whose telecommunication messages are to be intercepted,
(d) give an indication of the criminal conduct under investigation,
(e) state the desired duration of the interception,
(f) provide sufficient technical data, including the network connection number of the telecommunications address concerned, to ensure that the request can be met, and
(g) if the person is present in a member state other than that in which the lawful interception order or warrant has been issued and from which no technical assistance is required to carry out the interception, confirm that that member state has been informed of the order or warrant pursuant to Article 20(2)(a) of the 2000 Convention.
(3) Where–
(a) the person whose telecommunications messages are to be intercepted is present in the State, or
(b) the request is for the interception and recording of the messages and transmission of the recording,

the request shall also include a summary of the facts relating to the offence being investigated and any further information that the Minister may require to enable him or her to decide whether the conduct constituting the offence, if it occurred in the State, would constitute a serious offence within the meaning of the Act of 1993 and otherwise justify the giving of an Authorisations under that Act.

In *domestic situations*: ss. 2, 4, 5 Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993.
Authorisations by competent body: ss. 23, 24 Criminal Justice (Mutual Assistance) Act 2008.

In *domestic situations*: ss. 2, 4, 5 Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993:
ss. 2, 6 (application), 8 (judicial control by "designated judge")
s. 2. (1) The *Minister may give an Authorisations*, but only for the purpose of criminal investigation or in the interests of the security of the State.
(2) (a) Subject to subsection (b) of this paragraph, an Authorisations shall be given by warrant under the hand of the Minister.
(b) If the Minister considers that the case is one of exceptional urgency, an Authorisations may be given orally (whether by telephone or otherwise) by the Minister and, if it is so given, it shall be confirmed, as soon as may be, by warrant under the hand of the Minister.
(c) The nominated officer shall maintain a record of any Authorisations s given under paragraph (b).
(3) The *Minister shall not give an Authorisations unless he considers that the conditions specified in section 4 or 5 of this Act*, as may be appropriate, *stand fulfilled*, and that there has not been a contravention of section 6 of this Act, in relation to the proposed interception.
(4) A warrant under this section–
(a) shall bear the date on which the Authorisations to which it relates is given,
(b) shall state–
(i) whether the proposed interception is in relation to postal packets or telecommunications messages or both, and
(ii) that the requirements of this Act in relation to the giving of the Authorisations to which the warrant relates have been complied with,
(c) shall specify–

(i) the postal address to which and (unless the Minister considers that to restrict the Authorisations to which the warrant relates to a specified person or persons would be prejudicial to the purposes of the proposed interception) the person or persons to whom the proposed interception relates, or
(ii) the telecommunications address to which the proposed interception relates,
or, where appropriate, the matters specified in both subparagraphs (i) and (ii) of this paragraph, and
(d) may require the person to whom it is addressed to disclose the intercepted material to such persons as are specified in the warrant.
(5) Subject to sections 7 and 8 para. 6 of this Act, an Authorisations shall remain in force for such period not exceeding 3 months from the date on which it is given as may be specified in the warrant and shall then cease to have effect unless that period is extended under para. 6 of this section.
(6) (a) Subject to subsection (b) of this paragraph, the Minister may, from time to time as occasion requires while an Authorisations is in force, by warrant under his hand extend the period for which the Authorisations is in force for such further period not exceeding 3 months at a time as may be specified in the warrant.
(b) Paras. 2 lit. b, 3, 4 and 5 of this section shall apply in relation to an extension under this paragraph as if it were an authorisations under para. 1 of this section.
(7) The Minister may consult the designated judge before deciding whether to give an Authorisations, or extend the period for which an Authorisations is in force, in any particular case or in a case of any particular class.

IT=Art. 254bis seizure of IT data from IT, telematic and telecommunication service providers, Art. 266 – Eligibility limits, Art. 266 bis – Interception of computer or telematic communications, Art. 267 – Assumptions and forms of the provision, Art. 268 – Execution of operations, Art. 268 bis – Filing of minutes and registrations [repealed], Art. 268 ter – Acquisition of the investigation file [repealed], Art. 268 quater – Terms and methods of the judge's decision [REPEALED], Art. 269 – Conservation of documentation Art. 270 – Use in other proceedings, Art. 270 bis – Service communications from members of the Department of Security Information and Security Information Services, Art. 271 – Prohibitions of use;
Authorisations by competent body:
Art. 343(see above)
Art. 268 paara 7

LT=Art. 154 CPC.
Authorisations by competent body:
Art. 154 para. 1 CPC: "1. *When a pre-trial investigation judge's ruling has been issued* at the request of the prosecutor, the pre-trial investigation officer may listen to, record, control and record and store other information transmitted by electronic communications networks […]".
Art. 155 para. 1 CPC: "Article 155. Prosecutor 's right of access to information
1. The prosecutor, having made a ruling and with the consent of the pre-trial judge, has the right to enter any state or municipal, public or private institution, company or organisation and request that he be given access to the necessary documents or other information, make entries or copy documents and information or to obtain the specified information in writing if necessary for the investigation of a criminal offence."
Art. 160[1] CPC: "Application of coercive procedural measures in urgent cases
1. In *urgent cases*, the coercive procedural measures provided for in Articles 154, 155, 158, 159 of this Code *may be applied by a resolution of the prosecutor*, and the coercive procedural measures provided for in Articles 145, 147, 160 of this Code may also be applied by a resolution of the prosecutor or pre-trial investigation officer. In all of these cases, *an order of the pre-trial investigation judge confirming the legality of the application of the coercive procedural measure must be received within three days* from the adoption of the ruling.

LUX=Art. 65–67 (general information on interception of communications), especially 67-1, 88, 88-1, 88-2 (special provisions on the interception of communications and technical means of surveillance) CPC and Art. 7 of the law of July 5, 2016.[786]
(Nota bene: all of these provisions are under review as they become more and more outdated with the ongoing "cybercriminalité"[787]) and see Art. 32, 33 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European investigation order in criminal matters;
2° amendment of the Code of Criminal Procedure;
3° modification of the amended law of 8 August 2000 on international legal assistance in criminal matters.)

[786] See Law of 5 July 2016 1. reorganizing the State Intelligence Service; 2. amending - the Code of Criminal Investigation, - the law of June 15, 2004 relating to the classification of documents and security clearances, and - the law of March 25, 2015 establishing the salary regime and the conditions for advancement of state officials.
[787] See Putz 2019, 1.2 passim.

Authorisations /enforcement/restrictions/exceptions by competent body:
Art. 67-1 CPC: *the investigating judge (judge d'instruction) is competent to proceed with such a measure* if he/she "considers that there are circumstances which make the tracking of telecommunications or the location of the origin or destination of telecommunications necessary for the manifestation of the truth, and if the facts entail a criminal penalty or correctional sentence, the maximum of which is equal to or greater than one year's imprisonment".
Art. 88-1 para. 1: "(1) *The investigating judge may*, under the conditions provided for in articles 88-2 and 88-4, *order the use of technical means of surveillance* and control of all forms of communication. […]"
Art. 32 para. 3 Law of August 1, 2018 transposing Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European investigation order in criminal matters "(3)The Luxembourg judicial authority may make its consent subject to compliance with the conditions which would have to be complied with in the context of a similar national procedure.".

LV=see Chapter 11 Special Investigative Actions, ss. 215 et seq. CPC, but cf. especially ss. 218, 219.
Authorisations by competent body:
Section 212. Permission for the Performance of Special Investigative Actions
(1) Special investigative actions shall be performed *on the basis of a decision of an investigating judge*, except in cases determined in this Chapter.
(2) A decision of an investigating judge shall not be necessary if all the persons who will work or live in the publicly inaccessible location during the performance of a special investigative action agree to the performance of such operation.
(3) Within the meaning of this Chapter, locations that one may not enter, or wherein one may not remain, without the consent of the owner, possessor, or user are publicly inaccessible.
(4) In *emergency cases, the person directing the proceedings may commence special investigative actions* by *receiving the consent of a prosecutor*, and, not later than on the next working day, a decision of an investigating judge.
s. 219 para. 1 CPC: "shall be performed, on the basis of a decision of an investigating judge"
s. 220 CPC: "shall be performed, on the basis of a decision of an investigating judge"

MT=see. ss. 628 para. 1 (d) and the newly introduced s. 628E. Criminal Code Cap. 9 Laws of Malta, Book 2 Laws Of Criminal Proce-dure Part I of the Authorities to which the Administration of Criminal Justice is entrusted, Title I Of the powers and duties of the Attorney General and the Executive Police in Respect of Criminal Prosecutions. And last but not least see ss. 6, 7 Security Service Act, Chapter 391 of the Laws of Malta.[788]
s. 7. "(1) Subject to sub article (2), the interception or interference with communications required by a warrant shall be the interception of or interference with - (a) such communications as are sent to or from one or more addresses specified in the warrant, being an address or addresses likely to be used for the transmission of communications, to or from - (i) one particular person specified or described in the warrant; or (ii) one particular set of premises so specified o described; and (b) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere with communications falling within paragraph (a).
(2) Sub article (1) shall not apply to a warrant if - (a) the interception or interference required by the warrant is the interception or interference, in the course of their transmission by means of a radio communications or telecommunication system, of -(i) such external communications as are described in the warrant; and (ii) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere with such external communications as are so described; and (b) at the time when the warrant is issued, the Minister issues a certificate certifying the descriptions of information the examination of which he considers necessary as mentioned in article 6(3)(a)."
Authorisations by competent body:
s. 628E. (e): The European Delegated Prosecutors may order the following investigative measures […] "(e) request the competent authority to intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using relative to the offences established in articles 190C, 190E and 190G; and […]."
s. 7 Securities Service Act

NL=Art. 126m et seq. *Wetboek van Strafordering*;
Authorisations by competent body:

[788] Grech 2014. online: https://fra.europa.eu/sites/default/files/fra_uploads/malta-study-data-surveillance-mt.pdf. (Accessed 31 December 2024); and see Filetti et al. 2013, pp. 473 et seq as well as Caruna and Cannatcai 2021, pp. 290 et seq.

In urgent cases the public prosecutor can issue an order for an investigating officer. As the EDPs have the same rights as purely domestic prosecutors, this must apply to the EDP, too. Art. 126m para. 5: "5.The order referred to in para. 1 may only be given after written authorisation to be granted by the examining magistrate at the request of the public prosecutor. Article 126l, fifth to eighth paragraphs, shall apply mutatis mutandis."
Art. 126ma: "Article 126ma1. If, when an order as referred to in Article 126m para. 3 is issued, it is known that the user of the number referred to in Article 126m para. 2 lit. c is on the territory of another state, insofar as a treaty so prescribes and pursuant to that treaty, notify that other State of its intention to record telecommunications and obtain the consent of that State before the order is enforced." A court order is required.

PL=Chapter 26, Art. 237 et seq. CPC. Especially Art. 237 § 3 14, 16b), 17 CPC are important if Poland decides to join the EPPO one day. And see Art. 179 § 4a, 180d Telecommunications Law.
Authorisations by competent body:
Art. 237 § 1 CPC: "*the court, at the request of the prosecutor, may order* the control and recording of the content of telephone conversations in order to detect and obtain evidence for the pending proceedings or to prevent the commission of a new crime"
Art. 237 § 2 CPC: "*In urgent cases, the control and recording of the content of telephone conversations may be ordered by the public prosecutor*, who is obliged to apply to the court within 3 days for approval of the decision. The court issues a decision on the request within 5 days at the meeting without the participation of the parties. If the prosecutor's decision is not approved, the court orders the destruction of all recorded records in the decision issued on the application. Appealing the decision suspends its execution"

PT=Art. 187 et seq. (*CAPÍTULO IV Das escutas telefónicas*).

RO=Art. 100 relates to evidence gathering in general and is important for the interception of telecommunications, which is made available by virtue of Art. 138 para. 1 a), b) CPC, Art. 139.
Authorisations by competent body:
Art. 139 para. 1 CPC: "(1) The technical supervision shall be disposed of by the judge of rights and freedoms when the following conditions are cumulatively fulfilled: […]"
Art. 140 para. 1 CPC: "Article 140

Procedure for issuing the technical supervision warrant
(1) The technical supervision *may be ordered* during the criminal investigation, for a maximum period of 30 days, *at the request of the prosecutor, by the judge of rights and freedoms from the court which would have the competence to judge the case in the first instance* or to the court corresponding to its degree in whose district the headquarters of the prosecutor's office of which the prosecutor who made the request is part is located. […]"
Art. 141 CPC: "Article 141
Authorisation of technical supervision measures by the prosecutor
1. The *prosecutor may authorize, for a maximum period of 48 hours*, technical supervision measures where:
a) *there is an emergency*, and obtaining the technical supervision mandate under the conditions of art. 140 would lead to a substantial delay in the investigation, to the loss, alteration or destruction of evidence or would endanger the safety of the injured person, the witness or their family members; and
b) *the conditions provided in art. 139 para. paras. 1 and 2 are fulfilled*.
(2) The ordinance of the prosecutor authorizing the technical supervision measure must include the mentions provided in art. 140 para. (5).
(3) The *prosecutor has the obligation to notify, within maximum 24 hours from the expiration of the measure, the judge of rights and freedoms* from the court which would have the competence to judge the case in first instance or from the corresponding court in degree in whose constituency is the headquarters of the prosecutor's office of which the prosecutor who issued the order is part, in order to confirm the measure, while submitting a report summarizing the technical supervision activities performed and the case file. […]"

SE=Chapters 26 and 27, ss. 18 et seq. Swedish Code of Judicial Procedure (1942:740).
Authorisations by competent body:
Chapter 27, ss. 21, 22: "Section 21 Questions concerning secret interception of electronic communications, secret surveillance of electronic communications, secret camera surveillance and secret room interception *are examined by the court upon application by the prosecutor*.

A decision to allow measures pursuant to the first paragraph shall state the time to which the permit relates. The time may not be determined longer than necessary. In the case of time after the decision, the time may not exceed one month from the date of the decision.

A *permit for secret interception of electronic communications or secret surveillance of electronic communications shall state* which telephone number or other address, which electronic communication equipment or which geographical area the permit relates to. It shall also be specified in particular whether the measure may be implemented outside publicly available electronic communications networks.
In a permit for secret camera surveillance or secret room interception, the place to which the permit applies must be stated.
If the permit is associated with a special permit in accordance with section 25 a to gain access to a place to install technical aids, this shall be stated separately in the decision.
A decision to allow covert room interception must also state who is reasonably suspected of the crime.
A decision to allow measures pursuant to the first paragraph shall, when there are reasons for this, also state conditions in other respects to satisfy the interest that individuals' personal integrity is not violated unnecessarily. Lag (2014:1419).
Section 21 a *If it can be feared that it would entail a delay of significant importance for the investigation to obtain the court's permission for covert interception* of electronic communications, covert surveillance of electronic communications or covert camera surveillance, *permission for the measure may be granted by the prosecutor pending the court's decision*. […]."

SI=Art. 150, 150a150b, 151 Zakon o kazenskem postopku, the Slovenian CPC.
Authorisations by competent body:
Art. 152 CPC: "(1) The measures referred to in Articles 150, 150a, 150b and 151 of this Act *shall be ordered by a written order of the investigating judge* upon a written proposal of the state prosecutor. The proposal and the order must contain: […]."

SK=ss. 115–118 Zákon č. 301/2005 *Z. z. Trestný poriadok*, the Slovakian CPC.
Authorisations by competent body:
s. 115 paras 2, 3 CPC: "(2) An order for interception and recording of telecommunication traffic *shall be issued by the chairman of the senate, before the commencement of criminal prosecution* or in *the preparatory proceedings of the judge for the preparatory proceedings* on the proposal of the prosecutor. In the case of a case which cannot be postponed and the pre-trial

	judge's order cannot be obtained in advance, such an order may be issued by the prosecutor before the prosecution or pre-trial proceedings, unless the interception and recording of the telecommunication traffic is connected no later than 24 hours after its issuance to be confirmed by the judge for the preparatory proceedings, otherwise it expires and the information thus obtained cannot be used for criminal proceedings and must be destroyed in the prescribed manner without delay. (3) The ***order for interception and recording of telecommunication traffic must be issued in writing and justified by the factual circumstances***, especially for each participating station or facility. The order must identify the subscriber station or facility and the person, if known, to whom the interception and recording of telecommunications traffic relates and the time for which the interception and recording of telecommunications traffic will take place. The interception and recording time may last for a maximum of six months. This time may be extended by the judge of the preparatory proceedings for another two months, even repeatedly, in the preparatory proceedings. Interception and recording of telecommunication traffic is done by the relevant department of the Police Force."

dd. Justification and adoption of such measures governed by the law of the MS of the handling EDP

First it has to be clear, which member state represents the handling one. This is the state, where the EDP has the power to conduct investigations in accordance with Art. 26 or 27 EPPO Regulation (see above). The measure must then be justified by the national law of this member state. Thus, the EDP must obtain a court order or authorisation. He/she can only adopt the measure if she/has determined the principles that are prominent for the law of the Member State of the handling EDP. In relation to the German CPC the principle of proportionality, the principles of the German Basis Law (Art. 103 para. 2 GG), the rule of law principle (Art. 20 para. 3 GG) and the special principles of the CPC ("*keine Wahrheitsermittlung um jeden Preis",* see e.g. s. 136a CPC) or the obligation to get permission from a court at first instance must be observed. **19**

There are already discussions about the practicability of Art. 31 EPPO Reg. – some consider the concept to be impracticable.[789]

20 While in theory a single authorisation by the supporting EDP from the national court of the other Member State should suffice and speed up the entire procedure (Art. 31 para. 3 subpara. 1 of the Regulation in conjunction with Recital 72 sentence 2 of the Regulation), *Yolaçan* sees a problem here in the implementation: "In practice, however, the Delegated European Public Prosecutor will simply not be able to assign a measure that is subject to judicial authorisation under the law of his Member State to the assisting Delegated European Public Prosecutor without investing his own time, invoking the principle of *Single Judicial Authorisation*."[790] According to this, there is a "double judicial control", as the entrusted EDP also has to check the measure against the substantive law before ordering and assigning it. There may even be judicial control, for example in the Member States that apply the investigating judge system (e.g. Belgium and Luxembourg with the *juge d'instruction* [See → Belgian and French chapters]).[791]

21 According to *Yolaçan*, the system may lead to a disadvantage for the accused, who should only seek legal protection against a measure ordered by judicial authorisation of the supporting Member State before the national courts of the handling Member State, where a judicial decision does not exist.[792]

22 In the facts submitted to the ECJ by the Vienna Higher Regional Court, the problem becomes clear: the court of the supporting Member State rejected an appeal against the order of search and seizure at the expense of the accused for lack of jurisdiction, especially since the order and assignment of the disputed measure originated from the Member State handling the case according to the instructions of a judge. According to the Vienna Higher Regional Court, the court in the supporting Member State only reviewed the implementation of this specific measure.[793] The referring court raises a question regarding the scope of review of such assigned measures.[794] The Austrian court is of the opinion that if full judicial review is to take place, the entire case file must be submitted to the court.[795] According to the referring court, the whole procedure is a "step backwards" compared to the already existing mutual recognition measures such as the EEA, since with the EEA only formal aspects have to be examined in the Member State of enforcement.[796]

[789] Yolaçan 2023b, p. 94.
[790] Yolaçan 2023b, p. 95.
[791] Yolaçan 2023b, p. 95.
[792] Section Two/B., point 17 f. Guidelines on Art. 31 of the Regulation; Yolaçan 2023b, p. 96.
[793] Yolaçan 2023b, p. 98f.
[794] Yolaçan 2023b, p. 99.
[795] Summary of Case C-281/22 - G.K. and Others, mn. 10.
[796] Summary of Case C-281/22 - G.K. and Others, mn. 11.

This contradicts the purpose of EPPO investigations (fast, efficient, economic),[797] especially when there already is judicial control in the handling Member State.[798] **23**

In a comparison of the EEA-Directive as a **mutual legal assistance instrument** and the cross-border investigations of the EPPO, *Yolaçan* notes the legal similarity of the two systems of the EPPO Regulation and the EEA-Directive with regard to cross-border investigations.[799] She does not find any revolutionary progress in the system established by Art. 31 EPPO Reg. compared to the EEA,[800] although she acknowledges the **acceleration of the processes**.[801] **24**

Yolaçan proposes two options for dealing with the problem of legal protection: **25**

1. Legal protection against assigned measures could be understood in parallel with legal protection against EEA and the former could be oriented towards the latter ("separation model").[802] **26**

2. The assigned measures should be subject to a full judicial review in front of the courts of each Member State, regardless of whether it is the Member State of the handling or supporting EDP.[803] **27**

In any case, the courts of all Member States will have to deal more and more with the legal systems of the other Member States.[804] **28**

ee. Applicability of general national investigative measures according to national provisions in relevant Codes and the CPC

All measures that are presented under the heading of Art. 30 above may apply in this regard. **29**

d) Para 8: Decision by the chamber concerning the execution of an assigned measure needed, or a substitute measure by the assisting EDP

Paragraph 8 of this Article of the Regulation request a decision by the Chamber, which concerns the execution of an assigned measures needed or a substitute measure by the assisting EDP. **30**

[797] Yolaçan 2023b p. 99.
[798] Summary of Case C-281/22 - G.K. and Others, mn. 12.
[799] Yolaçan 2023b, p. 104 et seq.
[800] Yolaçan 2023b, p. 108.
[801] Yolaçan 2023b, p. 109.
[802] Yolaçan 2023b, p. 109.
[803] Yolaçan 2023b, p. 109.
[804] Yolaçan 2023b, p. 119.

e) Relevant examples and precedents (from mutual legal assistance)

31 Cases from mutual assistance, which existed even before the EPPO was set up can help in this regard as the same justification principles apply in these cases.

3. Article 32 Enforcement of assigned measures

a) Assigned measures according to para. 2 of Art. 31 523
aa. Special provisions in the handling EDP's state that govern this situation 523
bb. Availability of measures to the EDP according to Art. 31 and 30 in combination with the national measures 524
b) Examples for difficulties between handling and the assisting MS 524
cc. EDP misses knowledge about "the other country" 524
ee. The role of mutual legal assistance (cf. Art. 31 para. 6 EPPO Regulation) 525
ff. Contact points between the MS 525

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

a) Assigned measures according to para. 2 of Art. 31

aa. Special provisions in the handling EDP's state that govern this situation

The enforcement of an assigned measure will not take place in Germany in a cross-border investigation but in the assigned, foreign Member State. Thus the law of this assigned, foreign Member State (e.g. Austria, Italy or Czech Republic) will govern the enforcement of the assigned measure. The law that is referred to in Art. 32 EPPO Regulation *in abtracto* will mainly be the CPC of the assigned Member State (thus in Austria the *Ö-Strafprozessordnung*, in Italy the *Codice di Procedura* Penale and in Czech Republic the *Zákon č. 141/1961 Sb. Zákon o trestním řízení soudním (trestní řád)*. These laws are in normal circumstances not known to the EDP of the handling Member State but they are the homeland law of the assigned EDP. Still it is useful if the handling EDP has at least some knowledge about the foreign Member State and its law. **1**

The procedures and formalities in the state of the handling EDP that he/she may notify to the assigned EDPs depend on the assigned measure and the following comparison with the measure in the MS of the handling EDP. House searches by virtue of ss. 102, **2**

103, 110 (search measures) et seq. CPC e.g. will be governed by the formal requirements of the Criminal Procedure Code.

3 Any other measure that is not stipulated by the CPC will be governed by the law it stems from or is enshrined in.

4 Thus for Art. 32 para. 1 in connection with Art. 31 para. 2 EPPO Regulation it can be concluded that the special provisions in the handing EDP's state that govern the situation of the assigned measure mainly depend on the formal requirements that the relevant Code (CPC, tax code, customs code, e.g. ss. 104, 105, 106 CPC in Germany) stipulates for the adoption of this measure in an investigation.

bb. Availability of measures to the EDP according to Art. 31 and 30 in combination with the national measures

5
- Telecommunication, s. 100a, 100g CPC
- Searches, 102, 103, 110 CPC
- Digital access to Bank accounts (bank secrecy) in the special law called KWG, s. 24c para. 3 N°2

b) Examples for difficulties between handling and the assisting MS

6 Difficulties might especially occur if it is unclear which "formalities and procedures the handling European Delegated Prosecutor will expressly indicate. This may relate to the comparison with the own national standard (is there a judicial approval requirement? Are there times to be observed for a search? Can a lawyer be present? Are fundamental rights to be observed?).

7 In the end the German EDP can only indicate or wish these formalities and procedures to be executed if "such formalities and procedures are [not] contrary to the fundamental principles of law of the Member State of the assisting European Delegated Prosecutor." This requires that the EDP at least roughly pre-compares both states.

aa. EDP misses knowledge about "the other country"

8 If the EDP must investigate in a participating country and it misses knowledge about the country he/she may refer to different authorities and (EU-)networks (such as primarly the EDP in the other country, secondly Eurojust, thirdly the Chamber and the EP and furthermore the European Judicial Network (EJN), Europol and external organisations like e.g. the International Association of Prosecutors (IAP)) and he/she might refer to manuals and academic information's like the present ones. He/she is obliged to acquire the information in order to achieve the *ratio* of Art. 32 EPPO Regulation and secure the success of the investigation into conduct detrimental to the Union's financial interest.

bb. The role of mutual legal assistance (cf. Art. 31 para. 6 EPPO Regulation)

In some cases the measure will not be available by national law. In this case bilateral or multilateral conventions and agreements need to be explored.[805] In some cases foreign CPCs might offer measures or possibilities of mutual legal assistance in criminal matters.[806] In other countries the EDP might explore the provisions of the Laws on mutual legal assistance of the Member States. **9**

The "old" mutual legal assistance (system) has a potential influence on the knowledge of the investigation measures in another country. If the EDP must investigate in a non-participating or non-EU country and it misses knowledge about the country he/she may refer to different authorities (such as the EDP in the other country, Eurojust, the Chamber, the EP) and might consult different legal instruments such as the European Investigation Order, mutual legal assistance requests or the setting-up of a Joint-Investigation Team with the help of Eurojust.[807]

cc. Contact points between the MS

A police cooperation code does not yet exist,[808] but there are contact points already today. **10**

Contact Points:

- Ministry of Justice of the concerned country
- Prosecutor Agreements
- The EJN Communication
- The role of Eurojust

[805] A very old example is an early approach in custom matters from 1931 see e.g. the contract between Austria and old Germany, Vertrag zwischen der Republik Österreich und dem Deutschen Reich über die Rechtshilfe in Zollsachen.StF: BGBl. Nr. 32/1931 (NR: GP IV 9 AB 31 S. 7.).

[806] The assisstance in criminal matters shall not be confused with the assistance in administrative questions, cf. e.g. Vertrag zwischen der Bundesrepublik Deutschland und der Republik Österreich über Amts- und Rechtshilfe in Verwaltungssachen vom 31. Mai 1988 (BGBl. 1990 II S. 357).

[807] See Eurojust 2021 Joint Investigation Teams Practical Guide. Publications Office of the European Union. Luxembourg, pp. 16–17.

[808] See the EU Commission proposed one in December 2021 Police Cooperation Code. online: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_6646. Accessed 31 December 2024.

4. Article 33 Pre-trial arrest and cross-border surrender

a) General relation to national law: Applicable Codes 527
b) Para 1: Provisions for arrest and pre-trial detention 528
aa. Arrest 528
bb. Pre-Trial detention 538
c) Para 2: Cross-border surrender 560
d) Fraud-related peculiarities 562
e) Relevant example and precedent for para. 1, 2 562

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

1 Arrest and detention are regulated by **Chapter 9 o**f the German Criminal Procedure Code. They are an intrusive form of stopping individuals suspected of having committed or committing a PIF offence and part of the tools of coercion, which the state may use to enforce his power to investigate and eventually indict human conduct.[809] Chapter 9 CPC contains chapters 9a and b. Especially sections 112–120 and 120–130 are important for Art. 30 RG 2017/1739 and the investigations of the EDPs and the defence actions of European lawyers.[810] *Morgenstern* calls this area already the **European Pre-Trial Detention Law (Area)**.[811] It is important to take into account that the EDPs cannot act without the so-called Arrest and Detention Judges (*Haftrichter*) in this area.

2 An early publication on the harmonization of European Criminal Procedures post 1950 stated for Germany the following, which is still relevant today: "The public prosecutor, who is in charge of the inquiry conducts the necessary investigations. However, certain measures may only be authorized by judges. The judge is responsible for verifying the procedural regularity of the act referred to him, without, however, going into the merits. The judge who does this (*Ermittlungsrichter*) not the trial judge, but one whose specific task is to oversee (but not to direct) the preliminary stages of the case. The acts within the judges competence mainly affect the freedom of the individual: remand in custody

[809] See Brodowski and Vogler 2022, pp. 219–259.
[810] Krauß 2022, § 142b GVG mn. 22 ("gelten uneingeschränkt").
[811] See Morgenstern, 2018, pp. 286 et seq. writing about critical elements of the final EPPO draft; for the German Law Area see Paeffgen 2022, § 34 Mn. 1 et seq.

or provisional detention in a psychiatric institution; temporary removal of a driving licence; taking evidence in advance from witnesses and experts; and making certain decisions which cannot be taken by the public prosecutor alone, except in urgent cases."[812]

Arrest and detention are constantly researched in Germany even in comparison with other (European) jurisdictions.[813] The following provision of the German CPC shall be presented in advance: **3**

Section 125 CPC[814] **Jurisdiction to issue the arrest warrant**
(1) Before the public action is brought, the judge at the local court in whose district a place of jurisdiction is established or in whose district the accused is staying shall issue the warrant of arrest at the request of the public prosecutor or, if a public prosecutor is not available and there is imminent danger, ex officio.
(2) After the public action has been brought, the warrant of arrest shall be issued by the court hearing the case and, if an appeal has been lodged, by the court whose judgment is contested. In urgent cases, the presiding judge may also issue the warrant.

a) General relation to national law: Applicable Codes

The question which Codes are, or which part of the CPC is applicable has already partly been answered by the German legislator, who provided information on the draft and its reasoning.[815] **4**

- German Criminal Procedure Code
- German Courts Constitution Act
- German law executing the EU Regulation establishing the European Public Prosecutor's Office (European Public Prosecutor's Office Act – EUStAG)
- General Tax Code of Germany (Abgabenordnung)

[812] See *Rodolphe Juy-Birmann/Jörg Biermann*, The German System in Delmas-Mary, Mireille/J.R. Spencer, European Criminal Procedures, CUP 2006, 305.
[813] See e.g. Weiß 2015.
[814] **§ 125 Zuständigkeit für den Erlass des Haftbefehls StPO**
(1) Vor Erhebung der öffentlichen Klage erläßt der Richter bei dem Amtsgericht, in dessen Bezirk ein Gerichtsstand begründet ist oder der Beschuldigte sich aufhält, auf Antrag der Staatsanwaltschaft oder, wenn ein Staatsanwalt nicht erreichbar und Gefahr im Verzug ist, von Amts wegen den Haftbefehl.
(2) Nach Erhebung der öffentlichen Klage erläßt den Haftbefehl das Gericht, das mit der Sache befaßt ist, und, wenn Revision eingelegt ist, das Gericht, dessen Urteil angefochten ist. In dringenden Fällen kann auch der Vorsitzende den Haftbefehl erlassen.
[815] The German legislator stated in his proposal of an Adoption law (see RefE EuStA, p. 31): "Da die Delegierten Europäischen Staatsanwälte aufgrund der Regelung des § 142b Absatz 1 GVG-E den nationalen Staatsanwälten gleichgestellt sind, finden die §§ 112 bis 130 und 131 CPC in EUStA-Verfahren uneingeschränkt Anwendung. Die Regelungen über Festnahmeanordnungen beziehungsweise Haftbefehle deutscher Gerichte im Hauptverfahren (vergleiche §§ 230 Absatz 2, 236 CPC, § 183 Satz 2 GVG) bleiben von Artikel 33 Absatz 1 EUStA-Verordnung ohnehin unberührt, da diese Vorschrift nur Anordnungen beziehungsweise Anträge eines Delegierten Europäischen Staatsanwalts betreffen. Der Vollstreckungshaftbefehl gemäß § 457 Absatz 2 Satz 1 CPC ist ebenfalls nicht von Artikel 33 EUStA-Verordnung betroffen, da die Europäische Staatsanwaltschaft auch nicht Vollstreckungsbehörde ist (§ 10 Absatz 1 EUStAG-E)"

b) Para 1: Provisions for arrest and pre-trial detention

5 Arrest has been studied by German legal scholars.[816]

aa. Arrest

6

Section 127 CPC[817] **Provisional arrest**

(1) If a person is caught in the act or is being pursued, any person shall be authorised to arrest him provisionally, even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately established. The establishment of the identity of a person by the public prosecution office or by police officers shall be governed by section 163b para. 1.

(2) In exigent circumstances, the public prosecution office and police officers shall also be authorised to make a provisional arrest if the conditions for issuance of a warrant of arrest or of an order for placement are met.

(3) In the case of an offence which can be prosecuted upon application only, provisional arrest shall also be admissible where no application has yet been filed. This shall apply accordingly if an offence may be prosecuted only with authorisation or upon request to prosecute.

(4) Sections 114a to 114c shall apply accordingly to provisional arrest by the public prosecution office and by police officers.

[816] See Morgenstern 2018, pp. 418 ff.

[817] **§ 127 Vorläufige Festnahme**

(1) Wird jemand auf frischer Tat betroffen oder verfolgt, so ist, wenn er der Flucht verdächtig ist oder seine Identität nicht sofort festgestellt werden kann, jedermann *befugt*, ihn auch ohne richterliche Anordnung vorläufig festzunehmen. Die Feststellung der Identität einer Person durch die Staatsanwaltschaft oder die Beamten des Polizeidienstes bestimmt sich nach § 163b Abs. 1.

(2) Die Staatsanwaltschaft und die Beamten des Polizeidienstes sind bei Gefahr im Verzug auch dann zur vorläufigen Festnahme *befugt*, wenn die Voraussetzungen eines Haftbefehls oder eines Unterbringungsbefehls vorliegen.

(3) Ist eine Straftat nur auf Antrag verfolgbar, so ist die vorläufige Festnahme auch dann zulässig, wenn ein Antrag noch nicht gestellt ist. Dies gilt entsprechend, wenn eine Straftat nur mit Ermächtigung oder auf Strafverlangen verfolgbar ist.

(4) Für die vorläufige Festnahme durch die Staatsanwaltschaft und die Beamten des Polizeidienstes gelten die §§ 114a bis 114c entsprechend.

Section 127a CPC[818] **Exemption from ordering or continuation of provisional arrest**

(1) If the accused has no permanent residence or residence within the territorial scope of this statute and if the conditions for a warrant of arrest are met only on account of a risk of flight, the court may dispense with ordering or continuing his arrest if

1. it is not expected that a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty will be ordered on account of the offence and
2. the accused provides adequate security for the fine to be expected and the costs of the proceedings.

(2) Section 116a paras. 1 and 3 shall apply accordingly.

Section 127b CPC[819] **Provisional arrest and warrant of arrest in accelerated proceedings**

(1) The public prosecution office and police officers shall also be authorised to provisionally arrest a person caught in the act or being pursued

1. if it is probable that an immediate decision will be taken in accelerated proceedings and
2. if, on the basis of certain facts, it is to be feared that the arrested person will fail to appear at the main hearing.

Sections 114a to 114c shall apply accordingly.

(2) A warrant of arrest (section 128 para. 2 sentence 2) may be issued on the grounds set out in para. 1 against an individual who is strongly suspected of having committed the offence only if it is to be expected that the main hearing will be held within one week

[818] **§ 127a Absehen von der Anordnung oder Aufrechterhaltung der vorläufigen Festnahme**
(1) Hat der Beschuldigte im Geltungsbereich dieses Gesetzes keinen festen Wohnsitz oder Aufenthalt und liegen die Voraussetzungen eines Haftbefehls nur wegen Fluchtgefahr vor, so kann davon abgesehen werden, seine Festnahme anzuordnen oder aufrechtzuerhalten, wenn
1. nicht damit zu rechnen ist, daß wegen der Tat eine Freiheitsstrafe verhängt oder eine freiheitsentziehende Maßregel der Besserung und Sicherung angeordnet wird und
2. der Beschuldigte eine angemessene Sicherheit für die zu erwartende Geldstrafe und die Kosten des Verfahrens leistet.
(2) § 116a Abs. 1 und 3 gilt entsprechend.

[819] **§ 127b Vorläufige Festnahme und Haftbefehl bei beschleunigtem Verfahren**
(1) Die Staatsanwaltschaft und die Beamten des Polizeidienstes sind zur vorläufigen Festnahme eines auf frischer Tat Betroffenen oder Verfolgten auch dann *befugt*, wenn
1. eine unverzügliche Entscheidung im beschleunigten Verfahren wahrscheinlich ist und
2. auf Grund bestimmter Tatsachen zu befürchten ist, daß der Festgenommene der Hauptverhandlung fernbleiben wird.

Die §§ 114a bis 114c gelten entsprechend.
(2) Ein Haftbefehl (§ 128 Abs. 2 Satz 2) darf aus den Gründen des Absatzes 1 gegen den der Tat dringend Verdächtigen nur ergehen, wenn die Durchführung der Hauptverhandlung binnen einer Woche nach der Festnahme zu erwarten ist. Der Haftbefehl ist auf höchstens eine Woche ab dem Tage der Festnahme zu befristen.
(3) Über den Erlaß des Haftbefehls soll der für die Durchführung des beschleunigten Verfahrens zuständige Richter entscheiden.

after the arrest. The warrant of arrest shall be limited to a maximum period of one week, running from the day of the arrest.
(3) The decision to issue the warrant of arrest shall be given by the judge responsible for conducting the accelerated proceedings.

Section 128 CPC[820] Appearance before judge following provisional arrest
(1) The arrested person shall, without delay, be brought before the judge of the local court in whose district he was arrested, at the latest on the day after his arrest, unless he has been released. The judge shall examine the person brought before him in accordance with section 115 para. 3.
(2) If the judge does not consider the arrest justified or if he considers that the reasons therefor no longer apply, he shall order release. Otherwise, he shall issue a warrant of arrest or an order for placement upon application by the public prosecution office or, if the public prosecutor cannot be reached, ex officio. Section 115 para. 4 shall apply accordingly.

Section 129 CPC[821] Appearance before judge following provisional arrest after preferment of public charges
If public charges have already been preferred against the arrested person, he shall be brought before the competent court either immediately or upon the direction of the judge before whom he was first brought; this court shall, at the latest on the day after the arrest, decide on the arrested person's release, detention or provisional placement.

Section 130 CPC[822] Warrant of arrest prior to filing request to prosecute
If, because of a suspected offence which may be prosecuted only upon request, a warrant of arrest is issued before the request is filed, the person entitled to file such a request,

[820] **§ 128 Vorführung bei vorläufiger Festnahme**
(1) Der Festgenommene ist, sofern er nicht wieder in Freiheit gesetzt wird, unverzüglich, spätestens am Tage nach der Festnahme, dem Richter bei dem Amtsgericht, in dessen Bezirk er festgenommen worden ist, vorzuführen. Der Richter vernimmt den Vorgeführten gemäß § 115 Abs. 3.
(2) Hält der Richter die Festnahme nicht für gerechtfertigt oder ihre Gründe für beseitigt, so ordnet er die Freilassung an. Andernfalls erläßt er auf Antrag der Staatsanwaltschaft oder, wenn ein Staatsanwalt nicht erreichbar ist, von Amts wegen einen Haftbefehl oder einen Unterbringungsbefehl. s. 115 Abs. 4 gilt entsprechend.
[821] **§ 129 Vorführung bei vorläufiger Festnahme nach Anklageerhebung**
Ist gegen den Festgenommenen bereits die öffentliche Klage erhoben, so ist er entweder sofort oder auf Verfügung des Richters, dem er zunächst vorgeführt worden ist, dem zuständigen Gericht vorzuführen; dieses hat spätestens am Tage nach der Festnahme über Freilassung, Verhaftung oder einstweilige Unterbringung des Festgenommenen zu entscheiden.
[822] **§ 130 Haftbefehl vor Stellung eines Strafantrags**
Wird wegen Verdachts einer Straftat, die nur auf Antrag verfolgbar ist, ein Haftbefehl erlassen, bevor der Antrag gestellt ist, so ist der Antragsberechtigte, von mehreren wenigstens einer, sofort von dem Erlaß des Haftbefehls in Kenntnis zu setzen und davon zu unterrichten, daß der Haftbefehl aufgehoben werden wird, wenn der Antrag nicht innerhalb einer vom Richter zu bestimmenden Frist, die eine Woche nicht überschreiten soll, gestellt wird. Wird innerhalb der Frist Strafantrag nicht gestellt, so ist der Haftbefehl aufzuheben. Dies gilt entsprechend, wenn eine Straftat nur mit Ermächtigung oder auf Strafverlangen verfolgbar ist. § 120 Abs. 3 ist anzuwenden.

or, if there are several such entitled persons, then at least one of them, shall be immediately informed of the issuance of the warrant of arrest and be notified that the warrant of arrest will be revoked if the request is not filed within a time limit to be determined by the judge, which shall not exceed one week. If no request to prosecute is filed within this time limit, the warrant of arrest shall be revoked. This shall apply accordingly if an offence may be prosecuted only upon authorisation or upon a request to prosecute. Section 120 para. 3 shall apply.

Chapter 9a Further measures to secure criminal prosecution and enforcement of sentence

Section 131 CPC[823] Alert for arrest

(1) The judge or the public prosecution office and, in exigent circumstances, its investigators (section 152 of the Courts Constitution Act) may issue an alert for arrest on the basis of a warrant for arrest or an order for placement.

(2) If the conditions are met for a warrant of arrest or an order for placement the issuance of which cannot be awaited without endangering the success of the investigations, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) may order measures under para. 1 if this is necessary for a provisional arrest. The decision on the issuance of a warrant of arrest or an order for placement shall be obtained without delay and at the latest within one week.

(3) In the case of an offence of substantial significance, the judge and the public prosecution office may, in the cases under paras. 1 and 2, also order public searches if other means of determining the accused's whereabouts would offer much less prospect of success or would be much more difficult. In exigent circumstances and if the judge or the public prosecution office cannot be reached in time, the public prosecution office's

[823] **§ 131 Ausschreibung zur Festnahme**
(1) Auf Grund eines Haftbefehls oder eines Unterbringungsbefehls können der Richter oder die Staatsanwaltschaft und, wenn Gefahr im Verzug ist, ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) die Ausschreibung zur Festnahme veranlassen.
(2) Liegen die Voraussetzungen eines Haftbefehls oder Unterbringungsbefehls vor, dessen Erlass nicht ohne Gefährdung des Fahndungserfolges abgewartet werden kann, so können die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) Maßnahmen nach Absatz 1 veranlassen, wenn dies zur vorläufigen Festnahme erforderlich ist. Die Entscheidung über den Erlass des Haft- oder Unterbringungsbefehls ist unverzüglich, spätestens binnen einer Woche herbeizuführen.
(3) Bei einer Straftat von erheblicher Bedeutung können in den Fällen der Absätze 1 und 2 der Richter und die Staatsanwaltschaft auch Öffentlichkeitsfahndungen veranlassen, wenn andere Formen der Aufenthaltsermittlung erheblich weniger Erfolg versprechend oder wesentlich erschwert wären. Unter den gleichen Voraussetzungen steht diese Befugnis bei Gefahr im Verzug und wenn der Richter oder die Staatsanwaltschaft nicht rechtzeitig erreichbar ist auch den Ermittlungspersonen der Staatsanwaltschaft (§ 152 des Gerichtsverfassungsgesetzes) zu. In den Fällen des Satzes 2 ist die Entscheidung der Staatsanwaltschaft unverzüglich herbeizuführen. Die Anordnung tritt außer Kraft, wenn diese Bestätigung nicht binnen 24 Stunden erfolgt.
(4) Der Beschuldigte ist möglichst genau zu bezeichnen und soweit erforderlich zu beschreiben; eine Abbildung darf beigefügt werden. Die Tat, derer er verdächtig ist, Ort und Zeit ihrer Begehung sowie Umstände, die für die Ergreifung von Bedeutung sein können, können angegeben werden.
(5) Die §§ 115 und 115a gelten entsprechend.

investigators (section 152 of the Courts Constitution Act) shall also be entitled to exercise this power, subject to the same conditions. In the cases under sentence 2, the decision of the public prosecution office shall be obtained without delay. The order shall become ineffective if it is not confirmed within 24 hours.
(4) The accused shall be named and, where necessary, described as accurately as possible; an image may be attached. The offence of which he is suspected, the place and time of its commission, as well as circumstances which may be relevant for his apprehension may be indicated.
(5) Sections 115 and 115a shall apply accordingly.

Section 163 CPC[824] **Role of police in preliminary investigation**
(1) The authorities and officers of the police force are to investigate offences and take all measures which may not be deferred in order to prevent the concealment of facts. To this end, they shall be authorised to request and, in exigent circumstances, to demand information from all authorities, as well as to conduct investigations of any kind, insofar as there are no other statutory provisions which specifically regulate their powers.

[824] **§ 163 Aufgaben der Polizei im Ermittlungsverfahren**
(1) Die Behörden und Beamten des Polizeidienstes haben Straftaten zu erforschen und alle keinen Aufschub gestattenden Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. Zu diesem Zweck sind sie *befugt*, alle Behörden um Auskunft zu ersuchen, bei Gefahr im Verzug auch, die Auskunft zu verlangen, sowie Ermittlungen jeder Art vorzunehmen, soweit nicht andere gesetzliche Vorschriften ihre Befugnisse besonders regeln.
(2) Die Behörden und Beamten des Polizeidienstes übersenden ihre Verhandlungen ohne Verzug der Staatsanwaltschaft. Erscheint die schleunige Vornahme richterlicher Untersuchungshandlungen erforderlich, so kann die Übersendung unmittelbar an das Amtsgericht erfolgen.
(3) Zeugen sind verpflichtet, auf Ladung vor Ermittlungspersonen der Staatsanwaltschaft zu erscheinen und zur Sache auszusagen, wenn der Ladung ein Auftrag der Staatsanwaltschaft zugrunde liegt. Soweit nichts anderes bestimmt ist, gelten die Vorschriften des Sechsten Abschnitts des Ersten Buches entsprechend. Die eidliche Vernehmung bleibt dem Gericht vorbehalten.
(4) Die Staatsanwaltschaft entscheidet
1. über die Zeugeneigenschaft oder das Vorliegen von Zeugnis- oder Auskunftsverweigerungsrechten, sofern insoweit Zweifel bestehen oder im Laufe der Vernehmung aufkommen,
2. über eine Gestattung nach § 68 Absatz 3 Satz 1, Angaben zur Person nicht oder nur über eine frühere Identität zu machen,
3. über die Beiordnung eines Zeugenbeistands nach § 68b Absatz 2 und
4. bei unberechtigtem Ausbleiben oder unberechtigter Weigerung des Zeugen über die Verhängung der in den §§ 51 und 70 vorgesehenen Maßregeln; dabei bleibt die Festsetzung der Haft dem nach § 162 zuständigen Gericht vorbehalten.
Im Übrigen trifft die erforderlichen Entscheidungen die die Vernehmung leitende Person.
(5) Gegen Entscheidungen von Beamten des Polizeidienstes nach § 68b Absatz 1 Satz 3 sowie gegen Entscheidungen der Staatsanwaltschaft nach Absatz 4 Satz 1 Nummer 3 und 4 kann gerichtliche Entscheidung durch das nach § 162 zuständige Gericht beantragt werden. Die §§ 297 bis 300, 302, 306 bis 309, 311a und 473a gelten jeweils entsprechend. Gerichtliche Entscheidungen nach Satz 1 sind unanfechtbar.
(6) Für die Belehrung des Sachverständigen durch Beamte des Polizeidienstes gelten § 52 Absatz 3 und § 55 Absatz 2 entsprechend. In den Fällen des § 81c Absatz 3 Satz 1 und 2 gilt § 52 Absatz 3 auch bei Untersuchungen durch Beamte des Polizeidienstes sinngemäß.
(7) § 185 Absatz 1 und 2 des Gerichtsverfassungsgesetzes gilt entsprechend.

(2) The authorities and officers of the police force shall transmit their records to the public prosecution office without delay. If it appears necessary that a judicial investigation be performed promptly, transmission directly to the local court shall be possible.
(3) Upon being summoned by the public prosecution office's investigators, witnesses shall be obliged to appear in court and make a statement on the subject matter if the summons was issued on the public prosecution office's behalf. Unless otherwise provided, the provisions of Part 6 of Book 1 shall apply accordingly. The court reserves the right to examine witnesses under oath.
(4) The public prosecution office shall decide
1. whether a person has the status of witness or whether he has the right to refuse to testify or provide information if there are doubts as to these matters or such doubts arise in the course of the examination,
2. whether a person is permitted, pursuant to section 68 para. 3 sentence 1, not to provide personal details or only concerning a previous identity,
3. whether to assign counsel to a witness pursuant to section 68b para. 2 and
4. whether to impose one of the measures provided for under sections 51 and 70 in the event of a witness's non-appearance in court without justification or refusal to give testimony without justification; the court competent pursuant to section 162 shall have the right to determine the sentence of imprisonment.
In all other respects, the person conducting the examination shall take all necessary decisions.
(5) An application may be made for a court decision by the court competent pursuant to section 162 against decisions taken by police officers pursuant to section 68b para. 1 sentence 3 and against decisions taken by the public prosecution office pursuant to para. 4 sentence 1 nos. 3 and 4. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. Court decisions as referred to in sentence 1 shall not be contestable.
(6) Section 52 para. 3 and section 55 para. 2 shall apply accordingly to instruction given to experts by police officers. In the cases under section 81c para. 3 sentences 1 and 2, section 52 para. 3 shall also apply accordingly to examinations by police officers.
(7) Section 185 paras. 1 and 2 of the Courts Constitution Act shall apply analogously.

7

Courts Constitution Act

Section 152 Courts Constitution Act[825]

(1) The investigative personnel of the public prosecution office shall be obliged in this capacity to comply with the orders of the public prosecution office of their district and the orders of the officials superior thereto.

(2) The Land governments shall be authorised to issue statutory instruments designating the groups of civil servants and salaried staff who are to be subject to this provision. The salaried staff must be public service employees, must have attained the age of 21 and must have been employed in the designated groups of civil servants or salaried staff for at least two years. The Land governments may issue statutory instruments transferring this authorisation to the Land departments of justice.

Section 183 Courts Constitution Act[826]

If a criminal offence is committed at the sitting, the court must establish the facts and communicate the record thereof to the competent authority. Where appropriate, the provisional arrest of the perpetrator shall be ordered.

[825] **§ 152 GVG**
(1) Die Ermittlungspersonen der Staatsanwaltschaft sind in dieser Eigenschaft verpflichtet, den Anordnungen der Staatsanwaltschaft ihres Bezirks und der dieser vorgesetzten Beamten Folge zu leisten.
(2) Die Landesregierungen werden ermächtigt, durch Rechtsverordnung diejenigen Beamten- und Angestelltengruppen zu bezeichnen, auf die diese Vorschrift anzuwenden ist. Die Angestellten müssen im öffentlichen Dienst stehen, das 21. Lebensjahr vollendet haben und mindestens zwei Jahre in den bezeichneten Beamten- oder Angestelltengruppen tätig gewesen sein. Die Landesregierungen können die Ermächtigung durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen.

[826] **§ 183 GVG**
Wird eine Straftat in der Sitzung begangen, so hat das Gericht den Tatbestand festzustellen und der zuständigen Behörde das darüber aufgenommene Protokoll mitzuteilen. In geeigneten Fällen ist die vorläufige Festnahme des Täters zu verfügen.

General Tax Code of Germany **8**

Section 284 General Tax Code[827] Judgment debtor's asset disclosure

(1) For the enforcement of a receivable, the Judgment debtor shall provide information about his assets to the enforcement authority in accordance with the following provisions where he fails to settle the claim within two weeks of the enforcement authority having called upon him to pay, making reference to the obligation to provide the asset disclosure. In addition he shall state his birth name, date of birth and place of birth. Where the Judgment debtor is a legal person or an association, then he shall state his company name, the number of the page in the commercial register and his registered office.

[…] (8) Where the Judgment debtor fails to present himself without sufficient justification at the appointment scheduled for the provision of the asset disclosure before the enforcement authority described in para. 5, first sentence, above or where he refuses without reason to provide the asset disclosure, the enforcement authority pursuing enforcement may apply for the ordering of arrest so as to force provision. The local court in whose district the Judgment debtor has his residence or, in the absence of such, has his abode at the time the deadline is set, shall be responsible for the ordering of arrest. Sections 802g to 802j of the Code of Civil Procedure shall apply accordingly. A bailiff shall conduct the arrest of the Judgment debtor. Section 292 of this Code shall apply accordingly. Following the arrest of the Judgment debtor, the asset disclosure may be taken down by the bailiff responsible pursuant to section 802i of the Code of Civil Procedure where the seat of the enforcement authority described in para. 5 above is not

[827] **§ 284 Vermögensauskunft des Vollstreckungsschuldners**
(1) Der Vollstreckungsschuldner muss der Vollstreckungsbehörde auf deren Verlangen für die Vollstreckung einer Forderung Auskunft über sein Vermögen nach Maßgabe der folgenden Vorschriften erteilen, wenn er die Forderung nicht binnen zwei Wochen begleicht, nachdem ihn die Vollstreckungsbehörde unter Hinweis auf die Verpflichtung zur Abgabe der Vermögensauskunft zur Zahlung aufgefordert hat. Zusätzlich hat er seinen Geburtsnamen, sein Geburtsdatum und seinen Geburtsort anzugeben. Handelt es sich bei dem Vollstreckungsschuldner um eine juristische Person oder um eine Personenvereinigung, so hat er seine Firma, die Nummer des Registerblatts im Handelsregister und seinen Sitz anzugeben.
[…] (8) Ist der Vollstreckungsschuldner ohne ausreichende Entschuldigung in dem zur Abgabe der Vermögensauskunft anberaumten Termin vor der in Absatz 5 Satz 1 bezeichneten Vollstreckungsbehörde nicht erschienen oder verweigert er ohne Grund die Abgabe der Vermögensauskunft, so kann die Vollstreckungsbehörde, die die Vollstreckung betreibt, die Anordnung der Haft zur Erzwingung der Abgabe beantragen. Zuständig für die Anordnung der Haft ist das Amtsgericht, in dessen Bezirk der Vollstreckungsschuldner im Zeitpunkt der Fristsetzung nach Absatz 1 Satz 1 seinen Wohnsitz oder in Ermangelung eines solchen seinen Aufenthaltsort hat. Die §§ 802g bis 802j der Zivilprozessordnung sind entsprechend anzuwenden. Die Verhaftung des Vollstreckungsschuldners erfolgt durch einen Gerichtsvollzieher. § 292 dieses Gesetzes gilt entsprechend. Nach der Verhaftung des Vollstreckungsschuldners kann die Vermögensauskunft von dem nach § 802i der Zivilprozessordnung zuständigen Gerichtsvollzieher abgenommen werden, wenn sich der Sitz der in Absatz 5 bezeichneten Vollstreckungsbehörde nicht im Bezirk des für den Gerichtsvollzieher zuständigen Amtsgerichts befindet oder wenn die Abnahme der Vermögensauskunft durch die Vollstreckungsbehörde nicht möglich ist. Der Beschluss des Amtsgerichts, mit dem der Antrag der Vollstreckungsbehörde auf Anordnung der Haft abgelehnt wird, unterliegt der Beschwerde nach den §§ 567 bis 577 der Zivilprozessordnung.

located in the district of the local court responsible for the bailiff or where it is not possible for the enforcement authority to take down the asset disclosure. The local court decision through which the application of the enforcement authority for an order for arrest is rejected shall be subject to the appeal procedure pursuant to sections 567 to 577 of the Code of Civil Procedure.

Section 386 General Tax Code[828] Jurisdiction of the revenue authority in the case of tax crimes

(1) Where a tax crime is suspected, the revenue authority shall investigate the facts of the case. The revenue authority within the meaning of this chapter shall be the main customs office, the tax office, the Federal Central Tax Office and the child benefits disbursement office.

(2) The revenue authority shall conduct the investigation independently within the limits laid down in sections 399 para. 1, 400 and 401 where the act

1. is exclusively a tax crime or
2. simultaneously violates other criminal laws, and such violation involves church taxes or other public-law levies linked to tax bases, base amounts of non-personal taxes or tax amounts.

(3) Para. 2 above shall not apply as soon as an arrest warrant or a remand to a psychiatric hospital centre is issued against the accused for the act.

(4) The revenue authority may hand the criminal matter over to the public prosecutor's office at any time. The public prosecutor's office may take over the criminal matter at any time. In both cases, the public prosecutor's office may, with the mutual agreement of the revenue authority, return the criminal matter to the revenue authority.

[828] **§ 386 AO Zuständigkeit der Finanzbehörde bei Steuerstraftaten Abgabenordnung**
(1) Bei dem Verdacht einer Steuerstraftat ermittelt die Finanzbehörde den Sachverhalt. Finanzbehörde im Sinne dieses Abschnitts sind das Hauptzollamt, das Finanzamt, das Bundeszentralamt für Steuern und die Familienkasse.
(2) Die Finanzbehörde führt das Ermittlungsverfahren in den Grenzen des § 399 Ab§ 1 und der §§ 400, 401 selbständig durch, wenn die Tat
1. ausschließlich eine Steuerstraftat darstellt oder
2. zugleich andere Strafgesetze verletzt und deren Verletzung Kirchensteuern oder andere öffentlich-rechtliche Abgaben betrifft, die an Besteuerungsgrundlagen, Steuermessbeträge oder Steuerbeträge anknüpfen.
(3) Absatz 2 gilt nicht, sobald gegen einen Beschuldigten wegen der Tat ein Haftbefehl oder ein Unterbringungsbefehl erlassen ist.
(4) Die Finanzbehörde kann die Strafsache jederzeit an die Staatsanwaltschaft abgeben. Die Staatsanwaltschaft kann die Strafsache jederzeit an sich ziehen. In beiden Fällen kann die Staatsanwaltschaft im Einvernehmen mit der Finanzbehörde die Strafsache wieder an die Finanzbehörde.

Section 391 General Tax Code[829] Competent court
(1) Where the local court has subject-matter jurisdiction, the local court in whose district the Land court has its seat shall have local jurisdiction. Irrespective of a wider provision pursuant to section 58 para. 1 of the Act on the Constitution of Courts, this shall apply in preparatory proceedings only with regard to the consent of the court pursuant to section 153 para. 1 and section 153a para. 1 of the Code of Criminal Procedure.
(2) Notwithstanding the first sentence of para. 1 above, the government of a Land may issue ordinances specifying jurisdiction insofar as this appears appropriate considering the economic situation or transport infrastructure, the structure of the administrative authorities and other local needs. The government of a Land may transfer this power to the justice authorities of the Land.
(3) Criminal proceedings for tax crimes should be allocated to a particular department at a local court.
(4) Paras. 1 to 3 above shall also apply where the proceedings concern not only tax crimes; they shall not apply, however, where the same action constitutes a crime pursuant to the Narcotics Act or where a tax crime concerns motor vehicle tax.

In fiscal matters the General Tax Code of Germany may apply, but as it pinpoints at the CPC either the provisions of arrest or the ones for pre-trial detention in the CPC may apply.[830] **9**

[829] **§ 391 AO Zuständiges Gericht**
(1) Ist das Amtsgericht sachlich zuständig, so ist örtlich zuständig das Amtsgericht, in dessen Bezirk das Landgericht seinen Sitz hat. Im vorbereitenden Verfahren gilt dies, unbeschadet einer weitergehenden Regelung nach § 58 Absatz 1 des Gerichtsverfassungsgesetzes, nur für die Zustimmung des Gerichts nach § 153 Absatz 1 und § 153a Absatz 1 der Strafprozessordnung.
(2) Die Landesregierung kann durch Rechtsverordnung die Zuständigkeit abweichend von Absatz 1 Satz 1 regeln, soweit dies mit Rücksicht auf die Wirtschafts- oder Verkehrsverhältnisse, den Aufbau der Verwaltungsbehörden oder andere örtliche Bedürfnisse zweckmäßig erscheint. Die Landesregierung kann diese Ermächtigung auf die Landesjustizverwaltung übertragen.
(3) Strafsachen wegen Steuerstraftaten sollen beim Amtsgericht einer bestimmten Abteilung zugewiesen werden.
(4) Die Absätze 1 bis 3 gelten auch, wenn das Verfahren nicht nur Steuerstraftaten zum Gegenstand hat; sie gelten jedoch nicht, wenn dieselbe Handlung eine Straftat nach dem Betäubungsmittelgesetz darstellt, und nicht für Steuerstraftaten, welche die Kraftfahrzeugsteuer betreffen.

[830] Hellman 1995; Joecks 2013, pp. 136 ff.; Quedenfeld et al. 2016, pp. 321 ff., 401 ff.

10 But the EUStAG states the following on the question of applicability of the *Abgabenordnung*:

> **Section 7 EUStAG[831] Applicability of the tax code/General Tax Code of Germany German EPPO Act**
> (1) Section 386 paras. 2 and 4 sentence 3 of the Tax Code shall not apply if the European Public Prosecutor's Office is responsible in accordance with Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken on the prosecution in accordance with Article 25 of this Regulation. Section 386 para. 4 sentences 1 and 2 of the Tax Code shall apply with the proviso that the tax authority must inform the European Public Prosecutor's Office of the initiation of an investigation under the conditions of Article 24 paras. 2, 3 and 5 of Regulation (EU) 2017/1939 and the European Public Prosecutor's Office can take the proceedings under Article 27 of Regulation (EU) 2017/1939.
> (2) Section 395 of the Tax Code shall apply with the proviso that in the preparatory procedure the European Delegated Public Prosecutor entrusted with the preliminary investigation decides on the granting of access to the files and inspection of the confiscated or otherwise seized items.
> (3) Section 397 para. 1 of the Tax Code does not apply to the decision of a European Delegated Public Prosecutor to initiate proceedings in accordance with Article 26 para. 1 of Regulation (EU) 2017/1939.

bb. Pre-Trial detention

11 Pre-trial detention has been heavily studied by German legal scholars.[832] Section 112 of the Code of Criminal Procedure contains an essential term for the suspicion with regard to a crime, namely the **strong suspicion** that a crime has been committed (*dringender*

[831] **§ 7 Anwendbarkeit der Abgabenordnung**
(1) § 386 Absatz 2 und 4 Satz 3 der Abgabenordnung ist nicht anzuwenden, wenn die Europäische Staatsanwaltschaft gemäß den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat. § 386 Absatz 4 Satz 1 und 2 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass die Finanzbehörde unter den Voraussetzungen des Artikels 24 Absatz 2, 3 und 5 der Verordnung (EU) 2017/1939 die Europäische Staatsanwaltschaft von der Einleitung eines Ermittlungsverfahrens zu unterrichten hat und die Europäische Staatsanwaltschaft gemäß Artikel 27 der Verordnung (EU) 2017/1939 das Verfahren an sich ziehen kann.
(2) § 395 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass im vorbereitenden Verfahren der mit dem Ermittlungsverfahren betraute Delegierte Europäische Staatsanwalt über die Gewährung der Akteneinsicht und die Besichtigung der beschlagnahmten oder sonst sichergestellten Gegenstände entscheidet.
(3) § 397 Absatz 1 der Abgabenordnung ist nicht anzuwenden auf die Entscheidung eines Delegierten Europäischen Staatsanwalts, ein Verfahren gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 einzuleiten.

[832] Cf. e.g. Gless 2006, passim; van Kalmthout 2009, passim; Morgenstern 2018, pp. 345 ff., 377 passim, 550 (overview); Maes et al. 2016 (literally: "investigation detention") in German law is the deprivation of liberty of an untried or not yet finally convicted person.1 Its legal basis are the German constitution (Grundgesetz =Basic Law, BL) and the Code of Criminal Procedure (Strafprozessordnung)"; cf. furthermore Jung 2021, pp. 303 et seq.

Tatverdacht). The premise of the strong suspicion is higher than that of the initial suspicion (*Anfangsverdacht*) and the sufficient suspicion (*hinreichender Tatverdacht*), as the detention of a person is a massive interference with his/her fundamental rights.[833]

The requirement of a strong suspicion is met, if, according to the results of the investigation to date, there is a **high probability** that the accused has committed a criminal offence as a perpetrator or participant and will therefore be convicted, at least, for attempting the offence.[834] In a prognostic determination the judge must come to the conclusion that the conviction of the offender is highly probable.[835] If there is a slight probability for the existence of grounds for justification, the exclusion of guilt or the exclusion of punishment, there can be no strong suspicion.[836] The detention decision in the investigative phase on the basis of a strong suspicion is only linked to the **facts** known at the time of the proceedings, i.e. the **results of the investigation** that are shown in the files and can be used in court, sections 112 para. 2, 114 para. 2 no. 4 CPC.[837] **12**

In criminal tax law, there are two special circumstances that may cause problems. Firstly, the problem is that the strong suspicion of an offence is less verifiable than the strong suspicion of an offence in core criminal law because, typically, the suspicion at the beginning of the proceedings or when applying for a pre-trial detention order may coincide with the application for a search and seizure order.[838] "The question often arises as to whether the tax arrangement chosen by the taxpayer is a permissible means of saving tax within the meaning of the BVerfG's [*Bundesverfassungsgericht*] ruling or a concealment model for a possibly realised tax offence."[839] On the other hand, "the further problem is that the affirmation of the strong suspicion of an offence depends on the existence of the tax claim."[840] **13**

In the following, the relevant provisions from the German CPC are presented: **14**

Section 112 CPC Conditions for remand detention; grounds for arrest **15**
(1) [841] Remand detention may be ordered against the accused if he is strongly suspected of having committed the offence and if there is a ground for arrest. It may not

[833] Bott 2017, § 112 StPO Rn. 4, 6; Posthoff 2023, II. Dringender Tatverdacht (Abs. 1 S. 1) Rn. 6.
[834] BVerfG NJW 1996, 1049 (1050); BGH NJW 1992, 1975 (1976); BGH NStZ 1992, 449 mit Anm. Baumann; OLG Köln StV 1999, 156 (157); OLG Brandenburg StV 1996, 157.
[835] OLG Koblenz StV 1994, 316 (317); OLG Köln StV 1996, 389 (390); OLG Köln StV 1999, 156 (157); Posthoff 2023, II. Dringender Tatverdacht (Abs. 1 S. 1, Rn. 5.
[836] OLG Bremen StV 1990, 25; Schlothauer 1996, p. 393.
[837] Bott 2017, § 112 StPO Rn. 12; BGH v. 04.04.1990 - 3 StB 5/90, BGHSt 36, 396, 398 =NJW 1990, 1799f.; OLG Köln StV 1999, 156 (157).
[838] Peters 2025, 2. Dringender Tatverdacht, Rn. 593.
[839] Peters 2025, 2. Dringender Tatverdacht, Rn. 593.
[840] Peters 2025, 2. Dringender Tatverdacht, Rn. 593.
[841] § 112 Voraussetzungen der Untersuchungshaft; Haftgründe

be ordered if it is disproportionate to the significance of the case or to the penalty or measure of reform and prevention likely to be imposed.
(2) A ground for arrest shall exist if, on the basis of certain facts,
1. it is established that the accused is at large or in hiding,
2. considering the circumstances of the individual case, there is a risk that the accused will evade the criminal proceedings (risk of flight) or
3. the accused's conduct gives rise to the strong suspicion that he will
a) destroy, alter, remove, suppress or falsify evidence or
b) improperly influence the co-accused, witnesses or experts or
c) cause others to do so
and if, therefore, the danger exists that establishment of the truth will be made more difficult (risk of the suppression of evidence).
(3) Remand detention may also be ordered against an accused who is strongly suspected pursuant to section 308 paras. 1 to 3 of the Criminal Code of having committed an offence under section 6 para. 1 no. 1 or section 13 para. 1 of the Code of Crimes against International Law or section 129a para. 1 or 2, also in conjunction with section 129b para. 1 or under section 211, 212, 226, 306b or 306c of the Criminal Code or insofar as life or limb of another have been endangered by the offence, even if there are no grounds for arrest pursuant to para. 2.

(1) Die Untersuchungshaft darf gegen den Beschuldigten *angeordnet werden*, wenn er der Tat dringend verdächtig ist und ein Haftgrund besteht. Sie darf nicht *angeordnet werden*, wenn sie zu der Bedeutung der Sache und der zu erwartenden Strafe oder Maßregel der Besserung und Sicherung außer Verhältnis steht.
(2) Ein Haftgrund besteht, wenn auf Grund bestimmter Tatsachen
1. festgestellt wird, daß der Beschuldigte flüchtig ist oder sich verborgen hält,
2. bei Würdigung der Umstände des Einzelfalles die Gefahr besteht, daß der Beschuldigte sich dem Strafverfahren entziehen werde (Fluchtgefahr), oder
3. das Verhalten des Beschuldigten den dringenden Verdacht begründet, er werde
a Beweismittel vernichten, verändern, beiseite schaffen, unterdrücken oder fälschen oder
b) auf Mitbeschuldigte, Zeugen oder Sachverständige in unlauterer Weise einwirken oder
c) andere zu solchem Verhalten veranlassen, und wenn deshalb die Gefahr droht, daß die Ermittlung der Wahrheit erschwert werde (Verdunkelungsgefahr).
(3) Gegen den Beschuldigten, der einer Straftat nach § 6 Absatz 1 Nummer 1 oder § 13 Absatz 1 des Völkerstrafgesetzbuches oder § 129a Abs. 1 oder Abs. 2, auch in Verbindung mit § 129b Abs. 1, oder nach den §§ 176c, 176d, 211, 212, 226, 306b oder 306c des Strafgesetzbuches oder, soweit durch die Tat Leib oder Leben eines anderen gefährdet worden ist, nach § 308 Abs. 1 bis 3 des Strafgesetzbuches dringend verdächtig ist, darf die Untersuchungshaft auch *angeordnet werden*, wenn ein Haftgrund nach Absatz 2 nicht besteht.

Section 112a CPC[842] Danger of recidivism as ground for arrest
(1) A ground for arrest shall also exist if the accused is strongly suspected of
1. having committed an offence under sections 174, 174a, 176 to 178 or under section 238 paras. 2 and 3 of the Criminal Code or
2. having repeatedly or continually committed an offence which seriously undermines the legal order under section 89a, section 89c paras. 1 to 4, section 125a, sections 224 to 227, sections 243, 244, 249 to 255 or 260, section 263, sections 306 to 306c or section 316a of the Criminal Code or under section 29 para. 1 sentence 1 no. 1 or no. 10 or para. 3, section 29a para. 1, section 30 para. 1, section 30a para. 1 of the Narcotics Act, or under section 4 para. 3 no. 1 lit. a of the New Psychoactive Substances Act
and certain facts substantiate the risk that prior to final conviction he will commit further serious crimes of the same nature or will continue the offence, detention is required to avert the imminent danger and, in the cases under no. 2, imprisonment for a term exceeding one year is expected to be imposed. When assessing the strong suspicion of the accused's having committed an offence within the meaning of sentence 1 no. 2, consideration shall also be given to offences which are or have been the subject of other, including finally concluded, proceedings.
(2) Para. 1 shall not apply if the conditions for issuing a warrant of arrest under section 112 are met and the conditions for the suspension of enforcement of the warrant of arrest under section 116 paras. 1 and 2 are not met.

[842] § 112a Haftgrund der Wiederholungsgefahr
(1) Ein Haftgrund besteht auch, wenn der Beschuldigte dringend verdächtig ist,
1. eine Straftat nach den §§ 174, 174a, 176 bis 178, 184b Absatz 2 oder nach § 238 Abs. 2 und 3 des Strafgesetzbuches oder
2. wiederholt oder fortgesetzt eine die Rechtsordnung schwerwiegend beeinträchtigende Straftat nach den §§ 89a, 89c Absatz 1 bis 4, nach § 125a, nach den §§ 224 bis 227, nach den §§ 243, 244, 249 bis 255, 260, nach § 263, nach den §§ 306 bis 306c oder § 316a des Strafgesetzbuches oder nach § 29 Absatz 1 Satz 1 Nummer 1, 10 oder Abs. 3, § 29a Abs. 1, § 30 Abs. 1, § 30a Abs. 1 des Betäubungsmittelgesetzes oder nach s. 4 Absatz 3 Nummer 1 Buchstabe a des Neue-psychoaktive-Stoffe-Gesetzes
begangen zu haben, und bestimmte Tatsachen die Gefahr begründen, daß er vor rechtskräftiger Aburteilung weitere erhebliche Straftaten gleicher Art begehen oder die Straftat fortsetzen werde, die Haft zur Abwendung der drohenden Gefahr erforderlich und in den Fällen der Nummer 2 eine Freiheitsstrafe von mehr als einem Jahr zu erwarten ist. In die Beurteilung des dringenden Verdachts einer Tatbegehung im Sinne des Satzes 1 Nummer 2 sind auch solche Taten einzubeziehen, die Gegenstand anderer, auch rechtskräftig abgeschlossener, Verfahren sind oder waren.
(2) Absatz 1 findet keine Anwendung, wenn die Voraussetzungen für den Erlaß eines Haftbefehls nach § 112 vorliegen und die Voraussetzungen für die Aussetzung des Vollzugs des Haftbefehls nach § 116 Abs. 1, 2 nicht gegeben sind.

Section 113 CPC[843] **Remand detention for less serious offences**
(1) If the offence is punishable only by imprisonment for a term not exceeding six months or a fine of up to 180 daily rates, then remand detention may not be ordered on the ground of a risk of the suppression of evidence.
(2) In such cases, remand detention may be imposed on the ground of a risk of flight only if the accused
1. has previously evaded the proceedings against him or has made preparations for flight,
2. has no permanent residence or residence within the territorial scope of this statute or
3. cannot establish his identity.

Section 114 CPC[844] **Warrant of arrest**
(1) Remand detention shall be imposed by the judge in a written warrant of arrest.
(2) The warrant of arrest shall indicate
1. the accused,
2. the offence of which he is strongly suspected, the time and place of its commission, the statutory elements of the offence and the penal provisions to be applied,
3. the ground for arrest as well as
4. the facts disclosing the **strong suspicion of the offence** and the ground for arrest, unless disclosure would endanger national security.
(3) If it appears that section 112 para. 1 sentence 2 is applicable or if the accused invokes that provision, the grounds for not applying it shall be stated.

[843] § 113 Untersuchungshaft bei leichteren Taten
(1) Ist die Tat nur mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu einhundertachtzig Tagessätzen bedroht, so darf die Untersuchungshaft wegen Verdunkelungsgefahr nicht *angeordnet werden*.
(2) In diesen Fällen darf die Untersuchungshaft wegen Fluchtgefahr nur *angeordnet werden*, wenn der Beschuldigte
1. sich dem Verfahren bereits einmal entzogen hatte oder Anstalten zur Flucht getroffen hat,
2. im Geltungsbereich dieses Gesetzes keinen festen Wohnsitz oder Aufenthalt hat oder
3. sich über seine Person nicht ausweisen kann.

[844] § 114 Haftbefehl
(1) Die Untersuchungshaft wird durch schriftlichen Haftbefehl des Richters angeordnet.
(2) In dem Haftbefehl sind anzuführen
1. der Beschuldigte,
2. die Tat, deren er dringend verdächtig ist, Zeit und Ort ihrer Begehung, die gesetzlichen Merkmale der Straftat und die anzuwendenden Strafvorschriften,
3. der Haftgrund sowie
4. die Tatsachen, aus denen sich der dringende Tatverdacht und der Haftgrund ergibt, soweit nicht dadurch die Staatssicherheit gefährdet wird.
(3) Wenn die Anwendung des § 112 Abs. 1 Satz 2 naheliegt oder der Beschuldigte sich auf diese Vorschrift beruft, sind die Gründe dafür anzugeben, daß sie nicht angewandt wurde.

Section 114a CPC[845] Issuance of warrant of arrest; translations
A copy of the warrant of arrest shall be handed over to the accused at the time of his arrest; if he does not have a sufficient command of the German language, he shall additionally be provided with a translation in a language he understands. If it is not possible for a copy and, where necessary, a translation to be handed over to him, he must be informed without delay, in a language he understands, of the grounds for his arrest and the accusations levied against him. In that case, the copy of the warrant of arrest and, where necessary, a translation shall subsequently be handed over to him without delay.

Section 114b[846] Instruction of arrested accused
(1) The arrested accused shall be instructed as to his rights without delay and in writing in a language he understands. If written instruction is clearly insufficient, oral instruction shall also be given. The same procedure shall apply accordingly if it is not possible to give instruction in writing; written instruction shall, however, be given subsequently insofar as this can reasonably be done. The accused shall confirm in writing that he was given instruction; if he refuses, this shall be documented.
(2) In the instruction pursuant to para. 1 the accused shall be advised that he
1. shall, without delay, at the latest on the day after his apprehension, be brought before the court which is to examine him and decide on his further detention,
2. has the right to reply to the accusation or to remain silent,
3. may request that evidence be taken in his defence,

[845] § 114a Aushändigung des Haftbefehls; Übersetzung
Dem Beschuldigten ist bei der Verhaftung eine Abschrift des Haftbefehls auszuhändigen; beherrscht er die deutsche Sprache nicht hinreichend, erhält er zudem eine Übersetzung in einer für ihn verständlichen Sprache. Ist die Aushändigung einer Abschrift und einer etwaigen Übersetzung nicht möglich, ist ihm unverzüglich in einer für ihn verständlichen Sprache mitzuteilen, welches die Gründe für die Verhaftung sind und welche Beschuldigungen gegen ihn erhoben werden. In diesem Fall ist die Aushändigung der Abschrift des Haftbefehls sowie einer etwaigen Übersetzung unverzüglich nachzuholen.
[846] § 114b Belehrung des verhafteten Beschuldigten
(1) Der verhaftete Beschuldigte ist unverzüglich und schriftlich in einer für ihn verständlichen Sprache über seine Rechte zu belehren. Ist eine schriftliche Belehrung erkennbar nicht ausreichend, hat zudem eine mündliche Belehrung zu erfolgen. Entsprechend ist zu verfahren, wenn eine schriftliche Belehrung nicht möglich ist; sie soll jedoch nachgeholt werden, sofern dies in zumutbarer Weise möglich ist. Der Beschuldigte soll schriftlich bestätigen, dass er belehrt wurde; falls er sich weigert, ist dies zu dokumentieren.
(2) In der Belehrung nach Absatz 1 ist der Beschuldigte darauf hinzuweisen, dass er
1. unverzüglich, spätestens am Tag nach der Ergreifung, dem Gericht vorzuführen ist, das ihn zu vernehmen und über seine weitere Inhaftierung zu entscheiden hat,
2. das Recht hat, sich zur Beschuldigung zu äußern oder nicht zur Sache auszusagen,
3. zu seiner Entlastung einzelne Beweiserhebungen beantragen kann,
4. jederzeit, auch schon vor seiner Vernehmung, einen von ihm zu wählenden Verteidiger befragen kann; dabei sind ihm Informationen zur Verfügung zu stellen, die es ihm erleichtern, einen Verteidiger zu kontaktieren; auf bestehende anwaltliche Notdienste ist dabei hinzuweisen,
4a. in den Fällen des § 140 die Bestellung eines Pflichtverteidigers nach Maßgabe des § 141 Absatz 1 und des § 142 Absatz 1 beantragen kann; dabei ist auf die mögliche Kostenfolge des § 465 hinzuweisen,
5. das Recht hat, die Untersuchung durch einen Arzt oder eine Ärztin seiner Wahl zu verlangen,

4. may at any time, including before his examination, consult with defence counsel of his choice,
4a. may, in the cases under section 140 paras. 1 and 2, request the appointment of defence counsel in accordance with the provisions of section 141 paras. 1 and 3,
5.[847] has the right to demand an examination by a female or male physician of his choice,
6. may notify a relative or a person trusted by him, provided the purpose of the investigation is not significantly endangered thereby,
7. may, in accordance with the provisions of section 147 (4), apply to inspect the files and, under supervision, to view items of evidence in official custody if he has no defence counsel and
8. may, if remand detention is continued after he is brought before the competent judge,
a) lodge a complaint against the warrant of arrest or apply for a review of detention (section 117 paras. 1 and 2) and an oral hearing (section 118 paras. 1 and 2),
b) in the event of inadmissibility of the complaint, make an application for a court decision pursuant to section 119 para. 5 and
c) make an application for a court decision pursuant to section 119a para. 1 against official decisions and measures in the enforcement of remand detention.
The accused is to be advised of defence counsel's right to inspect the files under section 147. An accused who does not have a sufficient command of the German language or who is hearing or speech impaired shall be advised in a language he understands that he may, in accordance with the provisions of section 187 paras. 1 to 3 of the Courts Constitution Act, demand that an interpreter or a translator be called in free of charge for the entire criminal proceedings. A foreign national shall be advised that he may demand notification of the consular representation of his home state and have messages communicated to the same.

[847] 5. das Recht hat, die Untersuchung durch einen Arzt oder eine Ärztin seiner Wahl zu verlangen,
6. einen Angehörigen oder eine Person seines Vertrauens benachrichtigen kann, soweit der Zweck der Untersuchung dadurch nicht erheblich gefährdet wird,
7. nach Maßgabe des § 147 Absatz 4 beantragen kann, die Akten einzusehen und unter Aufsicht amtlich verwahrte Beweisstücke zu besichtigen, soweit er keinen Verteidiger hat, und
8. bei Aufrechterhaltung der Untersuchungshaft nach Vorführung vor den zuständigen Richter
a) eine Beschwerde gegen den Haftbefehl einlegen oder eine Haftprüfung (§ 117 Absatz 1 und 2) und eine mündliche Verhandlung (§ 118 Absatz 1 und 2) beantragen kann,
b) bei Unstatthaftigkeit der Beschwerde eine gerichtliche Entscheidung nach § 119 Absatz 5 beantragen kann und
c) gegen behördliche Entscheidungen und Maßnahmen im Untersuchungshaftvollzug eine gerichtliche Entscheidung nach § 119a Absatz 1 beantragen kann.
Der Beschuldigte ist auf das Akteneinsichtsrecht des Verteidigers nach § 147 hinzuweisen. Ein Beschuldigter, der der deutschen Sprache nicht hinreichend mächtig ist, ist in einer ihm verständlichen Sprache darauf hinzuweisen, dass er nach Maßgabe des § 187 Absatz 1 bis 3 des Gerichtsverfassungsgesetzes für das gesamte Strafverfahren die unentgeltliche Hinzuziehung eines Dolmetschers oder Übersetzers beanspruchen kann; ein hör- oder sprachbehinderter Beschuldigter ist auf sein Wahlrecht nach § 186 Absatz 1 und 2 des Gerichtsverfassungsgesetzes hinzuweisen. Ein ausländischer Staatsangehöriger ist darüber zu belehren, dass er die Unterrichtung der konsularischen Vertretung seines Heimatstaates verlangen und dieser Mitteilungen zukommen lassen kann.

Section 114c CPC[848] Notification of relatives
(1) An arrested accused shall be given the opportunity without delay to notify a relative or a person trusted by him, provided the purpose of the investigation is not significantly endangered thereby.
(2) If detention is enforced against the arrested accused after he is brought before the court, the court shall order that one of his relatives or a person trusted by him be notified without delay. The same duty shall exist in respect of every further decision on the continuation of detention.

Section 114d CPC[849] Information communicated to penal institution
(1) The court shall communicate a copy of the warrant of arrest along with the request for admission to the penal institution competent for the accused. In addition, it shall inform the penal institution of
1. the public prosecution office in charge of the proceedings and the court competent pursuant to section 126,
2. the persons notified pursuant to section 114c,
3. decisions and other measures under section 119 paras. 1 and 2,
4. other decisions given in the proceedings, insofar as this is necessary for the performance of the duties of the penal institution,
5. dates set down for the main hearing and information following therefrom which is necessary for the performance of the duties of the penal institution,

[848] § 114c Benachrichtigung von Angehörigen
(1) Einem verhafteten Beschuldigten ist unverzüglich Gelegenheit zu geben, einen Angehörigen oder eine Person seines Vertrauens zu benachrichtigen, sofern der Zweck der Untersuchung dadurch nicht erheblich gefährdet wird.
(2) Wird gegen einen verhafteten Beschuldigten nach der Vorführung vor das Gericht Haft vollzogen, hat das Gericht die unverzügliche Benachrichtigung eines seiner Angehörigen oder einer Person seines Vertrauens anzuordnen. Die gleiche Pflicht besteht bei jeder weiteren Entscheidung über die Fortdauer der Haft.

[849] § 114d Mitteilungen an die Vollzugsanstalt
(1) Das Gericht übermittelt der für den Beschuldigten zuständigen Vollzugsanstalt mit dem Aufnahmeersuchen eine Abschrift des Haftbefehls. Darüber hinaus teilt es ihr mit
1. die das Verfahren führende Staatsanwaltschaft und das nach § 126 zuständige Gericht,
2. die Personen, die nach § 114c benachrichtigt worden sind,
3. Entscheidungen und sonstige Maßnahmen nach § 119 Abs. 1 und 2,
4. weitere im Verfahren ergehende Entscheidungen, soweit dies für die Erfüllung der Aufgaben der Vollzugsanstalt erforderlich ist,
5. Hauptverhandlungstermine und sich aus ihnen ergebende Erkenntnisse, die für die Erfüllung der Aufgaben der Vollzugsanstalt erforderlich sind,
6. den Zeitpunkt der Rechtskraft des Urteils sowie
7. andere Daten zur Person des Beschuldigten, die für die Erfüllung der Aufgaben der Vollzugsanstalt erforderlich sind, insbesondere solche über seine Persönlichkeit und weitere relevante Strafverfahren.
Die Sätze 1 und 2 gelten bei Änderungen der mitgeteilten Tatsachen entsprechend. Mitteilungen unterbleiben, soweit die Tatsachen der Vollzugsanstalt bereits anderweitig bekannt geworden sind.
(2) Die Staatsanwaltschaft unterstützt das Gericht bei der Erfüllung seiner Aufgaben nach Absatz 1 und teilt der Vollzugsanstalt von Amts wegen insbesondere Daten nach Absatz 1 Satz 2 Nr. 7 sowie von ihr getroffene Entscheidungen und sonstige Maßnahmen nach § 119 Abs. 1 und 2 mit. Zudem übermittelt die Staatsanwaltschaft der Vollzugsanstalt eine Abschrift der Anklageschrift und teilt dem nach § 126 Abs. 1 zuständigen Gericht die Anklageerhebung mit.

6. the time of the entry into force of the judgment and
7. other personal data of the accused which the penal institution requires in the performance of its duties, especially data concerning his personality and other relevant criminal proceedings.
Sentences 1 and 2 shall apply accordingly in the event of changes in the communicated facts. Communications shall be dispensed with insofar as the facts have already otherwise become known to the penal institution.
(2) The public prosecution office shall support the court in the performance of its duties under para. 1 and shall, in particular, communicate ex officio to the penal institution the data referred to in para. 1 sentence 2 no. 7 as well as decisions and other measures it has taken pursuant to section 119 paras. 1 and 2. The public prosecution office shall also transmit a copy of the bill of indictment to the penal institution and communicate the preferment of charges to the court competent pursuant to section 126 (1).

Section 114e CPC[850] Information passed on by penal institution
The penal institution shall communicate ex officio to the court and to the public prosecution office information obtained during the enforcement of remand detention insofar as such information, in the opinion of the penal institution, is of importance for the performance of the recipient's duties and it has not already otherwise become known to them. Other rights of the penal institution to communicate information to the court and to the public prosecution office shall remain unaffected.

Section 115 CPC[851] Appearance before competent judge
para. 1 If the accused is apprehended on the basis of a warrant of arrest, he shall be brought before the competent court without delay.
(2) The court shall examine the accused concerning the subject of the accusation without delay following the arrest and no later than on the following day.

[850] § 114e Übermittlung von Erkenntnissen durch die Vollzugsanstalt
Die Vollzugsanstalt übermittelt dem Gericht und der Staatsanwaltschaft von Amts wegen beim Vollzug der Untersuchungshaft erlangte Erkenntnisse, soweit diese aus Sicht der Vollzugsanstalt für die Erfüllung der Aufgaben der Empfänger von Bedeutung sind und diesen nicht bereits anderweitig bekannt geworden sind. Sonstige Befugnisse der Vollzugsanstalt, dem Gericht und der Staatsanwaltschaft Erkenntnisse mitzuteilen, bleiben unberührt.
[851] § 115 Vorführung vor den zuständigen Richter
(1) Wird der Beschuldigte auf Grund des Haftbefehls ergriffen, so ist er unverzüglich dem zuständigen Gericht vorzuführen.
(2) Das Gericht hat den Beschuldigten unverzüglich nach der Vorführung, spätestens am nächsten Tage, über den Gegenstand der Beschuldigung zu vernehmen.
(3) Bei der Vernehmung ist der Beschuldigte auf die ihn belastenden Umstände und sein Recht hinzuweisen, sich zur Beschuldigung zu äußern oder nicht zur Sache auszusagen. Ihm ist Gelegenheit zu geben, die Verdachts- und Haftgründe zu entkräften und die Tatsachen geltend zu machen, die zu seinen Gunsten sprechen.
(4) Wird die Haft aufrechterhalten, so ist der Beschuldigte über das Recht der Beschwerde und die anderen Rechtsbehelfe (§ 117 Abs. 1, 2, s. 118 Abs. 1, 2, § 119 Abs. 5, § 119a Abs. 1) zu belehren. § 304 Abs. 4 und 5 bleibt unberührt.

(3) During the examination, the incriminating circumstances shall be pointed out to the accused and he shall be informed of his right to reply to the accusation or to remain silent. He shall be given the opportunity to remove grounds for suspicion and arrest and to present those facts which speak in his favour.
(4) If remand detention is continued, the accused shall be informed of the right of complaint as well as of other legal remedies (section 117 paras. 1 and 2, section 118 paras. 1 and 2, section 119 para. 5, section 119a para. 1). Section 304 paras. 4 and 5 shall remain unaffected.

Section 115a CPC[852] Appearance before judge at nearest local court
(1) If the accused cannot be brought before the competent court at the latest on the day after his apprehension, he shall be brought before the nearest local court without delay, no later than the day following his apprehension.
(2) Once the accused has been brought before it, the court shall examine him without delay, no later than the following day. Section 115 para. 3 shall apply at this examination, to the extent possible. If it transpires in the course of the examination that the warrant of arrest has been revoked, that an application for its revocation has been made by the public prosecution office (section 120 para. 3) or that the person apprehended is not the person designated in the warrant of arrest, the apprehended person shall be released. If he raises other objections to the warrant of arrest or its enforcement which are not manifestly unfounded or if the court has doubts regarding the continuation of detention, it shall inform the competent court and the competent public prosecution office without delay, using the fastest means available in the circumstances; the competent court shall without delay review whether the warrant of arrest is to be revoked or its enforcement suspended.
(3) If the accused is not released, he shall, at his request, be brought before the competent court for examination in accordance with section 115. The accused shall be informed of this right and shall be instructed pursuant to section 115 para. 4.

[852] § 115a Vorführung vor den Richter des nächsten Amtsgerichts
(1) Kann der Beschuldigte nicht spätestens am Tag nach der Ergreifung dem zuständigen Gericht vorgeführt werden, so ist er unverzüglich, spätestens am Tage nach der Ergreifung, dem nächsten Amtsgericht vorzuführen.
(2) Das Gericht hat den Beschuldigten unverzüglich nach der Vorführung, spätestens am nächsten Tage, zu vernehmen. Bei der Vernehmung wird, soweit möglich, § 115 Abs. 3 angewandt. Ergibt sich bei der Vernehmung, dass der Haftbefehl aufgehoben, seine Aufhebung durch die Staatsanwaltschaft beantragt (§ 120 Abs. 3) oder der Ergriffene nicht die in dem Haftbefehl bezeichnete Person ist, so ist der Ergriffene freizulassen. Erhebt dieser sonst gegen den Haftbefehl oder dessen Vollzug Einwendungen, die nicht offensichtlich unbegründet sind, oder hat das Gericht Bedenken gegen die Aufrechterhaltung der Haft, so teilt es diese dem zuständigen Gericht und der zuständigen Staatsanwaltschaft unverzüglich und auf dem nach den Umständen angezeigten schnellsten Wege mit; das zuständige Gericht prüft unverzüglich, ob der Haftbefehl aufzuheben oder außer Vollzug zu setzen ist.
(3) Wird der Beschuldigte nicht freigelassen, so ist er auf sein Verlangen dem zuständigen Gericht zur Vernehmung nach § 115 vorzuführen. Der Beschuldigte ist auf dieses Recht hinzuweisen und gemäß § 115 Abs. 4 zu belehren.

Section 116 CPC[853] Suspension of enforcement of warrant of arrest

(1) The judge shall suspend enforcement of a warrant of arrest which is justified merely by a risk of flight if there is a sufficiently substantiated expectation that the purpose of remand detention may also be achieved by less severe measures. The following measures, in particular, may be considered:

1. the direction to report at certain times to the judge, the prosecuting authority or to a specific office to be designated by them,
2. the direction not to leave one's place of residence or stay or a certain area without the permission of the judge or the prosecuting authority,
3. the direction not to leave one's private premises except under the supervision of a designated person,
4. the provision of security by the accused or another person.

(2) The judge may also suspend enforcement of a warrant of arrest which is justified on account of the risk of suppression of evidence if less severe measures sufficiently give rise to the expectation that they will considerably reduce the risk of the suppression of evidence. In particular, a direction not to have contact with co-accused persons, witnesses or experts may be considered.

(3) The judge may suspend enforcement of a warrant of arrest issued in accordance with section 112a if there are sufficient grounds to assume that the accused will comply with certain directions and that the purpose of detention will be fulfilled thereby.

(4) In the cases under paras. 1 to 3, the judge shall order enforcement of the warrant of arrest if

1. the accused grossly contravenes the duties and restrictions imposed upon him,

[853] § 116 Aussetzung des Vollzugs des Haftbefehls

(1) Der Richter setzt den Vollzug eines Haftbefehls, der lediglich wegen Fluchtgefahr gerechtfertigt ist, aus, wenn weniger einschneidende Maßnahmen die Erwartung hinreichend begründen, daß der Zweck der Untersuchungshaft auch durch sie erreicht werden kann. In Betracht kommen namentlich

1. die Anweisung, sich zu bestimmten Zeiten bei dem Richter, der Strafverfolgungsbehörde oder einer von ihnen bestimmten Dienststelle zu melden,
2. die Anweisung, den Wohn- oder Aufenthaltsort oder einen bestimmten Bereich nicht ohne Erlaubnis des Richters oder der Strafverfolgungsbehörde zu verlassen,
3. die Anweisung, die Wohnung nur unter Aufsicht einer bestimmten Person zu verlassen,
4. die Leistung einer angemessenen Sicherheit durch den Beschuldigten oder einen anderen.

(2) Der Richter kann auch den Vollzug eines Haftbefehls, der wegen Verdunkelungsgefahr gerechtfertigt ist, aussetzen, wenn weniger einschneidende Maßnahmen die Erwartung hinreichend begründen, daß sie die Verdunkelungsgefahr erheblich vermindern werden. In Betracht kommt namentlich die Anweisung, mit Mitbeschuldigten, Zeugen oder Sachverständigen keine Verbindung aufzunehmen.

(3) Der Richter kann den Vollzug eines Haftbefehls, der nach § 112a erlassen worden ist, aussetzen, wenn die Erwartung hinreichend begründet ist, daß der Beschuldigte bestimmte Anweisungen befolgen und daß dadurch der Zweck der Haft erreicht wird.

(4) Der Richter ordnet in den Fällen der Absätze 1 bis 3 den Vollzug des Haftbefehls an, wenn

1. der Beschuldigte den ihm auferlegten Pflichten oder Beschränkungen gröblich zuwiderhandelt,
2. der Beschuldigte Anstalten zur Flucht trifft, auf ordnungsgemäße Ladung ohne genügende Entschuldigung ausbleibt oder sich auf andere Weise zeigt, daß das in ihn gesetzte Vertrauen nicht gerechtfertigt war, oder
3. neu hervorgetretene Umstände die Verhaftung erforderlich machen.

2. the accused makes preparations for flight, remains absent without sufficient excuse upon proper summons to appear or shows in any other manner that the trust placed in him was not justified or
3. new circumstances have arisen which necessitate the arrest.

Section 116a CPC[854] Suspension upon provision of security
(1) Security shall be provided by depositing cash, securities, pledges or a guarantee issued by suitable persons. Any diverging provisions in a statutory instrument issued under the Act on Payments to and from Courts and Judicial Authorities (Gesetz über den Zahlungsverkehr mit Gerichten und Justizbehörden) shall remain unaffected.
(2) The judge shall determine the amount and type of security at his discretion.
(3) An accused person who is not resident within the territorial scope of this statute and applies for suspension of enforcement of the warrant of arrest upon provision of security must authorise a person residing within the district of the competent court to receive service on his behalf.

Section 116b CPC[855] Relationship between remand detention and other measures involving deprivation of liberty
Enforcement of remand detention shall precede the enforcement of detention pending extradition, provisional detention pending extradition, detention pending deportation and detention pending exit from the federal territory. Enforcement of other measures involving deprivation of liberty shall precede the enforcement of remand detention, unless the court rules otherwise because the purpose of remand detention so requires.

[854] § 116a Aussetzung gegen Sicherheitsleistung
(1) Die Sicherheit ist durch Hinterlegung in barem Geld, in Wertpapieren, durch Pfandbestellung oder durch Bürgschaft geeigneter Personen zu leisten. Davon abweichende Regelungen in einer auf Grund des Gesetzes über den Zahlungsverkehr mit Gerichten und Justizbehörden erlassenen Rechtsverordnung bleiben unberührt.
(2) Der Richter setzt Höhe und Art der Sicherheit nach freiem Ermessen fest.
(3) Der Beschuldigte, der die Aussetzung des Vollzugs des Haftbefehls gegen Sicherheitsleistung beantragt und nicht im Geltungsbereich dieses Gesetzes wohnt, ist verpflichtet, eine im Bezirk des zuständigen Gerichts wohnende Person zum Empfang von Zustellungen zu bevollmächtigen.
[855] § 116b Verhältnis von Untersuchungshaft zu anderen freiheitsentziehenden Maßnahmen
Die Vollstreckung der Untersuchungshaft geht der Vollstreckung der Auslieferungshaft, der vorläufigen Auslieferungshaft, der Abschiebungshaft und der Zurückweisungshaft vor. Die Vollstreckung anderer freiheitsentziehender Maßnahmen geht der Vollstreckung von Untersuchungshaft vor, es sei denn, das Gericht trifft eine abweichende Entscheidung, weil der Zweck der Untersuchungshaft dies erfordert.

Section 117[856] **Review of detention**
(1) As long as the accused is in remand detention, he may at any time apply for a court hearing as to whether the warrant of arrest is to be revoked or its enforcement suspended in accordance with section 116 (review of detention).
(2) A complaint shall be inadmissible if an application has been made for a review of detention. The right of complaint against the decision on the application shall remain unaffected.
(3) The judge may order specific investigations which may be important for the subsequent decision concerning continuation of remand detention, and he may conduct a further review after completion of such investigations.
(4) (repealed)
(5) (repealed)

Section 118 CPC[857] **Procedure for review of detention**
(1) In the case of a review of detention being carried out, a decision shall be given after an oral hearing upon application by the accused or ex officio at the court's discretion.
(2) If a complaint has been lodged against the warrant of arrest, then, upon application by the accused or ex officio, a decision may also be given in the complaint proceedings after an oral hearing.
(3) If remand detention has been upheld following an oral hearing, the accused shall have a right to a further oral hearing only if remand detention has continued for at least three months and at least two months of remand detention have elapsed since the last oral hearing.

[856] § 117 Haftprüfung
(1) Solange der Beschuldigte in Untersuchungshaft ist, kann er jederzeit die gerichtliche Prüfung beantragen, ob der Haftbefehl aufzuheben oder dessen Vollzug nach § 116 auszusetzen ist (Haftprüfung).
(2) Neben dem Antrag auf Haftprüfung ist die Beschwerde unzulässig. Das Recht der Beschwerde gegen die Entscheidung, die auf den Antrag ergeht, wird dadurch nicht berührt.
(3) Der Richter kann einzelne Ermittlungen anordnen, die für die künftige Entscheidung über die Aufrechterhaltung der Untersuchungshaft von Bedeutung sind, und nach Durchführung dieser Ermittlungen eine neue Prüfung vornehmen.
(4) (weggefallen)
(5) (weggefallen)
[857] § 118 Verfahren bei der Haftprüfung
(1) Bei der Haftprüfung wird auf Antrag des Beschuldigten oder nach dem Ermessen des Gerichts von Amts wegen nach mündlicher Verhandlung entschieden.
(2) Ist gegen den Haftbefehl Beschwerde eingelegt, so kann auch im Beschwerdeverfahren auf Antrag des Beschuldigten oder von Amts wegen nach mündlicher Verhandlung entschieden werden.
(3) Ist die Untersuchungshaft nach mündlicher Verhandlung aufrechterhalten worden, so hat der Beschuldigte einen Anspruch auf eine weitere mündliche Verhandlung nur, wenn die Untersuchungshaft mindestens drei Monate und seit der letzten mündlichen Verhandlung mindestens zwei Monate gedauert hat.
(4) Ein Anspruch auf mündliche Verhandlung besteht nicht, solange die Hauptverhandlung andauert oder wenn ein Urteil ergangen ist, das auf eine Freiheitsstrafe oder eine freiheitsentziehende Maßregel der Besserung und Sicherung erkennt.
(5) Die mündliche Verhandlung ist unverzüglich durchzuführen; sie darf ohne Zustimmung des Beschuldigten nicht über zwei Wochen nach dem Eingang des Antrags anberaumt werden.

(4) A right to an oral hearing shall not exist as long as the main hearing is in process or after a judgment has been pronounced which imposes a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty.
(5) The oral hearing shall be held without delay; unless the accused consents thereto, it may not be scheduled more than two weeks after receipt of the application.

Section 118a CPC[858] Oral hearing for review of remand detention
(1) The public prosecution office, the accused and defence counsel shall be notified of the place and time of the oral hearing.
(2) The accused shall be brought to the hearing, unless he has waived his right to be present at the hearing or unless great distance or sickness of the accused or other insurmountable obstacles prevent his being brought to the hearing. The court may order that, under the conditions of sentence 1, the oral hearing shall be conducted in such a way that the accused is located somewhere other than the court and the hearing is simultaneously transmitted audio-visually to the place where the accused is located and to the courtroom. If the accused is not brought to the oral hearing and if the procedure pursuant to sentence 2 is not followed, defence counsel shall safeguard his rights at the hearing. In that case, the accused shall be assigned defence counsel for the oral hearing if he does not yet have such counsel. Sections 142, 143 and 145 shall apply accordingly.
(3) The parties present shall be heard during the oral hearing. The court shall determine the type and extent of evidence to be taken. A record shall be drawn up of the hearing; sections 271 to 273 shall apply accordingly.
(4) The decision shall be pronounced at the end of the oral hearing. If this is not possible, the decision shall be given within one week at the latest.

[858] § 118a Mündliche Verhandlung bei der Haftprüfung
(1) Von Ort und Zeit der mündlichen Verhandlung sind die Staatsanwaltschaft sowie der Beschuldigte und der Verteidiger zu benachrichtigen.
(2) Der Beschuldigte ist zu der Verhandlung vorzuführen, es sei denn, daß er auf die Anwesenheit in der Verhandlung verzichtet hat oder daß der Vorführung weite Entfernung oder Krankheit des Beschuldigten oder andere nicht zu beseitigende Hindernisse entgegenstehen. Das Gericht kann anordnen, dass unter den Voraussetzungen des Satzes 1 die mündliche Verhandlung in der Weise erfolgt, dass sich der Beschuldigte an einem anderen Ort als das Gericht aufhält und die Verhandlung zeitgleich in Bild und Ton an den Ort, an dem sich der Beschuldigte aufhält, und in das Sitzungszimmer übertragen wird. Wird der Beschuldigte zur mündlichen Verhandlung nicht vorgeführt und nicht nach Satz 2 verfahren, so muss ein Verteidiger seine Rechte in der Verhandlung wahrnehmen.
(3) In der mündlichen Verhandlung sind die anwesenden Beteiligten zu hören. Art und Umfang der Beweisaufnahme bestimmt das Gericht. Über die Verhandlung ist ein Protokoll aufzunehmen; die §§ 271 bis 273 gelten entsprechend.
(4) Die Entscheidung ist am Schluß der mündlichen Verhandlung zu verkünden. Ist dies nicht möglich, so ist die Entscheidung spätestens binnen einer Woche zu erlassen.

Section 118b CPC[859] Application of provisions concerning appellate remedies
Sections 297 to 300 and section 302 para. 2 shall apply accordingly to applications for a review of detention (section 117 para. 1) and to applications for an oral hearing.

Section 119 CPC[860] Restrictions during remand detention relating to grounds for arrest
(1) Insofar as necessary to avert the risk of flight, suppression of evidence or repetition (sections 112 and 112a), restrictions may be imposed upon a detained accused. In particular, an order may be made that
1. visitation and telecommunications shall be subject to permission,
2. visitation, telecommunications, correspondence and parcels shall be monitored,
3. the handing over of items during visitation shall be subject to permission,
4. the accused shall be separated from individual or all other detainees,
5. his placement and presence on premises shared with other detainees shall be restricted or ruled out.
The orders shall be made by the court. If its order cannot be obtained in time, the public prosecution office or the penal institution may make a provisional order. The order shall be submitted to the court for approval within three working days, unless it has in the meantime ceased to be operative. The accused shall be informed of orders. The order referred to in sentence 2 no. 2 shall include the authorisation to terminate visitation and telecommunications as well as to hold correspondence and parcels.

[859] § 118b Anwendung von Rechtsmittelvorschriften
Für den Antrag auf Haftprüfung (§ 117 Abs. 1) und den Antrag auf mündliche Verhandlung gelten die §§ 297 bis 300 und 302 Abs. 2 entsprechend.
[860] § 119 Haftgrundbezogene Beschränkungen während der Untersuchungshaft
(1) Soweit dies zur Abwehr einer Flucht-, Verdunkelungs- oder Wiederholungsgefahr (§§ 112, 112a) erforderlich ist, können einem inhaftierten Beschuldigten Beschränkungen auferlegt werden. Insbesondere kann *angeordnet werden*, dass
1. der Empfang von Besuchen und die Telekommunikation der Erlaubnis bedürfen,
2. Besuche, Telekommunikation sowie der Schrift- und Paketverkehr zu überwachen sind,
3. die Übergabe von Gegenständen bei Besuchen der Erlaubnis bedarf,
4. der Beschuldigte von einzelnen oder allen anderen Inhaftierten getrennt wird,
5. die gemeinsame Unterbringung und der gemeinsame Aufenthalt mit anderen Inhaftierten eingeschränkt oder ausgeschlossen werden.
Die Anordnungen trifft das Gericht. Kann dessen Anordnung nicht rechtzeitig herbeigeführt werden, kann die Staatsanwaltschaft oder die Vollzugsanstalt eine vorläufige Anordnung treffen. Die Anordnung ist dem Gericht binnen drei Werktagen zur Genehmigung vorzulegen, es sei denn, sie hat sich zwischenzeitlich erledigt. Der Beschuldigte ist über Anordnungen in Kenntnis zu setzen. Die Anordnung nach Satz 2 Nr. 2 schließt die Ermächtigung ein, Besuche und Telekommunikation abzubrechen sowie Schreiben und Pakete anzuhalten.
(2) Die Ausführung der Anordnungen obliegt der anordnenden Stelle. Das Gericht kann die Ausführung von Anordnungen widerruflich auf die Staatsanwaltschaft übertragen, die sich bei der Ausführung der Hilfe durch ihre Ermittlungspersonen und die Vollzugsanstalt bedienen kann. Die Übertragung ist unanfechtbar.
(3) Ist die Überwachung der Telekommunikation nach Absatz 1 Satz 2 Nr. 2 angeordnet, ist die beabsichtigte Überwachung den Gesprächspartnern des Beschuldigten unmittelbar nach Herstellung der Verbindung mitzuteilen. Die Mitteilung kann durch den Beschuldigten selbst erfolgen. Der Beschuldigte ist rechtzeitig vor Beginn der Telekommunikation über die Mitteilungspflicht zu unterrichten.

(2) Implementation of the order shall be incumbent upon the authority making the order. The court may revocably transfer the implementation of orders to the public prosecution office, which may avail itself of the services of its investigators and the penal institution in effecting such implementation. The transfer shall not be contestable.
(3) Where the surveillance of telecommunications has been ordered pursuant to para. 1 sentence 2 no. 2, the persons with whom the accused is communicating shall be informed of the intended surveillance immediately after the connection has been established. The information may be given by the accused himself. The accused shall be advised in good time prior to the commencement of telecommunications of the duty to so inform.
(4)[861] Sections 148 and 148a shall remain unaffected. They shall apply accordingly to communications between the accused and
1. the probation office competent for his case,
2. the authority competent for supervision of his conduct,
3. the court assistance agency competent for his case,

[861] (4) Die §§ 148, 148a bleiben unberührt. Sie gelten entsprechend für den Verkehr des Beschuldigten mit
1. der für ihn zuständigen Bewährungshilfe,
2. der für ihn zuständigen Führungsaufsichtsstelle,
3. der für ihn zuständigen Gerichtshilfe,
4. den Volksvertretungen des Bundes und der Länder,
5. dem Bundesverfassungsgericht und dem für ihn zuständigen Landesverfassungsgericht,
6. dem für ihn zuständigen Bürgerbeauftragten eines Landes,
7. dem oder der Bundesbeauftragten für den Datenschutz und die Informationsfreiheit, den für die Kontrolle der Einhaltung der Vorschriften über den Datenschutz in den Ländern zuständigen Stellen der Länder und den Aufsichtsbehörden nach § 40 des Bundesdatenschutzgesetzes,
8. dem Europäischen Parlament,
9. dem Europäischen Gerichtshof für Menschenrechte,
10. dem Europäischen Gerichtshof,
11. dem Europäischen Datenschutzbeauftragten,
12. dem Europäischen Bürgerbeauftragten,
13. dem Europäischen Ausschuss zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe,
14. der Europäischen Kommission gegen Rassismus und Intoleranz,
15. dem Menschenrechtsausschuss der Vereinten Nationen,
16. den Ausschüssen der Vereinten Nationen für die Beseitigung der Rassendiskriminierung und für die Beseitigung der Diskriminierung der Frau,
17. dem Ausschuss der Vereinten Nationen gegen Folter, dem zugehörigen Unterausschuss zur Verhütung von Folter und den entsprechenden Nationalen Präventionsmechanismen,
18. den in § 53 Abs. 1 Satz 1 Nr. 1 und 4 genannten Personen in Bezug auf die dort bezeichneten Inhalte,
19. soweit das Gericht nichts anderes anordnet,
a) den Beiräten bei den Justizvollzugsanstalten und
b) der konsularischen Vertretung seines Heimatstaates.
Die Maßnahmen, die erforderlich sind, um das Vorliegen der Voraussetzungen nach den Sätzen 1 und 2 festzustellen, trifft die nach Absatz 2 zuständige Stelle.
(5) Gegen nach dieser Vorschrift ergangene Entscheidungen oder sonstige Maßnahmen kann gerichtliche Entscheidung beantragt werden, soweit nicht das Rechtsmittel der Beschwerde statthaft ist. Der Antrag hat keine aufschiebende Wirkung. Das Gericht kann jedoch vorläufige Anordnungen treffen.
(6) Die Absätze 1 bis 5 gelten auch, wenn gegen einen Beschuldigten, gegen den Untersuchungshaft angeordnet ist, eine andere freiheitsentziehende Maßnahme vollstreckt wird (§ 116b). Die Zuständigkeit des Gerichts bestimmt sich auch in diesem Fall nach § 126.

4. the Bundestag and the Länder parliaments,
5. the Federal Constitutional Court and the Land constitutional court competent for his case,
6. the Land ombudsman competent for his case,
7. the Federal Commissioner for Data Protection and Freedom of Information, the agencies of the Länder competent for the monitoring of compliance with data protection provisions in the Länder and the supervisory authorities pursuant to section 38 of the Federal Data Protection Act,
8. the European Parliament,
9. the European Court of Human Rights,
10. the European Court of Justice,
11. the European Data Protection Supervisor,
12. the European Ombudsman,
13. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
14. the European Commission against Racism and Intolerance,
15. the United Nations Human Rights Committee,
16. the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Committee on the Elimination of Discrimination against Women,
17. the United Nations Committee against Torture, its Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the corresponding national preventive mechanisms,
18. the persons mentioned in section 53 para. 1 sentence 1 nos. 1 and 4 in regard to the content specified therein,
19. unless the court orders otherwise,
a) the prison advisory boards and
b) the consular representation of his home state.
The measures necessary to determine the existence of the conditions of sentences 1 and 2 shall be taken by the authority competent pursuant to para. 2.
(5) An application for a court decision may be made against decisions or other measures taken pursuant to this provision, unless the legal remedy of complaint is admissible. The application shall not have suspensive effect. The court may, however, make provisional orders.
(6) Paras. 1 to 5 shall also apply where another measure involving deprivation of liberty (section 116b) is enforced against an accused in respect of whom remand detention has been ordered. In this case as well, the competence of the court shall be governed by section 126.

Section 119a CPC[862] Court decision on measure taken by enforcing authority
(1) An application for a court decision may be made against an official decision or measure in the enforcement of remand detention. An application for a court decision may also be made if an official decision applied for in the enforcement of remand detention is not given within three weeks.
(2) The application for a court decision shall not have suspensive effect. The court may, however, make provisional orders.
(3) The authority competent for the decision or measure relating to enforcement may also file a complaint against the decision of the court.

Section 120 CPC[863] Revocation of warrant of arrest
(1) The warrant of arrest shall be revoked as soon as the conditions for remand detention no longer apply or if continued remand detention is disproportionate to the importance of the case or to the anticipated penalty or measure of reform and prevention. In particular, it is to be revoked if the accused is acquitted or if the opening of the main proceedings is refused or if the proceedings are terminated other than provisionally.
(2) The accused's release shall not be delayed by the fact that an appellate remedy is being sought.
(3) The warrant of arrest shall also be revoked if the public prosecution office makes the relevant application before public charges have been preferred. The public prosecution office may order the release of the accused simultaneously with such application.

[862] § 119a Gerichtliche Entscheidung über eine Maßnahme der Vollzugsbehörde
(1) Gegen eine behördliche Entscheidung oder Maßnahme im Untersuchungshaftvollzug kann gerichtliche Entscheidung beantragt werden. Eine gerichtliche Entscheidung kann zudem beantragt werden, wenn eine im Untersuchungshaftvollzug beantragte behördliche Entscheidung nicht innerhalb von drei Wochen ergangen ist.
(2) Der Antrag auf gerichtliche Entscheidung hat keine aufschiebende Wirkung. Das Gericht kann jedoch vorläufige Anordnungen treffen.
(3) Gegen die Entscheidung des Gerichts kann auch die für die vollzugliche Entscheidung oder Maßnahme zuständige Stelle Beschwerde erheben.
[863] § 120 Aufhebung des Haftbefehls
(1) Der Haftbefehl ist aufzuheben, sobald die Voraussetzungen der Untersuchungshaft nicht mehr vorliegen oder sich ergibt, daß die weitere Untersuchungshaft zu der Bedeutung der Sache und der zu erwartenden Strafe oder Maßregel der Besserung und Sicherung außer Verhältnis stehen würde. Er ist namentlich aufzuheben, wenn der Beschuldigte freigesprochen oder die Eröffnung des Hauptverfahrens abgelehnt oder das Verfahren nicht bloß vorläufig eingestellt wird.
(2) Durch die Einlegung eines Rechtsmittels darf die Freilassung des Beschuldigten nicht aufgehalten werden.
(3) Der Haftbefehl ist auch aufzuheben, wenn die Staatsanwaltschaft es vor Erhebung der öffentlichen Klage beantragt. Gleichzeitig mit dem Antrag kann die Staatsanwaltschaft die Freilassung des Beschuldigten anordnen.

Section 121 CPC[864] Continuation of remand detention beyond six months

(1) As long as a judgment has not been given imposing a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty, then remand detention for one and the same offence exceeding a period of six months shall be enforced only if the particular difficulty or the unusual extent of the investigations or some other important reason do not yet admit pronouncement of judgment and justify continuation of remand detention.

(2) In the cases under para. 1, the warrant of arrest shall be revoked upon expiry of the six-month period, unless enforcement of the warrant of arrest is suspended pursuant to section 116 or the higher regional court orders remand detention to continue.

(3) If the case file is submitted to the higher regional court prior to the expiry of the time limit referred to in para. 2, the running of the time limit shall be suspended pending that court's decision. If the main proceedings commenced prior to the expiry of the time limit, the running of the time limit shall be suspended until pronouncement of the judgment. If the main proceedings are suspended and the case file is forwarded to the higher regional court without delay upon suspension of the proceedings, the running of the time limit shall likewise be suspended pending that court's decision.

(4) In cases over which a criminal division has jurisdiction pursuant to section 74a of the Courts Constitution Act, the decision shall be given by the higher regional court competent pursuant to section 120 or 120a of the Courts Constitution Act. In cases over which a higher regional court has jurisdiction pursuant to section 120 of the Courts Constitution Act, the Federal Court of Justice shall decide instead.

[864] § 121 Fortdauer der Untersuchungshaft über sechs Monate

(1) Solange kein Urteil ergangen ist, das auf Freiheitsstrafe oder eine freiheitsentziehende Maßregel der Besserung und Sicherung erkennt, darf der Vollzug der Untersuchungshaft wegen derselben Tat über sechs Monate hinaus nur aufrechterhalten werden, wenn die besondere Schwierigkeit oder der besondere Umfang der Ermittlungen oder ein anderer wichtiger Grund das Urteil noch nicht zulassen und die Fortdauer der Haft rechtfertigen.

(2) In den Fällen des Absatzes 1 ist der Haftbefehl nach Ablauf der sechs Monate aufzuheben, wenn nicht der Vollzug des Haftbefehls nach § 116 ausgesetzt wird oder das Oberlandesgericht die Fortdauer der Untersuchungshaft anordnet.

(3) Werden die Akten dem Oberlandesgericht vor Ablauf der in Absatz 2 bezeichneten Frist vorgelegt, so ruht der Fristenlauf bis zu dessen Entscheidung. Hat die Hauptverhandlung begonnen, bevor die Frist abgelaufen ist, so ruht der Fristenlauf auch bis zur Verkündung des Urteils. Wird die Hauptverhandlung ausgesetzt und werden die Akten unverzüglich nach der Aussetzung dem Oberlandesgericht vorgelegt, so ruht der Fristenlauf ebenfalls bis zu dessen Entscheidung.

(4) In den Sachen, in denen eine Strafkammer nach § 74a des Gerichtsverfassungsgesetzes zuständig ist, entscheidet das nach § 120 des Gerichtsverfassungsgesetzes zuständige Oberlandesgericht. In den Sachen, in denen ein Oberlandesgericht nach den §§ 120 oder 120b des Gerichtsverfassungsgesetzes zuständig ist, tritt an dessen Stelle der Bundesgerichtshof.

Section 122 CPC[865] Special review of detention by higher regional court
(1) In the cases under section 121, the competent court shall submit the files via the public prosecution office to the higher regional court for decision if it deems the continuation of remand detention necessary or if the public prosecution office so requests.
(2) The accused and his defence counsel shall be heard prior to the decision. The higher regional court may decide on the continuation of remand detention after an oral hearing; in that case, section 118a shall apply accordingly.
(3) If the higher regional court orders continuation of remand detention, section 114 para. 2 no. 4 shall apply accordingly. In respect of the further review of remand detention (section 117 para. 1), the higher regional court shall have jurisdiction until a judgment is given imposing a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty. It may refer the review of remand detention to the court having jurisdiction pursuant to the general provisions for a period not exceeding three months. In the cases under section 118 para. 1, the higher regional court shall decide on an application for an oral hearing at its discretion.
(4) Reviews of whether the conditions of section 121 para. 1 are met shall also be reserved for the higher regional court in the further course of the proceedings. This review must be repeated no later than every three months.
(5) The higher regional court may suspend enforcement of the warrant of arrest in accordance with section 116.
(6) If more than one accused person is in remand detention in the same case, the higher regional court may decide on the continuation of remand detention even of those accused persons for whom it would not yet be competent pursuant to section 121 and to the aforementioned provisions.

[865] § 122 Besondere Haftprüfung durch das Oberlandesgericht
(1) In den Fällen des § 121 legt das zuständige Gericht die Akten durch Vermittlung der Staatsanwaltschaft dem Oberlandesgericht zur Entscheidung vor, wenn es die Fortdauer der Untersuchungshaft für erforderlich hält oder die Staatsanwaltschaft es beantragt.
(2) Vor der Entscheidung sind der Beschuldigte und der Verteidiger zu hören. Das Oberlandesgericht kann über die Fortdauer der Untersuchungshaft nach mündlicher Verhandlung entscheiden; geschieht dies, so gilt § 118a entsprechend.
(3) Ordnet das Oberlandesgericht die Fortdauer der Untersuchungshaft an, so gilt § 114 Abs. 2 Nr. 4 entsprechend. Für die weitere Haftprüfung (§ 117 Abs. 1) ist das Oberlandesgericht zuständig, bis ein Urteil ergeht, das auf Freiheitsstrafe oder eine freiheitsentziehende Maßregel der Besserung und Sicherung erkennt. Es kann die Haftprüfung dem Gericht, das nach den allgemeinen Vorschriften dafür zuständig ist, für die Zeit von jeweils höchstens drei Monaten übertragen. In den Fällen des § 118 Abs. 1 entscheidet das Oberlandesgericht über einen Antrag auf mündliche Verhandlung nach seinem Ermessen.
(4) Die Prüfung der Voraussetzungen nach s. 121 Abs. 1 ist auch im weiteren Verfahren dem Oberlandesgericht vorbehalten. Die Prüfung muß jeweils spätestens nach drei Monaten wiederholt werden.
(5) Das Oberlandesgericht kann den Vollzug des Haftbefehls nach § 116 aussetzen.
(6) Sind in derselben Sache mehrere Beschuldigte in Untersuchungshaft, so kann das Oberlandesgericht über die Fortdauer der Untersuchungshaft auch solcher Beschuldigter entscheiden, für die es nach § 121 und den vorstehenden Vorschriften noch nicht zuständig wäre.
(7) Ist der Bundesgerichtshof zur Entscheidung zuständig, so tritt dieser an die Stelle des Oberlandesgerichts.

(7) If the Federal Court of Justice has jurisdiction, it shall decide instead of the higher regional court.

Section 123 CPC[866] **Revocation of measures to suspend enforcement of detention**
(1) A measure serving to suspend enforcement of detention (section 116) shall be revoked if
1. the warrant of arrest has been revoked or
2. remand detention or imprisonment or a measure of reform and prevention involving deprivation of liberty is being enforced.
(2) A security not yet forfeited shall be discharged under the same conditions.
(3) Anyone who has provided security for the accused may bring about its discharge either by causing the accused to appear within a time limit to be set by the court or by reporting facts which warrant a suspicion that the accused intends to flee and doing so early enough to allow for the accused to be arrested.

Section 124 CPC[867] **Forfeiture of security paid**
(1) A security not yet discharged shall be forfeited to the Treasury if the accused evades the investigation or the commencement of imprisonment or the measure of reform and prevention involving deprivation of liberty.
(2) Prior to the decision, the accused as well as the person who has provided security for the accused shall be requested to make a statement. They shall be entitled only to lodge an immediate complaint against the decision. Before a decision is given concerning the complaint, these persons and the public prosecution office shall be given the opportunity to support their applications orally and to discuss the investigations which were made.

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[866] **§ 123 Aufhebung der Vollzugsaussetzung dienender Maßnahmen**
(1) Eine Maßnahme, die der Aussetzung des Haftvollzugs dient (§ 116), ist aufzuheben, wenn
1.der Haftbefehl aufgehoben wird oder
2.die Untersuchungshaft oder die erkannte Freiheitsstrafe oder freiheitsentziehende Maßregel der Besserung und Sicherung vollzogen wird.
(2) Unter denselben Voraussetzungen wird eine noch nicht verfallene Sicherheit frei.
(3) Wer für den Beschuldigten Sicherheit geleistet hat, kann deren Freigabe dadurch erlangen, daß er entweder binnen einer vom Gericht zu bestimmenden Frist die Gestellung des Beschuldigten bewirkt oder die Tatsachen, die den Verdacht einer vom Beschuldigten beabsichtigten Flucht begründen, so rechtzeitig mitteilt, daß der Beschuldigte verhaftet werden kann.

[867] **§ 124 Verfall der geleisteten Sicherheit**
(1) Eine noch nicht frei gewordene Sicherheit verfällt der Staatskasse, wenn der Beschuldigte sich der Untersuchung oder dem Antritt der erkannten Freiheitsstrafe oder freiheitsentziehenden Maßregel der Besserung und Sicherung entzieht.
(2) Vor der Entscheidung sind der Beschuldigte sowie derjenige, welcher für den Beschuldigten Sicherheit geleistet hat, zu einer Erklärung aufzufordern. Gegen die Entscheidung steht ihnen nur die sofortige Beschwerde zu. Vor der Entscheidung über die Beschwerde ist ihnen und der Staatsanwaltschaft Gelegenheit zur mündlichen Begründung ihrer Anträge sowie zur Erörterung über durchgeführte Ermittlungen zu geben.
(3) Die den Verfall aussprechende Entscheidung hat gegen denjenigen, welcher für den Beschuldigten Sicherheit geleistet hat, die Wirkungen eines von dem Zivilrichter erlassenen, für vorläufig vollstreckbar erklärten Endurteils und nach Ablauf der Beschwerdefrist die Wirkungen eines rechtskräftigen Zivilendurteils.

(3) In respect of the person who has provided security for the accused, the decision declaring forfeiture shall have the effect of a final judgment passed by a civil court judge and declared provisionally enforceable. After expiry of the time limit for lodging a complaint, the decision shall take binding effect as a final civil judgment.

Section 125 CPC[868] **Competence for issuance of warrant of arrest**
(1) Prior to the preferment of public charges, it shall be for the judge at the local court within whose district venue is vested or where the accused is residing to issue the warrant of arrest upon application by the public prosecution office or, if a public prosecutor cannot be reached and there are exigent circumstances, ex officio.
(2) After public charges have been preferred, the warrant of arrest shall be issued by the court seized of the case and, if an appeal on points of law has been filed, by the court whose judgment is being contested. In urgent cases, the presiding judge may also issue the warrant of arrest.

Provisions of the Main Hearing (*CPC-Hauptverfahren*) **16**
Following sections are not touched by Art. 33 para. 1 RG 2017/1939
Section 230 para. 2 CPC
Section 236 CPC
Section 183 para. 2 Court Constitutions Act
Section 457 para. 2 s. 1 CPC
Section 10 EUStAG clarifies that the EPPO is not a "*Vollstreckungsbehörde*".[869]

[868] **§ 125 Zuständigkeit für den Erlass des Haftbefehls**
(1) Vor Erhebung der öffentlichen Klage erläßt der Richter bei dem Amtsgericht, in dessen Bezirk ein Gerichtsstand begründet ist oder der Beschuldigte sich aufhält, auf Antrag der Staatsanwaltschaft oder, wenn ein Staatsanwalt nicht erreichbar und Gefahr im Verzug ist, von Amts wegen den Haftbefehl.
(2) Nach Erhebung der öffentlichen Klage erläßt den Haftbefehl das Gericht, das mit der Sache befaßt ist, und, wenn Revision eingelegt ist, das Gericht, dessen Urteil angefochten ist. In dringenden Fällen kann auch der Vorsitzende den Haftbefehl erlassen.

[869] These information stem from the German RefE for the EuStAG: "[...] (vergleiche §§ 230 Absatz 2, 236 CPC, § 183 Satz 2 GVG) bleiben von Artikel 33 Absatz 1 EUStA-Verordnung ohnehin unberührt, da diese Vorschrift nur Anordnungen beziehungsweise Anträge eines Delegierten Europäischen Staatsanwalts betreffen. Der Vollstreckungshaftbefehl gemäß § 457 Absatz 2 Satz 1 CPC ist ebenfalls nicht von Artikel 33 EUStA-Verordnung betroffen, da die Europäische Staatsanwaltschaft auch nicht Vollstreckungsbehörde ist (§ 10 Absatz 1 EUStAG-E)"

c) Para 2: Cross-border surrender

17 Issuing a European Arrest Warrant
- outgoing EAWs and extradition requests based on the EAW.

Nota bene: Incoming EAWs from other Member States are not subject to Article 33 para. 2 of the EUStA Regulation
Competent body: *Generalstaatsanwaltschaft*.[870]

18 German EDP: in case of issuing a pre-trial detention warrant in conncetion with Art. 33 para. 1 EPPO Regulation (C-508/18 und C-82/19 PPU, OG und PI, ECLI:EU: C:2019:456 has no prevailing effect on this situation).[871]

19 Cf. in addition: 6 para. 2 EUStAG: clarification of the independence of the EPPO

20 **Competent authorities of the Member States**
[List of the States which are not identical with the issuing, handling MS + provisions for the EAW (European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA)]

Section 6 EUStAG Applicability of the Law on International Mutual Legal Assistance in Criminal Matters
(1)[872] The Act on International Mutual Legal Assistance in Criminal Matters shall only apply to cross-border investigations in accordance with Article 31 of Regulation (EU)

[870] This form can be used "Muster Nr. 3 Ersuchen um Vernehmung eines Beschuldigte (zu Nr. 117)".
[871] The legal opinion of the German Federal Ministry of Justice (EUStA-Referentenentwurf) was that the EDP can issue an EAW." Dem steht auch das Urteil des Europäischen Gerichtshofs in der verbundenen Rechtssache C-508/18 und C-82/19 *PPU, OG und PI*, ECLI:EU:C:2019:456, nicht entgegen, da die EUStA den vom EuGH gestellten Anforderungen in Bezug auf die Unabhängigkeit der Staatsanwaltschaft (Rn. 74 des Urteils) gerecht wird"
[872] § 6 Anwendbarkeit des Gesetzes über die internationale Rechtshilfe in Strafsachen
(1) Das Gesetz über die internationale Rechtshilfe in Strafsachen ist auf grenzüberschreitende Ermittlungen gemäß Artikel 31 der Verordnung (EU) 2017/1939 nur bei Maßnahmen nach Artikel 31 Absatz 6 dieser Verordnung anzuwenden. Auf die Stellung von Rechtshilfeersuchen durch einen Delegierten Europäischen Staatsanwalt nach Maßgabe des Artikels 31 Absatz 6 der Verordnung (EU) 2017/1939 ist § 74 Absatz 1 und 2 des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Sofern die ersuchte ausländische Stelle die Rechtshilfe an Bedingungen knüpft oder von Zusicherungen abhängig macht, entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind. Satz 2 gilt entsprechend für Entscheidungen eines Delegierten Europäischen Staatsanwalts über eingehende Ersuchen eines Delegierten Europäischen Staatsanwalts eines anderen teilnehmenden Mitgliedstaates gemäß Artikel 31 Absatz 6 der Verordnung (EU) 2017/1939, sofern die Europäische Staatsanwaltschaft für die Leistung der Rechtshilfe zuständig ist.
(2) Auf den Erlass eines Europäischen Haftbefehls durch einen Delegierten Europäischen Staatsanwalt gemäß Artikel 33 Absatz 2 oder Artikel 105 Absatz 3 der Verordnung (EU) 2017/1939 sind § 74 Absatz 1 und 2 und § 83i des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Über den Erlass des Europäischen Haftbefehls entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt. Sofern der betroffene andere Mitgliedstaat die Überstellung der verfolgten Person an Bedingungen knüpft oder von

2017/1939 in the case of measures under Article 31 paragraph 6 of this Regulation. Section 74 paras. 1 and 2 of the Act on International Mutual Legal Assistance in Criminal Matters do not apply to the submission of requests for mutual assistance by a European Delegated Public Prosecutor in accordance with Article 31 para. 6 of Regulation (EU) 2017/1939. If the requested foreign authority makes mutual assistance subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor entrusted with the investigation decides on the acceptance of the conditions or the issue of assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or the Compliance with the assurances are responsible. Sentence 2 applies accordingly to decisions by a European Delegated Public Prosecutor on incoming requests from a European Delegated Public Prosecutor from another participating Member State in accordance with Article 31 para. 6 of Regulation (EU) 2017/1939, provided that the European Public Prosecutor's Office is responsible for providing mutual legal assistance.
(2) Article 74 paras. 1 and 2 and Article 83i of the Act on International Mutual Legal Assistance in Criminal Matters apply to the issue of a European arrest warrant by a European Delegated Public Prosecutor in accordance with Article 33 para. 2 or Article 105 para. 3 of Regulation (EU) 2017/1939 do not apply. The European Delegated Public Prosecutor in charge of the investigation decides on the issue of the European arrest warrant. If the other Member State concerned makes the transfer of the persecuted person subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor will decide whether to accept the conditions or to give assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or compliance of the assurances are responsible.

Zusicherungen abhängig macht, entscheidet der Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind.
(3) Soweit Delegierte Europäische Staatsanwälte gemäß Artikel 104 Absatz 4 der Verordnung (EU) 2017/1939 *befugt* sind, nach Maßgabe einer völkerrechtlichen Vereinbarung gemäß § 1 Absatz 3 des Gesetzes über die internationale Rechtshilfe in Strafsachen, die unmittelbar anwendbares innerstaatliches Recht geworden ist, Ersuchen um sonstige Rechtshilfe an eine ausländische Stelle zu richten, ist § 74 Absatz 1 und 2 des Gesetzes über die internationale Rechtshilfe in Strafsachen nicht anzuwenden. Sofern die ersuchte ausländische Stelle die Rechtshilfe an Bedingungen knüpft oder von Zusicherungen abhängig macht, entscheidet der mit den Ermittlungen betraute Delegierte Europäische Staatsanwalt über die Annahme der Bedingungen oder die Abgabe von Zusicherungen im Einvernehmen mit den deutschen Justizbehörden, die für die Erfüllung der Bedingungen oder die Einhaltung der Zusicherungen zuständig sind. Für eingehende Rechtshilfeersuchen einer ausländischen Stelle, über die ein Delegierter Europäischer Staatsanwalt nach Artikel 104 Absatz 6 der Verordnung (EU) 2017/1939 zu entscheiden hat, gilt Satz 1 entsprechend.
(4) Absatz 3 gilt entsprechend für die Stellung von Rechtshilfeersuchen nach Maßgabe des Artikels 105 Absatz 3 der Verordnung (EU) 2017/1939 an die Behörden eines nicht an der Errichtung der Europäischen Staatsanwaltschaft beteiligten Mitgliedstaates der Europäischen Union sowie für die Entscheidung über eingehende Rechtshilfeersuchen, sofern das Ersuchen auf die Übermittlung von Auskünften aus Akten der Europäischen Staatsanwaltschaft oder die Herausgabe von Gegenständen gerichtet ist, über die die Europäische Staatsanwaltschaft im Rahmen eines von ihr geführten Ermittlungsverfahrens verfügt.

(3) To the extent that European Delegated Public Prosecutors are authorized in accordance with Article 104 para. 4 of Regulation (EU) 2017/1939, in accordance with an international agreement pursuant to Section 1 para. 3 of the Act on International Mutual Assistance in Criminal Matters, which has become directly applicable domestic law, Requests for other legal assistance to be directed to a foreign body do not apply to Section 74 paras. 1 and 2 of the Act on International Mutual Legal Assistance in Criminal Matters. If the requested foreign body makes mutual assistance subject to conditions or makes it dependent on assurances, the European Delegated Public Prosecutor entrusted with the investigation decides on the acceptance of the conditions or the issue of assurances in agreement with the German judicial authorities that are necessary for the fulfillment of the conditions or the Compliance with the assurances are responsible. Sentence 1 applies accordingly to incoming requests for mutual legal assistance from a foreign body on which a European Delegated Public Prosecutor has to decide in accordance with Article 104 paragraph 6 of Regulation (EU) 2017/1939.
(4) Paragraph 3 shall apply mutatis mutandis to the submission of requests for mutual assistance in accordance with Article 105 para. 3 of Regulation (EU) 2017/1939 to the authorities of a Member State of the European Union not involved in the establishment of the European Public Prosecutor's Office, as well as to the decision on incoming requests for mutual assistance if the request is aimed at the transmission of information from files of the European Public Prosecutor's Office or the surrender of objects which the European Public Prosecutor's Office has at its disposal in the course of an investigation it is conducting.

d) Fraud-related peculiarities

21 Fraud behaviour i.e. conduct that constitutes fraud under a national provision may be stopped – in order to prevent further harm to the legally protected good (*Rechtsgüter*) by various means under national law.[873]

e) Relevant example and precedent for para. 1, 2

⚖
- OLG München, Decision of 9 May 2022 – 2 Ws 215/22 H, ECLI:DE:OLGMUEN:2022:0509.2WS215.22H.00 – EPPO case, pre-trial detention, §§ 121, 122 SPO, Special review of detention by higher regional court, continuation of the detention, no exemption.
- LG Bonn, 01.06.2021 – 62 KLs – 213 Js 32/20 – 1/20.

[873] Morgenstern 2018, pp. 459 ff.; Schlothauer et al. 2016, p. 328 margin number 678 with a reference to Section 132a German CPC (ban from profession) in order to stop fraud behaviour immediately.

5. Provisions on defence relating to EPPO actions in Germany

a) Defence counsels 569
b) Defence in the investigation phase 570
aa. Art. 26, 27 EPPO Regulation 570
bb. Defence by virtue of s. 140 para. 1 n°1 CPC in combination with s. 141 para. 2 n°3 (*notwendige Verteidigung*, BGH Beschl. 5. April 2022 – 3 StR 16/22).....576
cc. The Input from the Regulation 2017/1939 ...581
(1) Access to national case file 581
(a) Section 32f CPC 583
(b) Section 147 CPC 585
(2) Access to EPPO case file 596
dd. Defence while investigation is under-way, Art. 28–33 EPPO Regulation 596
(1) In cases involving investigative measures of Art. 30 EPPO-Regulation 599
(2) Defence in cross-border cases.....603
(3) Defence in case of arrest and pre-trial detention, Art. 33 EPPO Regulation 603
c) Request for a discontinuation order pursuant to Article 39 para. 4 of the EPPO Regulation in conjunction with Section 171 para. 1 CPC..... 608
d) Defence in indictment phase and the trial phase... 609
aa. Structure of the EPPO indictment by German EDPs..... 610
bb. Determining the jurisdiction via the gravitiy of the PIF offence 613
(1) Specialised Economic Chambers of a County Court (*Landgericht*)... 616
(2) Challenging the competence of the court 618
cc. Other defence strategies and relevant provisions 618
(1) Review of prosecutorial actions 619
(2) Interim and procedural complaint remedies ... 620
(a) In the investigation phase 620
(b) In and after the trial phase..... 623
e) After the trial 623

1 **Every suspect or accused** has the right to defence and proper access on information about his or her rights.[874] Nowadays a lot of information can be found on the web, but defence against the EPPO, which has been described as a "*monster*" with 22 heads[875] in the investigation phase is often a different level and still partly a "**wild western territory**" mainly because the EPPO holds the option to choose the **forum state** partly in its hands (see above → Art. 25, 26), whereby **Art. 28**, **30**, **36**, **41**,[876] **42 and recital 5**, **18 of the Regulation** play a particular important role in this phase – especially if it comes to (problems with) **fundamental rights**[877], **transnational** cases, which are surrounded by **problems** like language barriers, a non-existent, but often requested European defence chamber *de lege ferenda* or organisation funded by the EU in order to create **equality of arms** (*Waffengleichheit*); despite the critique, which will surge up till a possible revision of the **Regulation in 2026 and 2028**[878], lawyers, judges, EDPs and more important suspects and accused have to respect, interpret, enforce, apply or disapply it. The accused, according to **German legal doctrine**, is the person who is specifically the focus of the investigative authorities, where the suspicion has become concrete, and the intention of the prosecuting authority has clearly emerged.[879] A recently discussed problem is whether unlawfully gathered evidence by OLAF is admissible in EPPO proceedings and how it can be legally challenged with (national) remedies.[880]

2 But not only the defence is bound by EU-law, judges are bound by ECJ decisions and EU-law interpretation; thus German courts, such as criminal chambers at a Landgericht

[874] See → ECJ, "**Meine Rechte während des Ermittlungsverfahrens"** https://shorturl.at/eyKHD. Accessed 31 May 2025; see Yolacan 2023 in-depth, Prozesskostenhilfe, see lawyer, pp. 216 et seq. pp. 234, translations, p. 270.
[875] Baab 2021, p. 215 et seq.; Stewart 2024, p. 1 taking the example of the "Goliath" EPPO Operation by the Regional Office in Hamburg to show effect of harmonisation; Seiler 2021, pp. 589 et seq., 596 and Seiler 2021 European Papers, Vol. 6, 2021, No 1, pp. 335–356; mild in his tone Krauß 2022, § 142b GVG mn. 1–4, 5, 6.
[876] According to Art. 41 para. 2, there is the right to interpretation and translation, the right to information and access to files, the right to access to a lawyer and the right to communicate with third parties and to inform third parties in the event of detention, the right to silence and the presumption of innocence, the right to legal aid. Seiler 2021, p. 341, 589 puts emphasis on the fact that the Directives often not refer to transnational situations, are not harmonized in the same way in the member states and do not constitute a "real european/europeanized protection level" for any suspect or accused. See Vervaele et al. 2023, pp. 78 et seq. stating that Art. 41 para. 3 was "implemented" quite well in the member states; see Jakobi & Theodorakakou 2025 citing Ligeti/Trautmann on a reform.
[877] See Seiler 2021, pp. 340 et seq. monographic on this subject. Seiler emphasises that when interpreting the scope and applicability of Article 41, it is important to take note of how Article 51 para. 1of the Charter is interpreted. It provides that these provisions are addressed to the institutions and bodies of the EU and to the Member States when implementing Union law. As the EPPO is a Union institution, the Charter applies to acts that it carries out itself, both at centralised and decentralised level, as well as to acts carried out by national authorities in the context of their investigations. However, it should be noted that this is not a uniform view, as many instructions are given in the course of investigations and there is much to suggest that Article 51 para. 1 sentences 1 and 2 of the Charter does not apply to purely national measures carried out on behalf of the Union, as this necessarily involves the implementation of Union law. See as well Brodowski 2021b, Art. 41 mn. 20 opting for full compliance and saying that "the additional limitations of the scope to situations when 'implementing Union law' (Art. 51 para. 1 sentence 1) is easily passed in view of the EPPO Regulation and the PIF Directive; more arguments can be found by Mitsilegas, Giuffrida (2018), in: LH Erkelens und A Meij (eds), p. 59; Wirth 2022, pp. 338 et seq.
[878] Esser 2024, p. 52 pointing promisingly at this fact.
[879] See BGHSt 38, 214 on the formal definition of the suspect, cf. S. 397 AO.
[880] Bovend'Eerdt and Graat 2023, pp. 533 et seq.

competent for PIF offences, are obligated to adhere to the ***Clifit*-criteria** if they act as courts of last resort in a case.[881] According to this test, defendants may claim that the national court should refer questions about the EPPO's powers, procedural rules, or potential breaches of EU law to the CJEU, particularly if such questions are novel or lack clear precedent e.g. if this might have resulted to a wrongful conviction.[882]

Art. 41 EPPO Regulation contains **three paragraphs**, conceptualising the protection of fundamental rights for EPPO proceedings. Acts of the EPPO – including those taken on behalf of the EPPO by national (investigative) authorities – are bound first and foremost to the Charter of Fundamental Rights, such as Art. 7 and 8 CFR, e.g. infringed if a house search is ordered. This automatically touches upon the field of application of the CFR. Whether the fundamental rights of the CFR are applicable under Art. 51 para. 1 sentence 1 alternative 2 CFR has been the topic of intense discussion in literature and judicature. It is always questionable if the fundamental rights of the CFR apply even if authors have elaborated a broad understanding of the applicability and scope of the Union's fundamental rights by the ECJ judges.[883] With Art. 41 para. 1 EPPO Reg. there remains no **3**

[881] Maher 2022, p. 271 interpreted that the ECJ established a new threshold, which is "to give reasons n the case of refusal to refer Union law question to the ECJ"; thus the national judges need to prove that they have assessed the clifit-criteria (thus law teachers need to really teach it). For the sake of consistency it can be said, that under Article 42 para. 2 EPPO Regulation, individuals subject to EPPO actions can challenge decisions before national courts, which may involve questions of EU law. If the interpretation of the EPPO Regulation is unclear or contested, the court may need to make a preliminary reference under Article 267 TFEU, unless an exception under CILFIT applies (see ECJ, Case 283/81, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, Judgment of the Court of 6 October 1982, mn. 9; Gourdet 2021, p. 117 "no legal remedy for the claimant"), but now see Maher 2022, 269 et seq. reffering e.g. to the most prominent cases an "*acte clair/ éclairé*". The article show that the ECJ confirmed the test in ECJ, Case C-561/19 *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi*, ECLI:EU:C:2021:799 (CIM).

[882] And if a court should fail to refer a relevant question and dismisses the criteria, the defendant may argue that this constitutes a failure to ensure the uniform application of EU law, potentially giving rise to "claims/remedies" under judge's invented *Köbler liability mechanism*, which was established by ECJ Case C-224/01, *Gerhard Köbler v Republik Österreich*, Judgment of the Court of 30 September 200, mn. 46, 49 (ECtHR reference, Art. 41 ECHR), 51 and see Article 258 TFEU for actions by the European Commission; further see Varga 2022, 2. III. C; only scratching the surface, too short here Gourdet 2021, pp. 117–118 fn. 386.

[883] See Seiler 2021, pp. 341 et seq. is the only author to put the "finger in the wound" and say why the Union legislator was keen to prescribe the scope of application of Union law 'The interest in this reference to Union law is that the defence can rely on its provisions before the national courts, which are obliged to exclude the application of national law which they consider to be incompatible with the provisions of the Charter or the directives. The Court of Justice of the European Union (CJEU), before which a preliminary The Court of Justice of the European Union (CJEU) may therefore have to interpret the provisions of EU law in order to inform the national judge of this possible incompatibility.'" The 'reluctance to deal with EU fundamental rights standards', which was already analysed 10-15 years ago, seems to continue, see Berlth 2012, p. 230, 231; on this matter recently and see Gourdet 2021, pp. 88, 151 et seq., 184 pointing at the fact some favour an all encompassing approach, e.g. if a national directive leaves an option for transposition to the member states, the national fundamental rights shall apply and p. 283 in *Åkerberg Fransson* the GA Cruz Villalón denied "application of Union law", while the ECJ confirmed it "since criminal proceedings for tax evasion based on incorrect VAT information are to be regarded as the implementation of Directive 2006/112 and Article 325 TFEU" and therefore constitute application of Union law. On p. 319 et seq. he cites cases, in which the scope of the application of Union law was denied and limited. Gourdet, p. 337 and 377 appears consternated and states that there is no generally applicable formula that can be used to concretise the concept of application and execution of Union law within the meaning of Art. 51 para. 1 sentence 1

doubt that the CFR applies to the acts of the EPPO. Interestingly, Art. 41 para. 3 EPPO Reg. brings the national perspective into play, ordering that suspects, accused and third persons shall have their rights from the applicable national law as well.

4 Art. 5 para. 3 sentence 2 EPPO Reg. rules that if a matter is regulated by the Regulation, this shall be applied before the national rules for the same matter – which is nothing short but a codification of the primacy of EU law. Although this is legitimate and in line with the primacy of EU law, a clarification lacks for cases, where the Union law only rules rights of suspects and accused to a limited degree, such as with the Directives mentioned in Art. 41 para. 2 EPPO Reg., harmonising procedural rights to a *minimum*. In practice, arguably, national procedural rights will be the common thread for the investigations of the EPPO.[884]

5 This topic triggers the discussion of the **double application** of fundamental rights guarantees (EU and national) and the existing judicature by the CJEU. Such can only be the case, when national authorities are implementing EU law according to Art. 51 para. 1 sentence 1 alternative 2 CFR (or apply to them directly acc. to alternative 1, if they are considered part of the EPPO as an EU institution). If the implementation of EU law is not concerned, only the national fundamental rights are relevant.[885] The parallel application of EU and national fundamental rights poses no problem for EPPO proceedings, insofar the criteria of the *Melloni* judicature of the CJEU is not activated, i.e. the primacy, unity and effectiveness of EU are not compromised by the application of national standards.[886] From the point of view of German courts – especially the Federal Constitutional Court (*BVerfG*) – the domestic law and national fundamental rights remain the primary standard of review (for the *BVerfG*) even within the scope of Union law and the activated application of the CFR as long as a situation is not completely determined (fully harmonised) by Union law, the national standards do not fall below the standard

CFR. Gourdet, p. 381 emphasises with the literature opinion that a 'comprehensive blocking effect of the Union's fundamental rights, from a national perspective, would shorten the legal protection of the individual'. Leloup and Spieker 2024, pp. analysing (new) situations and solutions (for the case), in which national judges and courts needs to unapply national law, which is in conflict (with the primacy) of EU law e.g. Art. 325 TFEU, pp. 913–958 and see Bonelli 2024, p. 1045 focusing on the fundamental rights after the ECJ *Lin*-decision in 2023; Wirth 2022, p. 339.

[884] Wahl 2020, p. 95.

[885] Gourdet 2021, pp. 386 et seq. According to him (p. 396 et seq., 406, 421 "*Doppelgeltung*") this situation can lead to a conflict and raise the question of whether the primacy of application (*effet utile*) of EU law speaks in favour of the decision that a measure emanating from an EU IBOA is to be regarded as the 'transposition, implementation' of Union law in the light of Art. 51 para1 CFR and thus activates the fundamental rights regime of the CFR. Gourdet interprets the *Fransson* case as a decision of the ECJ that decided in favour of the parallel application of both – national and EU – fundamental rights regulations. In its decisions *Recht auf Vergessenwerden* 1 and 2, the German Federal Constitutional Court aligned itself with the opinion of the ECJ and recognised the possibility of dual applicability.

[886] CJEU, Judgment of 26 February 2013, case C-399/11, *Stefano Melloni v Ministerio Fiscal*, ECLI:EU:C:2013:107, mn. 60.

of the CFR and there are no grounds to believe, the situation warrants the primary application of the CFR.[887] An exception to this rule by the *BVerfG* has to be considered, when there are specific and sufficient indications that the level of fundamental rights protection required under EU law might not be met.[888] The *BVerfG* believes, the German fundamental rights generally ensure the level of protection required under the CFR as interpreted by the CJEU.[889]

The defence in normal investigations, i.e. non-primarly PIF cases is well researched and can be deduced from standard analyses and books in this area.[890] A classical first action of a defence lawyer will be to **object pre-emptively to the use of evidence by invoking Article 257** of the CPC and to announce that every evidentiary measure will be thoroughly reviewed.[891] The first analysis of PIF Defence in Germany was presented in a special handbook by *Oehmichen*.[892] The **right to an effective defence** is particularly important as an expression of the right to a fair trial (Article 2 para. 1 in conjunction with Article 20 para. 3 of the Basic Law). **6**

The suspect or accused may as well contact the **Federal Commissioner for Data Protection and Freedom of Information** if the national authorities working on behalf of the EPPO infringe the data protection rights of the individual.[893] In case that the EPPO infringes certain rights of the suspect a **complaint to the superiors of the EDPs** is possible. The following pages focus on the defence instead of the general perspective of violations of the basic rights of the individual. **7**

In principle, Union law takes precedence, meaning that **conflicting national law** must not be applied – except the Union legislator provided room for national rules and considerations. This becomes relevant in the EPPO investigation procedure since the Regulation is heavily built on the criminal law systems of the Member States that are by no means fully harmonised. If the EPPO implements Union law in accordance with Art. 51 para. 1 sentence 1 of the Charter of Fundamental Rights – which is generally disputed, especially for acts during national criminal proceedings – prohibitions on the utilisation of evidence may also play a role.[894] These serve to protect the accused, although in German criminal procedure law they must always be weighed against the 'functionality of the administration of criminal justice'. **8**

[887] BVerfGE 152, 152 (169 et seq.) – Recht auf Vergessenwerden I / right to be forgotten I.
[888] BVerfGE 152, 152 (179) – Recht auf Vergessenwerden I / right to be forgotten I.
[889] BVerfGE 152, 152 (170) – Recht auf Vergessenwerden I / right to be forgotten I.
[890] See Bosbach et al. 2022.
[891] BGH 5 StR 197/20, mn. 21; Haller and Conzen 2022, mn. 596.
[892] Oehmichen 2022.
[893] See https://www.bfdi.bund.de/DE/Meta/Impressum/impressum_node.html. Accessed 31 December 2024.
[894] Wirth 2022, pp. 342 citing "Esser, in HB EUStA, § 11 Rn. 121 ff." opting for the applicability of EU law and interpreting any EPPO action as an execution of EU law, which stipulates and activates the applicability of the

9 A distinction must therefore be made between national and EU **bans on the use of evidence**, with the ECJ deciding on the latter and the regional court in white-collar criminal cases or the Federal Court of Justice in criminal cases on appeal deciding on the former.[895] It may be questionable here how far the **scope of application of the Union's fundamental rights** extends and to what extent investigative measures interfere with fundamental rights (are EU fundamental rights of the Charter affected or national fundamental rights of the Constitution?).[896]

10 The situation is particularly problematic when national procedural rights go beyond the standards guaranteed by EU fundamental rights. *Peters* emphasized this through using the example of VAT fraud and explained that in the case of Europeanised criminal offences, the European standard, i.e. the Union's fundamental rights, may apply.[897] This depends, for example, on the extent to which the national criminal law is 'Europeanised'.

11 In a 2019 preliminary ruling, the CJEU ruled that **Art. 325 para. 1 TFEU**[898] and Art. 1 para. 1 b and Art. 2 para. 1 do not preclude a prohibition on the use of evidence under national criminal procedural law.[899] In this case, telecommunications surveillance, which is an infringement of Art. 7 CFR and can only be accepted under **Art. 52 para. 2 CFR** if it is proportionate, had been authorised by a (wrong) court i.e. one without jurisdiction, which resulted in a ban on the use of evidence. If interpreted in this case, the effective enforcement of EU law had to take a back seat.[900] This speaks in favour of protecting the rights of the accused in such clear-cut cases of a court without jurisdiction.

CFR rights. He points out that national fundamental rights shall still apply in any assessement of national courts, which concentrates on the proportionality of a measure.

[895] Peters 2021, mn. 6.266.

[896] Ibid, mn. 6.267; see Stelkens 2022 https://www.saarheim.de/Anmerkungen/deutsche-und-europaeische-grundrechte.htm. Accessed 31 December 2024.

[897] Ibid, mn. 6.266.

[898] See as well on the relevance of Art. 325 TFEU for fighting corruption ECJ, Jointed Cases C-357/19, C-379/19, C-547/19, C-811/19 und C-840/19, *SC Euro Box Promotion SRL and others*, ECLI:EU:C:2021:1034.

[899] ECJ, C-310/16, *Dzivev et al*., Judgment of 17. January 2019; see Böse ZJS 2019, 476–480.

[900] Böse ZJS 2019, p. 478 discussing the efficiency principle in Art. 325 TFEU by citing various cases, such as ECJ *Kolev*, where it becomes claear that the main question always is, whether a national procedural rule or a substantive offence hinders the efficient protection of the EU's financial interests. The reason for that is that the EU would de facto not function if if had no money. The Member States are obliged to protect crimes affecting the financial interests or being detrimental to the Union budget. This can lead to such a situation that national courts, thus judges need to refrain from applying such a national provision, which contradicts this (Union) aim, cf. the Taricco-saga. At the same time, national judges, which apply Union law must ensure that the suspect is protected by its fundamental rights during an investigation measure etc. The ultimate restrictions to this mechanism are the rule of law principle, the fundamental rights of suspects and accused's and the legality principle. Böse agrees with the criticism of former Advocate General Bobek, who once said that in favour of the rights of the defendant, it would be better to leave the decision on applicability to the national court, since 'the selective suspension of national procedural rules in accordance with the principle of effectiveness would be associated with considerable uncertainties due to the uncertainties of the Union law requirements ('systemic risk") and their determination, so that the criminal proceedings would be linked, which would be tantamount to a "lottery". This is in accordance with Art. 2 TEU.

The literature argues that judges and public prosecutors should always bear the fundamental rights of the Union in mind when examining harmonised national EU law or law originating from regulations in order to ensure the **efficient recovery** of Union finances[901] and, on the other hand, to **protect the relevant rights of the defendant**. **12**

This applies and is established case-law already, for example, if criminal proceedings initiated for VAT offences constitute an implementation of Union law within the meaning of Art. 51 para. 1 of the Charter, which has existed since the *Franson* case law of the ECJ.[902] *Peters* now understandably deduces from this, which is important for this defence lawyer, that 'contrary to the previous tendencies in case law, which assume a merely reduced value of evidence, directly applicable bans on the use of evidence can now also be a consequence in national law'[903]. **13**

a) Defence counsels

An online search for particular law firms (co-)specialised in PIF offences proves to be of little success. This may be due to the fact the EPPO is still a newly operating authority but perhaps also because there is no official specialization for the field of European criminal law in Germany, which lawyers may attain under certain circumstances like absolving a field related course of the **German Federal Bar Association** (*BRAK*).[904] At the moment defence in Crime offences seems to be a "second leg" for economic lawyers and smaller, specialized law(yer) boutiques ("*zweites Standbein für Wirtschaftskanzleien und Boutiquen*"). Main cities of bigger law firms are Hamburg, Berlin, Frankfurt a.M., Munich and Cologne. **14**

At this time, therefore, it is up to the suspect to find a defence lawyer experienced in the area of PIF offences at the first attempt. The lawyers itself – especially in the area of tax fraud cases take a look into Advice Books for Lawyers and the official manuals inform about the rights of the defence referring to ss. 137 et seq. CPC (see → **no. 32–35 AStBV**). There are numerous books and guides in this area.[905] **15**

[901] Emphasized by ECJ, C-68/88, *Greek Maize*, Judgment of 21 September, 1989 Mn. 29.
[902] The ECJ C-310/16, *Dzivev et al*., Judgment of 17. January 2019 itself cites "to that effect, judgments of 5 December 2017, M.A.S. and M.B., C-42/17, EU:C:2017:936', paragraph 52, of 5 June 2018, Kolev and Others, C-612/15, EU:C:2018:392', paragraphs 68 and 71, and of 20 March 2018, Di Puma and Zecca, C-596/16 and C-597/16, EU:C:2018:192', paragraph 31 and the case-law cited therein" to express that this is the case even for the investigation phase (any investigation into VAT offences to the detriment of the Union budget).
[903] Drawing this conclusion Peters 2021, mn. 6.270.
[904] See Duesberg 2022, p. 599 proposing to introduce such a specialization in European criminal law. In Frankfurt, Colone, Düsselforf and Munich some boutique have now specialized more on VAT fraud cases and thus EPPO cases, if they reach a certain threshold and include intracommunity sales of e.g. cars.
[905] See e.g. Habetha et al. 2018.

b) Defence in the investigation phase

aa. Art. 26, 27 EPPO Regulation

16 At this point interesting aspects relating to the defence[906] may be provisions that regulate legal assistance.

17 In the following the relevant provisions of the German Criminal Procedure Code (*Strafprozessordnung StPO*) are presented next to the new rules from the EPPO Act (*Europäische-Staatsanwaltschaft-Gesetz EUStAG*):

Section 3[907] **European Public Prosecutor's Office Act Applicability of provisions of the Code of Criminal Procedure on pre-trial proceedings**
(1) If the European Public Prosecutor's Office has jurisdiction pursuant to Articles 22 and 23 of Regulation (EU) 2017/1939 and has taken over the prosecution pursuant to Article 25 of that Regulation, Sections 153c, 160 para. 1 and 170 para. 2 sentence 1 of the Code of Criminal Procedure shall not apply. […]

Section 7[908] **Applicability of the Fiscal Code** [...]
(3) Section 397(1) of the Tax Code shall not apply to the decision of a Delegated European Public Prosecutor to initiate proceedings pursuant to Article 26 para. 1 of Regulation (EU) 2017/1939.

18 **Chapter 11 Defence**
Section 137 CPC[909] **Accused's right to assistance of defence counsel**
(1) The accused may avail himself of the assistance of defence counsel at any stage of the proceedings. No more than three defence counsel may be chosen.
(2) If the accused has a statutory representative, the latter may also engage defence counsel independently. Para. 1 sentence 2 shall apply accordingly.

[906] See Burhoff 2024.
[907] **§ 3 EUStAG** Anwendbarkeit von Vorschriften der Strafprozessordnung über das Ermittlungsverfahren
(1) Wenn die Europäische Staatsanwaltschaft nach den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat, sind die §§ 153c, 160 Absatz 1 und § 170 Absatz 2 Satz 1 der Strafprozessordnung nicht anzuwenden. […]
[908] **§ 7 EUStAG** Anwendbarkeit der Abgabenordnung [...]
(3) § 397 Absatz 1 der Abgabenordnung ist nicht anzuwenden auf die Entscheidung eines Delegierten Europäischen Staatsanwalts, ein Verfahren gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 einzuleiten.
[909] **Elfter Abschnitt**
Verteidigung
§ 137 StPO Recht des Beschuldigten auf Hinzuziehung eines Verteidigers
(1) Der Beschuldigte kann sich in jeder Lage des Verfahrens des Beistandes eines Verteidigers bedienen. Die Zahl der gewählten Verteidiger darf drei nicht übersteigen.
(2) Hat der Beschuldigte einen gesetzlichen Vertreter, so kann auch dieser selbständig einen Verteidiger wählen. Absatz 1 Satz 2 gilt entsprechend.

Section 138 CPC[910] **Own choice of defence counsel**
(1) Lawyers (*Rechtsanwälte*) and professors of law at German institutions of higher education as defined in the Framework Act for Higher Education (Hochschulrahmengesetz) who are qualified to hold judicial office may be engaged as defence counsel.
(2) Other persons may be engaged only with the approval of the court. In cases where the assistance of defence counsel is mandatory and the person chosen is not amongst the persons who may be appointed as defence counsel, such person may additionally be admitted as counsel of the accused's own choice only together with one who may be so appointed.
(3) If witnesses, private prosecutors, private accessory prosecutors, persons entitled to private accessory prosecution and aggrieved persons can avail themselves of the assistance of a lawyer or representation by a lawyer, they may, in accordance with para. 1 and para. 2 sentence 1, also choose the other persons designated therein.

Section 138a CPC Exclusion of defence counsel
(1)[911] Defence counsel shall be excluded from participating in proceedings if he is strongly suspected or suspected to a degree justifying the opening of the main proceedings

[910] **§ 138 StPO** Wahlverteidiger
(1) Zu Verteidigern können Rechtsanwälte sowie die Rechtslehrer an deutschen Hochschulen im Sinne des Hochschulrahmengesetzes mit Befähigung zum Richteramt gewählt werden.
(2) Andere Personen können nur mit Genehmigung des Gerichts gewählt werden. Gehört die gewählte Person im Fall der notwendigen Verteidigung nicht zu den Personen, die zu Verteidigern bestellt werden dürfen, kann sie zudem nur in Gemeinschaft mit einer solchen als Wahlverteidiger zugelassen werden.
(3) Können sich Zeugen, Privatkläger, Nebenkläger, Nebenklagebefugte und Verletzte eines Rechtsanwalts als Beistand bedienen oder sich durch einen solchen vertreten lassen, können sie nach Maßgabe der Absätze 1 und 2 Satz 1 auch die übrigen dort genannten Personen wählen.
[911] **§ 138a StPO** Ausschließung des Verteidigers
(1) Ein Verteidiger ist von der Mitwirkung in einem Verfahren auszuschließen, wenn er dringend oder in einem die Eröffnung des Hauptverfahrens rechtfertigenden Grade verdächtig ist, daß er
1. an der Tat, die den Gegenstand der Untersuchung bildet, beteiligt ist,
2. den Verkehr mit dem nicht auf freiem Fuß befindlichen Beschuldigten dazu mißbraucht, Straftaten zu begehen oder die Sicherheit einer Vollzugsanstalt erheblich zu gefährden, oder
3. eine Handlung begangen hat, die für den Fall der Verurteilung des Beschuldigten Datenhehlerei, Begünstigung, Strafvereitelung oder Hehlerei wäre.
(2) Von der Mitwirkung in einem Verfahren, das eine Straftat nach § 129a, auch in Verbindung mit § 129b Abs. 1, des Strafgesetzbuches zum Gegenstand hat, ist ein Verteidiger auch auszuschließen, wenn bestimmte Tatsachen den Verdacht begründen, daß er eine der in Absatz 1 Nr. 1 und 2 bezeichneten Handlungen begangen hat oder begeht.
(3) Die Ausschließung ist aufzuheben,
1. sobald ihre Voraussetzungen nicht mehr vorliegen, jedoch nicht allein deshalb, weil der Beschuldigte auf freien Fuß gesetzt worden ist,
2. wenn der Verteidiger in einem wegen des Sachverhalts, der zur Ausschließung geführt hat, eröffneten Hauptverfahren freigesprochen oder wenn in einem Urteil des Ehren- oder Berufsgerichts eine schuldhafte Verletzung der Berufspflichten im Hinblick auf diesen Sachverhalt nicht festgestellt wird,

1. of being involved in the offence which constitutes the subject of investigation,
2. of abusing communications with an accused who is not at liberty for the purpose of committing offences or seriously endangering the security of a penal institution or
3. of having committed an act which, in the event of the accused's conviction, would constitute handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling stolen goods.

(2) Defence counsel shall also be excluded from participating in proceedings the subject of which is an offence under section 129a, also in conjunction with section 129b para. 1, of the Criminal Code if certain facts give rise to the suspicion that he has committed or is committing one of the acts designated in para. 1 nos. 1 and 2.

(3) The exclusion shall be revoked

1. as soon as its conditions are no longer met, not, however, for the sole reason that the accused has been released,
2. if defence counsel is acquitted in main proceedings which were opened on account of the facts leading to exclusion or if a culpable breach of professional duties in relation to these facts is not determined in a judgment handed down by a disciplinary court,
3. if, within one year after exclusion, main criminal proceedings or professional disciplinary proceedings have not been opened or a summary penalty order has not been made on the basis of the facts leading to exclusion.

An exclusion which is to be revoked in accordance with no. 3 may be maintained for a limited time, at the most, however, for one more year if the particular difficulty or the particular scope of the case or another important reason does not yet permit a decision to be taken on the opening of the main proceedings.

(4) As long as defence counsel is excluded, he may not defend the accused in other proceedings governed by statute either. He may not visit an accused who is not at liberty in relation to other matters.

(5) As long as defence counsel is excluded, he may not defend other accused persons in the same proceedings either or in other proceedings if such proceedings are based on an

3. wenn nicht spätestens ein Jahr nach der Ausschließung wegen des Sachverhalts, der zur Ausschließung geführt hat, das Hauptverfahren im Strafverfahren oder im ehren- oder berufsgerichtlichen Verfahren eröffnet oder ein Strafbefehl erlassen worden ist.

Eine Ausschließung, die nach Nummer 3 aufzuheben ist, kann befristet, längstens jedoch insgesamt für die Dauer eines weiteren Jahres, aufrechterhalten werden, wenn die besondere Schwierigkeit oder der besondere Umfang der Sache oder ein anderer wichtiger Grund die Entscheidung über die Eröffnung des Hauptverfahrens noch nicht zuläßt.

(4) Solange ein Verteidiger ausgeschlossen ist, kann er den Beschuldigten auch in anderen gesetzlich geordneten Verfahren nicht verteidigen. In sonstigen Angelegenheiten darf er den Beschuldigten, der sich nicht auf freiem Fuß befindet, nicht aufsuchen.

(5) Andere Beschuldigte kann ein Verteidiger, solange er ausgeschlossen ist, in demselben Verfahren nicht verteidigen, in anderen Verfahren dann nicht, wenn diese eine Straftat nach § 129a, auch in Verbindung mit § 129b Abs. 1, des Strafgesetzbuches zum Gegenstand haben und die Ausschließung in einem Verfahren erfolgt ist, das ebenfalls eine solche Straftat zum Gegenstand hat. Absatz 4 gilt entsprechend.

offence under section 129a, also in conjunction with section 129b para. 1, of the Criminal Code and where exclusion was ordered during proceedings which were also based on such an offence. Para. 4 shall apply accordingly.

Section 138b CPC[912] Exclusion of defence counsel in case of danger to national security

Defence counsel shall also be excluded from participating in proceedings the subject of which is one of the offences designated in section 74a para. 1 no. 3 and section 120 para. 1 no. 3 of the Courts Constitution Act or breach of the duties under section 138 of the Criminal Code concerning the offences of high treason or endangering external security under sections 94 to 96, 97a and 100 of the Criminal Code if, in view of certain facts, there is reason to believe that his participation would endanger the security of the Federal Republic of Germany. Section 138a para. 3 sentence 1 no. 1 shall apply accordingly.

Section 138c CPC Competence for decision on exclusion of defence counsel

(1)[913] Decisions under sections 138a and 138b shall be given by the higher regional court. If the Federal Public Prosecutor General is conducting the investigations in the

[912] **§ 138b StPO** Ausschließung bei Gefahr für die Sicherheit der Bundesrepublik Deutschland
Von der Mitwirkung in einem Verfahren, das eine der in § 74a Abs. 1 Nr. 3 und § 120 Abs. 1 Nr. 3 des Gerichtsverfassungsgesetzes genannten Straftaten oder die Nichterfüllung der Pflichten nach § 138 des Strafgesetzbuches hinsichtlich der Straftaten des Landesverrates oder einer Gefährdung der äußeren Sicherheit nach den §§ 94 bis 96, 97a und 100 des Strafgesetzbuches zum Gegenstand hat, ist ein Verteidiger auch dann auszuschließen, wenn auf Grund bestimmter Tatsachen die Annahme begründet ist, daß seine Mitwirkung eine Gefahr für die Sicherheit der Bundesrepublik Deutschland herbeiführen würde. § 138a Abs. 3 Satz 1 Nr. 1 gilt entsprechend.

[913] **§ 138c StPO** Zuständigkeit für die Ausschließungsentscheidung
(1) Die Entscheidungen nach den §§ 138a und 138b trifft das Oberlandesgericht. Werden im vorbereitenden Verfahren die Ermittlungen vom Generalbundesanwalt geführt oder ist das Verfahren vor dem Bundesgerichtshof anhängig, so entscheidet der Bundesgerichtshof. Ist das Verfahren vor einem Senat eines Oberlandesgerichtes oder des Bundesgerichtshofes anhängig, so entscheidet ein anderer Senat.
(2) Das nach Absatz 1 zuständige Gericht entscheidet nach Erhebung der öffentlichen Klage bis zum rechtskräftigen Abschluß des Verfahrens auf Vorlage des Gerichts, bei dem das Verfahren anhängig ist, sonst auf Antrag der Staatsanwaltschaft. Die Vorlage erfolgt auf Antrag der Staatsanwaltschaft oder von Amts wegen durch Vermittlung der Staatsanwaltschaft. Soll ein Verteidiger ausgeschlossen werden, der Mitglied einer Rechtsanwaltskammer ist, so ist eine Abschrift des Antrages der Staatsanwaltschaft nach Satz 1 oder die Vorlage des Gerichts dem Vorstand der zuständigen Rechtsanwaltskammer mitzuteilen. Dieser kann sich im Verfahren äußern.
(3) Das Gericht, bei dem das Verfahren anhängig ist, kann anordnen, daß die Rechte des Verteidigers aus den §§ 147 und 148 bis zur Entscheidung des nach Absatz 1 zuständigen Gerichts über die Ausschließung ruhen; es kann das Ruhen dieser Rechte auch für die in § 138a Abs. 4 und 5 bezeichneten Fälle anordnen. Vor Erhebung der öffentlichen Klage und nach rechtskräftigem Abschluß des Verfahrens trifft die Anordnung nach Satz 1 das Gericht, das über die Ausschließung des Verteidigers zu entscheiden hat. Die Anordnung ergeht durch unanfechtbaren Beschluß. Für die Dauer der Anordnung hat das Gericht zur Wahrnehmung der Rechte aus den §§ 147 und 148 einen anderen Verteidiger zu bestellen. § 142 Absatz 5 bis 7 gilt entsprechend.
(4) Legt das Gericht, bei dem das Verfahren anhängig ist, gemäß Absatz 2 während der Hauptverhandlung vor, so hat es zugleich mit der Vorlage die Hauptverhandlung bis zur Entscheidung durch das nach Absatz 1 zuständige Gericht zu unterbrechen oder auszusetzen. Die Hauptverhandlung kann bis zu dreißig Tagen unterbrochen werden.
(5) Scheidet der Verteidiger aus eigenem Entschluß oder auf Veranlassung des Beschuldigten von der Mitwirkung in einem Verfahren aus, nachdem gemäß Absatz 2 der Antrag auf Ausschließung gegen ihn gestellt oder die Sache

preparatory proceedings or if the proceedings are pending before the Federal Court of Justice, the Federal Court of Justice shall decide. If the proceedings are pending before a panel of the higher regional court or of the Federal Court of Justice, another panel shall decide.
(2) After public charges have been preferred and until final conclusion of the proceedings, the court which is competent pursuant to para. 1 shall decide, upon submission by the court before which the proceedings are pending and otherwise upon application by the public prosecution office. The submission shall be made upon application by the public prosecution office or ex officio through the intervention of the public prosecution office. If defence counsel who is a member of a bar association is to be excluded, a copy of the public prosecution office's application pursuant to sentence 1 or the submission by the court shall be communicated to the president of the competent bar association. The latter may make submissions in the proceedings.
(3) The court before which the proceedings are pending may order the rights of defence counsel under sections 147 and 148 to be suspended pending an order on exclusion by the court competent under para. 1; it may also order suspension of such rights with respect to the cases designated in section 138a paras. 4 and 5. Prior to the preferment of public charges and subsequent to final conclusion of the proceedings, the order under sentence 1 shall be given by the court which has to decide on exclusion of defence counsel. The order shall take the form of an incontestable decision. For the duration of the order, the court shall appoint another defence counsel to exercise the rights under sections 147 and 148. Section 142 shall apply accordingly.
(4) If the court before which the proceedings are pending makes a submission pursuant to para. 2 during the main hearing, it shall simultaneously interrupt or suspend the main hearing until a decision is given by the court competent pursuant to para. 1. The main hearing may be interrupted for up to 30 days.
(5) If defence counsel, on his own initiative or at the request of the accused, withdraws from participation in the proceedings after an application for his exclusion has been filed pursuant to para. 2 or the matter has been submitted to the court competent to decide, this court may continue the exclusion proceedings with the aim of determining whether the participation of defence counsel who has withdrawn is admissible in the proceedings. The determination of inadmissibility shall be equivalent to exclusion within the meaning of sections 138a, 138b and 138d.

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dem zur Entscheidung zuständigen Gericht vorgelegt worden ist, so kann dieses Gericht das Ausschließungsverfahren weiterführen mit dem Ziel der Feststellung, ob die Mitwirkung des ausgeschiedenen Verteidigers in dem Verfahren zulässig ist. Die Feststellung der Unzulässigkeit steht im Sinne der §§ 138a, 138b, 138d der Ausschließung gleich.
(6) Ist der Verteidiger von der Mitwirkung in dem Verfahren ausgeschlossen worden, so können ihm die durch die Aussetzung verursachten Kosten auferlegt werden. Die Entscheidung hierüber trifft das Gericht, bei dem das Verfahren anhängig ist.

(6) If defence counsel has been excluded from participating in the proceedings, costs caused by the suspension can be imposed on him. The decision on this shall be taken by the court before which the proceedings are pending.

Section 138d CPC[914] **Procedure for exclusion of defence counsel**

(1) A decision on the exclusion of defence counsel shall be given after an oral hearing.
(2) Defence counsel shall be summoned to the oral hearing. The time limit for the summons shall be one week; it may be reduced to three days. The public prosecution office, the accused and, in the cases under section 138c para. 2 sentence 3, the president of the bar association shall be notified of the date of the oral hearing.
(3) The oral hearing may be held without defence counsel if he has been properly summoned and has had his attention drawn in the summons to the fact that the oral hearing may be conducted in his absence.
(4) Those parties who are present at the oral hearing shall be heard. Section 247a para. 2 sentence 1 shall apply accordingly to the hearing of the president of the bar association. The extent to which evidence is taken shall be determined by the court at its duty-bound discretion. A record shall be drawn up of the hearing; sections 271 to 273 shall apply accordingly.
(5) The decision shall be pronounced at the end of the oral hearing. If this is not possible, the decision shall be given no later than within one week.
(6) An immediate complaint shall be admissible against a decision excluding defence counsel for the reasons designated in section 138a or concerning a case referred to in section 138b. The president of the bar association shall not be entitled to lodge a complaint. A decision rejecting the exclusion of defence counsel pursuant to section 138a shall not be contestable.

[914] **§ 138d StPO** Verfahren bei Ausschließung des Verteidigers
(1) Über die Ausschließung des Verteidigers wird nach mündlicher Verhandlung entschieden.
(2) Der Verteidiger ist zu dem Termin der mündlichen Verhandlung zu laden. Die Ladungsfrist beträgt eine Woche; sie kann auf drei Tage verkürzt werden. Die Staatsanwaltschaft, der Beschuldigte und in den Fällen des § 138c Abs. 2 Satz 3 der Vorstand der Rechtsanwaltskammer sind von dem Termin zur mündlichen Verhandlung zu benachrichtigen.
(3) Die mündliche Verhandlung kann ohne den Verteidiger durchgeführt werden, wenn er ordnungsgemäß geladen und in der Ladung darauf hingewiesen worden ist, daß in seiner Abwesenheit verhandelt werden kann.
(4) In der mündlichen Verhandlung sind die anwesenden Beteiligten zu hören. Für die Anhörung des Vorstands der Rechtsanwaltskammer gilt § 247a Absatz 2 Satz 1 und 3 entsprechend. Den Umfang der Beweisaufnahme bestimmt das Gericht nach pflichtgemäßem Ermessen. Über die Verhandlung ist ein Protokoll aufzunehmen; die §§ 271 bis 273 gelten entsprechend.
(5) Die Entscheidung ist am Schluß der mündlichen Verhandlung zu verkünden. Ist dies nicht möglich, so ist die Entscheidung spätestens binnen einer Woche zu erlassen.
(6) Gegen die Entscheidung, durch die ein Verteidiger aus den in § 138a genannten Gründen ausgeschlossen wird oder die einen Fall des § 138b betrifft, ist sofortige Beschwerde zulässig. Dem Vorstand der Rechtsanwaltskammer steht ein Beschwerderecht nicht zu. Eine die Ausschließung des Verteidigers nach § 138a ablehnende Entscheidung ist nicht anfechtbar.

Section 139 CPC[915] **Transferral of defence to trainee lawyer**
A lawyer engaged as defence counsel may, with the consent of the person who selected him, entrust the defence to a person who has undergone legal training and who has passed the first examination for the judicial service and has been employed within the judicial service for at least one year and three months.

bb. Defence by virtue of s. 140 para. 1 n°1 CPC in combination with s. 141 para. 2 n°3 (*notwendige Verteidigung*, BGH Beschl. 5. April 2022 – 3 StR 16/22)

Section 140 CPC[916] **Mandatory defence**
(1) A case of necessary defence exists if
1. it is to be expected that the main hearing in the first instance will take place before the Higher Regional Court, the Regional Court or the Court of Appeal;
2. the accused is charged with a crime;
3. the proceedings may lead to a disbarment;
4. the accused is to be brought before a court under sections 115, 115a, 128 para. 1 or 129 for a decision on detention or temporary accommodation;
5. the accused is in an institution on the basis of a court order or with the authorisation of a court;
6. in order to prepare an expert report on the mental state of the accused, his or her placement under section 81 is in question;
7. it is to be expected that security proceedings will be conducted;

[915] **§ 139 StPO** Übertragung der Verteidigung auf einen Referendar
Der als Verteidiger gewählte Rechtsanwalt kann mit Zustimmung dessen, der ihn gewählt hat, die Verteidigung einem Rechtskundigen, der die erste Prüfung für den Justizdienst bestanden hat und darin seit mindestens einem Jahr und drei Monaten beschäftigt ist, übertragen.

[916] **§ 140 StPO** Notwendige Verteidigung
(1) Ein Fall der notwendigen Verteidigung liegt vor, wenn
1. zu erwarten ist, dass die Hauptverhandlung im ersten Rechtszug vor dem Oberlandesgericht, dem Landgericht oder dem Schöffengericht stattfindet;
2. dem Beschuldigten ein Verbrechen zur Last gelegt wird;
3. das Verfahren zu einem Berufsverbot führen kann;
4. der Beschuldigte nach den §§ 115, 115a, 128 Absatz 1 oder § 129 einem Gericht zur Entscheidung über Haft oder einstweilige Unterbringung vorzuführen ist;
5. der Beschuldigte sich auf Grund richterlicher Anordnung oder mit richterlicher Genehmigung in einer Anstalt befindet;
6. zur Vorbereitung eines Gutachtens über den psychischen Zustand des Beschuldigten seine Unterbringung nach § 81 in Frage kommt;
7. zu erwarten ist, dass ein Sicherungsverfahren durchgeführt wird;
8. der bisherige Verteidiger durch eine Entscheidung von der Mitwirkung in dem Verfahren ausgeschlossen ist;
9. dem Verletzten nach den §§ 397a und 406h Absatz 3 und 4 ein Rechtsanwalt beigeordnet worden ist;
10. bei einer richterlichen Vernehmung die Mitwirkung eines Verteidigers auf Grund der Bedeutung der Vernehmung zur Wahrung der Rechte des Beschuldigten geboten erscheint;
11. ein seh-, hör- oder sprachbehinderter Beschuldigter die Bestellung beantragt.
(2) Ein Fall der notwendigen Verteidigung liegt auch vor, wenn wegen der Schwere der Tat, der Schwere der zu erwartenden Rechtsfolge oder wegen der Schwierigkeit der Sach- oder Rechtslage die Mitwirkung eines Verteidigers geboten erscheint oder wenn ersichtlich ist, dass sich der Beschuldigte nicht selbst verteidigen kann.
(3) (weggefallen)

8. the previous defence counsel has been excluded from participation in the proceedings by a decision;
9. the injured person has been assigned a lawyer in accordance with sections 397a and 406h paras. 3 and 4;
10. in the case of a judicial hearing, the participation of a defence counsel appears necessary due to the importance of the hearing for the protection of the rights of the accused;
11. a visually, hearing or speech impaired accused requests the appointment.
(2) A case of necessary defence shall also be deemed to exist if the participation of a defence counsel appears necessary due to the seriousness of the offence, the seriousness of the legal consequence to be expected or due to the difficulty of the factual or legal situation or if it is evident that the accused cannot defend himself/herself.
(3) (omitted)

Section 141 CPC[917] **Time of appointment of a public defender of rights**
(1) In cases of necessary defence, a public defender of rights shall be appointed without delay for the accused who has been charged with the offence and who does not yet have a defence lawyer, if the accused expressly applies for this after being informed. A decision on the application shall be taken at the latest before the accused is questioned or confronted.
(2) Irrespective of an application, a public defender of rights shall be appointed for the accused who does not yet have a defence counsel in cases of necessary defence as soon as
1. he or she is to be brought before a court for a decision on detention or provisional accommodation;

[917] **§ 141 StPO** Zeitpunkt der Bestellung eines Pflichtverteidigers
(1) In den Fällen der notwendigen Verteidigung wird dem Beschuldigten, dem der Tatvorwurf eröffnet worden ist und der noch keinen Verteidiger hat, unverzüglich ein Pflichtverteidiger bestellt, wenn der Beschuldigte dies nach Belehrung ausdrücklich beantragt. Über den Antrag ist spätestens vor einer Vernehmung des Beschuldigten oder einer Gegenüberstellung mit ihm zu entscheiden.
(2) Unabhängig von einem Antrag wird dem Beschuldigten, der noch keinen Verteidiger hat, in den Fällen der notwendigen Verteidigung ein Pflichtverteidiger bestellt, sobald
1. er einem Gericht zur Entscheidung über Haft oder einstweilige Unterbringung vorgeführt werden soll;
2. bekannt wird, dass der Beschuldigte, dem der Tatvorwurf eröffnet worden ist, sich auf Grund richterlicher Anordnung oder mit richterlicher Genehmigung in einer Anstalt befindet;
3. im Vorverfahren ersichtlich ist, dass sich der Beschuldigte, insbesondere bei einer Vernehmung des Beschuldigten oder einer Gegenüberstellung mit ihm, nicht selbst verteidigen kann, oder
4. er gemäß § 201 zur Erklärung über die Anklageschrift aufgefordert worden ist; ergibt sich erst später, dass die Mitwirkung eines Verteidigers notwendig ist, so wird er sofort bestellt.
Erfolgt die Vorführung in den Fällen des Satzes 1 Nummer 1 zur Entscheidung über den Erlass eines Haftbefehls nach § 127b Absatz 2 oder über die Vollstreckung eines Haftbefehls gemäß § 230 Absatz 2 oder § 329 Absatz 3, so wird ein Pflichtverteidiger nur bestellt, wenn der Beschuldigte dies nach Belehrung ausdrücklich beantragt. In den Fällen des Satzes 1 Nummer 2 und 3 kann die Bestellung unterbleiben, wenn beabsichtigt ist, das Verfahren alsbald einzustellen und keine anderen Untersuchungshandlungen als die Einholung von Registerauskünften oder die Beiziehung von Urteilen oder Akten vorgenommen werden sollen.

2. it becomes known that the accused, who has been charged with the offence, is in an institution on the basis of a court order or with the authorisation of a court;
3. it becomes apparent in the preliminary proceedings that the accused is unable to defend himself or herself, in particular when questioning the accused or confronting him or her; or
4. he or she has been summoned to make a statement on the indictment in accordance with section 201; if it only emerges later that the cooperation of a defence counsel is necessary, he or she shall be appointed immediately.
If, in the cases of sentence 1 number 1, the accused is brought before the court for the purpose of deciding on the issuing of an arrest warrant pursuant to section 127b para. 2 or on the execution of an arrest warrant pursuant to section 230 para. 2 or section 329 para. 3, a public defender shall only be appointed if the accused expressly requests this after having been informed. In the cases of sentence 1 numbers 2 and 3, the appointment may be omitted if it is intended to discontinue the proceedings immediately and no investigative measures other than obtaining information from the register or consulting judgments or files are to be taken.

19 The **PIF offences** (ss. 263, 266, 332 ff. in connection with 335 CC (StGB), s. 370 AO, ss. 1–3 EUFinSchStG), regularly **qualify as misdemeanor under s. 12 para 1 CC if commited** as normal offence or already as **"crimes"** (*Verbrechen*) under s. 12 para 2 StGB i.e. punishable by at least one year's imprisonment triggering s. 140 para 1 No. 2 CPCmostly if commited in a **particular serious matter or in a group** (*Bande*). Most EPPO cases fall under the **competence** of the Regional Court or even the Higher Regional Court due to their economic-crime nature. We know that most current VAT fraud cases were charged according to § 74c GVG to a Landgericht (Economic Crime Chamber), which is competent for extensive or complex cases involving considerable damages (typically ca. 50,000 €), cross-border criminal networks or offences requiring special economic expertise. Because s. 140 para 1 No. 1 StPO explicitly requires mandatory defence where the **main hearing** takes place before the Landgericht or Oberlandesgericht, EPPO-PIF cases almost always meet this criterion. And often, the accused faces high penalties and asset recovery (Art. 30 EPPO Reg., ss. 73 ff. StGB), which stipulates s. 140 no 2 CPC. And even in an EPPO investigation (e.g. corruption in EU-funded projects involving MEPs) covered by **s. 108e CC** mandatory appointment of defence counsel is thus unavoidable as it is a crime and the defence appointement must occur at the latest before the first interrogation (s. 141 para 2 No. 2, 3 StPO).

20 On 5 April 2022, the Federal Supreme Court issued a decision on an appeal by the accused.[918] This concerned the complaint about the accused's **failure to appoint a public**

[918] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, openJur 2022, 10895, see https://openjur.de/u/2397130.html.

defender (section 141 para. 2 sentence 1 no. 3 of the Code of Criminal Procedure) prior to police questioning of the accused.

The Federal Supreme Court (*Bundesgerichtshof BGH*) concluded the following: "A case of mandatory defence within the meaning of section 140 para. 1 no. 1 or 2 of the CPC does not in itself require the appointment of a public defender of rights pursuant to section 141 para. 2 sentence 1 no. 3 of the CPC (see below under aa). The question of whether the immediate appointment is necessary because it is evident that the accused cannot defend himself or herself must be based on his or her individual need for protection (bb). Moreover, a wrongfully omitted appointment does not in principle result in the inadmissibility of the interrogation (cc). According to the concrete circumstances, the Higher Regional Court could base its judgment on the statements of the witness (dd)"[919] **21**

Pursuant to section 141 para. 1 sentence 1 CPC, a public defender is appointed for the accused person if the accusation of the offence has been made known to him or her, if he or she does not yet have a defence counsel and expressly requests this after being instructed.[920] **22**

Pursuant to section 141 para. 2 sentence 1 no. 3 CPC, the public defender is appointed independently of an application if it is evident that the accused person cannot defend himself or herself during questioning. Otherwise, a public defender is not appointed *ex officio* without an application.[921] **23**

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ EU 2016 No. L 197 p. 1) does not require otherwise.[922] **24**

For persons in need of protection, a remedy was provided by section 141 para. 2 sentence 1 of the Code of Criminal Procedure, according to the Federal Supreme Court. A person is in need of protection in particular if he or she is unable to defend himself or herself **25**

[919] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 10, https://openjur.de/u/2397130.html. Accessed 31 December 2024.
[920] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 11, https://openjur.de/u/2397130.html. Accessed 31 December 2024.
[921] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 11, https://openjur.de/u/2397130.html. Accessed 31 December 2024.
[922] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 13, https://openjur.de/u/2397130.html. Accessed 31 December 2024.

due to his or her mental condition.[923] According to the Federal Supreme Court, the personal abilities of the accused play a role in this regard. The decision on the individual capacity to defend is made as a result of an overall assessment. [924]

26 However, if the appointment of a public defender is wrongly omitted, this does not necessarily mean the inadmissibility of the statements made. The Federal Supreme Court discloses the following general information on this issue: "*[...] A prohibition of the use of evidence may therefore be required in particular after serious, deliberate or objectively arbitrary violations of the law in which fundamental rights safeguards have been disregarded in a planned or systematic manner.*" [925]

27 With regard to the failure to appoint a public defender, the Federal Supreme Court closes with the following:

> "A prohibition of utilisation is not regulated by law. The PKH Directive [Directive (EU) 2016/1919] also does not address such consequences of a possible breach of the obligation to ensure an accused's entitlement to legal aid. The national legislative procedure is based on the consideration that an infringement should not automatically lead to a prohibition of realisation, but that the general principles should apply (BT-Drucks. 19/13829 p. 39 f.; also LR/Jahn, StPO, 27th ed., § 141 mn. 41 f.. [...] According to the concrete circumstances and what has been explained above, it is not objectionable that the accused was not appointed a public defender before his hearings with the accused pursuant to § 141.2 sentence 1 no. 3 of the Code of Criminal Procedure. A reason for which he was not able to defend himself during the interrogations was and is not apparent. As already explained, neither any lack of knowledge of the language nor the seriousness of the charges or difficulties in assessing the evidence are sufficient for this. Nothing else results from a synopsis of the circumstances"[926]

28 The **suspect and accused** in an EPPO investigation has **to be heard** and **interrogated at latest before the end of the investigation**, s. 163a para. 1 CPC (obligation to interrogation). The moment someone is deemed to be a suspect is mainly influenced by the decision of the EDP, an interrogator of the police or tax police, who needs to examine the status and the role of the person concerned in every stage. This **right to be heard** must be guaranteed (an exception is if the success of the investigation is jeopardised, see 33 para. 4 CPC). The **rights of the accused** must be protected from then on (see → **No 2, 3, 28 AStBV 2023)**.

[923] BT-Drucks. 19/13829, p. 27.
[924] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 15, https://openjur.de/u/2397130.html. Accessed 31 December 2024.
[925] BGH, Beschluss vom 05.04.2022 - 3 StR 16/22, Reference: openJur 2022, 10895, mn. 24, https://openjur.de/u/2397130.html. Accessed 31 December 2024.
[926] BGH, Beschluss vom 05.04.2022 – 3 StR 16/22, Reference: openJur 2022, 10895, mn. 25 et seq., https://openjur.de/u/2397130.html. Accessed 31 December 2024.

cc. The Input from the Regulation 2017/1939

(1) Access to national case file

The access to national case files[927] (see as well → **no. 35 AStBV**; **no. 182, 186 RiStBV** is one of the most important procedural steps in an effective defence strategy.[928] It is

[927] In general the (national) case files have different acronyms, which are listed here for the country courts (s. 74c GVG competence for EPPO matters): s. 48 Aktenordnung/Case File Regulation Decree: "(2) 1 All criminal and fine matters entered in the Js register according to paragraph 1 and whose files reach the court via the public prosecutor's office continued in court under the Js file number of the public prosecutor. 2 to Signs of pendency before the court are given the Js file number by the preceded by the following distinguishing features
· ***Ks for jury matters***
· ***KLs for matters of the large criminal division (juvenile division)***
· ***Ls for lay judges (juvenile lay judges)***
· ***Ds for matters of the criminal judge (juvenile judge)***
· ***Cs for penal orders***
· ***OWi for fine matters***
· ***Ns for appeal matters.***
3 In front of the distinguishing feature is the Arabic Number of the department of the clerk of the court set"
All acronyms are defined in the Länder-based own "*Aktenordnung ordentliche Gerichtsbarkeit/Staatsanwaltschaften Anweisungen für die Verwaltung des Schriftguts bei den Geschäftsstellen der Gerichte und Staatsanwaltschaften des Landes Nordrhein-Westfalen*" .
Article 47 Prosecutor at the district court
(1) At the public prosecutor's office, the register for criminal matters and fines
chen Js (pattern 32)/UJs (pattern 33). The following must be entered in this register:
a) requests for criminal prosecution,
b) incoming advertisements directed against a specific person,
c) Ex officio investigations by the public prosecutor,
d) indictment without prior investigation,
e) Objections to fines or confiscation notices (Section 69 (3), Sections 67, 87
Paragraphs 2 and 3, Section 88 Paragraph 3 OWiG),
f) Reopening or follow-up proceedings in fine matters (section 85 para. 4 sentence 2, section 87
Para. 4 sentence 2 OWiG),
g) independent confiscation proceedings according to §§ 435 to 437 StPO, which are based on a
drive against suspects who are unknown by name,
h) Reports from the police about a suicide, about an accident without
fault of a third party, about a fire or about the appearance of counterfeit money,
i) private prosecution cases, which the court of the public prosecutor to take over the
prosecution submits,
k) Prosecution matters, which the administrative authority has due to indications of a
criminal offence to the public prosecutor's office (§ 41 Para. 1 OWiG) or which the public prosecutor
takes over custody due to connection with a criminal offence (§ 42 OWiG),
l) Applications from the tax authorities for the issuance of a penal order or for self-employed
confiscation in criminal tax matters, [...]
m) Requests from foreign authorities for legal assistance by enforcing an im
penalty or other sanction imposed abroad,
n) fine proceedings in the field of legal advice in accordance with Section 1 of the Ordinance
of April 15, 1969 (GV NW p. 205).
In order to identify the documents by their acronyms lawyers need the following information to **orders of an investigating judge**:
§ 18 Register and file management
(2) The register for individual judicial orders of the district court Gs (list 35).

seen as a core element of a fair criminal procedure.[929] The contact of the EDP and a defence lawyer is usually taking place in German as the court language is German as well.[930] The most relevant provision for access to case files in the German Criminal Procedure Code is section 147 CPC, which regulates the access for the accused's defence counsel (paragraph 1) and for the accused him-/herself without a defence counsel

To the Gs things count the complaints and applications in such criminal (private prosecution) cases in which the public (private) action is not or not at this district court and that District court also not as legal assistance court (§§ 156 ff. Courts Constitution Act GVG) is called.
3The items to be registered as ***Gs items*** in particular areReason for provisions of the StPO (e.g. §§ 98 to 100, 125, 128, 159, 162 ff. StPO) in the preparatory proceedings at the request of the public prosecutor or by officialjudicial investigative acts to be carried out, the applications forcertificate (morgue, autopsy), confiscation, search, issuance or revocation of arrest warrants, the applications in which the public prosecutor the judicial approval to refrain from collecting the public lawsuits, etc., as well as other decisions in criminal matters before Hearing of the public complaint assigned to the judges (e.g. § 9 paragraph 1 sentence 1 of the law on compensation for criminal prosecution remedial measures StrEG, § 73 paragraph 3 SGB X etc.) as well as decisions according to §§ 87g and 87i IRG.
On several decisions in a detention matter only kept one file.
If for the procedure the provisions of the law on the procedure in family matters and in the affairs of the voluntary Jurisdiction does not apply accordingly, further local courts are statutory assigned business of ordering search and confirming Register confiscation on Schedule 35.
(3) Proceedings regarding the resumption of a legally concluded private procedure are to be included in the files in which the contested
divorce. If the application for reopening is directed against a judgment of a higher instance, the events nevertheless belong in the files of the first instance (Section 4 paragraph 6).
(4) 1In all cases not in the register for private lawsuits and fines Bs, OWi (Ab- sentence 1) and not in the register for individual judicial orders Gs (para
2) criminal and fine matters to be recorded, i.e. in all other before the criminal courts Criminal and fine matters belonging to ter and the juvenile judge (including opposition, follow-up and reopening proceedings) as well as in the before the jury matters belonging to the court and before the juvenile court of lay judges is incumbent on and keeping records of the Office of the Public Prosecutor.
These files are continued in court under the Js file number of the public prosecutor.
As a sign of pending before the court, the Js file number is given the following
Distinctive features preceded:
Ls for matters of the court of lay judges (juvenile court of lay judges)
Ds for matters of the criminal judge (juvenile judge)
Cs for penal orders
OWi for fine matters.
In addition, if necessary, the Js- supplemented by one of these distinguishing features File number the number of the responsible department of the office of the official to precede in court.
The resulting file number for the procedure For example, ren in court is "8 Ls 12 Js 130/76" .
The Clerk's Office informs the office of the public prosecutor's office for the Js register at which division of the office of the court the proceedings are pending.
From this fellow division, the office of the court can only in agreement with the State refrain from advocacy in principle or for specific cases (e.g. if the competent department of the office of the court of the public prosecutor's office already is known or the court only has a branch office for criminal and penal money matters).
(4a) In the case of applications by the financial authority for the issuance of penal orders, which the official sent immediately, the first step is to register with the competent authority bring about prosecution.
(5) If, in the cases of paragraph 4, pre-trial detention or temporary detention completed, after the public complaint has been filed, the office of the the court newly seized of the matter immediately upon receipt of the files pendency of the procedure to the register for individual judicial orders of th District Court Gs.

[928] Wohlers 2016, s. 147, mn 1.

[929] BVerfGE 63, 45 (61 f.).

[930] Esser 2024, p. 52 reffering to a statement of EDP Dr. Sonja Heine: "Ddirect contact between defence lawyers and the central office in Luxembourg - for example to suggest that the proceedings be proceedings – is not possible.

(paragraph 4). Section 147 CPC also differentiates between the access to files and the inspection of evidence.[931] Section 147 CPC is applicable on the entire criminal procedure as well as on criminal tax proceedings (sections 385 para. 1, 410 para. 1 no 3 Fiscal Code).[932] Some lawyers and case-law databases as well as the general literature scene offers forms and blanks for concerned lawyers.[933]

(a) Section 32f CPC

The relevant provisions on access to national case files[934] are the following: **29**

Section 32f CPC[935] **Inspection of files; authorisation to issue statutory instrument**
(1) Inspection of electronic files shall be granted by means of making the content of the

[931] Wohlers 2016, s. 147, mn 2.
[932] Wohlers 2016, s. 147, mn 4.
[933] See 20.4 Antrag auf Akteneinsicht, in: Jens Bosbach, Pfordte Bosbach Rechtsanwälte Partnerschaftsgesellschaft mbB, *Beck'sche Online-Formulare Prozess*, 52. Edition 2022, Stand: 01.01.2020, Anm. 1-6.
[934] The Bundesländer may issue in the area of their Ministries of Justice special Regulations fort he e-case file handling. North-Rhine Westphalia has done this in 2020 already, see *Verordnung über die Ermächtigung des Ministeriums der Justiz zum Erlass von Rechtsverordnungen zur elektronischen Aktenführung in Ordnungswidrigkeitsverfahren, Strafverfahren und Strafvollzugsverfahren vom 10. März 2020 (GV. NRW. S. 182).* The technical details of the e-case file are stipulated by the *Verordnung über die technischen und organisatorischen Rahmenbedingungen für die elektronische Aktenführung im Strafverfahren im Land Nordrhein-Westfalen (eAkten-Verordnung Strafverfahren – eAktVO Straf), Vom 19. August 2020, (GV. NRW. S. 761).*
The Federal Government (*Bundesregierung*) has as well established standards for the tranfer of e-case files, see *Verordnung über die Standards für die Übermittlung elektronischer Akten zwischen Strafverfolgungsbehörden und Gerichten im Strafverfahren (Strafaktenübermittlungsverordnung – StrafAktÜbV), Vom 14. April 2020, (BGBl. I 2020 799).*
In the following process the Ministry of Justice has determined the due dates within another Regulation see *Verordnung über den Zeitpunkt der Einführung der elektronischen Aktenführung in gerichtlichen und staatsanwaltschaftlichen Straf- und Bußgeldverfahren im Land Nordrhein-Westfalen (eAkten-Einführungszeitpunktverordnung Straf- und Bußgeldverfahren – eAktEVO StrafOWi) Vom 19. Januar 2021 (GV. NRW. S. 130) SGV. NRW. 301.*
All Länder within the Federal Republic of Germany have issued Regulations alike to the ones in North-Rhine Westphalia. For the now historic debate see Beukelmann 2016, pp. 632 et seq.
Details and the road to only "e-case files" (1.1.2026) is documented in https://justiz.de/Länder-bund-europa/elektronische_kommunikation/nordrhein-westfalen/index.php. Accessed 31 December 2024.
Several Länder work closely together in the e(2) Connection that wants to establish a congruent Software solution for the e-case files ("Landesjustizverwaltung Nordrhein-Westfalen mit den Ländern Bremen, Hessen, Niedersachsen, Saarland und Sachsen-Anhalt im sogenannten e²-Verbund ("ergonomisch elektronisch" =e²) zusammengeschlossen"). The ideal solution would be a solution for all territories of the Federal Republic of Germany but this does not exist at the moment (08/22). At the moment courts and piblic prosecution offices use different software, The national prosecution service uses "web.sta, eStA und eDAP" and the "GER-Umfang" .
For more infromation on this matter see: https://justiz.de/Länder-bund-europa/BLK/Länderberichte/niedersachsen.pdf;jsessionid=4AF59F032BE141AEE5516736629F0AEE. Accessed 31 December 2024.
The product designer behind the e(2)a case file software based on PDF(A) standard is called "SINC company" and registered in Wiesbaden, Hesse: https://www.sinc.de/wp-content/uploads/2022/03/SINC-A4Factsheet-e2A.pdf. Accessed 31 December 2024.
[935] **§ 32f StPO Form der Gewährung von Akteneinsicht; Verordnungsermächtigung**
(1) Einsicht in elektronische Akten wird durch Bereitstellen des Inhalts der Akte zum Abruf oder durch Übermittlung des Inhalts der Akte auf einem sicheren Übermittlungsweg gewährt. Auf besonderen Antrag wird Akteneinsicht durch Einsichtnahme in die elektronischen Akten in Diensträumen gewährt. Ein Aktenausdruck oder ein Datenträger mit dem Inhalt der elektronischen Akten wird auf besonders zu begründenden Antrag nur übermittelt,

file available for retrieval. Upon specific request, inspection of the files shall be granted by means of inspection of the electronic files on official premises. A hard copy of the files or a data carrier containing the content of the electronic file shall be transmitted on the basis of a request, which must include specific reasons, only if the person making the application has a justified interest therein. Where important reasons constitute an obstacle to inspection of the files in the manner provided for under sentence 1, such inspection may also be granted without a request in the manner provided for under sentences 2 and 3.
(2) Inspection of files which are available in paper form shall be granted by means of inspection of the files on official premises. Unless precluded for important reasons, inspection of the files may also be granted by making the content of the files available for retrieval or by making a copy of the files available to be taken away. Upon special request, defence counsel or lawyers shall be given the files to take away for inspection on their own business or private premises, unless this is precluded for important reasons.
(3) Decisions concerning the manner in which inspection of the files is to be granted in accordance with paras. 1 and 2 shall not be contestable.
(4) Technical and organisational measures are to be taken to guarantee that third parties cannot obtain knowledge of the content of the files whilst the files are laid open for inspection. The name of the person to whom inspection of the files is granted is to be identified in perpetuity by applying technical measures reflecting the state of the art to the files retrieved and to transmitted electronic documents.

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wenn der Antragsteller hieran ein berechtigtes Interesse hat. Stehen der Akteneinsicht in der nach Satz 1 vorgesehenen Form wichtige Gründe entgegen, kann die Akteneinsicht in der nach den Sätzen 2 und 3 vorgesehenen Form auch ohne Antrag gewährt werden.
(2) Einsicht in Akten, die in Papierform vorliegen, wird durch Einsichtnahme in die Akten in Diensträumen gewährt. Die Akteneinsicht kann, soweit nicht wichtige Gründe entgegenstehen, auch durch Bereitstellen des Inhalts der Akten zum Abruf, durch Übermittlung des Inhalts der Akte auf einem sicheren Übermittlungsweg oder durch Bereitstellen einer Aktenkopie zur Mitnahme gewährt werden. Auf besonderen Antrag werden einem Verteidiger oder Rechtsanwalt, soweit nicht wichtige Gründe entgegenstehen, die Akten zur Einsichtnahme in seine Geschäftsräume oder in seine Wohnung mitgegeben.
(3) Entscheidungen über die Form der Gewährung von Akteneinsicht nach den Absätzen 1 und 2 sind nicht anfechtbar.
(4) Durch technische und organisatorische Maßnahmen ist zu gewährleisten, dass Dritte im Rahmen der Akteneinsicht keine Kenntnis vom Akteninhalt nehmen können. Der Name der Person, der Akteneinsicht gewährt wird, soll durch technische Maßnahmen in abgerufenen Akten und auf übermittelten elektronischen Dokumenten nach dem Stand der Technik dauerhaft erkennbar gemacht werden.
(5) Personen, denen Akteneinsicht gewährt wird, dürfen Akten, Dokumente, Ausdrucke oder Abschriften, die ihnen nach Absatz 1 oder 2 überlassen worden sind, weder ganz noch teilweise öffentlich verbreiten oder sie Dritten zu verfahrensfremden Zwecken übermitteln oder zugänglich machen. Nach Absatz 1 oder 2 erlangte personenbezogene Daten dürfen sie nur zu dem Zweck verwenden, für den die Akteneinsicht gewährt wurde. Für andere Zwecke dürfen sie diese Daten nur verwenden, wenn dafür Auskunft oder Akteneinsicht gewährt werden dürfte. Personen, denen Akteneinsicht gewährt wird, sind auf die Zweckbindung hinzuweisen.
(6) Die Bundesregierung bestimmt durch Rechtsverordnung mit Zustimmung des Bundesrates die für die Einsicht in elektronische Akten geltenden Standards. Sie kann die Ermächtigung durch Rechtsverordnung ohne Zustimmung des Bundesrates auf die zuständigen Bundesministerien übertragen.

(5) Persons who are granted inspection of the files may, neither in full nor in part, publicly disseminate those files, documents, hard copies or copies which were surrendered to them pursuant to para. 1 or 2, nor may they be transmitted or made available to third parties for purposes other than the proceedings in question. They may use personal data which they have acquired in accordance with para. 1 or 2 only for the purpose for which they were granted inspection of the files. They may use these data for other purposes only if they could be permitted information about them or inspection of the files for those purposes. Persons who are granted inspection of the files are to be made aware of the limitations as to use.
(6) The Federal Government shall, by statutory instrument requiring the approval of the Bundesrat, determine the standards applicable to inspection of electronic files. It may, by statutory instrument not requiring the approval of the Bundesrat, delegate this authorisation to the competent federal ministries.

(b) Section 147 CPC

The most important provision from the point-of-view of a German White Collar Crime Defence lawyer is s. 147 of the german CPC:

Section 147 CPC Right to inspect files, right of inspection; accused's right to information **30**

(1)[936] Defence counsel shall be authorised to inspect those files which are available to the court or which would have to be submitted to the court if charges were preferred as well as to view items of evidence in official custody.

[936] **§ 147 StPO** Akteneinsichtsrecht, Besichtigungsrecht; Auskunftsrecht des Beschuldigten
(1) Der Verteidiger ist befugt, die Akten, die dem Gericht vorliegen oder diesem im Falle der Erhebung der Anklage vorzulegen wären, einzusehen sowie amtlich verwahrte Beweisstücke zu besichtigen.
(2) Ist der Abschluss der Ermittlungen noch nicht in den Akten vermerkt, kann dem Verteidiger die Einsicht in die Akten oder einzelne Aktenteile sowie die Besichtigung von amtlich verwahrten Beweisgegenständen versagt werden, soweit dies den Untersuchungszweck gefährden kann. Liegen die Voraussetzungen von Satz 1 vor und befindet sich der Beschuldigte in Untersuchungshaft oder ist diese im Fall der vorläufigen Festnahme beantragt, sind dem Verteidiger die für die Beurteilung der Rechtmäßigkeit der Freiheitsentziehung wesentlichen Informationen in geeigneter Weise zugänglich zu machen; in der Regel ist insoweit Akteneinsicht zu gewähren.
(3) Die Einsicht in die Protokolle über die Vernehmung des Beschuldigten und über solche richterlichen Untersuchungshandlungen, bei denen dem Verteidiger die Anwesenheit gestattet worden ist oder hätte gestattet werden müssen, sowie in die Gutachten von Sachverständigen darf dem Verteidiger in keiner Lage des Verfahrens versagt werden.
(4) Der Beschuldigte, der keinen Verteidiger hat, ist in entsprechender Anwendung der Absätze 1 bis 3 befugt, die Akten einzusehen und unter Aufsicht amtlich verwahrte Beweisstücke zu besichtigen, soweit der Untersuchungszweck auch in einem anderen Strafverfahren nicht gefährdet werden kann und überwiegende schutzwürdige Interessen Dritter nicht entgegenstehen. Werden die Akten nicht elektronisch geführt, können ihm an Stelle der Einsichtnahme in die Akten Kopien aus den Akten bereitgestellt werden.
(5) Über die Gewährung der Akteneinsicht entscheidet im vorbereitenden Verfahren und nach rechtskräftigem Abschluss des Verfahrens die Staatsanwaltschaft, im Übrigen der Vorsitzende des mit der Sache befassten Gerichts. Versagt die Staatsanwaltschaft die Akteneinsicht, nachdem sie den Abschluss der Ermittlungen in den Akten vermerkt hat, versagt sie die Einsicht nach Absatz 3 oder befindet sich der Beschuldigte nicht auf freiem

(2) If the fact that the investigations have been concluded has not yet been recorded in the file, defence counsel may be refused inspection of the files or of individual parts of the files as well as the viewing of items of evidence in official custody insofar as this may jeopardise the purpose of the investigation. If the conditions of sentence 1 are met and if the accused is in remand detention or if, in the case of provisional arrest, this has been requested, information of relevance for the assessment of the lawfulness of such deprivation of liberty shall be made available to defence counsel in suitable form; to this extent, as a rule, inspection of the files shall be granted.
(3) At no stage of the proceedings may defence counsel be refused inspection of records drawn up of the examination of the accused or of such judicial investigatory acts to which defence counsel was or should have been admitted, nor may he be refused inspection of expert opinions.
(4) An accused who has no defence counsel shall be authorised, applying paras. 1 to 3 accordingly, to inspect the files and to view, under supervision, items of evidence in official custody insofar as the purpose of the investigation even in other criminal proceedings cannot be endangered thereby and the overriding interests of third parties meriting protection do not constitute an obstacle thereto. If the files are not kept in electronic form, instead of granting inspection of the files, copies of the files may be made available to the accused.
(5) The public prosecution office shall decide whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings; in all other cases, the presiding judge of the court seized of the case shall be competent to decide. If the public prosecution office refuses inspection of the files after noting the termination of the investigations in the file, if it refuses inspection pursuant to para. 3 or if the accused is not at liberty, a decision by the court competent pursuant to section 162 may be applied for. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. These decisions shall be given without reasons if their disclosure might jeopardise the purpose of the investigation.
(6) If the reason for refusing inspection of the files has not already ceased to exist, the public prosecution office shall revoke the order no later than upon conclusion of the investigations. Defence counsel or an accused who has no defence counsel shall be notified as soon as he once again has the unrestricted right to inspect the files.
(7) (repealed)

Fuß, so kann gerichtliche Entscheidung durch das nach § 162 zuständige Gericht beantragt werden. Die §§ 297 bis 300, 302, 306 bis 309, 311a und 473a gelten entsprechend. Diese Entscheidungen werden nicht mit Gründen versehen, soweit durch deren Offenlegung der Untersuchungszweck gefährdet werden könnte.
(6) Ist der Grund für die Versagung der Akteneinsicht nicht vorher entfallen, so hebt die Staatsanwaltschaft die Anordnung spätestens mit dem Abschluß der Ermittlungen auf. Dem Verteidiger oder dem Beschuldigten, der keinen Verteidiger hat, ist Mitteilung zu machen, sobald das Recht zur Akteneinsicht wieder uneingeschränkt besteht.
(7) (weggefallen)

Section 385 CPC[937] **Status of private prosecutor; summons; inspection of files**
(1) A private prosecutor shall be called in and heard in proceedings on private charges brought to the same extent as the public prosecution office is to be called in and heard in proceedings on preferred public charges. All decisions which are brought to the attention of the public prosecution office in the latter case shall be brought to the attention of the private prosecutor in the former case.
(2) A period of at least one week must elapse between service of the summons on the private prosecutor to attend the main hearing and the day of the main hearing.
(3) A lawyer may inspect those files on behalf of a private prosecutor which are available to the court or would have to be submitted by the public prosecution office in the event of public charges being preferred, and he may examine evidence in official custody if the purpose of the investigation in other criminal proceedings cannot be endangered thereby and the overriding interests meriting protection of the accused or third parties do not constitute an obstacle thereto. Applying sentence 1 accordingly, private prosecutors who are not represented by a lawyer shall be authorised to inspect the files and to examine, under supervision, evidence in official custody. If the files are not kept in electronic form, instead of granting inspection of the files, copies of the files may be transmitted to private prosecutors who are not represented by a lawyer. Section 406e para. 4 shall apply accordingly.
(4) In the cases under sections 154a and 421, para. 3 sentence 2 of those sections shall not apply.
(5) In proceedings on an appeal on points of law, no application by the private prosecutor pursuant to section 349 para. 2 shall be necessary. Section 349 para. 3 shall not apply.

[937] **§ 385 StPO** Stellung des Privatklägers; Ladung; Akteneinsicht
(1) Soweit in dem Verfahren auf erhobene öffentliche Klage die Staatsanwaltschaft zuzuziehen und zu hören ist, wird in dem Verfahren auf erhobene Privatklage der Privatkläger zugezogen und gehört. Alle Entscheidungen, die dort der Staatsanwaltschaft bekanntgemacht werden, sind hier dem Privatkläger bekanntzugeben.
(2) Zwischen der Zustellung der Ladung des Privatklägers zur Hauptverhandlung und dem Tag der letzteren muß eine Frist von mindestens einer Woche liegen.
(3) Für den Privatkläger kann ein Rechtsanwalt die Akten, die dem Gericht vorliegen oder von der Staatsanwaltschaft im Falle der Erhebung einer Anklage vorzulegen wären, einsehen sowie amtlich verwahrte Beweisstücke besichtigen, soweit der Untersuchungszweck in einem anderen Strafverfahren nicht gefährdet werden kann und überwiegende schutzwürdige Interessen des Beschuldigten oder Dritter nicht entgegenstehen. Der Privatkläger, der nicht durch einen Rechtsanwalt vertreten wird, ist in entsprechender Anwendung des Satzes 1 befugt, die Akten einzusehen und amtlich verwahrte Beweisstücke unter Aufsicht zu besichtigen. Werden die Akten nicht elektronisch geführt, können dem Privatkläger, der nicht durch einen Rechtsanwalt vertreten wird, an Stelle der Einsichtnahme in die Akten Kopien aus den Akten übermittelt werden. § 406e Absatz 5 gilt entsprechend.
(4) In den Fällen der §§ 154a und 421 ist deren Absatz 3 Satz 2 nicht anzuwenden.
(5) Im Revisionsverfahren ist ein Antrag des Privatklägers nach § 349 Abs. 2 nicht erforderlich. § 349 Abs. 3 ist nicht anzuwenden.

Section 397 CPC[938] **Rights of private accessory prosecutor**

(1) A private accessory prosecutor shall be entitled to be present at the main hearing even if he is to be examined as a witness. He shall be summoned to the main hearing; section 145a para. 2 sentence 1 and section 217 paras. 1 and 3 shall apply accordingly. A private accessory prosecutor shall also be entitled to challenge a judge (sections 24 and 31) or an expert (section 74), to ask questions (section 240 para. 2), to object to orders made by the presiding judge (section 238 para. 2) and to object to questions (section 242), to apply for evidence to be taken (section 244 paras. 3 to 6) and to make statements (sections 257 and 258). Unless otherwise provided by law, he shall be called in and heard to the same extent as the public prosecution office. Decisions which are notified to the public prosecution office shall also be notified to the private accessory prosecutor; section 145a paras. 1 and 3 shall apply accordingly.

(2) A private accessory prosecutor may avail himself of the assistance of a lawyer or may be represented by such lawyer. The lawyer shall be entitled to be present at the main hearing. He shall be notified of the date set down for the main hearing if his choice has been notified to the court or if he has been appointed as counsel.

the private accessory prosecutor does not speak German, he shall, upon application, in accordance with the provisions of section 187 para. 2, receive a translation of written documentation insofar as this is necessary in order to exercise his rights under the law of criminal procedure.

[938] **§ 397 StPO** Verfahrensrechte des Nebenklägers

(1) Der Nebenkläger ist, auch wenn er als Zeuge vernommen werden soll, zur Anwesenheit in der Hauptverhandlung berechtigt. Er ist zur Hauptverhandlung zu laden; § 145a Absatz 2 Satz 1 und § 217 Absatz 1 und 3 gelten entsprechend. Die Befugnis zur Ablehnung eines Richters (§§ 24, 31) oder Sachverständigen (§ 74), das Fragerecht (§ 240 Absatz 2), das Recht zur Beanstandung von Anordnungen des Vorsitzenden (§ 238 Absatz 2) und von Fragen (§ 242), das Beweisantragsrecht (§ 244 Absatz 3 bis 6) sowie das Recht zur Abgabe von Erklärungen (§§ 257, 258) stehen auch dem Nebenkläger zu. Dieser ist, soweit gesetzlich nichts anderes bestimmt ist, im selben Umfang zuzuziehen und zu hören wie die Staatsanwaltschaft. Entscheidungen, die der Staatsanwaltschaft bekannt gemacht werden, sind auch dem Nebenkläger bekannt zu geben; § 145a Absatz 1 und 3 gilt entsprechend.

(2) Der Nebenkläger kann sich des Beistands eines Rechtsanwalts bedienen oder sich durch einen solchen vertreten lassen. Der Rechtsanwalt ist zur Anwesenheit in der Hauptverhandlung berechtigt. Er ist vom Termin der Hauptverhandlung zu benachrichtigen, wenn seine Wahl dem Gericht angezeigt oder er als Beistand bestellt wurde.

(3) Ist der Nebenkläger der deutschen Sprache nicht mächtig, erhält er auf Antrag nach Maßgabe des § 187 Absatz 2 des Gerichtsverfassungsgesetzes eine Übersetzung schriftlicher Unterlagen, soweit dies zur Ausübung seiner strafprozessualen Rechte erforderlich ist.

Section 406e CPC[939] **Inspection of files**

(1) A lawyer may, on the aggrieved person's behalf, inspect the files which are available to the court or the files which would need to be submitted if public charges were preferred and he may view items of evidence in official custody if he can show a legitimate interest therein. In the cases under section 395, there shall be no requirement to show a legitimate interest.

(2) Inspection of the files shall be refused if overriding interests meriting protection, either on the part of the accused or of other persons, constitute an obstacle thereto. It may be refused if the purpose of the investigation, including in other criminal proceedings, appears to be jeopardised. It may also be refused if the proceedings would be considerably delayed thereby, unless, in the cases under section 395, the public prosecution office has noted the conclusion of the investigations in the files.

(3) Applying paras. 1 and 2 accordingly, aggrieved persons who are not represented by a lawyer shall be authorised to inspect the files and, under supervision, to view items of evidence in official custody. If the files are not kept in electronic form, then instead of granting inspection of the files he may be sent copies of the files. Section 478 para. 1 sentences 3 and 4 shall apply accordingly.

(4) It is for the public prosecution office to decide whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings, in all other cases, the presiding judge of the court seized of the case shall give this decision. An application may be made for a decision by the court competent pursuant to section 162 appealing against the decision made by the public prosecution office pursuant to sentence 1. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. The court's decision shall not be contestable as long as the investigations have not yet

[939] **§ 406e StPO** Akteneinsicht

(1) Für den Verletzten kann ein Rechtsanwalt die Akten, die dem Gericht vorliegen oder diesem im Falle der Erhebung der öffentlichen Klage vorzulegen wären, einsehen sowie amtlich verwahrte Beweisstücke besichtigen, soweit er hierfür ein berechtigtes Interesse darlegt. In den in § 395 genannten Fällen bedarf es der Darlegung eines berechtigten Interesses nicht.

(2) Die Einsicht in die Akten ist zu versagen, soweit überwiegende schutzwürdige Interessen des Beschuldigten oder anderer Personen entgegenstehen. Sie kann versagt werden, soweit der Untersuchungszweck, auch in einem anderen Strafverfahren, gefährdet erscheint. Sie kann auch versagt werden, wenn durch sie das Verfahren erheblich verzögert würde, es sei denn, dass die Staatsanwaltschaft in den in § 395 genannten Fällen den Abschluss der Ermittlungen in den Akten vermerkt hat.

(3) Der Verletzte, der nicht durch einen Rechtsanwalt vertreten wird, ist in entsprechender Anwendung der Absätze 1 und 2 befugt, die Akten einzusehen und amtlich verwahrte Beweisstücke unter Aufsicht zu besichtigen. Werden die Akten nicht elektronisch geführt, können ihm an Stelle der Einsichtnahme in die Akten Kopien aus den Akten übermittelt werden. § 480 Absatz 1 Satz 3 und 4 gilt entsprechend.

(4) Die Absätze 1 bis 3 gelten auch für die in § 403 Satz 2 Genannten.

(5) Über die Gewährung der Akteneinsicht entscheidet im vorbereitenden Verfahren und nach rechtskräftigem Abschluß des Verfahrens die Staatsanwaltschaft, im übrigen der Vorsitzende des mit der Sache befaßten Gerichts. Gegen die Entscheidung der Staatsanwaltschaft nach Satz 1 kann gerichtliche Entscheidung durch das nach § 162 zuständige Gericht beantragt werden. Die §§ 297 bis 300, 302, 306 bis 309, 311a und 473a gelten entsprechend. Die Entscheidung des Gerichts ist unanfechtbar, solange die Ermittlungen noch nicht abgeschlossen sind. Diese Entscheidungen werden nicht mit Gründen versehen, soweit durch deren Offenlegung der Untersuchungszweck gefährdet werden könnte.

been concluded. These decisions shall not be given with reasons if their disclosure might jeopardise the purpose of the investigation.
(5) (repealed)
(6) (repealed)

Section 475 CPC[940] **Provision of information to and inspection of files by private individuals and other agencies**
(1) Without prejudice to the provision of section 406e, a lawyer may obtain information from a file for a private individual or for other agencies if such file is available to the court or would have to be submitted to the court if public charges were preferred and if he sets forth a legitimate interest therefor. Information shall be refused if the data subject has an interest meriting protection in such refusal.
(2) Inspection of the files may be granted under the conditions of para. 1 if the provision of information would require disproportionate effort or if it would be insufficient to exercise the justifiable interest according to the explanation supplied by the person requesting inspection of the files.
(3) Items of evidence in official custody may be viewed under the conditions of para. 2.
(4) Private persons and other agencies may also be given information from the files under the conditions of para. 1.

Section 491 CPC[941] **Information provided to data subjects**
(1) Where this statute contains no specific provisions dealing with the provision or refusal of information, the data subject shall be given information in accordance with section 19 of the Federal Data Protection Act. Information shall not be provided in respect of proceedings which were initiated by the public prosecution office less than six months prior to the filing of the application for information. The public prosecution office may extend the time limit set in sentence 2 to up to 24 months if, in the particular case, there

[940] **§ 475 StPO** Auskünfte und Akteneinsicht für Privatpersonen und sonstige Stellen
(1) Für eine Privatperson und für sonstige Stellen kann unbeschadet des § 57 des Bundesdatenschutzgesetzes ein Rechtsanwalt Auskünfte aus Akten erhalten, die dem Gericht vorliegen oder diesem im Falle der Erhebung der öffentlichen Klage vorzulegen wären, soweit er hierfür ein berechtigtes Interesse darlegt. Auskünfte sind zu versagen, wenn der hiervon Betroffene ein schutzwürdiges Interesse an der Versagung hat.
(2) Unter den Voraussetzungen des Absatzes 1 kann Akteneinsicht gewährt werden, wenn die Erteilung von Auskünften einen unverhältnismäßigen Aufwand erfordern oder nach Darlegung dessen, der Akteneinsicht begehrt, zur Wahrnehmung des berechtigten Interesses nicht ausreichen würde.
(3) Unter den Voraussetzungen des Absatzes 2 können amtlich verwahrte Beweisstücke besichtigt werden.
(4) Unter den Voraussetzungen des Absatzes 1 können auch Privatpersonen und sonstigen Stellen Auskünfte aus den Akten erteilt werden.
[941] **§ 491 StPO** Auskunft an betroffene Personen
(1) Ist die betroffene Person bei einem gemeinsamen Dateisystem nicht in der Lage, den Verantwortlichen festzustellen, so kann sie sich zum Zweck der Auskunft nach § 57 des Bundesdatenschutzgesetzes an jede beteiligte speicherungsberechtigte Stelle wenden. Über die Erteilung einer Auskunft entscheidet die ersuchte speicherungsberechtigte Stelle im Einvernehmen mit dem Verantwortlichen.
(2) Für den Auskunftsanspruch betroffener Personen gilt § 57 des Bundesdatenschutzgesetzes.

is a need to maintain secrecy due to the complexity or scope of the investigations. The Public Prosecutor General shall give a decision on any further extension of the time limit; in proceedings of the Office of the Federal Public Prosecutor General, such decision shall lie with the Federal Public Prosecutor General. Decisions pursuant to sentences 3 and 4, including the reasons therefor, are to be documented. The applicant is to be informed of the provisions of sentences 2 to 5, regardless of whether proceedings have been initiated against him.
(2) If, in the case of a shared file, the data subject is unable to ascertain the name of the storing agency, he may approach any agency involved which is entitled to store the data. The latter shall give a decision regarding the disclosure of information in consultation with the agency which entered the data.

Section 495 CPC[942] **Information provided to data subject**
Information from the register of proceedings shall be provided to the data subject in accordance with section 19 of the Federal Data Protection Act; section 491 para. 1 sentences 2 to 6 shall apply accordingly. The authority holding the register, in consultation with the public prosecution office which communicated the personal data for entry in the register, shall decide whether information may be disclosed. Insofar as information from the register of proceedings has been made available to a public agency and the data subject seeks information from such agency about the data collected in that manner, the agency concerned, in consultation with the public prosecution office which communicated the personal data for entry in the register, shall decide whether to disclose the information.

[942] **§ 495 StPO** Auskunft an betroffene Personen
Der betroffenen Person ist entsprechend § 57 des Bundesdatenschutzgesetzes Auskunft aus dem Verfahrensregister zu erteilen; § 491 Absatz 2 gilt entsprechend. Über die Erteilung einer Auskunft entscheidet die Registerbehörde im Einvernehmen mit der Staatsanwaltschaft, die die personenbezogenen Daten zur Eintragung in das Verfahrensregister mitgeteilt hat. Soweit eine Auskunft aus dem Verfahrensregister an eine öffentliche Stelle erteilt wurde und die betroffene Person von dieser Stelle Auskunft über die so erhobenen Daten begehrt, entscheidet hierüber diese Stelle im Einvernehmen mit der Staatsanwaltschaft, die die personenbezogenen Daten zur Eintragung in das Verfahrensregister mitgeteilt hat.

31 **Act on Regulatory Offences**/*Ordungswidrigkeitengesetz OWiG*

Section 49[943] **Inspection of the Files by the Person Concerned and by the Administrative Authority**

(1) The administrative authority shall grant the person concerned on request inspection of the files insofar as the purpose of the investigation, including in a different set of criminal or regulatory fining proceedings, cannot be endangered and no third persons have opposing and overriding interests that are worthy of protection. In the event that the files are not kept in electronic form, copies from the files may be provided in place of the inspection of the files.

(2) Where the public prosecution office is the prosecuting authority, the administrative authority that would otherwise have jurisdiction shall be entitled to inspect the files which have been submitted to the court or which would have to be submitted in court proceedings, as well as to inspect secured and seized items. Upon application, files which are kept in paper form shall be sent to the administrative authority for inspection.

32 **European Public Prosecutor's Office Act**

Section 7[944] **Applicability of the Fiscal Code**

See above → A. III.

[943] **§ 49 OWiG** Akteneinsicht des Betroffenen und der Verwaltungsbehörde
(1) Die Verwaltungsbehörde gewährt dem Betroffenen auf Antrag Einsicht in die Akten, soweit der Untersuchungszweck, auch in einem anderen Straf- oder Bußgeldverfahren, nicht gefährdet werden kann und nicht überwiegende schutzwürdige Interessen Dritter entgegenstehen. Werden die Akten nicht elektronisch geführt, können an Stelle der Einsichtnahme in die Akten Kopien aus den Akten übermittelt werden.
(2) Ist die Staatsanwaltschaft Verfolgungsbehörde, so ist die sonst zuständige Verwaltungsbehörde befugt, die Akten, die dem Gericht vorliegen oder im gerichtlichen Verfahren vorzulegen wären, einzusehen sowie sichergestellte und beschlagnahmte Gegenstände zu besichtigen. Akten, die in Papierform geführt werden, werden der Verwaltungsbehörde auf Antrag zur Einsichtnahme übersandt.

[944] **§ 7 EUStAG** Anwendbarkeit der Abgabenordnung
(1) § 386 Absatz 2 und 4 Satz 3 der Abgabenordnung ist nicht anzuwenden, wenn die Europäische Staatsanwaltschaft gemäß den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat. § 386 Absatz 4 Satz 1 und 2 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass die Finanzbehörde unter den Voraussetzungen des Artikels 24 Absatz 2, 3 und 5 der Verordnung (EU) 2017/1939 die Europäische Staatsanwaltschaft von der Einleitung eines Ermittlungsverfahrens zu unterrichten hat und die Europäische Staatsanwaltschaft gemäß Artikel 27 der Verordnung (EU) 2017/1939 das Verfahren an sich ziehen kann.
(2) § 395 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass im vorbereitenden Verfahren der mit dem Ermittlungsverfahren betraute Delegierte Europäische Staatsanwalt über die Gewährung der Akteneinsicht und die Besichtigung der beschlagnahmten oder sonst sichergestellten Gegenstände entscheidet.
(3) § 397 Absatz 1 der Abgabenordnung ist nicht anzuwenden auf die Entscheidung eines Delegierten Europäischen Staatsanwalts, ein Verfahren gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 einzuleiten.

Financial Court Code/*Finanzgerichtsordnung FGO* **33**

Section 78[945]

(1) The parties may inspect the court file and the files submitted to the court. Parties may have copies, extracts, printouts and transcripts issued by the court registry at their own expense.

(2) If the case files are kept electronically, inspection of the files shall be granted by making the contents of the files available for retrieval or by transmitting the contents of the files by a secure means of transmission. On special request, inspection of files shall be granted by inspecting the files at official premises. A printout of the file or a data carrier with the contents of the file shall only be transmitted upon a special justified request if the applicant demonstrates a legitimate interest. If important reasons prevent the inspection of files in the form provided for in sentence 1, the inspection of files in the form provided for in sentences 2 and 3 may also be granted without an application. The chairman shall decide on an application pursuant to sentence 3; the decision shall be final. Section 79a para. 4 shall apply mutatis mutandis.

(3) If the case files are kept in paper form, inspection of files shall be granted by inspecting the files in official rooms. Unless there are important reasons to the contrary, inspection of files may also be granted by making the contents of the files available for retrieval or by transmitting the contents of the files by secure means of transmission.

(4) The drafts of judgments, decisions and orders, the work on their preparation, furthermore the documents concerning votes or administrative penalties of the Court shall neither be submitted nor communicated in transcript.

[945] **§ 78 FGO**

(1) Die Beteiligten können die Gerichtsakte und die dem Gericht vorgelegten Akten einsehen. Beteiligte können sich auf ihre Kosten durch die Geschäftsstelle Ausfertigungen, Auszüge, Ausdrucke und Abschriften erteilen lassen.

(2) Werden die Prozessakten elektronisch geführt, wird Akteneinsicht durch Bereitstellung des Inhalts der Akten zum Abruf oder durch Übermittlung des Inhalts der Akten auf einem sicheren Übermittlungsweg gewährt. Auf besonderen Antrag wird Akteneinsicht durch Einsichtnahme in die Akten in Diensträumen gewährt. Ein Aktenausdruck oder ein Datenträger mit dem Inhalt der Akten wird auf besonders zu begründenden Antrag nur übermittelt, wenn der Antragsteller hieran ein berechtigtes Interesse darlegt. Stehen der Akteneinsicht in der nach Satz 1 vorgesehenen Form wichtige Gründe entgegen, kann die Akteneinsicht in der nach den Sätzen 2 und 3 vorgesehenen Form auch ohne Antrag gewährt werden. Über einen Antrag nach Satz 3 entscheidet der Vorsitzende; die Entscheidung ist unanfechtbar. § 79a Absatz 4 gilt entsprechend.

(3) Werden die Prozessakten in Papierform geführt, wird Akteneinsicht durch Einsichtnahme in die Akten in Diensträumen gewährt. Die Akteneinsicht kann, soweit nicht wichtige Gründe entgegenstehen, auch durch Bereitstellung des Inhalts der Akten zum Abruf oder durch Übermittlung des Inhalts der Akten auf einem sicheren Übermittlungsweg gewährt werden.

(4) Die Entwürfe zu Urteilen, Beschlüssen und Verfügungen, die Arbeiten zu ihrer Vorbereitung, ferner die Dokumente, die Abstimmungen oder Ordnungsstrafen des Gerichts betreffen, werden weder vorgelegt noch abschriftlich mitgeteilt.

34	**Prison Act**/*Strafvollzugsgesetz StVollzG* **Section 185**[946] **Information to the Person Concerned, Inspection of Files** On proviso of Section 19 of the Federal Data Protection Act, the person concerned shall receive information, and inspection of files where the information is insufficient to assert his legal interests, and he needs to inspect them for this purpose. The Land Commissioner for Data Protection shall replace the Federal Commissioner for Data Protection in Section 19 paras. 5 and 6 of the Federal Data Protection Act, and the corresponding Land authority shall replace the superior Federal authority.
35	**Fiscal Code**/*Abgabenordnung AO* **Section 385**[947] **Validity of procedural rule** (1) Unless otherwise specified in the following provisions, criminal proceedings for tax crimes shall be governed by the general laws on criminal proceedings, namely the Code of Criminal Procedure, the Act on the Constitution of Courts and the Juvenile Courts Act. (2) With the exception of section 386 para. 2 as well as sections 399 to 401, the provisions of this chapter applicable to tax crimes shall apply accordingly where there is suspicion of a crime aimed at obtaining pecuniary benefits by misrepresenting facts of significance for taxation to the revenue authority or another authority and no law regarding tax crimes is infringed.

[946] **§ 185 StVollzG**
Auskunft an den die betroffene Person, Akteneinsicht
Das Recht auf Auskunft der betroffenen Person gemäß Artikel 15 der Verordnung (EU) 2016/679 besteht nicht, soweit die Voraussetzungen einer Ausnahme nach § 34 Absatz 1 des Bundesdatenschutzgesetzes vorliegen. Steht der betroffenen Person ein Recht auf Auskunft zu, erhält sie Akteneinsicht, soweit eine Auskunft für die Wahrnehmung ihrer rechtlichen Interessen nicht ausreicht und sie hierfür auf die Einsichtnahme angewiesen ist. An die Stelle der oder des Bundesbeauftragten in § 34 Absatz 3 des Bundesdatenschutzgesetzes tritt die oder der Landesbeauftragte für den Datenschutz, an die Stelle der obersten Bundesbehörde tritt die entsprechende Landesbehörde.

[947] **§ 385 AO**
Geltung von Verfahrensvorschriften
(1) Für das Strafverfahren wegen Steuerstraftaten gelten, soweit die folgenden Vorschriften nichts anderes bestimmen, die allgemeinen Gesetze über das Strafverfahren, namentlich die Strafprozessordnung, das Gerichtsverfassungsgesetz und das Jugendgerichtsgesetz.
(2) Die für Steuerstraftaten geltenden Vorschriften dieses Abschnitts, mit Ausnahme des § 386 Abs. 2 sowie der §§ 399 bis 401, sind bei dem Verdacht einer Straftat, die unter Vorspiegelung eines steuerlich erheblichen Sachverhalts gegenüber der Finanzbehörde oder einer anderen Behörde auf die Erlangung von Vermögensvorteilen gerichtet ist und kein Steuerstrafgesetz verletzt, entsprechend anzuwenden.

Section 410[948] **Supplementary provisions on administrative fine proceedings**
(1) Apart from the procedural provisions, the provisions of the Administrative Offences Act shall apply accordingly to administrative fine proceedings:
1. sections 388 to 390 on the jurisdiction of the revenue authority,
2. section 391 on the jurisdiction of the court,
3. section 392 on the defence,
4. section 393 on the relationship between criminal proceedings and the taxation procedure,
5. section 396 on the suspension of proceedings,
6. section 397 on the initiation of criminal proceedings,
7. section 399 para. 2 on the rights and obligations of the revenue authority,
8. sections 402, 403 paras. 1, 3 and 4 on the role of the revenue authority in procedures carried out by the public prosecutor,
9. section 404, first sentence and the first half-sentence of the second sentence on tax and customs investigation,
10. section 405 on compensation for witnesses and experts,
11. section 407 on the participation of the revenue authorities and
12. section 408 on the costs of proceedings.
(2) Where the revenue authority prosecutes a tax crime connected with a tax-related administrative offence (section 42 para. 1, second sentence, of the Administrative Offences Act), the revenue authority may, in the cases of section 400, apply to extend the order of summary punishment to the tax-related administrative offence.

[948] **§ 410 AO**
Ergänzende Vorschriften für das Bußgeldverfahren
(1) Für das Bußgeldverfahren gelten außer den verfahrensrechtlichen Vorschriften des Gesetzes über Ordnungswidrigkeiten entsprechend:
1. die §§ 388 bis 390 über die Zuständigkeit der Finanzbehörde,
2. § 391 über die Zuständigkeit des Gerichts,
3. § 392 über die Verteidigung,
4. § 393 über das Verhältnis des Strafverfahrens zum Besteuerungsverfahren,
5. § 396 über die Aussetzung des Verfahrens,
6. § 397 über die Einleitung des Strafverfahrens,
7. § 399 Abs. 2 über die Rechte und Pflichten der Finanzbehörde,
8. die §§ 402, 403 Abs. 1, 3 und 4 über die Stellung der Finanzbehörde im Verfahren der Staatsanwaltschaft,
9. § 404 Satz 1 und Satz 2 erster Halbsatz über die Steuer- und Zollfahndung,
10. § 405 über die Entschädigung der Zeugen und der Sachverständigen,
11. § 407 über die Beteiligung der Finanzbehörde und
12. § 408 über die Kosten des Verfahrens.
(2) Verfolgt die Finanzbehörde eine Steuerstraftat, die mit einer Steuerordnungswidrigkeit zusammenhängt (§ 42 Abs. 1 Satz 2 des Gesetzes über Ordnungswidrigkeiten), so kann sie in den Fällen des § 400 beantragen, den Strafbefehl auf die Steuerordnungswidrigkeit zu erstrecken.

(2) Access to EPPO case file

36 The access to the EPPO case file is predominantly regulated by the EPPO Regulation itself but it is although influenced by national law because the EDPs need to transfer their national case file to the electronic (version of the) EPPO case file (manually).

37 Art. 45 EPPO Regulation regulates case files and the handling of them by the EPPO. Here, Art. 45 para. 2 subpara 2 sentence 2 grants suspects and accused person as well as other persons involved in the proceedings access to the case file of the EPPO by the handling EDP in accordance with the applicable national law (of the Member State where the handling EDP is competent).[949] Therefore, the provisions listed above are considered applicable to EPPO case files as well.

dd. Defence while investigation is under-way, Art. 28–33 EPPO Regulation

38 First of all, in its consistent case law, the BGH holds that: "The freedom of the accused to remain silent and the prohibition of compelled self-incrimination (nemo tenetur se ipsum accusare) are essential expressions of a constitutional attitude founded on the principle of respect for human dignity (cf. Federal Constitutional Court [BVerfG], decisions of October 8, 1974 – 2 BvR 747/73, BVerfGE 38, 105, 113; of October 22, 1980 – 2 BvR 1172/79, BVerfGE 55, 144, 150 f.; and of January 13, 1981 – 1 BvR 116/77, BVerfGE 56, 37, 43)."[950] The court has recalled in a judgment what this right means in front of German courts:

> "(aa) The accused's freedom to remain silent and the prohibition of compelled self-incrimination (nemo tenetur se ipsum accusare) are essential expressions of a rule-of-law principle rooted in the fundamental idea of respect for human dignity (cf. Federal Constitutional Court [BVerfG], decisions of 8 October 1974 – 2 BvR 747/73, BVerfGE 38, 105, 113; of 22 October 1980 – 2 BvR 1172/79, BVerfGE 55, 144, 150 f.; and of 13 January 1981 – 1 BvR 116/77, BVerfGE 56, 37, 43). The principle of protection against self-incrimination is anchored in the rule of law and holds constitutional status (cf. BVerfG, decisions of 8 October 1974 – 2 BvR 747/73, BVerfGE 38, 105, 113; of 22 October 1980 – 2 BvR 1172/79, BVerfGE 55, 144, 150; of 13 January 1981 – 1 BvR 116/77, BVerfGE 56, 37, 43; and of 14 January 2004 – 2 BvR 564/95, BVerfGE 110, 1, 31).
>
> It encompasses the right to freedom of expression and decision-making within criminal proceedings (BVerfG, decision of 25 August 2014 – 2 BvR 2048/13, NJW

[949] See Yolacan 2023, pp. 178–210 providing very useful model requests and solutions for an EPPO reform.

[950] BGH, Judgement of 6.3.2018 - 1 StR 277/17, mn. 23. If, for example, witness statements are to be challenged, a sufficient level of substantiation is also required in EPPO revision proceedings – even if these are represented by a European Delegated Prosecutor (EDP) from the regional office in Frankfurt, acting on behalf of the competent local EPPO unit before the Federal Court of Justice. This follows from s. 344 para. 2 sentence 2 of the German CPC, see BGH, Judgement of 6.3.2018 - 1 StR 277/17, mn. 21.

> 2014, 3506 f., para. 13). This includes the principle that no one may be forced, in the course of criminal proceedings, to incriminate themselves by their own statement or to actively contribute to their own conviction (cf. BVerfG, decision of 13 January 1981 – 1 BvR 116/77, BVerfGE 56, 37, 49; judgment of 3 March 2004 – 1 BvR 2378/98, BVerfGE 109, 279, 324).
> The accused must be able to decide independently and free from coercion whether, and if so, to what extent, they wish to participate in the criminal proceedings (cf. BVerfG, decisions of 8 October 1974 – 2 BvR 747/73, BVerfGE 38, 105, 113; of 13 January 1981 – 1 BvR 116/77, BVerfGE 56, 37, 43; and Federal Court of Justice [BGH], judgment of 26 July 2007 – 3 StR 104/07, BGHSt 52, 11, 17 ff., paras. 20, 26 f.)."[951]

39 While the investigation is on-going – this depends on the area of the money allocation and on the fact that different frauds involve different national investigative bodies operating for the EPPO (see above → Art. 28 EPPO Regulation) – the investigative bodies have duties to **submit information to the suspect**: An example from an FIU and tax document shows, how this needs to be done: "[Information for suspect in tax, customs investigation] Examination process if a tax offence or a tax offence is suspected: If during the examination there is a suspicion of a tax offence or a tax offence against you, the examination or investigation may only be continued with regard to the facts to which the suspicion relates, if you have been informed of the initiation of tax penalties or fines (cf. s. 397 AO). Insofar as the audit findings can also be used for the purposes of criminal tax or fine proceedings, your participation in the clarification of the facts may not be forced (s. 393 para. 1 sentence 2 AO). If you do not participate in the clarification of the facts (cf. Art. 15 Para. 1 UZK, ss. 90, 93 Para. 1, 200 Para. 1 AO), disadvantageous conclusions can be drawn for you in the taxation procedure; Under certain circumstances, the tax bases must be estimated (e.g. Art. 74 Para. 3 UZK, s. 162 AO) if it is not possible to determine the facts."

40 As a matter of law, no incriminating evidentiary assessment may be based on the order in which the accused exercised their procedural rights as "pursuant to s. 136 para. 1 sentence 2 and s. 163a para. 4 of the German CPC, the accused is free to decide whether and when to consult a defence counsel. Although this right is not rooted in the nemo tenetur principle, it is firmly anchored in the rule of law. Any evidentiary inferences

[951] See expressis verbis in BGH, Judgement of 6.3.2018 - 1 StR 277/17, mn. 23. In this case, while in police custody, the accused physically weakened, mentally distressed, and under the influence of medication had clearly invoked her right to remain silent. Despite this, she was subjected to indirect questioning by a police officer. In a vulnerable medical state, she felt compelled to disclose information about the incident in order to receive proper treatment. The police officer knowingly exploited this situation to extract self-incriminating statements violating her right to silence and the principle of *nemo tenetur se ipsum accusare*, see mn. 21–28 of the judgment.

drawn from the accused's exercise of this procedural choice would undermine the integrity of that guarantee."[952]

41 In most cases the suspect will be provided with such a printed paper or informed orally first and later printed these off. The lawyer will need to pay attention to the **right information of the suspect** as well if he/she arrives e.g. for an interrogation at a police station and that the *nemo tenetur se ipsum accusare* (no one is required to incriminate themselves), principle is in force. The scope of *nemo tenetur* is established in this case by the German Federal Constitutional Court. It recently ruled that forcing an individual to provide information that could incriminate themselves or close relatives violates the principle of *nemo tenetur*, derived from the right to personality, Art. 2 para. 1 GG in connection with Art. 1 para. 1 GG and the rule of law (Art. 20 para. 3 GG)[953], as well as the protection of human dignity, Art. 1 para. GG.[954] Insofar as an appeal alleges a violation of the *nemo tenetur* principle on the grounds that a court took into account, to the detriment of the defendant, his lack of insight into his wrongdoing, it likewise does not reveal any error of law.[955] Any tax obligation being in conflict with the right not to incriminate oneself might lead to a suspension of the evidence and therefor e.g. only to an accusation of attempt of a PIF fraud offence.[956]

42 The **legal obligation to disclose information** under s. 9 GG BefG conflicted with the individual's right to remain silent in cases where such disclosure could lead to self-incrimination or impose other legal risks, such as false testimony. In EPPO cases such **legal obligations** can appear in EU Regulations, structural funds law, national law on the distribution of EU money or VAT fraud cases. In the present case a transportation company was involved in a violation of regulations concerning the transport of hazardous goods. The truck was missing a required fire extinguisher, which constituted an administrative offence. The police demanded the identification of the person responsible for compliance with hazardous goods regulations to pursue accountability for the violation. The managing director, deemed responsible, refused to provide the information, invoking the right against self-incrimination (*nemo tenetur*). He was fined EUR 550 for the missing fire extinguisher and an additional EUR 1,000 for failing to identify the

[952] BGH, Beschluss vom 10.6.2020 - 5 StR 109/20, mn. 6.
[953] Lately the Federal Constitutional Court (BVerfG) derived the nemo tenetur principle from the right of a fair trial as part of the rule of law acc. to Art. 20 para. 3 in connection with Art. 2 para. 1 Basic Law, cf. BVerfGE 109, 38 (60); 26, 66 (71); 38, 105 (111); Jarass 2024, Art. 2 GG Rn. 137.
[954] BVerfG, Beschluss vom 25.01.2022 - 2 BvR 2462/18; see Rösinger 2019, pp. 4–27 on the scope of the principle, which is essential to a rule of law state and which prevents the suspect from being forced to reveal any conduct, 215 et seq. right to lie and be silent, 224–233 to any form of investigation measure, which included a way of forcing an individual to do something, 237–257 analysing the nemo-tenetur during so-called secret coercive measures, 277 et seq. emphasizing her point of the subject position of the individual as suspect and a solution how not to infringe the nemo tenetur principle.
[955] BGH, Judgment of 24.3.2022 - 3 StR 375/20.
[956] BGH, Beschluss vom 3.11.2021 - 1 StR 215/21, mn. 10 for tax income papers.

responsible person. While the lower courts upheld the fines, his constitutional complaint succeeded.[957]

The BVerfG made clear that the **statutory duty to provide information** may be justified for public welfare (e.g. to oversee compliance with hazardous goods transport), the police in this case sought the information not for regulatory oversight but to prosecute the responsible person. This specific intent amplified the conflict with *nemo tenetur*. In case of VAT fraud, the High Federal Criminal Court decided on the duty to submit information to text authorities.[958] **43**

For any **defence lawyer in an EPPO case** the judgment reaffirms and recalls that individuals cannot be compelled to actively contribute to their own prosecution or that of close relatives, whether in criminal or administrative contexts. Any enforcement of disclosure duties must respect the constitutional safeguards against self-incrimination. **44**

(1) In cases involving investigative measures of Art. 30 EPPO-Regulation

Art. 30 EPPO Regulation cases are the most intrusive ones and therefore require a **strict control** from the perspective of the defence. Section 304 CPC can e.g. be issued against seizure measures and against the confiscation arrest and freezing orders.[959] **Telecommunication interceptions** requires strong defence tools, too. Moreover, bans on confiscation could be asserted in subsequent court proceedings against search measures and confiscation whilst searching. **45**

[957] Ibid.

[958] BGH, Beschluss v. 22.3.2023 - 1 StR 440/22: "a) So far, the Senate has considered the suspension of criminal liability under the principle of the privilege against self-incrimination in the following exceptional constellations: with respect to the obligation to file the annual VAT return, where the person concerned was informed, prior to the deadline for submission, that criminal tax proceedings had been initiated against them concerning the same year's advance reporting periods (most recently: Federal Court of Justice (BGH), decision of 1 August 2018 – 1 StR 643/17, para. 6 with further references; fundamentally: BGH, decision of 26 April 2001 – 5 StR 587/00, BGHSt 47, 8, 12 et seq.), with respect to the obligation to submit an income tax return, where the individual had already reached the attempt stage of the offence through their failure to submit the return, but the offence had not yet been completed (most recently: BGH, decisions of 4 November 2021 – 1 StR 236/21, para. 16 and of 1 June 2021 – 1 StR 127/21, para. 8, each with further references), and in the context of the relationship between tax evasion and the offence of receiving stolen tax goods (§ 374 Fiscal Code – AO) (BGH, decision of 23 May 2019 – 1 StR 127/19, BGHR AO § 374 Konkurrenzen 6, paras. 9–17). Regarding the first two categories, the Senate has particularly emphasized that only upon notification of the initiation of criminal proceedings is the person effectively barred from filing a valid voluntary disclosure (§ 371 (2) sentence 1 no. 1 lit. b AO) – and not merely by the unknown initiation of proceedings (BGH, decision of 27 May 2009 – 1 StR 665/08, para. 9; see also BGH, decision of 3 November 2021 – 1 StR 215/21, paras. 9 f.). In the third category, the voluntary disclosure provision does not apply to the offence of receiving stolen tax goods."

[959] 20.27 Beschwerde gegen eine Beschlagnahme gem. § 304 StPO, in: *Jens Bosbach*, Pfordte Bosbach Rechtsanwälte Partnerschaftsgesellschaft mbB, Beck'sche Online-Formulare Prozess, 52. Edition 2022, Stand: 01.01.2020, Anm. 1-8; 3. Beschwerde gem. §304 CPC gegen die Anordnung des Vermögensarrests nach §111e Abs. 1 S. 1 CPC/Antrag auf richterliche Entscheidung gem. §111k Abs. 3 CPC, Rönnau 2018, XVII, B. 3.

46 **Section 98**[960] **Procedure for seizure**

(1) Seizures may only be ordered by the court, and in case of imminent danger also by the public prosecutor's office and its investigators (Section 152 of the Judicature Act). Seizure pursuant to Section 97 (5), second sentence, on the premises of an editorial office, a publishing house, a printing house or a broadcasting station may be ordered only by the court.

(2) The official who has seized an object without a court order shall apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of seizure or if the person concerned and, in the event of his absence, an adult relative of the person concerned have raised express objection to the seizure. ***The person concerned may apply for the court decision at any time.*** The jurisdiction of the court shall be determined in accordance with Section 162. ***The person concerned may also file the application with the district court in whose district the seizure took place; the latter shall forward the application to the competent court. The person concerned shall be informed of his rights.***

(3) If, after a public action has been filed, the seizure has been made by the public prosecutor's office or one of its investigators, the court shall be notified of the seizure within three days; the seized items shall be placed at its disposal.

(4) If a seizure becomes necessary in a service building or a facility or installation of the Federal Armed Forces that is not generally accessible, the superior office of the Federal Armed Forces shall be requested to carry it out. The requesting agency shall be entitled to cooperate. The request is not required if the seizure is to be carried out in rooms occupied exclusively by persons other than soldiers.

[960] **§ 98 Verfahren bei der Beschlagnahme**
(1) Beschlagnahmen dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden. Die Beschlagnahme nach § 97 Abs. 5 Satz 2 in den Räumen einer Redaktion, eines Verlages, einer Druckerei oder einer Rundfunkanstalt darf nur durch das Gericht angeordnet werden.
(2) Der Beamte, der einen Gegenstand ohne gerichtliche Anordnung beschlagnahmt hat, soll binnen drei Tagen die gerichtliche Bestätigung beantragen, wenn bei der Beschlagnahme weder der davon Betroffene noch ein erwachsener Angehöriger anwesend war oder wenn der Betroffene und im Falle seiner Abwesenheit ein erwachsener Angehöriger des Betroffenen gegen die Beschlagnahme ausdrücklichen Widerspruch erhoben hat. Der Betroffene kann jederzeit die gerichtliche Entscheidung beantragen. Die Zuständigkeit des Gerichts bestimmt sich nach § 162. Der Betroffene kann den Antrag auch bei dem Amtsgericht einreichen, in dessen Bezirk die Beschlagnahme stattgefunden hat; dieses leitet den Antrag dem zuständigen Gericht zu. Der Betroffene ist über seine Rechte zu belehren.
(3) Ist nach erhobener öffentlicher Klage die Beschlagnahme durch die Staatsanwaltschaft oder eine ihrer Ermittlungspersonen erfolgt, so ist binnen drei Tagen dem Gericht von der Beschlagnahme Anzeige zu machen; die beschlagnahmten Gegenstände sind ihm zur Verfügung zu stellen.
(4) Wird eine Beschlagnahme in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Beschlagnahme in Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

A distinction must be made against which judicial action is to be counteracted. On the one hand there are orders from the public prosecutor's office or EDP and on the other hand there are judicial decisions from the judge for the investigation phase. Attacking the latter in particular will usually succeed with the complaint (*Beschwerde*), whereby the former can usually only be attacked indirectly via administrative (disciplinary) complaints. **47**

In the area of telecommunications surveillance, there is still a complaint under Section 101 (7) in conjunction with Section 100 para. 7 sentence 2 CPC. Changes came about as a result of the *law on the further development of the Code of Criminal Procedure* and on the amendment of other provisions of June 25, 2021 (Federal Law Gazette I p. 2099), which came into force on July 1, 2021. Even the Online-Search (s. 100b CPC) might be challenged.[961] **48**

Section 101 CPC[962] **Procedural rules for covert actions** **49**

[…] (7) Judicial decisions pursuant to para. 6 shall be made by the court responsible for ordering the measure, and otherwise by the court at the seat of the competent public prosecutor's office. ***The persons referred to in para. 4 sentence 1 may apply to the court having jurisdiction pursuant to sentence 1 for a review of the lawfulness of the measure and the manner in which it was executed, even after the measure has ended, up to two weeks after they have been notified.*** An ***immediate appeal against the decision shall be admissible***. If the public action has been brought and the defendant has been notified, the court hearing the case shall decide on the application in the decision concluding the proceedings.

(8) If the ***personal data obtained through the measure*** are no longer required for criminal prosecution and for any judicial review of the measure, ***they shall be deleted without delay***. The deletion shall be recorded in the files. If the deletion is only postponed for a possible judicial review of the measure, the data may only be used for this purpose without the consent of the data subjects; their processing shall be restricted accordingly.

[961] Stuttgart Higher Regional Court, Decision of 05/19/2021 - Az.: 2 Ws 75/21.

[962] § 101 StPO [...] (7) Gerichtliche Entscheidungen nach Absatz 6 trifft das für die Anordnung der Maßnahme zuständige Gericht, im Übrigen das Gericht am Sitz der zuständigen Staatsanwaltschaft. 2Die in Absatz 4 Satz 1 genannten Personen können bei dem nach Satz 1 zuständigen Gericht auch nach Beendigung der Maßnahme bis zu zwei Wochen nach ihrer Benachrichtigung die Überprüfung der Rechtmäßigkeit der Maßnahme sowie der Art und Weise ihres Vollzugs beantragen. 3Gegen die Entscheidung ist die sofortige Beschwerde statthaft. 4Ist die öffentliche Klage erhoben und der Angeklagte benachrichtigt worden, entscheidet über den Antrag das mit der Sache befasste Gericht in der das Verfahren abschließenden Entscheidung.
(8) Sind die durch die Maßnahme erlangten personenbezogenen Daten zur Strafverfolgung und für eine etwaige gerichtliche Überprüfung der Maßnahme nicht mehr erforderlich, so sind sie unverzüglich zu löschen. Die Löschung ist aktenkundig zu machen. 3Soweit die Löschung lediglich für eine etwaige gerichtliche Überprüfung der Maßnahme zurückgestellt ist, dürfen die Daten ohne Einwilligung der betroffenen Personen nur zu diesem Zweck verwendet werden; ihre Verarbeitung ist entsprechend einzuschränken.

Section 304 CPC[963] **Admissibility of Complaints**

(1) An appeal shall be admissible against all orders made by the courts at first instance or on appeal and against orders made by the presiding judge, the judge in the preliminary proceedings and a delegated or requested judge, unless the law expressly exempts them from appeal.

(2) Witnesses, experts and other persons may also appeal against decisions and orders affecting them.

(3) An appeal against decisions on costs or necessary expenses shall only be admissible if the value of the object of the appeal exceeds 200 euros.

(4) No appeal shall be admissible against decisions and orders of the Federal Supreme Court. The same shall apply to orders and decrees of the Higher Regional Courts; however, in matters in which the Higher Regional Courts have jurisdiction at first instance, an appeal shall be admissible against orders and decrees which

1. concern arrest, provisional placement, placement for observation, appointment of a public defender of rights or the revocation thereof, seizure, search or the measures referred to in section 101 para. 1 or section 101a para. 1,
2. refuse to open the main proceedings or discontinue the proceedings due to an impediment to proceedings,
3. Order the main hearing in the absence of the accused (section 231a) or refer the case to a lower court,

[963] **§ 304 Zulässigkeit [der Beschwerde] Strafprozessorndung**

(1) Die Beschwerde ist gegen alle von den Gerichten im ersten Rechtszug oder im Berufungsverfahren erlassenen Beschlüsse und gegen die Verfügungen des Vorsitzenden, des Richters im Vorverfahren und eines beauftragten oder ersuchten Richters zulässig, soweit das Gesetz sie nicht ausdrücklich einer Anfechtung entzieht.

(2) Auch Zeugen, Sachverständige und andere Personen können gegen Beschlüsse und Verfügungen, durch die sie betroffen werden, Beschwerde erheben.

(3) Gegen Entscheidungen über Kosten oder notwendige Auslagen ist die Beschwerde nur zulässig, wenn der Wert des Beschwerdegegenstands 200 Euro übersteigt.

(4) Gegen Beschlüsse und Verfügungen des Bundesgerichtshofes ist keine Beschwerde zulässig. Dasselbe gilt für Beschlüsse und Verfügungen der Oberlandesgerichte; in Sachen, in denen die Oberlandesgerichte im ersten Rechtszug zuständig sind, ist jedoch die Beschwerde zulässig gegen Beschlüsse und Verfügungen, welche

1. die Verhaftung, einstweilige Unterbringung, Unterbringung zur Beobachtung, Bestellung eines Pflichtverteidigers oder deren Aufhebung, Beschlagnahme, Durchsuchung oder die in § 101 Abs. 1 oder § 101a Absatz 1 bezeichneten Maßnahmen betreffen,
2. die Eröffnung des Hauptverfahrens ablehnen oder das Verfahren wegen eines Verfahrenshindernisses einstellen,
3. die Hauptverhandlung in Abwesenheit des Angeklagten (§ 231a) anordnen oder die Verweisung an ein Gericht niederer Ordnung aussprechen,
4. die Akteneinsicht betreffen oder
5. den Widerruf der Strafaussetzung, den Widerruf des Straferlasses und die Verurteilung zu der vorbehaltenen Strafe (§ 453 Abs. 2 Satz 3), die Anordnung vorläufiger Maßnahmen zur Sicherung des Widerrufs (§ 453c), die Aussetzung des Strafrestes und deren Widerruf (§ 454 Abs. 3 und 4), die Wiederaufnahme des Verfahrens (§ 372 Satz 1) oder die Einziehung oder die Unbrauchbarmachung nach den §§ 435, 436 Absatz 2 in Verbindung mit § 434 Absatz 2 und § 439 betreffen;

§ 138d Abs. 6 bleibt unberührt.

(5) Gegen Verfügungen des Ermittlungsrichters des Bundesgerichtshofes und des Oberlandesgerichts (§ 169 Abs. 1) ist die Beschwerde nur zulässig, wenn sie die Verhaftung, einstweilige Unterbringung, Bestellung eines Pflichtverteidigers oder deren Aufhebung, Beschlagnahme, Durchsuchung oder die in § 101 Abs. 1 bezeichneten Maßnahmen betreffen.

4. order the inspection of files, or
5. concern the revocation of the suspended sentence, the revocation of the remission of the sentence and the sentencing to the reserved sentence (section 453, paragraph 2, sentence 3), the ordering of provisional measures to secure the revocation (section 453c), the suspension of the remainder of the sentence and its revocation (section 454, paragraphs 3 and 4), the reopening of the proceedings (section 372, sentence 1) or the confiscation or the rendering unusable pursuant to sections 435, 436, paragraph 2 in conjunction with section 434, paragraph 2 and section 439;
Section 138d para. 6 shall remain unaffected.
(5) An appeal shall only be admissible against orders of the investigating judge of the Federal Court of Justice and the Higher Regional Court (section 169 para. 1) if they concern arrest, temporary placement, appointment of a public defender of rights or their revocation, seizure, search or the measures referred to in section 101 para. 1.

(2) Defence in cross-border cases[964]

The EPPO Adoption Act refers to the defence in cross-border cases in an indirect way: **50**

European Public Prosecutor's Office Act

Section 3[965] See above → A. III. para. 2 is debated since the Judgment of the ECJ of December 23 2023.

(3) Defence in case of arrest and pre-trial detention, Art. 33 EPPO Regulation

First of all, the defence lawyer has to establish or to be granted by police, EDP or competent judge the possibility of communication with the defendant prior to the order of pre-trial detention or arrest, s. 163a para. 3, 4 sentence 3, 168c para. 1, 5 CPC.[966] It this communication it is then necessary to go into the accused's personal circumstances, the PIF offence of which he is accused and the evidence, and, if necessary, to appear directly **51**

[964] For a detailed examination of the topic of defence in EPPO cross-border investigations, see the recent dissertation by Yolaçan 2023, pp. 178 et seq.
[965] **§ 7 EUStAG** Anwendbarkeit der Abgabenordnung
(1) § 386 Absatz 2 und 4 Satz 3 der Abgabenordnung ist nicht anzuwenden, wenn die Europäische Staatsanwaltschaft gemäß den Artikeln 22 und 23 der Verordnung (EU) 2017/1939 zuständig ist und gemäß Artikel 25 dieser Verordnung die Verfolgung übernommen hat. § 386 Absatz 4 Satz 1 und 2 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass die Finanzbehörde unter den Voraussetzungen des Artikels 24 Absatz 2, 3 und 5 der Verordnung (EU) 2017/1939 die Europäische Staatsanwaltschaft von der Einleitung eines Ermittlungsverfahrens zu unterrichten hat und die Europäische Staatsanwaltschaft gemäß Artikel 27 der Verordnung (EU) 2017/1939 das Verfahren an sich ziehen kann.
(2) § 395 der Abgabenordnung ist mit der Maßgabe anzuwenden, dass im vorbereitenden Verfahren der mit dem Ermittlungsverfahren betraute Delegierte Europäische Staatsanwalt über die Gewährung der Akteneinsicht und die Besichtigung der beschlagnahmten oder sonst sichergestellten Gegenstände entscheidet.
(3) § 397 Absatz 1 der Abgabenordnung ist nicht anzuwenden auf die Entscheidung eines Delegierten Europäischen Staatsanwalts, ein Verfahren gemäß Artikel 26 Absatz 1 der Verordnung (EU) 2017/1939 einzuleiten.
[966] Pre-trial detention (*U-Haft*) is distinguished from detention pending trial (*Hauptverhandlungshaft*) pursuant to s. 127b para. 2, 3, which presupposes that the person arrested will evade trial, see Wiesneth 2006, pp. 140 mn. 361 et seq.

at the police station, contact the EDP, organise access to the files and explore the possibilities of taking action against the issuing of an arrest warrant; if necessary, an application for exemption from arrest[967] under s. 116 et seq. of the CPC e.g. with conditions such as not leaving the territory of the FRG should be considered if this is unavoidable and the decision of the EDP.

52 A special relevance should be paid to the **request of an European Arrest Warrant (EAW)** by an EDP as the procedure is enshrined in s**s. 78 et seq. IRG** (see online for a translation → International Mutual Legal Assistance Act).[968] A distinction must always be made between the situation of an incoming EAW from another state (e.g. the Austrian EDP sends an EAW to arrest a wanted person, e.g. a German or Austrian national) or the German EDP sends an EAW to another EPPO zone member state and also whether the EAW is requested for the purpose of criminal prosecution or for the execution of a custodial sentence.[969] For the requirements, reference is made to the applicable provisions and application forms and to an **Austrian-German case** (→ cf. OLG Wien 2025) that is already being discussed in case law.[970] Now, we take a look at the most important provisions for the defence lawyer and investigating judge in this stadium:

[967] Wiesneth 2006, pp. 90 et seq. mn. 228 with a sample form (*Haftverschonungsantrag*). This is issued by order of the district judge (*Haftverschonungsbeschluss*). See in his book presenting a tree diagram overview of legal remedies in detention matters, mn. 238. On the subject of the execution of pre-trial detention and care of clients during the witness in the penitentiary as well as the decisions of the investigating judge, see mn. 292 et seq.

[968] The German EDP can request, as the EPPO is considered impartial and independent under 2002/584/JI EU Council an EAW and order it, see Schmitt 2024, Vor § 112, mn. 9h; see Wiesneth 2006, pp. 145 et seq. and see him citing a form decision on the detention order under the IRG, mn. 390 (*Formularbeschluss zur Festhalteanordnung*).

[969] Schmitt 2024, Vor § 112, mn. 9, 9a-9b, 9e on the issuing process.

[970] Higher Regional Court of Vienna (OLG Vienna), 22 Bs 2/25t, ECLI:AT:OLG0009:2025:0220BS 00002.25T.0401.000, Case-Study: In the decision an EAW issued by the EPPO Munich against an Austrian citizen, A. B*, was rejected. The relevance of the decision (*Beschwerde der StA nach EU-JZG gegen Beschluss des Erstgerichts)* arises from its significance with regard to marking the limits of the surrender of Austrian citizens pursuant to Section 5 para. 2 EU-JZG – even in the context of substantial cross-border VAT fraud. The Vienna Higher Regional Court confirmed the decision of the court of first instance, as the offences charged are subject to the scope of Austrian criminal law and therefore the surrender to German authorities is inadmissible under national law. See equally OLG Wien 22 Bs 3/25i ECLI:AT:OLG0009:2025:0220BS00003.25I.0401.000. The EPPO was involved as the issuer of the EAW and argued that this was a cross-border case with a systematic carousel fraud structure. Despite this cross-border component and the coordinated EPPO investigations, the national obstacle to transfer due to citizenship and parallel prosecution possibilities in Austria prevailed. One can see the limits of EPPO jurisdiction in conjunction with national transfer law. For future proceedings, EDPs must ensure that the requirements of the national transposition law of the Framework Decision on EAW are observed, that the listed offence qualification is comprehensible and that alternative procedural cooperation (e.g. Art. 31 EPPO Regulation) is examined if there are obstacles to surrender. According to this OLG decision, EDPs must be familiar with national extradition law, e.g. the exchange on national pecularities must take place in the EPPO chamber. Defence lawyers learn from this case, that they can successfully assert obstacles to (EAW) surrender, especially in the case of fiscal offences, §§ 39, 40 FinStRG, see → Austrian CNP volume, Art. 33 EPPO Regulation.

Section 148 CPC[971] **Accused's communications with defence counsel**
(1) The accused shall be entitled to communicate with defence counsel in writing as well as orally even when he is not at liberty. […]

Section 148a CPC[972] **Implementation of surveillance measure**
(1) The judge of the local court in whose district the penal institution is located shall be competent as regards the implementation of surveillance measures under section 148 para. 2. If a report of an offence is to be made pursuant to section 138 of the Criminal Code, papers or other items in respect of which there is an obligation to report an offence shall be provisionally taken into custody. The provisions concerning seizure shall remain unaffected.
(2) A judge who is entrusted with implementing surveillance measures may not be or become seized of the subject of the investigation. The judge shall keep secret any knowledge which he obtains during surveillance; section 138 of the Criminal Code shall remain unaffected.

Section 304 CPC[973] **Admissibility of Complaints**
(1) An appeal shall be admissible against all orders made by the courts at first instance or on appeal and against orders made by the presiding judge, the judge in the preliminary proceedings and a delegated or requested judge, unless the law expressly exempts them from appeal. […]

[971] **§ 148 StPO** Kommunikation des Beschuldigten mit dem Verteidiger
(1) Dem Beschuldigten ist, auch wenn er sich nicht auf freiem Fuß befindet, schriftlicher und mündlicher Verkehr mit dem Verteidiger gestattet.
(2) […]
[972] **§ 148a StPO** Durchführung von Überwachungsmaßnahmen
(1) Für die Durchführung von Überwachungsmaßnahmen nach § 148 Abs. 2 ist der Richter bei dem Amtsgericht zuständig, in dessen Bezirk die Vollzugsanstalt liegt. Ist eine Anzeige nach § 138 des Strafgesetzbuches zu erstatten, so sind Schriftstücke oder andere Gegenstände, aus denen sich die Verpflichtung zur Anzeige ergibt, vorläufig in Verwahrung zu nehmen; die Vorschriften über die Beschlagnahme bleiben unberührt.
(2) Der Richter, der mit Überwachungsmaßnahmen betraut ist, darf mit dem Gegenstand der Untersuchung weder befaßt sein noch befaßt werden. Der Richter hat über Kenntnisse, die er bei der Überwachung erlangt, Verschwiegenheit zu bewahren; § 138 des Strafgesetzbuches bleibt unberührt.
[973] **§ 304 Zulässigkeit [der Beschwerde] Strafprozessorndung**
(1) Die Beschwerde ist gegen alle von den Gerichten im ersten Rechtszug oder im Berufungsverfahren erlassenen Beschlüsse und gegen die Verfügungen des Vorsitzenden, des Richters im Vorverfahren und eines beauftragten oder ersuchten Richters zulässig, soweit das Gesetz sie nicht ausdrücklich einer Anfechtung entzieht. […]

Section 306 CPC[974] **Filing; interlocutory revision procedure**
(1) The appeal shall be lodged with the court or tribunal by which or by whose chairman the decision appealed against was issued, either on the record of the registry or in writing.
(2) If the court or the presiding officer whose decision is appealed against considers the appeal to be well-founded, they shall rectify it; otherwise the appeal shall be submitted to the appeal court immediately, at the latest before the expiry of three days.
(3) These provisions shall also apply to the decisions of the judge in the preliminary proceedings and of the delegated or requested judge.

⚖ **First decision by a German court on lengthy pre-trial detention in an EPPO case – some aspects**

For lengthy detention periods that last more than 6 months ss. 121, 122 of the CPC apply. These provisons determine the rules for a special detention review (*besondere Haftprüfung*) by a higher regional court.

53 **The Higher Regional Court of Munich has reviewed a detention in an EPPO case on 9 May 2022:**[975] The accused has been facing the accusation of a gang-related VAT evasion in 21 cases in each case in combination with the formation of a criminal organisation.[976] The detention period began in 20 October 2021.

54 The ss. 121, 122 CPCP limit the duration of pre-trial detention and thus put pressure on law enforcement authorities, which are required to complete investigations quickly.[977] The arrest warrant must be revoked as soon as the detention is no longer proportionate.[978] The balance is struck between the accused's right to freedom and the state's interest in prosecution. As the duration of pre-trial detention increases, the balance tilts to the detriment of the prosecution's interest and higher demands are placed on further detention.[979] Certain criteria must be taken into account for the continuation of detention, e.g. a particularly extensive preliminary investigation.[980] Pursuant to s. 122 para. 1 CPC, the competent court submits the files to the Higher Regional Court if the continuation of pre-trial detention appears necessary or the public prosecutor's office requests this.

[974] **§ 306 Einlegung; Abhilfeverfahren**
(1) Die Beschwerde wird bei dem Gericht, von dem oder von dessen Vorsitzenden die angefochtene Entscheidung erlassen ist, zu Protokoll der Geschäftsstelle oder schriftlich eingelegt.
(2) Erachtet das Gericht oder der Vorsitzende, dessen Entscheidung angefochten wird, die Beschwerde für begründet, so haben sie ihr abzuhelfen; andernfalls ist die Beschwerde sofort, spätestens vor Ablauf von drei Tagen, dem Beschwerdegericht vorzulegen.
(3) Diese Vorschriften gelten auch für die Entscheidungen des Richters im Vorverfahren und des beauftragten oder ersuchten Richters.
[975] Ibid.
[976] Ibid, mn. 9.
[977] Posthoff 2019, § 121 mn. 1.
[978] Posthoff 2019, § 121 mn. 1.
[979] Posthoff 2019, § 121 mn. 1.
[980] Posthoff 2019, § 121 mn. 2.

Pursuant to ss. 121 para. 1, 122 para. 1 CPC the Higher Regional Court of Munich has examined whether a sparing of the detention can be considered. This was decided on the basis of an overall assessment of all the circumstances.[981] An important criterion has been whether the reason for detention (*Haftgrund*) still exists and the necessary "basis of trust" (*Vertrauensgrundlage*) for sparing the detention remains.[982] The court came to the conclusion that the accused's pre-trial detention must be continued.[983] **55**

The main reason for the continuation of the detention is the extensive preliminary investigation.[984] The court has given a lengthy reasoning why the requirements to quick pre-trail proceedings (Article 5 para. 3 sentence 1 ECtHR, s. 121 para. 1 CPC) have been met.[985] **56**

Furthermore, the accused is "strongly suspected" (*dringend verdächtig*) in 19 of 21 cases, which makes the sparing of the continued detention unlikely.[986] The ground for detention remains as well (risk of flight, s. 112 para. 2 no 2 CPC).[987] Therefore the continuation of the detention is not considered to be disproportionate.[988] **57**

➢ **Complaint of lack of jurisdiction**

In the case at hand, the defence complained about the lack of (local) jurisdiction of the EPPO (office in Munich) as well as the jurisdiction of German courts in general. [989] According to the Higher Regional Court of Munich, however, the court is not supposed to examine the local jurisdiction of the EPPO in pre-trial proceedings.[990] This is due to the fact that the prosecution office is considered the head of the pre-trial investigation (*Herrin des Ermittlungsverfahrens*) and the legality check taken on by the courts are limited during the pre-trail phase.[991] **58**

The complaint on the local jurisdiction was linked to the fact that the EPPO initially had severed proceedings from each other. The Higher Regional Court of Munich states that the "separation of a single set of facts, which is ready for conclusion of facts in order to accelerate proceedings in a custody case does not lead to a lack of jurisdiction of the European Public Prosecutor's Office merely because the total damage in the separated partial complex is less than €10 million."[992] Thus, despite the separation, the total damage and the total complex of offences continue to count. **59**

[981] Ibid, mn. 27.
[982] Ibid, mn. 27.
[983] Ibid.
[984] Ibid, mn. 12.
[985] Ibid, mn. 2831.
[986] Ibid, mn. 14.
[987] Ibid, mn. 25.
[988] Ibid, mn. 26.
[989] Ibid, mn. 4.
[990] Ibid,, mn. 17.
[991] Ibid, mn. 17.
[992] Ibid, mn. 18.

The Higher Regional Court of Munich further states that the courts of first instance are not authorised to examine "whether jurisdiction is also possible in another Member State and whether it would be expedient, if necessary, to transfer the proceedings to a Delegated European Public Prosecutor of another Member State – for example to Italy."[993] Such an examination could at most be the duty of the trial court after the indictment upon objection of the accused (s. 16 para. 2 CPC in connection with Art. 36 para. 3 of the EPPO Regulation).[994] The examination is not incumbent on the pre-trial judge when issuing the arrest warrant.[995] Therefore, the question of local jurisdiction has not been considered relevant for the detention review.[996]

c) Request for a discontinuation order pursuant to Article 39 para. 4 of the EPPO Regulation in conjunction with Section 171 para. 1 CPC

60 S. 171 para. 1 CPC applies when the EPPO decides not to follow up on a request – such as a European Crime Report (ECR) or a criminal complaint pursuant to s. 158 CPC. In such cases, the EPPO can issue a formal decision to discontinue criminal proceedings. This discontinuation order is subject to challenge pursuant to s. 171 para. 2 CPC and Article 42 para. 3 of the EPPO Regulation.

61 Alternatively, the EPPO may be persuaded to discontinue proceedings under Article 10 of the EPPO Regulation, provided that one of the grounds listed in Article 39 is met. If the suspect has already been questioned, a formal instruction on the reasons for discontinuation must be given pursuant to s. 170 para. 2 sentence 2 CPC – this also applies in cases involving a prior arrest warrant or particular public interest (e.g. where the suspect is an official of a public authority etc.).

62 Section 170 para. 2 sentence 1 CPC is superseded by the provisions of Articles 10 and 39 of the EPPO Regulation. From the point-of-view of the defence a discontinuation may still be pursued under s. 153 para. 1 CPC where the offence is proven but deemed insignificant (minor gravity). It is the duty of defence counsel to assess whether it is expedient to accept a conditional discontinuation under s. 153a CPC upon initiation of proceedings. This is only permissible if the seriousness of guilt does not preclude such a resolution.

63 Whether participation in a tax compliance seminar offered by the Chamber of Industry and Commerce (IHK) qualifies as a "social training course" under s. 153a CPC is doubtful.

[993] Ibid, mn. 19.
[994] Ibid, mn. 20.
[995] Ibid, mn. 21.
[996] Ibid, 21.

An application of s. 153 CPC is virtually excluded in EPPO proceedings due to the typically serious nature of PIF offences. S.153c CPC does not apply to the EPPO. **64**

d) Defence in indictment phase and the trial phase

The current situation in German is as follows: The prosecutor of the EPPO has to draw the indictment or a deferral after completion of the investigation, s. 169a CPC in conjunction with Art. 36, 39, 40 EPPO Regulation and the decision of the Chamber, if there are no reasons for abatement or transfer of the case to another national prosecution office, OLAF (see → Working Agreement of OLAF & EPPO) or an administrative penalty authority from the Member State (Rules of OWiG) and the reasons for a conviction outweigh the reasons for an acquittal, in the end of the investigations (ss. 199, 200 German CPC, Art. 36 et seq. EPPO Regulation).[997] This means he/she i.e. the EDP has to assemble it. It must be assembled from the existing tax investigation investigations and reports. To do this, the actual facts of the case must be structured, whereby the structure of the file under national law must be observed, since the national criminal division of the court receives the same structure of the indictment from the EPPO as in purely national cases. This means that the structure of the indictment can already be foreseen when examining the recording of the investigation via the structure of the investigation file. Since the evidence is sometimes enormous, constructing the indictment takes a lot of time, the competent court must be assessed, the communication with the defence must be established if they ask for access to the file etc. **65**



Nota bene: It is recommended that before the indictment is filed, any defence counsel should **request a review of the court's jurisdiction**. Under Art. 36 para. 3 and para. 5, the indictment is generally filed in the Member State of the EDP. However, the PC may reassign the case to another Member State based on overriding grounds. This matters i the court lacks international jurisdiction under national or EU law, i.e. then it may constitute a procedural bar. According to s. 16 GVG jurisdiction persists until a lack of competence is formally determined. Therefore, early procedural objection is essential.
→ It should **latest be done by the final indictment decision** of the PC ideally immediately after notice of the intention to indict (*Abschlussvermerk*).
It is suggested to draw **a motion or raise an objection** under national procedural law (e.g. § 6 StPO, § 16 GVG) to challenge international or territorial jurisdiction, demanding the court examine whether it is the legally competent venue for trial. This is important as any lack of territorial or personal connection might enable to argue possible violation of the defendant's procedural rights (e.g. Art. 6 ECHR – fair trial).

[997] Krauß 2022, § 142b GVG mn. 27, 32 on the completion notice (*Abschlussvermerk*). For the main trial the whole national procedural rules, which apply for the trial, §§ 238 et seq.CPC (Hauptverhandlung) apply.

aa. Structure of the EPPO indictment by German EDPs

66 When German EDPs prepare the indictment, they are dependent on the supply of a large amount of information, i.e. on the cooperation of numerous national authorities (which were presented above under Art. 28 EPPO Regulation[998]). In the case of a VAT fraud system, for example, the correct calculations or estimates of the tax loss at the expense of the Union and Germany must be presented. This often results from reports by the investigators of the public prosecutor's office. There is always potential for optimization here. It follows an example of how a normal Indictment could look like (not exhaustive[999]):

[998] See already Jansen 2002, pp. 115–180.

[999] See 110 RiStBV (see above Art. 28 EPPO Regulation).
Form and content of the indictment
(1) The indictment must be clear, concise and, above all, understandable for the accused.
(2) The indictment shall state:
a) the surname and first names (first name underlined), maiden name, occupation, address, marital status, date of birth and place of birth (district, district) of the accused and his nationality, in the case of minors the names and addresses of the legal representatives;
b) the defender;
c) the charge;
it includes:
the offence that the accused is accused of, as well as the time and place of its commission, the legal characteristics of the criminal offence - possibly in a simplified form, e.g. in the case of an attempt - the applicable penal provisions, the circumstances that warrant the ordering of a measure (§ 11 para. 1 No. 8 of the Criminal Code), in the case of violations of several penal provisions, also the statement as to whether the act was one act or a majority of the act was assumed;
d) in the case of criminal offences, a reference to the criminal complaint;
if, in cases in which the law permits it, a public complaint is filed without a criminal complaint having been filed, it should be stated in the indictment that due to the special public interest in the prosecution, official intervention is required.
e) Information on prosecution restrictions according to § 154a StPO;
f) the witnesses (if necessary with the restrictions permitted under Section 200 (1) sentences 3 to 5 StPO) and other evidence;
G) the main result of the investigation (§ 200 Section 2 StPO) and all circumstances that may be of importance for the assessment of the sentence, the suspension of the sentence on probation, the warning with the reservation of sentence, the waiver of punishment, the ancillary punishment and ancillary consequences.
(3) The bill of indictment must also contain the application for the opening of the main proceedings and the indication of the court before which the main hearing is to take place. 2It also has to designate the arbitral tribunal (e.g. white collar crime chamber, youth chamber, state protection chamber) which the public prosecutor regards as competent.
(4) If the accused was or is in pre-trial detention, the place and duration of detention are to be noted; this also applies to any other deprivation of liberty. 2Regarding the question of continuation, a specific application must be submitted. 3The expiry of the period specified in Section 121 Paragraph 2 of the Code of Criminal Procedure must be pointed out.
(5) If the public prosecutor applies for the involvement of the legal person or association and announces the application for the imposition of a fine against it (number 180a paragraph 2), he lists them as secondary participants and gives the factual and legal basis for the desired measure at.

Example of an Indictment

Prosecutor's Office **Place, date**
European (EPPO)
Regional Center **Detention (?!) Yes, No?, Deadline**
File number: Js etc. number/year number

To the court (mainly white collar crime chamber)
[results from the catalogue of acts in Art. 26 (see above) and GVG]
Chamber according to the business allocation plan
Jury court

I n d i c t m e n t

Personal details of the accused(s).

defender nomination

The accused
Detention details (place, time, etc.) s. 121 German CPC (Detention, see → Art. 33 EPPO Regulation)

is charged
to have committed
on XX from XXX to XXXX
in/at more precise designation of the place

as an adult/adolescent

uniformly/majority of acts (individual acts)
so and so many acts or omissions

in the full state of criminal responsibility to have [e.g. example follows:] left the financial authorities in ignorance of tax-related facts, and thereby reduced taxes or to have illegally obtained unjustified tax advantages for himself or for another to the detriment of the State and Union budget, whereby he is a particularly serious case according to p. 370 paragraph 3 no. 3 AO has thus taken advantage of the assistance of a public official or European public official (section 11 paragraph 1 number 2a of the Criminal Code) who has abused his powers or his position.

Chain of paragraphs: §§ e.g. 370 Paragraph 1, Paragraph 3 No. 3, Paragraph 6, AO, 15 I, 73 Paragraph 1, StGB e.g. also §§ 69, 71, 191 AO [and so on always in ascending order and after ordered by law].

Information on the statute of limitations and the filing of criminal charges.
If applicable, information as to whether the procedure was restricted in accordance with § 154a German CPC.

Evidence:
Legal evidence [**typical evidence for EPPO proceedings**]: inspection, witnesses (specific designation, address..., experts (e.g. customs investigation, tax authorities, tax investigation, Federal Network Agency, federal authorities, payment authorities, administrative authorities for EU funds, OLAF investigators, investigators, Federal Criminal Police Office, Customs Criminal Police Office, FIU etc.]
supplementary files
Investigation files (measures according to Art. 30 EPPO VO]

The **result of the investigation (summary)** is required before the Economic Criminal Court.

I. About the person
II. To the points and Facts
Of history, suspicion, investigation, decisions and interrogation, confessions and jurisdiction) an application is made to allow the indictment and to open the main proceedings before the district court, economic criminal chamber – chamber of lay judges.
Co-decision on already pending procedures (connection request).
(Name of EDP)
Signature of the public prosecutor

67 Be aware: This is only an **example of a (fictious) style sheet** and an interpretation of the style guide provisions in the RiStBV and not a real indictment.[1000] The EPPO has its own typical structure templates in the Case Management System, which was set up by an IT distributor from NRW for German EDPs. The Defence can draw many information from the Indictment and will need to study it closely to defend the accused properly.

[1000] Typical style-guide books for prosecutors, that are even used by trainee lawyer, prosecutors and judges see Solbach et al. 2022, pp. 75–123 on the rules to write an indictement and other practical letters, applications, requests.

bb. Determining the jurisdiction via the gravitiy of the PIF offence

The defence in the phase of indictment is prescribed by the legal system of the Member State where the indictment is filed. The determination of the place of indictment is in turn established by Art. 36 para. 3 of the EPPO Regulation, the competent court of the Member State of the handling EDP being the intended forum for filing the indictment.[1001] For determining the handling EDP, moreover, the gravity of the PIF offence is the main deciding aspect (Art. 26 para. 4 of the Regulation). Due to this, the decision on the handling EDP is detrimental to the Member State of indictment (Art. 36 para. 3 of the Regulation). **68**

However, in the EPPO regulation there are exceptions to these rules which may ultimately lead to uncertainties for the defence. A defence strategy has to be adapted to the applicable legal system where the investigation and/or the indictment take place. This is not clear from the start or can even change in between the phases of investigation and trial, e.g. due to possible reallocations (Art. 26 para. 5 of the Regulation). Therefore the determination of the jurisdiction plays a huge role for the defence and the need to present strategies that will not collapse in cross-border cases.[1002] **69**

In this matter it is important for the defence to challenge the jurisdiction of the court. In Germany, the jurisdiction of the court can be challenged with section 16 Criminal Procedure Code: **70**

Section 16 CPC[1003] Examination of local jurisdiction; objection of lack of jurisdiction
(1) The court shall examine its local jurisdiction ex officio until the main proceedings are opened. Thereafter, it may only declare that it lacks jurisdiction upon an objection

[1001] **Section 3 EUStAG Applicability of the provisions of the Code of Criminal Procedure on the preliminary investigation**
(3) Insofar as, according to the provisions of the Code of Criminal Procedure, jurisdiction is linked to the seat of the competent public prosecutor's office, the seat of the European Public Prosecutor's Office shall be the place of employment of the European Public Prosecutor or Delegate entrusted with the investigations in accordance with Article 13 (1) of Regulation (EU) 2017/1939 or the European Delegated Public Prosecutor providing support in accordance with Article 31 Paragraph 1 Clause 2 of Regulation (EU) 2017/1939. This also applies if the European Public Prosecutor has decided in accordance with Article 28 para. 4 of Regulation (EU) 2017/1939 to take over the management of the proceedings himself.

[1002] Duesberg 2022, p. 598.

[1003] **§ 16 StPO Prüfung der örtlichen Zuständigkeit; Einwand der Unzuständigkeit StPO**
(1) Das Gericht prüft seine örtliche Zuständigkeit bis zur Eröffnung des Hauptverfahrens von Amts wegen. Danach darf es seine Unzuständigkeit nur auf Einwand des Angeklagten aussprechen. Der Angeklagte kann den Einwand nur bis zum Beginn seiner Vernehmung zur Sache in der Hauptverhandlung geltend machen.
(2) Ist Anklage von der Europäischen Staatsanwaltschaft erhoben worden, so prüft das Gericht auf Einwand des Angeklagten auch, ob die Europäische Staatsanwaltschaft gemäß Artikel 36 Absatz 3 der Verordnung (EU) 2017/1939/2017 des Rates vom 12. Oktober 2017 zur Durchführung einer Verstärkten Zusammenarbeit zur Errichtung der Europäischen Staatsanwaltschaft (EUStA) (ABl. L 283 vom 31.10.2017, S. 1) befugt ist, vor einem Gericht im Geltungsbereich dieses Gesetzes Anklage zu erheben. Absatz 1 Satz 3 gilt entsprechend.

by the defendant. The defendant may file such an objection only until the beginning of his or her examination on the merits in the main proceedings.
(2) If charges have been brought by the European Public Prosecutor's Office, the court shall, upon objection by the defendant, also examine whether the European Public Prosecutor's Office is competent to bring charges before a court within the scope of this Act pursuant to Article 36 para. 3 of Council Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of enhanced cooperation for the establishment of the European Public Prosecutor's Office (EPPO). Paragraph 1 sentence 3 shall apply accordingly.

71 To determine the jurisdiction of a German court, section 74 c of the German Judicature Act is the relevant provision:

European Public Prosecutor's Office Act

Section 5[1004] Applicability of the Judicature Act
See above → A. III.

72 **Judicature Act**/*Gerichtsverfassungsgesetz GVG*

Section 74c (1) For criminal offences
1. [1005] pursuant to the Patent Act, the Utility Model Act, the Semiconductor Protection Act, the Plant Variety Protection Act, the Trade Mark Act, the Design Act, the Copyright

[1004] **§ 5 EUStAG** Anwendbarkeit des Gerichtsverfassungsgesetzes
(1) Die Delegierten Europäischen Staatsanwälte sind in dieser Eigenschaft ausschließlich den Weisungen und der Aufsicht nach Maßgabe der Verordnung (EU) 2017/1939 unterstellt. Die §§ 144 bis 147 des Gerichtsverfassungsgesetzes sind insoweit nicht anzuwenden.
(2) Die §§ 198 bis 201 des Gerichtsverfassungsgesetzes sind mit der Maßgabe anzuwenden, dass ein Anspruch auf Entschädigung ausgeschlossen ist, soweit der erlittene Nachteil von der Europäischen Staatsanwaltschaft oder ihrem Personal in Ausübung ihres Amtes verursacht worden und diesen zuzurechnen ist.

[1005] **§ 74c GVG**
(1) Für Straftaten
1. nach dem Patentgesetz, dem Gebrauchsmustergesetz, dem Halbleiterschutzgesetz, dem Sortenschutzgesetz, dem Markengesetz, dem Designgesetz, dem Urheberrechtsgesetz, dem Gesetz gegen den unlauteren Wettbewerb, dem Gesetz zum Schutz von Geschäftsgeheimnissen, der Insolvenzordnung, dem Unternehmensstabilisierungs- und -restrukturierungsgesetz, dem Aktiengesetz, dem Gesetz über die Rechnungslegung von bestimmten Unternehmen und Konzernen, dem Gesetz betreffend die Gesellschaften mit beschränkter Haftung, dem Handelsgesetzbuch, dem SE-Ausführungsgesetz, dem Gesetz zur Ausführung der EWG-Verordnung über die Europäische wirtschaftliche Interessenvereinigung, dem Genossenschaftsgesetz, dem SCE-Ausführungsgesetz und dem Umwandlungsgesetz,
2. nach den Gesetzen über das Bank-, Depot-, Börsen- und Kreditwesen sowie nach dem Versicherungsaufsichtsgesetz, dem Zahlungsdiensteaufsichtsgesetz und dem Wertpapierhandelsgesetz,
3. nach dem Wirtschaftsstrafgesetz 1954, dem Außenwirtschaftsgesetz, den Devisenbewirtschaftungsgesetzen sowie dem Finanzmonopol-, Steuer- und Zollrecht, auch soweit dessen Strafvorschriften nach anderen Gesetzen anwendbar sind; dies gilt nicht, wenn dieselbe Handlung eine Straftat nach dem Betäubungsmittelgesetz darstellt, und nicht für Steuerstraftaten, welche die Kraftfahrzeugsteuer betreffen,
4. nach dem Weingesetz und dem Lebensmittelrecht,
5. des Subventionsbetruges, des Kapitalanlagebetruges, des Kreditbetruges, des Bankrotts, der Verletzung der Buchführungspflicht, der Gläubigerbegünstigung und der Schuldnerbegünstigung,

Act, the Act against Unfair Competition, the Trade Secrets Act, the Insolvency Statute, the Corporate Stabilisation and Restructuring Act, the Stock Corporation Act, the Act concerning Accounting of Certain Enterprises and Groups, the Limited Liability Companies Act, the Commercial Code, the SE Implementation Act, the Act to Implement Council Regulation (EEC) on the European Economic Interest Grouping (EEIG), the Cooperatives Act, the SCE Implementation Act and the Transformation Act,
2. pursuant to the laws governing the banking industry, the custody and acquisition of securities, the stock exchanges and the credit system as well as the Act on the Supervision of Insurance Companies, the Payment Services Oversight Act and the Securities Trading Act,
3. pursuant to the Economic Offences Act of 1954, the Foreign Trade and Payments Act and foreign exchange control legislation as well as fiscal monopoly, tax and customs laws, including cases where their criminal provisions are applicable pursuant to other laws; this shall not apply if the same act constitutes a criminal offence under the Narcotics Act and shall not apply to fiscal offences involving the motor vehicle tax,
4. pursuant to the Wine Act and food products legislation,
5. involving subsidy fraud, capital investment fraud, credit fraud, bankruptcy offences, violation of book-keeping duties, preferential treatment for a creditor and preferential treatment for a debtor,
5a. involving agreements in restriction of competition upon invitations to tender, taking and offering bribes in business transactions, taking bribes in the health sector, offering bribes in the health sector, taking bribes from and offering bribes to foreign and international public employees, as well as under the Act on Combating International Bribery,

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5a. der wettbewerbsbeschränkenden Absprachen bei Ausschreibungen, der Bestechlichkeit und Bestechung im geschäftlichen Verkehr, der Bestechlichkeit im Gesundheitswesen, der Bestechung im Gesundheitswesen, der Bestechlichkeit und der Bestechung ausländischer und internationaler Bediensteter sowie nach dem Gesetz zur Bekämpfung internationaler Bestechung,
6. a) der Geldwäsche, des Betruges, des Computerbetruges, der Untreue, des Vorenthaltens und Veruntreuens von Arbeitsentgelt, des Wuchers, der Vorteilsannahme, der Bestechlichkeit, der Vorteilsgewährung und der Bestechung,
b) nach dem Arbeitnehmerüberlassungsgesetz, dem EU-Finanzschutzstärkungsgesetz und dem Schwarzarbeitsbekämpfungsgesetz,
soweit zur Beurteilung des Falles besondere Kenntnisse des Wirtschaftslebens erforderlich sind,
ist, soweit nach § 74 Abs. 1 als Gericht des ersten Rechtszuges und nach § 74 Abs. 3 für die Verhandlung und Entscheidung über das Rechtsmittel der Berufung gegen die Urteile des Schöffengerichts das Landgericht zuständig ist, eine Strafkammer als Wirtschaftsstrafkammer zuständig. Die §§ 120 und 120b bleiben unberührt.
(2) In den Sachen, in denen die Wirtschaftsstrafkammer nach Absatz 1 zuständig ist, trifft sie auch die in § 73 Abs. 1 bezeichneten Entscheidungen.
(3) Die Landesregierungen werden ermächtigt, zur sachdienlichen Förderung oder schnelleren Erledigung der Verfahren durch Rechtsverordnung einem Landgericht für die Bezirke mehrerer Landgerichte ganz oder teilweise Strafsachen zuzuweisen, welche die in Absatz 1 bezeichneten Straftaten zum Gegenstand haben. Die Landesregierungen können die Ermächtigung durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen.
(4) Im Rahmen des Absatzes 3 erstreckt sich der Bezirk des danach bestimmten Landgerichts auf die Bezirke der anderen Landgerichte.

6. a) involving money laundering, fraud, computer fraud, breach of trust, withholding and embezzling wages or salaries, usury, accepting benefits, taking bribes, granting benefits, and offering bribes,
b) pursuant to the Labour Leasing Act, the Act for Strengthening the Protection of the Financial Interests of the EU and the Act to Combat Clandestine Employment,
to the extent that special knowledge of business operations and practices is required in order to judge the case,
insofar as the Regional Court has jurisdiction as court of first instance pursuant to section 74 para. 1 and jurisdiction for hearing and ruling on the legal remedy of appeal on fact and law against judgments of a court with lay judges pursuant to section 74 para. 3, jurisdiction shall be vested in a criminal division as an economic offences division. Sections 120 and 120b shall remain unaffected.
(2) In the cases over which an economic offences division has jurisdiction pursuant to para. 1, it shall also give the decisions designated in section 73 para. 1.
(3) The Land governments shall be authorised, for the purpose of material furtherance or swifter disposal of the proceedings, to issue statutory instruments assigning to one Regional Court, either entirely or partially, the criminal matters for the districts of several Regional Courts that involve the criminal offences designated in para. 1. The Land governments may transfer this authorisation to the Land departments of justice by means of a statutory instrument.
(4) Within the scope of para. 3, the district of the subsequently designated Regional Court shall encompass the districts of the other Regional Courts.

(1) Specialised Economic Chambers of a County Court (*Landgericht*)

73 German courts already have economic crime chambers. Two examples are given in the following.

74 The regional court Munich I/*Landgericht München I*:

Table 16: Division of the economical criminal chambers of the German Landgericht München I

The Economic Criminal Chambers are the[1006]
4th, 5th, 6th and 7th criminal chambers for section 74c GVG Proceedings at 1st instance and decisions rendered outside the main hearing (insofar as these are not assigned to the 15th Criminal Division.)
and the 15th criminal chamber for section 74c GVG Appeals against judgments of the Local Court and decisions outside the main hearing

[1006] Schedule of Responsibilities of the Munich Regional Court I for the business year 2022, pp. 32, 33, 104 et seq.

Another example is the regional court in Frankfurt am Main/*Landgericht Frankfurt am Main*.[1007] The Economic Criminal Chambers is competent to hear EPPO cases.[1008] **75**

Table 17: Division of the Economical Criminal Chambers of the German Landgericht Frankfurt am Main

Major Economic Criminal Chambers for proceedings at first instance:
2nd, 12th and 14th criminal chambers for section 74c GVG[1009] - All matters arising pursuant to section 74c GVG – except appeals – unless offences are charged that are subject to the special jurisdiction of the 24th or 26th criminal chamber.
24th criminal chamber for[1010] - criminal cases at first and second instance – except appeals – under the provisions of sections 108b, 265c–e and 331 to 338 of the Criminal Code, also insofar as special knowledge of economic life is required for the assessment of the case (section 74c (1) no. 6 of the Criminal Procedure Act) and also insofar as these provisions apply pursuant to the EUBestG and IntBestG, as well as under sections 298–302 of the Criminal Code (section 74c para. 1 no. 5a of the Criminal Procedure Act) insofar as the special jurisdiction of the 26th Criminal chamber is not given, - all matters arising pursuant to section 74c GVG – except appeals – unless offences are charged that are subject to the special jurisdiction of the 26th criminal chamber. - all criminal proceedings under section 261 of the Criminal Code – except appeals – insofar as the subject matter stems from a criminal offence, a)... b) which would be punishable under one of the offences mentioned in section 74c GVG, unless the special jurisdiction of the 26th criminal chamber is given
26th criminal chamber for environmental and economic crime[1011]
28th and 29th, criminal chamber for economical crime
Minor economic criminal chambers for appellate proceedings:
5th criminal chamber (small criminal chamber) for appeals

[1007] Schedule of Responsibilities for the Frankfurt am Main Regional Court 2022.
[1008] Brodowski 2022, § 22 Margin Numbers 71–79, mainly 78, who thinks that lower regional courts could be competent, too. This is seriously analyzed not the case if economic offences are tangled as the specialzed economic criminal chambers will mainly be competent in these cases.
[1009] Schedule of Responsibilities for the Frankfurt am Main Regional Court 2022.
[1010] Schedule of Responsibilities for the Frankfurt am Main Regional Court 2022, p. 167.
[1011] Schedule of Responsibilities for the Frankfurt am Main Regional Court 2022, pp. 170, 171. see https://ordentliche-gerichtsbarkeit.hessen.de/sites/ordentliche-gerichtsbarkeit.hessen.de/files/2022-05/gvp_2022_stand_01.04.2022_-_ohne_telefonverzeichnis.pdf. Accessed 31 December 2024.

32nd criminal chamber (small economic crime chamber) for[1012]
- Appeals against Judgments of the criminal judge and the court of lay assessors in the division of the 26th criminal chamber
- Appeals against Judgments of the court of lay assessors for offences punishable under one of the offences listed in section 74c GVG, insofar as special knowledge of economic life is required for the assessment of the case

(2) Challenging the competence of the court

76 Recently the debate about the defence at the beginning of criminal investigations and at the stage of an indictment by the EDP has been started in German academia.[1013] Art. 26 is important to determine the jurisdiction.

77

s. 16 Criminal Procedure Code
Thereafter, it may declare that it lacks jurisdiction only upon objection by the defendant. The accused may raise the objection only up to the commencement of his examination on the merits in the main proceedings.
(2) If charges have been brought by the European Public Prosecutor's Office, ***the court shall also examine, upon objection by the accused, whether the European Public Prosecutor's Office is authorized to bring charges before a court within the scope of this Act*** pursuant to Article 36(3) of Council Regulation (EU) 1939/2017 of 12 October 2017 on the implementation of enhanced cooperation to establish the European Public Prosecutor's Office (EUStA) (OJ L 283, 31.10.2017, p. 1). Para. 1 sentence 3 shall apply mutatis mutandis.

cc. Other defence strategies and relevant provisions

78 Since defendants and otherwise affected persons are entitled to the same legal means as in regular national criminal proceedings, the defence in Germany can, as an example, file an application for a court decision pursuant to section 98 para. 2 sentence 2 of the Code of Criminal Procedure or an appeal pursuant to section 304 of the Code of Criminal Procedure. In contrast, German courts cannot review whether an EDP has rightly opened an investigation.[1014]

[1012] Schedule of Responsibilities for the Frankfurt am Main Regional Court 2022, p 178. see https://ordentliche-gerichtsbarkeit.hessen.de/sites/ordentliche-gerichtsbarkeit.hessen.de/files/2022-05/gvp_2022_stand_01.04.2022_-_ohne_telefonverzeichnis.pdf. Accessed 31 December 2024.
[1013] Brodowski 2022, Mn. 71–79 mainly 75.
[1014] Duesberg 2021, p. 1210.

(1) Review of prosecutorial actions

Section 98 CPC[1015] **Procedure for seizure** **79**

(1) Seizure may be ordered only by the court and, in exigent circumstances, by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Seizure pursuant to section 97 para. 5 sentence 2 on the premises of an editorial office, publishing house, printing works or broadcasting company may be ordered only by the court.

(2) An official who has seized an object without a court order is, as a rule, to apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of seizure or if the person concerned and, if he was absent, an adult relative of that person expressly objected to the seizure. *The person concerned may at any time apply for a court decision*. The competence of the court shall be determined by section 162. The person concerned may also submit the application to the local court in whose district the seizure took place, which shall then forward the application to the competent court. The person concerned shall be instructed as to his rights.

(3) If, after public charges have been preferred, the public prosecution office or one of its investigators has effected seizure, the court shall be notified of the seizure within three days; the objects seized shall be put at its disposal.

(4) If it is necessary to effect seizure in an official building or an installation or facility of the Federal Armed Forces which is not open to the general public, the superior authority of the Federal Armed Forces shall be requested to carry out such seizure. The requesting agency shall be entitled to participate. No such request shall be necessary if the seizure is to be made in places which are inhabited exclusively by persons other than members of the Federal Armed Forces.

[1015] § 98 StPO Verfahren bei der Beschlagnahme
(1) Beschlagnahmen dürfen nur durch das Gericht, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Ermittlungspersonen (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden. Die Beschlagnahme nach § 97 Abs. 5 Satz 2 in den Räumen einer Redaktion, eines Verlages, einer Druckerei oder einer Rundfunkanstalt darf nur durch das Gericht angeordnet werden.
(2) Der Beamte, der einen Gegenstand ohne gerichtliche Anordnung beschlagnahmt hat, soll binnen drei Tagen die gerichtliche Bestätigung beantragen, wenn bei der Beschlagnahme weder der davon Betroffene noch ein erwachsener Angehöriger anwesend war oder wenn der Betroffene und im Falle seiner Abwesenheit ein erwachsener Angehöriger des Betroffenen gegen die Beschlagnahme ausdrücklichen Widerspruch erhoben hat. Der Betroffene kann jederzeit die gerichtliche Entscheidung beantragen. Die Zuständigkeit des Gerichts bestimmt sich nach § 162. Der Betroffene kann den Antrag auch bei dem Amtsgericht einreichen, in dessen Bezirk die Beschlagnahme stattgefunden hat; dieses leitet den Antrag dem zuständigen Gericht zu. Der Betroffene ist über seine Rechte zu belehren.
(3) Ist nach erhobener öffentlicher Klage die Beschlagnahme durch die Staatsanwaltschaft oder eine ihrer Ermittlungspersonen erfolgt, so ist binnen drei Tagen dem Gericht von der Beschlagnahme Anzeige zu machen; die beschlagnahmten Gegenstände sind ihm zur Verfügung zu stellen.
(4) Wird eine Beschlagnahme in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Beschlagnahme in Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

Section 149 CPC[1016] **Admission of assisting counsel**
(1) The spouse or life partner of a defendant shall be admitted to the main hearing to give assistance in the defence and shall be heard upon his or her request. The time and place of the main hearing shall be communicated to him or her in time.
(2) The same rule shall apply to a defendant's statutory representative.
(3) In the preliminary investigation, the decision whether to admit such assistance shall be left to the judge's discretion.

(2) Interim and procedural complaint remedies

80 German law distinguishes between the so-called Interlocutory remedies or interim legal remedies (*Zwischenrechtsbehelfe*), which are legal remedies during ongoing proceedings, before a final decision and Remedies by way of complaint or simply complaint remedies (*Beschwerdebehelfe*), which typically refer to procedural complaints against judicial or prosecutorial measures, e.g. under § 304 CPC. In EPPO proceedings, it is necessary to **distinguish** between **remedies against investigative measures requiring judicial authorisation** and those **measures that do not require such authorisation**. Furthermore, the timing of the measure is relevant – whether it has already been executed, is still pending, or has only just commenced.

(a) In the investigation phase

81 Legal protection against coercive measures ordered by non-judicial authorities such as the police, tax investigators, or an EDP may concern both the order itself and its execution. In both cases, s. 98 para. 2 CPC applies. This provision is applied *mutatis mutandis* in situations where, for example, the police have acted on grounds of exigency (*Gefahr im Verzug*) although a judicial order would ordinarily have been required.



For EDP measures, as long as no judge has been involved, an **application for a judicial decision** should, if applicable, be filed by analogy with Section 98 para. 2 sentence 2 of the German CPC.

82 In EPPO investigations, **s. 257 CPC** (Questioning of the accused and the right to make statements following the taking of evidence) should be invoked where one can identify concrete indications that evidence gathered by the EPPO may be inadmissible or subject to exclusion. This applies in particular to evidence obtained in violation of national procedural rules, without the necessary judicial authorisation, or contrary to Union law

[1016] **§ 149 StPO** Zulassung von Beiständen
(1) Der Ehegatte oder Lebenspartner eines Angeklagten ist in der Hauptverhandlung als Beistand zuzulassen und auf sein Verlangen zu hören. Zeit und Ort der Hauptverhandlung sollen ihm rechtzeitig mitgeteilt werden.
(2) Dasselbe gilt von dem gesetzlichen Vertreter eines Angeklagten.
(3) Im Vorverfahren unterliegt die Zulassung solcher Beistände dem richterlichen Ermessen.

standards. The declaration must be made during the main hearing, immediately following the introduction or presentation of the contested evidence ("*nach jeder einzelnen Beweiserhebung*"), in order to preserve the objection for later appellate review and avoid preclusion. In addition, concerns regarding the legality or admissibility of such evidence may and should **already be raised at the pre-trial stage**, for example by way of a formal written submission to the EDP. This not only documents the defence's legal position early on but may also lead to clarification or corrective measures before the indictment is filed. Such pre-emptive procedural objections can reinforce later courtroom challenges and support the argument that potential violations were not tacitly accepted.[1017]

Section 304 CPC enables protection against coercive measures. It serves as a **legal remedy for challenging judicial decisions** rendered during the merits phase of the proceedings: **83**

Section 304 CPC[1018] **Admissibility [Complaint]**
(1) A complaint shall be admissible against all orders made by the courts of first instance[1019] or in proceedings on an appeal on points of fact and law and against directions given by the presiding judge, the judge in the preliminary investigation, and by a commissioned or a requested judge, unless such orders are expressly exempted from appellate remedy by law.
(2) Witnesses, experts and other persons may also lodge a complaint against orders and directions by which they are affected.
(3) A complaint against decisions on costs or necessary expenses shall be admissible only if the value of the subject matter of the complaint exceeds 200 euros.

[1017] Schmitt 2024, § 257 mn. 1, 5.5a (Widerspruch), 9.
[1018] **§ 304 StPO Zulässigkeit**
(1) Die Beschwerde ist gegen alle von den Gerichten im ersten Rechtszug oder im Berufungsverfahren erlassenen Beschlüsse und gegen die Verfügungen des Vorsitzenden, des Richters im Vorverfahren und eines beauftragten oder ersuchten Richters zulässig, soweit das Gesetz sie nicht ausdrücklich einer Anfechtung entzieht.
(2) Auch Zeugen, Sachverständige und andere Personen können gegen Beschlüsse und Verfügungen, durch die sie betroffen werden, Beschwerde erheben.
(3) Gegen Entscheidungen über Kosten oder notwendige Auslagen ist die Beschwerde nur zulässig, wenn der Wert des Beschwerdegegenstands 200 Euro übersteigt.
[1019] In preliminary proceedings, the following judicial orders are, in particular, subject to appeal under the German CPC search warrants (ss. 102, 103 CPC), seizure orders (§ 98 para. 1 CPC), orders for pre-trial detention (§ 114 para. 1 CPC), other forms of deprivation of liberty, orders for the collection of bodily samples or the performance of physical examinations (§§ 81a, 81c CPC), telecommunications surveillance measures (§§ 100a et seq.CPC), postal seizure and monitoring orders (s. 99 CPC), orders for DNA analysis and identification procedures (s. 81g CPC), the denial of access to the case file (potentially under § 147 para. 5 CPC), as well as the rejection of motions to take evidence or conduct judicial interrogations, insofar as these are requested during the investigative stage. See further Schmitt 2024, Vor § 304 mn. 1, § 304, mn. 13; Köhler 2024, Vor § 94 mn. 1., 2, 6.

(4)[1020] No complaint shall be admissible against orders and directions given by the Federal Court of Justice. The same shall apply to orders and directions given by the higher regional courts; in cases in which the higher regional courts have jurisdiction at first instance, a complaint shall, however, be admissible against orders and directions
1. concerning arrest, provisional placement, placement for observation, seizure, search or the measures designated in section 101 para. 1 or section 101a para. 1,
2. refusing to open the main proceedings or terminating the proceedings on account of a procedural impediment,
3. ordering the main hearing in the defendant's absence (section 231a) or referring a case to a court of lower rank,
4. concerning inspection of files or
5. concerning revocation of suspension of sentence, revocation of remission of sentence and imposition of a sentence reserved (section 453 para. 2 sentence 3), an order for interim measures to secure revocation (section 453c), suspension of the remainder of sentence and its revocation (section 454 paras. 3 and 4), the reopening of proceedings (section 372 sentence 1), or confiscation or rendering unusable of an object pursuant to section 435 and section 436 para. 2 in conjunction with section 434 para. 2 and section 439.
Section 138d para. 6 shall remain unaffected.
(5) A complaint against the directions of an investigating judge at the Federal Court of Justice or a higher regional court (section 169 para. 1) shall be admissible only if it concerns arrest, provisional placement, seizure, search or the measures designated in s. 101 para. 1.

[1020] (4) Gegen Beschlüsse und Verfügungen des Bundesgerichtshofes ist keine Beschwerde zulässig. Dasselbe gilt für Beschlüsse und Verfügungen der Oberlandesgerichte; in Sachen, in denen die Oberlandesgerichte im ersten Rechtszug zuständig sind, ist jedoch die Beschwerde zulässig gegen Beschlüsse und Verfügungen, welche
1. die Verhaftung, einstweilige Unterbringung, Unterbringung zur Beobachtung, Bestellung eines Pflichtverteidigers oder deren Aufhebung, Beschlagnahme, Durchsuchung oder die in § 101 Abs. 1 oder § 101a Absatz 1 bezeichneten Maßnahmen betreffen,
2. die Eröffnung des Hauptverfahrens ablehnen oder das Verfahren wegen eines Verfahrenshindernisses einstellen,
3. die Hauptverhandlung in Abwesenheit des Angeklagten (§ 231a) anordnen oder die Verweisung an ein Gericht niederer Ordnung aussprechen,
4. die Akteneinsicht betreffen oder
5. den Widerruf der Strafaussetzung, den Widerruf des Straferlasses und die Verurteilung zu der vorbehaltenen Strafe (§ 453 Abs. 2 Satz 3), die Anordnung vorläufiger Maßnahmen zur Sicherung des Widerrufs (§ 453c), die Aussetzung des Strafrestes und deren Widerruf (§ 454 Abs. 3 und 4), die Wiederaufnahme des Verfahrens (§ 372 Satz 1) oder die Einziehung oder die Unbrauchbarmachung nach den §§ 435, 436 Absatz 2 in Verbindung mit § 434 Absatz 2 und § 439 betreffen;
§ 138d Abs. 6 bleibt unberührt.
(5) Gegen Verfügungen des Ermittlungsrichters des Bundesgerichtshofes und des Oberlandesgerichts (§ 169 Abs. 1) ist die Beschwerde nur zulässig, wenn sie die Verhaftung, einstweilige Unterbringung, Bestellung eines Pflichtverteidigers oder deren Aufhebung, Beschlagnahme, Durchsuchung oder die in § 101 Abs. 1 bezeichneten Maßnahmen betreffen.

(b) In and after the trial phase

Section 238 CPC Conduct of the Trial 84
(1) The conduct of the trial, the examination of the accused, and the taking of evidence shall be carried out by the presiding judge.
(2) If an order by the presiding judge concerning the direction of the proceedings is challenged as inadmissible by a person participating in the trial, the court shall decide on the matter.

Section 238 CPC is to be asserted directly in the ongoing EPPO main proceedings and concerns procedural orders by the presiding judge, in particular in the conduct of the main hearing, the taking of evidence and the questioning of the accused. The application pursuant to section 238 para. 2 must be made **immediately during the hearing** as a later objection is inadmissible and otherwise the objection is precluded in the appeal proceedings (*EUStA-Revisionsverfahren*). 85

Tpyical Defence Motion: *The defence objects to the presiding judge's order as inadmissible pursuant to section 238 para. 2 CPC.* 🏛

A strong defence in the area of investigations of the EPPO and its EDPs is important for hedging the rule of law in Europe. If the EPPO hands the case to a national authority and decides not to evocate it (see above → Art. 27, Mn. 1 et seq.) the national prosecution can decide on how to proceed. The EPPO might as well hand the case to OLAF, which is why the OLAF Regulation and its provisions on administrative investigations for administrative actions of national bodies is important. The next Part of the Compendium takes a closer look at the references to national references of the OLAF Regulation. 86

e) After the trial

After a trial has ended, an **enforcement procedure** might be needed. The enforcement is transferred to the national prosecution office, which is competent to deal with the detention. The special decrees of the Länder (*Aktenordnungen*) prescribe certain new provisions how to handle an EPPO case (de facto a former EPPO case as it is transferred back to the national level) in this stadium. An example from NRW shall be reproduced here: 87

Section 50[1021] **Enforcement in criminal and administrative fine matters**

(1) Enforcement in criminal and administrative fine matters shall be registered, with the exception of those with which
the enforcement authority was already involved in the preliminary investigation or the court to which the head of enforcement belongs was already involved in the main proceedings:
1. at the public prosecutor's offices and the public prosecutor general's offices:
under the register symbol "VRs", in particular urgent enforcement orders
as an enforcement authority with no local jurisdiction and enforcement
a) in coercive detention cases,
b) in private prosecution cases,
c) after the court has decided on the objection pursuant to Section 87h IRG or the application
by the granting authority pursuant to Section 87i IRG,
d) in proceedings conducted by a German Delegated European Public Prosecutor or the German
European Public Prosecutor,
2. at the local courts:

[1021] **§ 50 Vollstreckungen in Straf- und Bußgeldsachen**
(1) Vollstreckungen in Straf- und Bußgeldsachen sind, mit Ausnahme derjenigen, mit denen die Vollstreckungsbehörde bereits im Ermittlungsverfahren oder das Gericht, dem der Vollstreckungsleiter angehört, bereits im Hauptsacheverfahren befasst war, zu registrieren: 1. bei den Staatsanwaltschaften und den Generalstaatsanwaltschaften: unter dem Registerzeichen "VRs" , insbesondere dringende Vollstreckungsanordnungen als örtlich unzuständige Vollstreckungsbehörde sowie Vollstreckungen a) in Erzwingungshaftsachen, b) in Privatklagesachen, c) nach Entscheidung des Gerichts über den Einspruch nach § 87h IRG oder den Antrag der Bewilligungsbehörde nach § 87i IRG,
d) in von einem deutschen Delegierten Europäischen Staatsanwalt oder dem deutschen Europäischen Staatsanwalt geführten Verfahren,
2. bei den Amtsgerichten: unter dem Registerzeichen "VRJs" insbesondere in den in Nummer 1 bezeichneten Fällen, wenn der Jugendrichter zuständig ist, sowie bei a) Abgabe an den Jugendrichter, der nach § 90 Absatz 2 Satz 2 JGG als Vollzugsleiter zuständig ist, b) Übergang auf den Jugendrichter des Amtsgerichts, in dessen Bezirk die Einrichtung für den Vollzug der Jugendstrafe liegt, c) Übergang auf den durch Rechtsverordnung bestimmten Jugendrichter, d) Abgabe der Vollstreckung aus wichtigen Gründen an einen nicht zuständigen Jugend-richter. Die Vollstreckungen sind für jeden Verurteilten gesondert, aber für mehrere Sanktionen in derselben Sache nur einmal zu registrieren. Nachträgliche Entscheidungen des Gerichts erster Instanz in der Strafvollstreckung sind nicht zu registrieren. Das Vollstreckungsaktenzeichen ist zu dem Verfahren, in dem die zu vollstreckende Entscheidung ergangen ist, mitzuteilen. Nach Erledigung der Vollstreckung sind die Akten in den Fällen nach Satz 1 Nummer 2 der Staatsanwaltschaft zur Aufbewahrung zu übermitteln. 6 Abweichend von Satz 1 können bis zur technischen Umsetzung der Trennung von Registrierung und statistischer Erfassung auch alle Vollstreckungen des bereits im Hauptsacheverfahren befassten Gerichts unter dem Registerzeichen "VRJs" registriert werden.
(2) In den nicht in Absatz 1 genannten Fällen erfolgt die Vollstreckung aus der Strafakte. 2
Bei Bedarf sind nach §§ 15, 16 StVollstrO Vollstreckungshefte anzulegen.
(3) Im Register sind folgende Angaben zu vermerken: 1. Aktenzeichen, 2. Datum des Eingangs, 3. vorherige Aktenzeichen, 4. Vor- und Familiennamen sowie Geburtsdatum des Verurteilten, 5. Datum der rechtskräftigen Entscheidung, 6. Inhalt der rechtskräftigen Entscheidung, 7. zu vollstreckende Rechtsfolgen, 8. Datum und Art der Erledigung, 9. Bemerkungen, zum Beispiel Gnadenerweis, Amnestie.

under the register symbol “VRJs” in particular in the cases specified in number 1, if the youth judge is responsible, as well as in the case of
a) transfer to the youth judge who is responsible as head of enforcement pursuant to Section 90 Paragraph 2 Sentence 2 JGG,
b) transfer to the youth judge of the local court in whose district the institution for executing the youth sentence is located,
c) transfer to the youth judge appointed by legal order,
d) transfer of enforcement for important reasons to a youth judge who is not responsible.
The enforcements must be registered separately for each convicted person, but only once for several sanctions in the same case.
Subsequent decisions by the court of first instance in the enforcement of sentences must not be registered.
The enforcement file number must be communicated for the procedure in which the decision to be enforced was made.
After the execution has been completed, the files in the cases according to sentence 1 number
are to be sent to the public prosecutor for storage.
In derogation from sentence 1, until the technical implementation of the separation of registration and statistical recording,
all executions of the court already involved in the main proceedings can also be registered under the register symbol “VRJs”.
(2) In the cases not mentioned in paragraph 1, the execution is carried out from the criminal file. If required, execution books must be created in accordance with Sections 15 and 16 of the StVollstrO.
(3) The following information must be recorded in the register:
1. File number,
2. Date of receipt,
3. Previous file number,
4. First and last names and date of birth of the convicted person,
5. Date of the final decision,
6. Content of the final decision,
7. Legal consequences to be enforced,
8. Date and type of settlement,
9. Remarks, for example pardon, amnesty.

88 The following case-study offers some insights on typical customs fraud schemes. This case was successfully prosecuted:

Case Study 7: Cross-Border Vehicle Smuggling and Under-Invoicing:

EPPO's Role Strengthened

The EPPO Regional Office in Hamburg, in collaboration with authorities in Estonia and Latvia, led a large-scale investigation into organized tax fraud related to the importation of high-end vehicles into the EU. The case involved international criminal networks operating in Germany and Estonia, with over 130 individual instances of tax evasion. The estimated tax damage exceeds five million euros.

The scheme initially involved smuggling luxury cars into the EU using falsified Lithuanian customs documents. However, investigations revealed that, over time, the suspects modified their approach. Vehicles were transported via sea, air, and land routes to the Netherlands, where they were undervalued upon importation to avoid customs and tax duties.

Search operations, coordinated by the Customs Investigation Office in Hannover with support from EPPO offices in Hamburg, Tallinn, and Riga, led to the seizure of twelve luxury vehicles, cash, gold bars, and other evidence. Two main suspects, aged 38 and 52, were arrested. Authorities also discovered illicit drugs and an illegally possessed firearm.

Court Ruling and Legal Consequences

On 22 August 2023, the Economic Crimes Chamber of the Regional Court of Osnabrück issued verdicts against three main defendants: A 38-year-old German national was convicted of 14 counts of organized and commercial smuggling and nine counts of commercial smuggling, receiving a prison sentence of three years and six months. A second German national was convicted of six counts of smuggling and received a 16-month suspended sentence. An Estonian national was convicted of one count of organized and commercial smuggling and 11 counts of aiding and abetting organized smuggling, receiving a 24-month suspended sentence.

The court also ruled on asset recovery measures:

Four seized luxury vehicles from December 2021 were confiscated, securing over one million euros in evaded import duties.

A corporate confiscation order was issued against the company operated by one of the defendants, amounting to 2.3 million euros.
A property arrest warrant was executed for the same amount, leading to the seizure of a sports car worth 300,000 euros, bank accounts, and outstanding receivables.

A fourth defendant's case was dismissed under § 153a German Code of Criminal Procedure in exchange for a five-figure financial settlement.

Legal and Operational Implications

From a legal perspective, this case reaffirms the EPPO's authority in tackling transnational VAT fraud. The coordination between EPPO delegations and national authorities highlights the agency's growing influence in prosecuting complex financial crimes. The successful execution of search warrants and asset seizures further underscores the efficiency of cross-border cooperation.

Lessons Learned

For defence attorneys, the case demonstrates that challenging the EPPO's jurisdiction over VAT fraud cases is unlikely to be a viable strategy. The investigation was carried out under clear legal authority, reinforcing the EPPO's competence in handling such matters.

Furthermore, this case highlights the importance of scrutinizing procedural aspects in international cases. Defence teams must be prepared for extensive collaboration between multiple jurisdictions, making procedural objections more difficult to sustain.

From an EPPO perspective, ensuring comprehensive documentation and streamlined cooperation with national authorities remains essential. Future investigations should maintain rigorous attention to procedural details to pre-empt potential legal challenges as this will even better protect the EU's financial resources.

All in all, the case is another significant example of the EPPO's role in combating large-scale financial crimes and will likely serve as a reference for future cross-border fraud investigations for the Chambers and new staff within the EPPO in the upcoming years. The appeals filed by the defence indicate that further judicial review may refine the legal boundaries of EPPO's role in asset recovery and cross-border prosecution. It is quite sure that the EPPO's power via investigation measures and its capacity to collect evidence will be tested more and more by appeal courts and Highest criminal courts of the Member States in the 2025-2030 phase defining more precisely, what we call here within this CNP GER volume a special EPPO (criminal) national and European jurisprudence forming a legally binding EPPO zone doctrine, which is done by shaping the PIF crimes and the EPPO's competence.

Source: Zollfahndungsamt Hannover, https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Sonstiges/2023/z16_einfuhrschmuggel_zfah.html. Accessed 30 January 2025.

C. OLAF-Regulation (EU, EURATOM) No 883/2013 of 11 September 2013

I. General Introduction: Investigation powers and national law related to OLAF in Germany (Art. 3–8 OLAF Regulation)

OLAF is well accommodated in Germany and the academic research is extensive and long lasting since the 2000s.[1022] The OLAF Regulation must be read in conjunction with the applicable national laws. **1**

1. General remarks

Current debates evolve around the effectiveness of investigations with regard to digital evidence by virtue of the Regulation 2185/96, which stems in parts from a more analogue society. The access to bank accounts and registers if highly important for OLAF investigators as well as their national homologues. **2**

a) OLAF's role

OLAF investigates fraud, corruption, and serious misconduct affecting the financial interests of the European Union. It conducts independent administrative investigations and cooperates with national and EU authorities to ensure recovery of misused funds and prosecution where appropriate. The relationship to the EPPO, especially the five regional centers of the EDP in Germany should be close. In addition to that the external investigations require a good coordination, which shall be governed by the German AFCOS (see → below Art. 12a OLAF Regulation). **3**

b) OLAF reports in national law

Another question and debate has ever since existed concerning the reports of OLAF (cf. Art. 11), which can and shall constitute evidence – even – in national criminal trials. They concern EPPO cases (see → Art. 23–28 EPPO Regulation) or cases below the thresholds for which the EDPs could exercise their competence and jurisdiction on behalf of the EPPO. This area has been well researched in a contribution to a collection by *Böse*/*Schneider* i.e. in an OLAF study from the last decade, which we will refer to e.g. for the Federal Rules on Accounting and the administrative measures in the area of audits for the German Budget decides by the German Bundestag. **4**

[1022] Rump 1993, pp. 35–52; Brüner 2001, pp. 17–26; Brüner 2009; Brüner 2008, pp. 859–872; Gellert 2009, pp. 85–88; Harings 2007a, pp. 141–149; Harings 2007b, pp. 169–179; Hedtmann 2002, pp. 122–138; Hetzer 2005a, pp. 185–192; Kuhl and Spitzer 1998, pp. 37–44; Rump 2000, pp. 129–144; Schrömbges 2002, pp. 218–223; Hauck 2014, pp. 685 ff.;Wattenberg 2019, Mn. 100; Wirth 2022, pp. 53 et seq.

c) Structure of Part C on OLAF investigations and references to national law

5 The compendium contains a bilingual collection of the relevant laws in relation to investigations and investigative powers as well as examples from case law and trials, which relied upon evidence gathered by OLAF. In addition to that the national authorities such as the role of the Referat E6a in the German Federal Ministry of Finance (German AFCOS) are explained below.

6 Art. 1 and 2 of the OLAF Regulation outline the definitions and tasks of OLAF, which is a successor from UCLAF. The whole history and the main key points on OLAF's telos and actions can be read in other studies more extensively.

2. Article 1 Objectives and tasks

1. In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Union and of the European Atomic Energy Community (hereinafter referred to collectively, when the context so requires, as 'the Union'), the European Anti-Fraud Office established by Decision 1999/352/EC, ECSC, Euratom ('the Office') shall exercise the powers of investigation conferred on the Commission by:
(a) the relevant Union acts; and
(b) the relevant cooperation and mutual assistance agreements concluded by the Union with third countries and international organisations.
2. The Office shall provide the Member States with assistance from the Commission in organising close and regular cooperation between their competent authorities in order to coordinate their action aimed at protecting the financial interests of the Union against fraud. The Office shall contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office shall promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field of the protection of the financial interests of the Union, and shall support joint anti-fraud actions undertaken by Member States on a voluntary basis.
3. This Regulation shall apply without prejudice to:
(a) Protocol No. 7 on the privileges and immunities of the European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union;
(b) the Statute for Members of the European Parliament;
(c) the Staff Regulations;
(d) Regulation (EU) 2016/679 of the European Parliament and of the Council;
(e) Regulation (EU) 2018/1725 of the European Parliament and of the Council.

4. Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations (hereinafter collectively referred to as 'officials, other servants, members of institutions or bodies, heads of offices or agencies, or staff members').
4a. The Office shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO) established in enhanced cooperation by Council Regulation (EU) 2017/1939 (3). That relationship shall be based on mutual cooperation, information exchange, complementarity and the avoidance of duplication. It shall aim in particular to ensure that all available means are used to protect the financial interests of the Union through the complementarity of their respective mandates and the support provided by the Office to the EPPO.
5. For the application of this Regulation, competent authorities of the Member States and institutions, bodies, offices and agencies may establish administrative arrangements with the Office. Those administrative arrangements may concern, in particular, the transmission of information, the conduct of investigations and any follow-up action.

3. Article 2 Definitions

The (legal) definitions[1023] are regulated by Art. 2 OLAF Regulation: **7**

For the purposes of this Regulation:
(1) 'financial interests of the Union' shall include revenues, expenditures and assets covered by the budget of the European Union and those covered by the budgets of the institutions, bodies, offices and agencies and the budgets managed and monitored by them;
(2) 'irregularity' shall mean 'irregularity' as defined in Article 1 para. 2 of Regulation (EC, Euratom) No 2988/95;
(3) 'fraud, corruption and any other illegal activity affecting the financial interests of the Union' shall have the meaning applied to those words in the relevant Union acts and the notion of 'any other illegal activity' shall include irregularity as defined in Article 1 para. 2 of Regulation (EC, Euratom) No 2988/95;

[1023] For the important role of "legal definitions" in EU legal frameworks see only Robertson and Aodha 2023 Handbook of Terminology Online, pp. 244–270. online: https://benjamins.com/online/hot/articles/leg2#c11-s3. Accessed 30 November 2024.

(4) ‘administrative investigations’ (‘investigations’) shall mean any inspection, check or other measure undertaken by the Office in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation; those investigations shall not affect the powers of the EPPO or of the competent authorities of Member States to initiate and conduct criminal proceedings;
(5) ‘person concerned’ shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office;
(6) ‘economic operator’ shall have the meaning applied to that term by Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96;
(7) ‘administrative arrangements’ shall mean arrangements of a technical and/or operational nature concluded by the Office, which may in particular aim at facilitating the cooperation and the exchange of information between the parties thereto, and which do not create additional legal obligations;
(8) ‘member of an institution’ means a member of the European Parliament, a member of the European Council, a representative of a Member State at ministerial level in the Council, a member of the Commission, a member of the Court of Justice of the European Union (CJEU), a member of the Governing Council of the European Central Bank or a member of the Court of Auditors, with respect to the obligations imposed by Union law in the context of the duties they perform in that capacity.

4. Article 3 External investigations

a) On the spot-checks and inspections – renouncing the applicable national law – para. 2, 4 638
b) Assistance needed, competent authorities and access to information in the Member States, para. 5 638
c) Resistance by the economic operator vs. law enforcement and effective investigations, para. 6 or the new model and the relevance of resistance or conformity of the economic operator 638
d) The basic principle of conformity to Regulations 2185/96 and 883/2013 639
aa. Submission: Compliance with Union law 639
bb. Resistance: Assistance in conformity with national procedural rules applicable 639
e) Competent authorities 639
f) National law and "checks and inspections" of OLAF 645
aa. Administrative procedure in general 645
bb. Special administrative powers and provisions in certain areas of revenue and expenditure 648
(1) Administrative provisions 648
(a) Administrative provisions in the area of customs duties (*Zölle*) and value added tax (VAT) = revenue 648
(b) General provisions 648
(aa) Principle of investigation (*Untersuchungs-grundsatz*), s. 88 General Tax Code (*Abgabenordnung*) 648
(bb) External audit (*Außenprüfung*) ss. 193 et seq. AO and s. 27b VAT Act sales tax review (Umsatzsteuernachschau) 650
(cc) Tax and customs investigation (*Steuer- und Zollfahndung*) s. 208 AO 652
(dd) Fiscal supervision (*Steueraufsicht*) and customs supervision s. 209 AO 654
(ee) VAT revenue area 656

(ff) Customs duties revenue area.....656
(c) Administrative provisions in the area of structural funds (*Strukurfonds*) and internal policies (*interne Politiken*) =expenditure.....658
(aa) Structural and investement funds 658
(bb) Internal policies 662
(d) Administrative provisions in the area of the common organisation of the markets (*gemeinsame Marktorganisation*) =expenditure.....664
(e) Administrative provisions in the area of direct expenditure (*Direktausgaben*) ...664
(f) Administrative provisions in the area of external aid (*Außenhilfe*) =expenditure.....665
(2) Investigative powers 665
(a) Investigative powers in the area of customs duties and VAT (*Zölle und MwSt.*), ss. 399 et seq. AO 665
(b) Investigative powers in the area of structural funds and internal policies (*Strukturfonds und interne Politiken*) ... 667
(c) Investigative powers in the area of common market organisations (*gemeinsame Marktorganisation*) 670
(d) Investigative powers in the area of direct expenditure (*Direktausgaben*) ... 670
(3) Protection of information 671
(a) Tax secrecy (*Steuergeheimnis*) s. 30 AO 671
(b) Administrative secrecy (*Verwaltungs-geheimnis*)..... 689
(c) Data secrecy (*Datengeheimnis*)... 689
(d) Official secrecy (*Amtsverschwiegenheit*) 696
(4) Investigation reports 699
(5) Support to the inspectors..... 700
(6) Preservation of evidence (*Sicherung der Beweismittel*) 702
g) Single measures (investigative powers)..... 703
aa. Interviewing / questioning of "persons

concerned" (in relation to suspects/defendants) 704
bb. The taking of statements from economic operators 705
cc. Interviewing / questioning of witnesses 706
dd. Inspections 707
ee. Searches 711
ff. Digital forensic operations within inspections or on-the-spot checks 713
(1) General remarks ... 716
(2) Formal requirements 716
(3) Substantive requirements 717
(a) Fraud-related peculiarities 717
(b) Examples and precedents 717
(aa) In national case-law 717
(bb) In the case-law of the ECJ and ECtHR 717
gg. Investigative missions in third countries 718
h) National procedural rules for "checks and inspections" by the assisting national authoritiy 724
i) Cooperation (*Amtshilfe*) and mutual assistance agreements 724

1. In the areas referred to in Article 1, the Office shall carry out on-the-spot checks and inspections in Member States and, in accordance with cooperation and mutual assistance agreements and any other legal instrument in force, in third countries and on the premises of international organisations.
2. The Office shall ***carry out on-the-spot checks and inspections in accordance with this Regulation and, to the extent not covered by this Regulation, in accordance with Regulation (Euratom, EC) No 2185/96.***
3. Economic operators shall cooperate with the Office in the course of its investigations. The Office may request written and oral information, including through interviews.
4. Where, in accordance with paragraph 3 of this Article, the ***economic operator concerned submits*** to an on-the-spot check and inspection authorised pursuant to this Regulation, Article 2(4) of Regulation (EC, Euratom) No 2988/95, the third subparagraph of Article 6 para. 1 of Regulation (Euratom, EC) No 2185/96 and Article 7 para. 1 of Regulation (Euratom, EC) No 2185/96 ***shall not apply insofar as those provisions require compliance with national law*** and are capable of restricting access to information and documentation by the Office to the same conditions as those that apply to national administrative inspectors.
5. At the request of the Office, the ***competent authority of the Member State*** concerned shall, without undue delay, provide the staff of the Office with the assistance needed in

order to carry out their tasks effectively, as specified in the written authorisation referred to in Article 7 para. 2.

The ***Member State concerned shall ensure***, in accordance with Regulation (Euratom, EC) No 2185/96, that the ***staff of the Office are allowed access to all information, documents and data relating to the matter under investigation which prove necessary in order for the on-the-spot checks and inspections to be carried out effectively and efficiently, and that the staff are able to assume custody of documents or data to ensure that there is no danger of their disappearance.*** Where privately owned devices are used for work purposes, those devices may be subject to inspection by the Office. The Office shall subject such devices to inspection only under the same conditions and to the same extent that national control authorities are allowed to investigate privately owned devices and where the Office has reasonable grounds for suspecting that their content may be relevant for the investigation.

6. Where the staff of the Office find that an ***economic operator resists*** an on-the-spot check and inspection authorised pursuant to this Regulation, namely where the economic operator refuses to grant the Office the necessary access to its premises or any other areas used for business purposes, conceals information or prevents the conduct of any of the activities that the Office needs to perform in the course of an on-the-spot check and inspection, the ***competent authorities, including, where appropriate, law enforcement authorities of the Member State concerned shall afford the staff of the Office the necessary assistance so as to enable the Office to conduct its on-the-spot check and inspection effectively and without undue delay.***

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law, such authorisation shall be applied for.

Article 2(4) of Regulation (EC, Euratom) No 2988/95

Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

The third subparagraph of Article 6 para. 1 of Regulation (Euratom, EC) No 2185/96

~~On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections.~~ [amendments]

~~Commission inspectors shall exercise their powers on production of a written authorisation showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection.~~ [amendments]

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

Article 7 para. 1 of Regulation (Euratom, EC) No 2185/96

Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidized projects.]

When providing assistance in accordance with this paragraph or with paragraph 5, the competent authorities of Member States ***shall act in accordance with national procedural rules applicable to the competent authority concerned. If such assistance requires authorisation from a judicial authority in accordance with national law***, such authorisation shall be applied for.

10. As part of its investigative function, the Office shall carry out the checks and inspections provided for in Article 9 para. 1 of Regulation (EC, Euratom) No 2988/95 and in the sectoral rules referred to in Article 9 para. 2 of that Regulation in Member States and, ***in accordance with cooperation and mutual assistance agreements and any other legal instrument in force***, in third countries and on the premises of international organisations.

12. Without prejudice to Article 12c para. 1, where, before a decision has been taken whether or not to open an external investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the competent authorities of the Member States concerned and, where necessary, the institutions, bodies, offices and agencies concerned.

Without prejudice to the sectoral rules referred to in Article 9 para. 2 of Regulation (EC, Euratom) No 2988/95, the competent authorities of the Member States concerned shall

ensure that appropriate action is taken, in which the Office may take part, ***in accordance with national law***. Upon request, the competent authorities of the Member States concerned shall inform the Office of the action taken and of their findings on the basis of information referred to in the first subparagraph of this paragraph.

1 Recently the relationship of OLAF and the national Member States and their authorities has again been described as an informal way of transfering information ("*informelle Zusammenarbeit im Verwaltungsverbund*") within the EU and between its partners and institutions, bodies, agencies.[1024] The **investigation powers for OLAF** remain sometimes somewhat uncertain[1025] and especially from the **German point-of-view** there has never been a real adoption law like in the Netherlands, Bulgaria or Latvia that clearly determines the competences and powers of OLAF officials by virtue of the Regulation 2185/96.

2 On-the-spot checks have been discussed in the last decade quite thoroughly[1026], but not enough for all countries. For Germany, it is worth taking a closer look at the applicable provisions.

a) On the spot-checks and inspections – renouncing the applicable national law – para. 2, 4

3 The national law is renounced if the economic operator, the beneficiary, the grant recipient etc. submits to the investigation of the Office. In this case Union law applies.

b) Assistance needed, competent authorities and access to information in the Member States, para. 5

4 Even in the case that Union law applies, OLAF may need the help and information from national authorities in the Member States (managing authorities, control bodies, customs and tax offices, etc.).

c) Resistance by the economic operator vs. law enforcement and effective investigations, para. 6 or the new model and the relevance of resistance or conformity of the economic operator

5 If the economic operator, the beneficiary, the grant recipient etc. resists this conduct has an effect on the applicability of law. The ECJ rules in *Sigma Orionis* that national law applies in the case of resistance, which means that the investigations need to be in conformity with the national law applicable in similar national investigations.

[1024] See Heil 2022, pp. 86 et seq.
[1025] Hauck 2014, pp. 685 ff, Wattenberg 2019, Mn 100.
[1026] See Bovend'eerdt 2018 European Law Blog. The Applicable Law in OLAF's On-The-Spot Inspections.

d) The basic principle of conformity to Regulations 2185/96 and 883/2013

aa. Submission: Compliance with Union law

In the case of compliance of an Estonian Economic Operator Union law applies, thus the Regulation allows OLAF officials to conduct on-the-spot checks without prior information of national authorities. **6**

bb. Resistance: Assistance in conformity with national procedural rules applicable

Does the participant, the personal or Economic operator concerned resist, the Regulation indicates that OLAF has to follow national law and inform national authorities that can provide assistance in conformity with national procedural rules applicable.[1027] **7**

e) Competent authorities

The table shows non-extensively the most important competent authorities, which need to be contacted if the Economic operator resists and thus national law applies if OLAF wants to conduct investigations into irregularities: **8**

Who is responsible depends on which area is affected (direct or shared management) and which type of irregularity or fraud is suspected, as well as in which payment (expenditure) or payment (revenue) area. **9**

For example one area of shared management can be presented here: **10**

Table 18: Competent Authorities in a Case of Resistance (Art. 3 OLAF Reg.) **11**

Financial authorities (tax matters)	**Custom authorities (custom matters)**	**Special(ised) authorities**
s. 6 para. 2[1028] **AO**: (2) Financial authorities within the meaning of this	s. 208 AO	ESF offices and administrative authorities of the Länder

[1027] ECJ, Case T-48/16 S*igma Orionis v the Commissio*n, Margin Number 112: "Finally, it should be noted that, according to the rules applicable to the actions carried out by OLAF, the requirement to obtain a judicial authorisation, if provided for by national law, only applies in the case of an objection raised by the economic operator and that OLAF must then have recourse to national police forces which, according to the rules applicable to them, must comply with national law"

[1028] **§ 6 [...] AO**
(2) Finanzbehörden im Sinne dieses Gesetzes sind die folgenden im Gesetz über die Finanzverwaltung genannten Bundes- und Landesfinanzbehörden:
1. das Bundesministerium der Finanzen und die für die Finanzverwaltung zuständigen obersten Landesbehörden als oberste Behörden,
2. das Bundeszentralamt für Steuern, das Informationstechnikzentrum Bund und die Generalzolldirektion als Bundesoberbehörden,

Act are the following federal and state financial authorities named in the Financial Management Act: 1. the Federal Ministry of Finance and the supreme state authorities responsible for financial management as supreme authorities, 2. the Federal Central Tax Office, the Federal Information Technology Center and the General Customs Directorate as higher federal authorities, 3. Computer centers and state financial authorities to which state-wide responsibility for cash transactions and	s. 21 Foreign Trade and Payments Act[1029]	Federal Administrative Office[1030] Agricultural authorities (disbursing agencies) Fisheries authorities (disbursing agencies) Food authorities Government offices, regional councils, district governments of the Länder, municipalities for individual payments and projects[1031] In single cases the police might be involved,

3. Rechenzentren sowie Landesfinanzbehörden, denen durch eine Rechtsverordnung nach s. 17 Absatz 2 Satz 3 Nummer 3 des Finanzverwaltungsgesetzes die landesweite Zuständigkeit für Kassengeschäfte und das Erhebungsverfahren einschließlich der Vollstreckung übertragen worden ist, als Landesoberbehörden,
4. die Oberfinanzdirektionen als Mittelbehörden,
4a. die nach dem Finanzverwaltungsgesetz oder nach Landesrecht an Stelle einer Oberfinanzdirektion eingerichteten Landesfinanzbehörden,
5. die Hauptzollämter einschließlich ihrer Dienststellen, die Zollfahndungsämter, die Finanzämter und die besonderen Landesfinanzbehörden als örtliche Behörden,
6. Familienkassen,
7. die zentrale Stelle im Sinne des § 81 des Einkommensteuergesetzes und
8. die Deutsche Rentenversicherung Knappschaft-Bahn-See (§ 40a Abs. 6 des Einkommensteuergesetzes).

[1029] Außenwirtschaftsgesetz - AWG

[1030] See https://www.bva.bund.de/DE/Das-BVA/Aufgaben/Z/Zuwendungen_international/Meldung_Betrugsverdacht/MeldungBetrugsverdacht_node.html (Accessed 31 December 2024): "Bei Vorliegen eines Betrugsverdachts ist jede an der Umsetzung der EU-Förderung beteiligte Stelle verpflichtet, die erforderlichen Schritte zur Sachverhaltsaufklärung vorzunehmen und umgehend die ESF-Verwaltungsbehörde zu informieren. Sofern sich der Sachverhalt konkretisiert, erfolgt seitens der Verwaltung eine Anzeige bei den zuständigen nationalen Ermittlungsstellen und unter Umständen beim Europäischen Amt für Betrugsbekämpfung (OLAF). Es gibt zwei Varianten, mögliche betrügerische Handlungen zu melden. Sie können einen Verdacht anonym melden über ein Webformular oder nicht anonym eine E-Mail an die unten stehende E-Mail-Addresse [esf@bva.bund.de] senden" See as well Webformular für Meldungen von Betrugs- oder Korruptionsverdachtsfällen (ESF-Bundesprogramm).

[1031] ESF Ämter und Verwaltungsbehörden der Länder, Bundesverwaltungsamt, Bundesämter und Bundeszahlstellen, Agrarbehörden (Auszahlungsstellen) des Bundes/Länder, Fischereibehörden (Auszahlungsstellen) des Bundes/der Länder, Lebensmittelbehörden des Bundes/der Länder, Regierungsämter der Länder sowie Regierungspräsidien und Bezirksregierungen der Länder als auch Kommunen für einzelne Zahlungen und Projekte.

the collection procedure including enforcement has been transferred by a statutory order pursuant to Section 17 para. 2 sentence 3 number 3 of the Financial Management Act, as state higher authorities, 4. the senior finance directorates as intermediate authorities, 4a. the state financial authorities set up under the Financial Management Act or under state law in place of a regional tax office, 5. the main customs offices including their offices, the customs investigation offices, the tax offices and the special state tax authorities as local authorities, 6. family benefits, 7. the central office within the meaning of Section 81 of the Income Tax Act and 8th. the Deutsche Rentenversicherung Knappschaft-Bahn-See (Section 40a para. 6 of the Income Tax Act).		too (eg entering premises and being protected). That is the same for the "Zollfahndungsdienst", which might carry guns in serious cases (for self-defence).

Source: The authors.

The following fictious case study with connection to real funding that exists since 2023 shows how OLAF could be involved in a national external control, a so-called on-the spots check. **12**

13 *Case Study 8: Fictitious case – Detecting an Irregularity in the area of funding national authorities*

	**Fictious Case-Study: How Detect an Irregularity in the Area of Funding and Involved National Authorities**

From January 27th, 2023 to April 17th, 2023, the guideline for the promotion of projects as part of the program "Sustainable in the profession – future-oriented training (NIB)", Federal Gazette of January 27th, 2023, will be implemented in Germany, which aims to use EU funds for vocational training promote sustainable.
It provides conditions that an applicant must meet in order to receive the funds. From an administrative point of view, these requirements are prerequisites for the issuance of a beneficial monetary benefit administrative act. In this case, an examination is required for the granting of the grant by the competent authority, which is why it is not a purely real act that represents the payment of money. The "EU pot" behind the funding is the ESF+ funding allocation. It says in part: "With the ESF-Plus co-financed program "Sustainable in the workplace – future-oriented training" (NIB), the Federal Ministry of Education and Research (BMBF) promotes the sustainability-oriented development of skills in vocational training. It thus contributes to the anchoring of Sustainability in the sense of the Sustainable Development Goals of the United Nations2, the European Green Deal, the German Sustainability Strategy and the Climate Protection Act as well as the "National Action Plan Education for Sustainable Development". The funding also takes account of the 2021 coalition agreement (lines 3253 to 3255)"
The European secondary law is: "The program is funded from the European Social Fund Plus (ESF Plus) on the basis of Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 (ESF Plus Regulation) and of Regulation (EU) 2021/1060 of the European Parliament and of the Council of June 24, 2021 (General Structural Funds Regulation).[....] This is funding in accordance with Article 4 number 1 letter g of Regulation (EU) 2021/ 1057. [...] According to this funding guideline, state aid is granted on the basis of Article 29 Paragraph 1 or Article 31 Paragraph 1 of the General Block Exemption Regulation (AGVO) of the EU Commission.3 The funding takes place in compliance with Chapter I GBER common provisions, in particular taking into account the definitions set out in Article 2 of the Regulation"
The applicant must prove that he can achieve the measures to achieve this goal.

Eligible are:
"Beneficiary
legal persons under public law as well as
legal persons and partnerships under private law,"

Requirement is:
“A prerequisite for the funding of a project is the involvement of suitable institutions and partners relevant for regional dissemination (e.g. responsible bodies: chambers and the like). This involvement takes place as a network partner with its own funding application or as a strategic partner whose participation must be ensured and proven”

The application process has two stages. In the first stage, a project outline must be submitted.

“Presentation of the project: Brief summary of the project (maximum one page, including details of the total amount of funding requested)

Justification of the project and contribution of the project to the achievement of the funding objectives

- Concrete needs for the project, including market/potential analysis, taking into account the interface check for state-owned funding in this field
- Underlying concepts, starting point of the project concept
- Project description (project goals, scope, methods and implementation)
- For joint projects: cooperation in the joint venture, justification of the joint venture, contributions by the joint partner to the achievement of goals, presentation of the regional distribution (e.g. chamber districts)
- Presentation of measurable quantitative or qualitative indicators/target values for target achievement
- consolidation concept
- Experiences and activities of the applicant/the network partner in the field of vocational training and with the topic of sustainability
- Networking in the regional structures relevant to the project; existing and planned cooperations, networks
- Presentation of the chances of success, scope of the project (also with proof of the professional suitability of the person submitting the sketch, brief description of the planned project management)
- Work Planning/Scheduling
- Financial planning (roughly structured overview of human and material resources; own and third-party funds)
- Proof of ownership or permission to use the underlying and to be used (teaching and learning) concepts (starting point)
- Consideration of the ESF cross-cutting objectives
- Attachment: Letter(s) of Intent (LOI) from the additional strategic partners

Authorities:
The BMBF has currently commissioned the following with the technical handling of the funding measure:

"Federal Institute for Vocational Training (BIBB)
Working area 4.2
Password: NIB
Robert Schuman Square 3
53175 Bonn
Email: nib@bibb.de

The BMBF has currently commissioned the Deutsche Rentenversicherung Knappschaft-Bahn-See (DRV KBS) (authorizing authority) with the administrative implementation of the funding measure (authorizing authority):

German pension insurance
Knappschaft Bahn Lake
Specialist office for federal subsidies – European Social Fund department
Knappschaftplatz 1
03046 Cottbus
Email: Nachhaltig-im-Beruf@kbs.de"

Example
If A submits such an application for his civil society (GbR), but is inaccurate and provides information that he cannot prove beyond doubt, then there is reason to assume an irregularity.
If A provides the IBAN for the payment for his private account, there is a suspicion of a serious irregularity.
If A misleads a payout processor in order to receive the payment, a criminal offence under section 263 of the German Criminal Code is suspected.
If, contrary to the requirement, A names network partners on paper but does not contact anyone, there is a suspicion of irregularity.
If A changes the funding goal without contacting the donors, there is a suspicion of an irregularity.

The example shows that national funding programs involve **numerous actors as national authorities who are important for OLAF investigations.**

The Official publication also says:
ss. 48 to 49a of the Administrative Procedure Act, ss. 23, 44 BHO and the general administrative regulations issued for this purpose, unless deviations from the general

administrative regulations have been permitted in these funding guidelines. The Federal Court of Auditors is authorized to audit in accordance with § 91 BHO. The European Commission, the European Court of Auditors, the European Anti-Fraud Office (OLAF) are also authorized to audit, the European Public Prosecutor's Office (EUStA), the ESF administrative authority and the federal ESF audit authority as well as their intermediary bodies in accordance with number 7.4 BNBest-P-ESF-Bund, BNBest-Gk-ESF-Bund."[1032]

f) National law and "checks and inspections" of OLAF

Expenditure and revenue area must be distinguished in order to determine the relevant and applicable national law for external, thus on-the-spot checks and inspections on German territory. For a huge part of investigations in the area of shared management and direct management the **general administrative law** will apply. In some cases concerning the Market Organisation, the Market Organisation Act and the Budet Law will apply. **14**

In the area of revenue either customs law will apply or if VAT irregularities (*Umsatzsteuerunregelmäßigkeiten*) are detected the General Tax Law in combination with the VAT law as well as the provisions for the tax investigators will apply. Customs law (*Zollrecht*) governs duties and import/export irregularities Union Customs Code (UCC, Regulation (EU) 952/2013), national customs laws and Abgabenordnung (AO, General Tax Code). Investigations in this field may often overlap with criminal investigations under the Fiscal Code (ss. 369 ff. AO) or Smuggling Act if (criminal) fraud is suspected; OLAF cooperates closely with the German Customs Investigation Office (*Zollkriminalamt, ZKA*; for reform B.) and the AFCOS (Federal Ministry of Finance, Referat E6a). **15**

In order to carry out and plan the investigations, the relevant law should be taken into account carefully (and with the help of the national AFCOS, see → below Art. 12a OLAF Regulation if necessary). OLAF acts in coordination with national paying or managing authorities; enforcement follows administrative procedure rules unless criminal suspicion arises (then referral to the public prosecutor's office, EPPO under Art. 25 EPPO-Reg., 12e OLAF-Reg., under ss. 152 ff. StPO). **16**

aa. Administrative procedure in general

- German Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG).[1033] **17**

[1032] See https://www.bmbf.de/bmbf/shareddocs/bekanntmachungen/de/2023/01/2023-01-27-Bekanntmachung-NIB.html. Accessed 31 December 2024.
[1033] See https://www.bmi.bund.de/SharedDocs/downloads/EN/gesetztestexte/VwVfg_en.pdf?__blob=publicationFile&v=1. Accessed 31 December 2024.

Sources and national sections 9: Overview for Germany – Art. 3 OLAF Regulation General German Administrative Procedure Act

Administrative Procedure Act
[Verwaltungsverfahrensgesetz (VwVfG)]
of May 25th 1976

In the wording last promulgated on January 23rd 2003 (Federal Law Gazette I p. 102), amended by Article 4, para. 8 of the Act to Modernise the Law on Costs (Kostenrechtsmodernisierungsgesetz – KostRMoG) of May 5th 2004 (Federal Law Gazette I p. 718)

* The last number indicates the section (§) of the Act.

C o n t e n t s

PART I
Scope, local competence, electronic communication, official assistance
Sections
Scope 1
Exceptions 2
Local competence 3
Electronic communication 3a
Authorities' duty to assist one another 4
Circumstances permitting and limits to official assistance 5
Choice of authority 6
Execution of official assistance 7
Cost of official assistance 8
Section 3
European administrative cooperation
s. 8a Principles of assistance
Section 8b Form and handling of requests
s. 8c costs of assistance
Section 8d Notifications ex officio
Section 8e Applicability

PART II
General regulations governing administrative procedure
D i v i s i o n 1
Procedural principles
Definition of administrative procedure 9
Administrative procedure not tied to form 10
Capacity to participate 11
Capacity to act 12
Participants 13
Authorised representatives and advisers 14
Appointment of an authorised recipient 15
Official appointment of a representative 16
Representatives in the case of identical submissions 17
Representatives for participants with the same interests 18
Provisions relating to representatives in the case of identical
submissions and those for participants with the same interests 19
Persons excluded 20
Fear of prejudice 21
Commencement of proceedings 22
Official language 23
Principle of investigation 24
Advice and information 25
Evidence 26
Affirmation in place of oath 27
Hearing of participants 28
Inspection of documents by participants 29
Secrecy 30
D i v i s i o n 2
Time limits, deadlines, restoration
Time limits and deadlines 31
Restoration of the status quo ante 32
D i v i s i o n 3
Official certification
Certification of documents 33

Certification of signatures 34

PART III
Administrative acts
D i v i s i o n 1
Materialisation of an administrative act
Definition of an administrative act 35
Additional stipulations to an administrative act 36
Determinateness and form of an administrative act 37
Assurance 38
Grounds for an administrative act 39
Discretion 40
Notification of an administrative act 41
Obvious errors in an administrative act 42
D i v i s i o n 2
Validity of an administrative act
Validity of an administrative act 43
Invalidity of an administrative act 44
Making good defects in procedure or form 45
Consequences of defects in procedure and form 46
Converting a defective administrative act 47
Withdrawal of an unlawful administrative act 48
Revocation of a legal administrative act 49
Reimbursement, interest 49a
Withdrawal and revocation in proceedings for a legal remedy 50
Resumption of proceedings 51
Return of documents and other materials 52
D i v i s i o n 3
Legal effects of an administrative act on the statute of limitations
Suspension of the statute of limitations by administrative act 53
PART IV
Agreement under public law
Admissibility of an agreement under public law 54
Compromise agreements 55
Exchange agreements 56
Written form 57
Agreement of third parties and authorities 58
Invalidity of an agreement under public law 59
Adaptation and termination in special cases 60
Submission to immediate enforcement 61
Supplementary application of provisions 62

PART V
Special types of procedures
D i v i s i o n 1
Formal administrative proceedings
Application of provisions concerning formal administrative proceedings 63
Form of applications 64
Participation of witnesses and experts 65
Obligation to hear participants 66
Need for an oral hearing 67
Conduct of oral hearings 68
Decisions 69
Contesting the decision 70
Special provisions governing formal proceedings before committees 71
D i v i s i o n 1 a
Expediting approval procedures
[…]
D i v i s i o n 2
Procedures for planning approval
[…]

PART VI
Procedures for legal remedies
Remedies for administrative acts 79
Refund of costs in preliminary proceedings 80

bb. Special administrative powers and provisions in certain areas of revenue and expenditure

18 The special laws that apply in certain areas of revenue and expenditure are:

- Value Added Tax Act/*Umsatzsteuergesetz*[1034] in combination with Directive 112/2006/EC
- Federal Tax Code/*Abgabenordnung*
  See ss. 121, 364 AO.
- Customs Administration Act/*Zollverwaltungsgesetz*
- Customs Investigation Service Act/*Zollfahndungsdienstgesetz*
- *Finanzgerichtsordung (FGO)*
  See ss. 79, 79a, 90.
- *Verwaltungsgerichtsordung* (VwGO)

(1) Administrative provisions

(a) Administrative provisions in the area of customs duties (*Zölle*) and value added tax (VAT) =revenue

19 Important provisions are:

- s. 27a Value Added Tax Act
- s. 370 Federal Tax Code

(b) General provisions

(aa) Principle of investigation (*Untersuchungsgrundsatz*), s. 88 General Tax Code (*Abgabenordnung*)

20

Federal Tax Code

Section 88 Principle of investigation

(1)[1035] The revenue authorities shall investigate the facts of a case by virtue of office. In doing so, they shall take all relevant circumstances into account, including those that are favourable to the participants.

[1034] Cf. Amtlichen Umsatzsteuer-Handausgabe (UStH).

[1035] **§ 88 Abgabenordnung Untersuchungsgrundsatz**
(1) Die Finanzbehörde ermittelt den Sachverhalt von Amts wegen. Dabei hat sie alle für den Einzelfall bedeutsamen, auch die für die Beteiligten günstigen Umstände zu berücksichtigen.
(2) Die Finanzbehörde bestimmt Art und Umfang der Ermittlungen nach den Umständen des Einzelfalls sowie nach den Grundsätzen der Gleichmäßigkeit, Gesetzmäßigkeit und Verhältnismäßigkeit; an das Vorbringen und an die Beweisanträge der Beteiligten ist sie nicht gebunden. Bei der Entscheidung über Art und Umfang der Ermittlungen können allgemeine Erfahrungen der Finanzbehörden sowie Wirtschaftlichkeit und Zweckmäßigkeit berücksichtigt werden.

(2) The revenue authorities shall determine the type and scope of investigations based on the circumstances of each individual case and based on the principles of consistency, lawfulness and proportionality; they shall not be bound by motions for the submission of evidence or by submissions made by the participants. Decisions on the type and scope of investigations may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account.
(3) To ensure the timely and consistent execution of tax laws, the highest revenue authorities may, for identified or identifiable categories of cases, issue instructions on the type and scope of investigations and the processing of data collected or recorded, unless otherwise required by law. Such instructions may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account. Such instructions may not be made public if doing so could jeopardise the consistency and lawfulness of taxation. Instructions by the highest Land revenue authorities in accordance with the first sentence above shall require the agreement of the Federal Ministry of Finance if the Land revenue authorities administer taxes on behalf of the Federation.

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(3) Zur Gewährleistung eines zeitnahen und gleichmäßigen Vollzugs der Steuergesetze können die obersten Finanzbehörden für bestimmte oder bestimmbare Fallgruppen Weisungen über Art und Umfang der Ermittlungen und der Verarbeitung von erhobenen oder erfassten Daten erteilen, soweit gesetzlich nicht etwas anderes bestimmt ist. Bei diesen Weisungen können allgemeine Erfahrungen der Finanzbehörden sowie Wirtschaftlichkeit und Zweckmäßigkeit berücksichtigt werden. Die Weisungen dürfen nicht veröffentlicht werden, soweit dies die Gleichmäßigkeit und Gesetzmäßigkeit der Besteuerung gefährden könnte. Weisungen der obersten Finanzbehörden der Länder nach Satz 1 bedürfen des Einvernehmens mit dem Bundesministerium der Finanzen, soweit die Landesfinanzbehörden Steuern im Auftrag des Bundes verwalten.
(4) Das Bundeszentralamt für Steuern und die zentrale Stelle im Sinne des § 81 des Einkommensteuergesetzes können auf eine Weiterleitung ihnen zugegangener und zur Weiterleitung an die Landesfinanzbehörden bestimmter Daten an die Landesfinanzbehörden verzichten, soweit sie die Daten nicht oder nur mit unverhältnismäßigem Aufwand einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zuordnen können. Nach Satz 1 einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zugeordnete Daten sind unter Beachtung von Weisungen gemäß Absatz 3 des Bundesministeriums der Finanzen weiterzuleiten. Nicht an die Landesfinanzbehörden weitergeleitete Daten sind vom Bundeszentralamt für Steuern für Zwecke von Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b bis zum Ablauf des 15. Jahres nach dem Jahr des Datenzugangs zu speichern. Nach Satz 3 gespeicherte Daten dürfen nur für Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b sowie zur Datenschutzkontrolle verarbeitet werden.
(5) Die Finanzbehörden können zur Beurteilung der Notwendigkeit weiterer Ermittlungen und Prüfungen für eine gleichmäßige und gesetzmäßige Festsetzung von Steuern und Steuervergütungen sowie Anrechnung von Steuerabzugsbeträgen und Vorauszahlungen automationsgestützte Systeme einsetzen (Risikomanagementsysteme). Dabei soll auch der Grundsatz der Wirtschaftlichkeit der Verwaltung berücksichtigt werden. Das Risikomanagementsystem muss mindestens folgende Anforderungen erfüllen:
1. die Gewährleistung, dass durch Zufallsauswahl eine hinreichende Anzahl von Fällen zur umfassenden Prüfung durch Amtsträger ausgewählt wird,
2. die Prüfung der als prüfungsbedürftig ausgesteuerten Sachverhalte durch Amtsträger,
3. die Gewährleistung, dass Amtsträger Fälle für eine umfassende Prüfung auswählen können,
4. die regelmäßige Überprüfung der Risikomanagementsysteme auf ihre Zielerfüllung.
Einzelheiten der Risikomanagementsysteme dürfen nicht veröffentlicht werden, soweit dies die Gleichmäßigkeit und Gesetzmäßigkeit der Besteuerung gefährden könnte. Auf dem Gebiet der von den Landesfinanzbehörden im Auftrag des Bundes verwalteten Steuern legen die obersten Finanzbehörden der Länder die Einzelheiten der Risikomanagementsysteme zur Gewährleistung eines bundeseinheitlichen Vollzugs der Steuergesetze im Einvernehmen mit dem Bundesministerium der Finanzen fest.

(4) When they receive data meant for forwarding to Land revenue authorities, both the Federal Central Tax Office and the central agency as defined in section 81 of the Income Tax Act may refrain from forwarding such data to the Land revenue authorities if attributing or assigning the data to a specific taxpayer or tax office is impossible or requires unreasonable effort. Data attributed or assigned to a specific taxpayer or tax office in accordance with the first sentence above shall be forwarded to the Länder, taking into account any instructions issued by the Federal Ministry of Finance in accordance with para. 3 above. Data not forwarded to Land revenue authorities shall be stored by the Federal Central Tax Office for the purpose of proceedings described in section 30 para. 2 numbers 1a) and 1b), until the expiration of the 15th year following the year when the data were received. Data stored in accordance with the third sentence above may be processed only for use in proceedings described in section 30 para. 2 numbers 1a) and 1b) and for purposes of monitoring data protection.
(5) Revenue authorities may use automated systems (risk management systems) to gauge whether further investigations and reviews are necessary to ensure the consistent and lawful assessment of taxes and tax rebates and the consistent and lawful crediting of withheld taxes and prepayments. The principle of cost-effective administration should be taken into account here. At a minimum, risk management systems must ensure that:
1. a sufficient number of cases are selected, on the basis of random selection, for comprehensive review by officials,
2. officials review those cases sorted out as requiring review,
3. officials are able to select cases for comprehensive review,
4. regular reviews are conducted to determine whether risk management systems are fulfilling their objectives.
The details of risk management systems must not be made public if doing so could jeopardise the consistency and lawfulness of taxation. For taxes administered by Land revenue authorities on behalf of the Federation, the highest Land revenue authorities shall, in consultation with the Federal Ministry of Finance, specify the details of risk management systems with a view towards ensuring that the execution of tax laws is consistent on a nationwide basis.

(bb) External audit (*Außenprüfung*) ss. 193 et seq. AO and s. 27b VAT Act sales tax review (Umsatzsteuernachschau)

21 The external audit in external investigations of OLAF as a special ex-post administrative measure according to the Federal German Tax Code has already been outlined by German literature[1036] and is as well possible in the VAT area (*Umsatzsteuersonderprüfung*):

[1036] Heike Gemmel 2002, pp. 144 et seq.

Federal Tax Code **22**

Fourth Chapter External audit

Section 193[1037] **Permissibility of an external audit**

(1) It shall be permissible to conduct audits of taxpayers who operate a business or agricultural and forestry undertaking or who are self-employed, and of taxpayers within the meaning of section 147a.

(2) With respect to taxpayers other than those described in para. 1 above, an external audit shall be permissible

1. to the extent that it concerns the obligation of these taxpayers on behalf of another to pay taxes or to withhold or remit to revenue authorities taxes which are due,
2. where there is a need to clarify the circumstances relevant for taxation and, due to the nature and scope of the circumstances to be examined, it is impractical to conduct an examination at the offices of the competent authority, or
3. where a taxpayer fails to comply with his obligation to cooperate under section 90 para. 2, third sentence.

In the area of VAT irregularities the German legislator has implemented in 2012 a very special right of the authorities called additional VAT **inspection control (sales tax review/*Umsatzsteuernachschau*)**. This instrument can be used additionally to the general audit rights in the General Tax Act, S. 193 et seq. Section 27b VAT Act is an untypical, purely administrative inspection section and it is non-related to criminal investigations.[1038] **23**

Section 27b Value Added Tax Act (Umsatzsteuergesetz, UStG) **24**

Value Added Tax Inspection

(1)[1039] In order to ensure the uniform assessment and collection of turnover tax, the officers of the tax authority entrusted with this task may, without prior notice and outside

[1037] **§ 193 Zulässigkeit einer Außenprüfung Abgabenordnung**
(1) Eine Außenprüfung ist zulässig bei Steuerpflichtigen, die einen gewerblichen oder land- und forstwirtschaftlichen Betrieb unterhalten, die freiberuflich tätig sind und bei Steuerpflichtigen im Sinne des § 147a.
(2) Bei anderen als den in Absatz 1 bezeichneten Steuerpflichtigen ist eine Außenprüfung zulässig,
1. soweit sie die Verpflichtung dieser Steuerpflichtigen betrifft, für Rechnung eines anderen Steuern zu entrichten oder Steuern einzubehalten und abzuführen,
2. wenn die für die Besteuerung erheblichen Verhältnisse der Aufklärung bedürfen und eine Prüfung an Amtsstelle nach Art und Umfang des zu prüfenden Sachverhalts nicht zweckmäßig ist oder
3. wenn ein Steuerpflichtiger seinen Mitwirkungspflichten nach § 12 des Gesetzes zur Abwehr von Steuervermeidung und unfairem Steuerwettbewerb nicht nachkommt.

[1038] Allgemeine Verwaltungsvorschrift zur Aufhebung der Allgemeinen Verwaltungsvorschrift zur Ausführung des Umsatzsteuergesetzes (Umsatzsteuer-Richtlinien 2008 - UStR 2008) vom 6. Oktober 2010 (Bundesanzeiger Nr. 165 vom 29. Oktober 2010, BStBl I S. 769) werden die UStR 2008 mit Wirkung vom 1. November 2010 aufgehoben. An ihre Stelle tritt der – zeitlich nicht befristete – Umsatzsteuer-Anwendungserlass (UStAE).

[1039] **§ 27b Umsatzsteuer-Nachschau Umsatzsteuergesetz (UStG)**
(1) Zur Sicherstellung einer gleichmäßigen Festsetzung und Erhebung der Umsatzsteuer können die damit betrauten Amtsträger der Finanzbehörde ohne vorherige Ankündigung und außerhalb einer Außenprüfung

an external audit, enter the properties and premises of persons who carry out a commercial or professional activity on a self-employed basis during business and working hours in order to ascertain facts which may be relevant to taxation (turnover tax inspection). Residential premises may only be entered against the will of the owner to prevent urgent dangers to public safety and order.
(2) Insofar as this is expedient for the determination of tax relevance, the persons affected by the VAT inspection shall, upon request, submit records, books, business papers and other documents on the facts subject to the VAT inspection and provide information to the officials entrusted with it. If the documents referred to in sentence 1 were prepared with the aid of a data processing system, the officers entrusted with the VAT inspection may, on request, inspect the stored data on the facts subject to the VAT inspection and, if necessary, use the data processing system for this purpose. This shall also apply to electronic invoices pursuant to section 14, paragraph 1, sentence 8.
(3) If the findings made during the VAT inspection give cause for this, a transition to an external audit in accordance with section 193 of the Fiscal Code may be made without a prior audit order (section 196 of the Fiscal Code). The transition to an external audit shall be pointed out in writing.
(4) If, on the occasion of the VAT inspection, circumstances are ascertained which may be significant for the assessment and levying of taxes other than VAT, the evaluation of the findings shall be permissible insofar as their knowledge may be of significance for the taxation of the persons referred to in paragraph 1 or other persons.

(cc) Tax and customs investigation (*Steuer- und Zollfahndung*) s. 208 AO

25 In the area of real investigations the Tax Criminal Investigation (*Fahndungsprüfung*), which is typical for actions by virtue of Art. 28 EPPO Regulation (see above in this

Grundstücke und Räume von Personen, die eine gewerbliche oder berufliche Tätigkeit selbständig ausüben, während der Geschäfts- und Arbeitszeiten betreten, um Sachverhalte festzustellen, die für die Besteuerung erheblich sein können (Umsatzsteuer-Nachschau). Wohnräume dürfen gegen den Willen des Inhabers nur zur Verhütung dringender Gefahren für die öffentliche Sicherheit und Ordnung betreten werden.
(2) Soweit dies zur Feststellung einer steuerlichen Erheblichkeit zweckdienlich ist, haben die von der Umsatzsteuer-Nachschau betroffenen Personen den damit betrauten Amtsträgern auf Verlangen Aufzeichnungen, Bücher, Geschäftspapiere und andere Urkunden über die der Umsatzsteuer-Nachschau unterliegenden Sachverhalte vorzulegen und Auskünfte zu erteilen. Wurden die in Satz 1 genannten Unterlagen mit Hilfe eines Datenverarbeitungssystems erstellt, können die mit der Umsatzsteuer-Nachschau betrauten Amtsträger auf Verlangen die gespeicherten Daten über die der Umsatzsteuer-Nachschau unterliegenden Sachverhalte einsehen und soweit erforderlich hierfür das Datenverarbeitungssystem nutzen. Dies gilt auch für elektronische Rechnungen nach § 14 Absatz 1 Satz 8.
(3) Wenn die bei der Umsatzsteuer-Nachschau getroffenen Feststellungen hierzu Anlass geben, kann ohne vorherige Prüfungsanordnung (§ 196 der Abgabenordnung) zu einer Außenprüfung nach § 193 der Abgabenordnung übergegangen werden. Auf den Übergang zur Außenprüfung wird schriftlich hingewiesen.
(4) Werden anlässlich der Umsatzsteuer-Nachschau Verhältnisse festgestellt, die für die Festsetzung und Erhebung anderer Steuern als der Umsatzsteuer erheblich sein können, so ist die Auswertung der Feststellungen insoweit zulässig, als ihre Kenntnis für die Besteuerung der in Absatz 1 genannten Personen oder anderer Personen von Bedeutung sein kann.

Country Chapter) must be distinguished clearly from administrative investigations (see *Umsatzsteuernachschau*, above) of administrative authorities.

In the area of tax irregularities authorities overlap and the clear distinction between criminal and administrative investigation gets blurred. Thus s. 208 of the General Tax Code is partly misleading in relation to on-the-spot-checks. If OLAF only concentrates on administrative offences and there is no criminal suspicion s. 208 AO may apply in cases of resistance (see above Sigma Orionis jurisprudence). **26**

Section 208 Federal Tax Code[1040] Tax investigation (customs investigation)
(1) Tax investigation (customs investigation) authorities shall be charged with
1. investigating tax crimes and tax-related administrative offences,
2. determining the tax bases in the cases named in number 1 above,
3. detecting and investigating unknown tax cases.
The offices of Land revenue authorities charged with tax investigations and the customs investigation offices shall have, in addition to the powers granted under section 404, second sentence, first half-sentence, the powers of investigation at the disposal of the tax offices (main customs offices). In the cases of numbers 2 and 3 above, the restrictions set out in section 93 para. 1, third sentence, section 93 para. 2, second sentence, and section 97 para. 2 shall not apply; section 200 para. 1, first and second sentences, section 200 para. 2 and section 200 para. 3, first and second sentences, shall apply mutatis mutandis, section 393 para. 1 shall remain unaffected.
(2) Notwithstanding para. 1 above, the offices of the revenue authorities of a Land charged with tax investigations and the customs investigations offices shall be responsible for
1. tax investigations, including external audits upon request by the competent revenue authority,
2. the other tasks entrusted to them within the scope of the jurisdiction of the revenue authorities.

[1040] **§ 208 Steuerfahndung (Zollfahndung) Abgabenordnung**
(1) Aufgabe der Steuerfahndung (Zollfahndung) ist
1. die Erforschung von Steuerstraftaten und Steuerordnungswidrigkeiten,
2. die Ermittlung der Besteuerungsgrundlagen in den in Nummer 1 bezeichneten Fällen,
3. die Aufdeckung und Ermittlung unbekannter Steuerfälle.
Die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden und die Behörden des Zollfahndungsdienstes haben außer den Befugnissen nach § 404 Satz 2 erster Halbsatz auch die Ermittlungsbefugnisse, die den Finanzämtern (Hauptzollämtern) zustehen. In den Fällen der Nummern 2 und 3 gelten die Einschränkungen des § 93 Abs. 1 Satz 3, Abs. 2 Satz 2 und des § 97 Absatz 2 nicht; § 200 Abs. 1 Satz 1 und 2, Abs. 2, Abs. 3 Satz 1 und 2 gilt sinngemäß, § 393 Abs. 1 bleibt unberührt.
(2) Unabhängig von Absatz 1 sind die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden und die Behörden des Zollfahndungsdienstes zuständig
1. für steuerliche Ermittlungen einschließlich der Außenprüfung auf Ersuchen der zuständigen Finanzbehörde,
2. für die ihnen sonst im Rahmen der Zuständigkeit der Finanzbehörden übertragenen Aufgaben.
(3) Die Aufgaben und Befugnisse der Finanzämter (Hauptzollämter) bleiben unberührt.

(3) The tasks and powers of the tax offices (main customs offices) shall remain unaffected.

(dd) Fiscal supervision (*Steueraufsicht*) and customs supervision s. 209 AO

27 In the area of the consumer taxes the following sections of the General Tax Code apply in relation to fiscal supervision:

Federal Tax Code

Fiscal supervision in special cases

Section 209[1041] **Object of fiscal supervision**

(1) The movement of goods over the border and in the free zones and free warehouses as well as the production and manufacture, storage, transport and commercial use of goods subject to excise duty and the trade of goods subject to excise duty shall be subject to customs supervision (fiscal supervision).

(2) Also subject to fiscal supervision shall be:

1. the shipping, export, storage, use, destruction, refinement, conversion and other processing or treatment of goods in an excise duty procedure,
2. the manufacture and export of goods, for which a remission, refund or rebate of excise duty is claimed.

(3) Other activities shall be subject to fiscal supervision where this is required by law.

Section 210 Powers of the tax authority

(1)[1042] The officials entrusted by the tax authority with the supervision of taxation shall be entitled to enter the properties and premises of persons who independently carry on

[1041] **§ 208 Steuerfahndung (Zollfahndung) Abgabenordnung**
(1) Aufgabe der Steuerfahndung (Zollfahndung) ist
1. die Erforschung von Steuerstraftaten und Steuerordnungswidrigkeiten,
2. die Ermittlung der Besteuerungsgrundlagen in den in Nummer 1 bezeichneten Fällen,
3. die Aufdeckung und Ermittlung unbekannter Steuerfälle.

Die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden und die Behörden des Zollfahndungsdienstes haben außer den Befugnissen nach § 404 Satz 2 erster Halbsatz auch die Ermittlungsbefugnisse, die den Finanzämtern (Hauptzollämtern) zustehen. In den Fällen der Nummern 2 und 3 gelten die Einschränkungen des § 93 Abs. 1 Satz 3, Abs. 2 Satz 2 und des § 97 Absatz 2 nicht; § 200 Abs. 1 Satz 1 und 2, Abs. 2, Abs. 3 Satz 1 und 2 gilt sinngemäß, § 393 Abs. 1 bleibt unberührt.
(2) Unabhängig von Absatz 1 sind die mit der Steuerfahndung betrauten Dienststellen der Landesfinanzbehörden und die Behörden des Zollfahndungsdienstes zuständig
1. für steuerliche Ermittlungen einschließlich der Außenprüfung auf Ersuchen der zuständigen Finanzbehörde,
2. für die ihnen sonst im Rahmen der Zuständigkeit der Finanzbehörden übertragenen Aufgaben.

(3) Die Aufgaben und Befugnisse der Finanzämter (Hauptzollämter) bleiben unberührt.

[1042] **§ 210 AO Befugnisse der Finanzbehörde**
(1) Die von der Finanzbehörde mit der Steueraufsicht betrauten Amtsträger sind berechtigt, Grundstücke und Räume von Personen, die eine gewerbliche oder berufliche Tätigkeit selbständig ausüben und denen ein der Steueraufsicht unterliegender Sachverhalt zuzurechnen ist, während der Geschäfts- und Arbeitszeiten zu betreten,

a commercial or professional activity and to whom facts subject to tax supervision are attributable, during business and working hours, in order to carry out inspections or otherwise make findings which may be relevant to taxation (inspection).
(2) Furthermore, properties and premises of persons to whom facts subject to fiscal supervision are to be attributed shall be subject to inspection without time limitation if facts justify the assumption that smuggled goods or improperly taxed excisable goods are located there or that regulations or orders are otherwise violated there, compliance with which is to be ensured by fiscal supervision. In case of imminent danger, a search of residential and business premises shall also be permissible without a judicial order.
(3) The officers entrusted by the tax authority with tax supervision shall furthermore be entitled to stop ships and other vehicles which, according to their external appearance, serve commercial purposes within the framework of controls limited in time and place. The persons concerned shall identify themselves and provide information on the goods being carried; in particular, they shall produce bills of lading and other transport documents, including those of a non-tax nature. If, as a result of this or other facts, there are indications that excisable goods are being carried, the officers may check the goods carried and make any findings that may be relevant for the taxation of these goods. The persons concerned shall indicate the origin of the excisable goods, tolerate the taking of samples free of charge and provide the necessary assistance.
(4) If findings during the exercise of fiscal supervision give cause for this, a transition to an external audit according to section 193 may be made without a prior audit order (section 196). Written notice shall be given of the transition to an external audit.

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um Prüfungen vorzunehmen oder sonst Feststellungen zu treffen, die für die Besteuerung erheblich sein können (Nachschau).
(2) Der Nachschau unterliegen ferner Grundstücke und Räume von Personen, denen ein der Steueraufsicht unterliegender Sachverhalt zuzurechnen ist ohne zeitliche Einschränkung, wenn Tatsachen die Annahme rechtfertigen, dass sich dort Schmuggelwaren oder nicht ordnungsgemäß versteuerte verbrauchsteuerpflichtige Waren befinden oder dort sonst gegen Vorschriften oder Anordnungen verstoßen wird, deren Einhaltung durch die Steueraufsicht gesichert werden soll. Bei Gefahr im Verzug ist eine Durchsuchung von Wohn- und Geschäftsräumen auch ohne richterliche Anordnung zulässig.
(3) Die von der Finanzbehörde mit der Steueraufsicht betrauten Amtsträger sind ferner berechtigt, im Rahmen von zeitlich und örtlich begrenzten Kontrollen, Schiffe und andere Fahrzeuge, die nach ihrer äußeren Erscheinung gewerblichen Zwecken dienen, anzuhalten. Die betroffenen Personen haben sich auszuweisen und Auskunft über die mitgeführten Waren zu geben; sie haben insbesondere Frachtbriefe und sonstige Beförderungspapiere, auch nicht steuerlicher Art, vorzulegen. Ergeben sich dadurch oder auf Grund sonstiger Tatsachen Anhaltspunkte, dass verbrauchsteuerpflichtige Waren mitgeführt werden, können die Amtsträger die mitgeführten Waren überprüfen und alle Feststellungen treffen, die für eine Besteuerung dieser Waren erheblich sein können. Die betroffenen Personen haben die Herkunft der verbrauchsteuerpflichtigen Waren anzugeben, die Entnahme von unentgeltlichen Proben zu dulden und die erforderliche Hilfe zu leisten.
(4) Wenn Feststellungen bei Ausübung der Steueraufsicht hierzu Anlass geben, kann ohne vorherige Prüfungsanordnung (§ 196) zu einer Außenprüfung nach § 193 übergegangen werden. Auf den Übergang zur Außenprüfung wird schriftlich hingewiesen.
(5) Wird eine Nachschau in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die Finanzbehörde ist zur Mitwirkung berechtigt. Ein Ersuchen ist nicht erforderlich, wenn die Nachschau in Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

(5) If an inspection becomes necessary in an official building or a facility or installation of the Federal Armed Forces which is not generally accessible, the superior office of the Federal Armed Forces shall be requested to carry it out. The fiscal authority shall be entitled to cooperate. A request shall not be required if the inspection is to be carried out in rooms occupied exclusively by persons other than soldiers.

(ee) VAT revenue area

28 In general, companies are obliged to pay input tax when they purchase goods and thus set their production in motion.

29 In return, they spend money and the capital is reduced. On the turnover of goods, companies must levy the so-called turnover tax (colloquially referred to as the value-added tax). If, at the end of the quarter or tax year, the input tax paid exceeds the revenue from the VAT, companies can have the input tax refunded, which they apply for at the competent tax office.

30 There are many opportunities for fraud here, as there are companies that declare forged documents, falsified figures, false products, non-existent products, incorrect or non-existent purchases.

31 The tax offices then pay an unjustified sum to the tax authorities (asset misappropriation) as a result of deception on the part of their payers and the excitation of error, which ultimately results in damage to the state or EU budget.

32 More complex cases of VAT fraud take advantage of the cross-border nature of goods and the complex set-up of businesses in other Member States. This gives rise to criminal models that have increasingly occupied both OLAF and national fraud offices in recent years, as so-called cum-ex and cum-cum methods are practised and have not yet been declared indisputably punishable by the Federal Criminal Court of Germany until the summer of 2021. In the meantime, i.e. nowadays there is legal certainty in this respect: cum-ex fraud is punishable and always has been.

(ff) Customs duties revenue area

33 Customs duties are sources of revenue for the EU budget. For the companies, i.e. the obligated parties, these sources of revenue mean the payment of money or the payment or compliance with laws.

34 The order to protect the EU economy, so-called anti-dumping duties exist and in many areas of goods production (especially the traditional own resources) falsified declarations, too much or too little goods, false origin (state information is missing or is deliberately exchanged, because different trade agreements are known to fraudsters) are made.

Case Study 9: Anti-Dumping case **35**



Case-Study: Anti-dumping case 2017–2021

"OLAF has been investigating suspected circumvention imports since April 1, 2017 of seamless stainless steel pipes and tubes of Chinese origin, which would be declared as Indian certificates of origin"[1043]

The role of OLAF as an initiator of checks in this case:
"On the basis of an incrimination risk profile of the Customs Criminal Investigation Office (ZKA) (... RL xxx-6/20), which in turn was based on the notification of the European Anti-Fraud Office (*Office Européen de Lutte Antifraude*, OLAF) AM 2020/xxx of... February 2020, the defendant ordered a document check and examination with regard to the origin for the two customs declarations. In this context, the commercial documents submitted at the request of the defendant were randomly compared with the data of the customs declarations without any objections"[1044]

OLAF has a quasi-annex competence in the area of counterfeiting of substances, products, foodstuffs, tobacco, cigarettes, medicines, components, steel, toys, etc., as these goods are mostly subject to so-called import bans or they damage the economy and the EU budget by ending up on the market. **36**

OLAF, together with the customs authorities of the Member States, is therefore required to intercept, identify and, if necessary, destroy these products. Fake and adulterated honey (in the 1990s it was olive oil) is causing concern and difficulties today.[1045] **37**

[1043] FG Hamburg (Der Senat), Judgment of 24.09.2021 – 4 K 56/21, BeckRS 2021, 33734, Margin Number 17.
[1044] FG Hamburg (Der Senat), Judgment of 24.09.2021 – 4 K 56/21, BeckRS 2021, 33734, Margin Number 3: "Aufgrund eines Anlastungs-Risikoprofils des Zollkriminalamts (ZKA) (… RL xxx-6/20), das seinerseits auf der Mitteilung des Europäischen Amts für Betrugsbekämpfung (Office Européen de Lutte Antifraude - OLAF) AM 2020/xxx vom … Februar 2020 beruht, ordnete der Beklagte für die beiden Zollanmeldungen eine Dokumentenprüfung und Beschau hinsichtlich des Ursprungs an. Hierbei wurden die auf Anforderung des Beklagten vorgelegten Handelsunterlagen ohne Beanstandungen stichprobenweise mit den Angaben der Zollanmeldungen abgeglichen. Bei der Beschaffenheitsbeschau am 12. Mai 2020 stellte der Beklagte in Holzkisten mit der Aufschrift IN-xxx eingepackte Rohre verschiedener Länge und Durchmesser mit der PO-Nr. xxx.xxx fest. Logos, Länder- oder Firmenbezeichnungen fehlten. Es bestünden Zweifel am angemeldeten Ursprung. Daher sei eine Sicherheit in Höhe des höchstmöglichen Antidumpingzolls und des Zusatzzolls für kritische Kontingente festzusetzen"
[1045] See Operation OPSON, in which OLAF takes part, https://www.bvl.bund.de/DE/Arbeitsbereiche/01_Lebensmittel/03_Verbraucher/16_Food_Fraud/06_OPSON_Operationen/OPSON-X/OPSON_Operationen_node.html;jsessionid=FB6F212C442583C7C830BD5098EEE802.2_cid298#doc16273670bodyText7. Accessed 31 December 2024.

(c) Administrative provisions in the area of structural funds (*Strukurfonds*) and internal policies (*interne Politiken*) =expenditure

(aa) Structural and investement funds

38 The structural and investment funds are an integrated part of the EU's support to economic growth.[1046] The history of cohesion policy in Germany is long and the last phase from 2014–2020 was intensive as well.[1047] The new cohesion policy was designed in 2019 and amended in 2020. It will cover the years from 2021–2027 (see e.g. the new ERDF fund[1048]). For the discovery of falsified documents and their analysis OLAF has produced a small handbook in the past already.[1049]

39 In the new funding period Germany receives around 21 billion euros. The German *Länder* are responsible to implement and control the distribution of the structural funds.[1050] On the Federal level the "*Bundesministerium für Wirtschaft und Klimaschutz*" and partly the *Bundesministerium der Finanzen*" – especially for questions of financial control mechanisms – are responsible for the overall cohesion concept for Germany.

40 *Examples* from the funding period 2014–2020 indicate that it is mostly special offices in an institution of one of the 16 *Länder*, which copes with the implementation of the MFR 2021–2027:

- Ministerium für Wirtschaft, Verkehr, Arbeit, Technologie und Tourismus des Landes Schleswig-Holstein – Referat VII 21 Regional- und Strukturpolitik, EFRE, GRW, EU-Angelegenheiten
- Niedersächsisches Ministerium für Bundes- und Europaangelegenheiten und Regionale Entwicklung Referat 103 – Verwaltungsbehörde EFRE, ESF – Koordinierung ELER
- Ministry of Economic Affairs, Labour and Energy of the State of Brandenburg

[1046] See European Commission. online: https://ec.europa.eu/regional_policy/en/funding/. (Accessed 31 December 2024). For Germany see SWD(2020) 504 final.
[1047] See EU-Kohäsionspolitik in Deutschland. online: https://www.bmwi.de/Redaktion/DE/Downloads/F/fakten-zur-kohaesionspolitik-in-deutschland.pdf?__blob=publicationFile&v=3. (Accessed 31 December 2024): "In der Periode 2014-2020 werden in Deutschland 32 Operationelle Programme im Bereich der EU-Kohäsionspolitik umgesetzt. Ein nationales Programm wird durch den Europäischen Sozialfonds (ESF) gefördert. 15 regionale Programme werden durch den Europäischen Fond s für Regionale Entwicklung (EFRE), weitere 15 regionale Programme durch de n ESF gefördert. In Niedersachsen wird ein Programm vom EFRE und dem ESF gefördert"
[1048] See Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund PE/48/2021/INIT, OJ L 231, 30.6.2021, p. 60–93.
[1049] OLAF, Aufdeckung gefälschter Unterlagen im Bereich von Strukturmaßnahmen Praktischer Leitfaden für Verwaltungsbehörden erarbeitet von einer Gruppe von Experten aus den Mitgliedstaaten, koordiniert vom OLAF-Referat D.2 (Betrugsverhütung). The handbook indicates so.called "Red-flags" for the discovery process.
[1050] See e.g. Berlin-Brandenburg. online: https://www.berlin.de/sen/wirtschaft/gruenden-und-foerdern/europaeische-strukturfonds/esf-foerderperiode-2014-2020/informationen-fuer-verwaltungen-partner-eu/artikel.725607.php. Accessed 31 December 2024. Berlin offers a "trust lawyer" (*Vertrauensanwalt*) to make whistleblowing easier.

- Gemeinsames INTERREG-Sekretariat – Technisches Sekretariat c/o Euregio Rhein-Waal

In the last decade the Land Sachsen-Anhalt was accused of wrong-handling and misappropriation of funds in the area of structural funds. The Berliner Morgenpost, a prominent new journal reported about the case: **41**

> "Saxony-Anhalt misallocates funding case involved misapplied funding in Saxony-Anhalt. A venture capital fund of the investment and holding company IGB was supposed to support SMEs with 162 million euros from the EU, but the company used the money more broadly: Larger companies outside Saxony-Anhalt and in sectors that were not intended for support were also promoted. At the instigation of the investigators, the EU Commission is demanding the return of the funds, but the government of Saxony-Anhalt refuses and is threatening legal action."[1051]

In some cases the institutions are banks e.g. Investement banks or administrative authorities (*Verwaltungsbehörden*).[1052] **42**

A case from the Thüringer Oberlandesgericht indicates how the funding with subsidies functions: "The disputed funds are funds co-financed by the European Social Fund (ESF) and the Member States to promote growth and employment (cf. Art. 177 TFEU in conjunction with the 2012 applicable Council Regulation (EC) No. 1083/2006 of 11 July 2006 with general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999 (OJ No. L 210/25, hereinafter: Regulation No. 1083/2006)). Responsibility for the management and control of these funds lies with the Member States, which must ensure effective management and control systems and effective measures to combat irregularities (cf.Magera, in: Streinz, EUV/AEUV, 3rd ed. 2018, Art. 177 TFEU para. 25). The Member States can delegate the tasks incumbent on them to third parties. This is done in the area of responsibility of the defendant by lending the G. according to § 44 paragraph 3 ThürLHO. G. also acts as a sovereign when approving these grants. Subsidies or funding are awarded in a one- or two-stage process. The decision on the approval is generally made at the public law level through an administrative act, only in the case of a two-stage award can the payment be agreed on a private law basis. In this case, a **43**

[1051] Kerl 2018: Sachsen-Anhalt verteilt Fördergeld falsch. In einem anderen Fall ging es um falsch eingesetzte Fördergelder in Sachsen-Anhalt. Ein Risikokapitalfonds der Investitions- und Beteiligungsgesellschaft IGB sollte mit 162 Millionen Euro der EU den Mittelstand unterstützen, doch die Gesellschaft setzte die Gelder breiter ein: Gefördert wurden auch größere Unternehmen außerhalb Sachsen-Anhalts und in Branchen, die zur Förderung nicht vorgesehen waren. Auf Betreiben der Ermittler verlangt die EU-Kommission die Fördermittel zurück, die Landesregierung Sachsen-Anhalt lehnt das aber ab und droht mit einer Klage" See https://www.morgenpost.de/wirtschaft/article214507101/Anti-Korruptionsbehoerde-Milliardenbetrug-mit-EU-Geldern.html. Accessed 31 December 2024.

[1052] See https://ec.europa.eu/regional_policy/de/atlas/managing-authorities/?search=1&keywords=&countryCode=DE&typeId=ALL. Accessed 31 December 2024.

one-stage procedure with approval by administrative act is to be assumed due to the granting of the funding due to a lost subsidy (cf. BGH, judgment of 17.01.1985 – III ZR 196/83 – para. 26, juris).”[1053]

44 On the country level the Ministries of Finance of the Länder are designing the funding concepts for their local regions.

45 Taking the Land Sachsen as an example, the “*Länderportal #moderndenken Sachsen*”[1054] is the first step for the implementation and the communication with the beneficiaries on the country level in Germany. Sachsen has presented the concrete plan on how to fund projects under the new MFR on the 9th of March 2022.[1055]

46 In addition to the MFR the NGEU and the resilience plan of the EU were decided with the aim of combating the costs of the pandemic.

47 The resilience plan needs to be implemented in every Member State. The German application was drafted by the German Federal Ministry of Finance and special co-organisations, which are responsible for the German territory and its economic growth (eg *Deutsches Institut für Wirtschaftsforschung*, *DIR*). The EU Commission accepted the German plan “*Deutscher Aufbau- und Resilienzlan (DARP)*” on 22nd June 2021. The plan has several components, which already indicate where the money will flow.[1056]

[1053] Thüringer Oberlandesgericht 4. Zivilsenat, Urteil v. 30.10.2018, 4 U 696/17: “Bei den streitgegenständlichen Fördermitteln handelt es sich um durch den Europäischen Sozialfonds (ESF) und die Mitgliedstaaten kofinanzierte Mittel zur Förderung des Wachstums und der Beschäftigung (vgl. Art. 177 AEUV i.V.m. der 2012 geltenden Verordnung (EG) Nr. 1083/2006 des Rates vom 11. Juli 2006 mit allgemeinen Bestimmungen über den Europäischen Fonds für regionale Entwicklung, den Europäischen Sozialfonds und den Kohäsionsfonds und zur Aufhebung der Verordnung (EG) Nr. 1260/1999 (ABl. Nr. L 210/25, im Folgenden: VO Nr. 1083/2006)). Die Zuständigkeit für die Verwaltung und die Kontrolle dieser Fördermittel liegen bei den Mitgliedstaaten, die für wirksame Verwaltungs- und Kontrollsysteme sowie für effektive Maßnahmen zur Bekämpfung von Unregelmäßigkeiten zu sorgen haben (vgl. Magiera, in: Streinz, EUV/AEUV, 3. Aufl. 2018, Art. 177 AEUV Rn. 25). Die Mitgliedstaaten können dabei die ihnen obliegenden Aufgaben an Dritte delegieren. Dies ist im Zuständigkeitsbereich des Beklagten durch die Beleihung der G. nach § 44 Abs. 3 ThürLHO erfolgt. Die G. handelt bei der Bewilligung dieser Zuwendungen auch hoheitlich. Subventionen bzw. Fördermittel werden in einem ein- oder zweistufigen Verfahren vergeben. Die Entscheidung über die Bewilligung erfolgt grundsätzlich auf der öffentlich-rechtlichen Ebene durch Verwaltungsakt, lediglich im Fall einer zweistufigen Vergabe kann die Auszahlung auf privatrechtlicher Grundlage vereinbart werden. Hier ist wegen der Gewährung der Fördermittel durch verlorenen Zuschuss von einem einstufigen Verfahren mit Bewilligung durch Verwaltungsakt auszugehen (vgl. BGH, Judgment of 17.01.1985 - III ZR 196/83 - Rn. 26, juris)”

[1054] See https://europa.sachsen-anhalt.de/esi-fonds-in-sachsen-anhalt/foerderperiode-2021-bis-2027-efreesf-jtf/. Accessed 31 December 2024.

[1055] “SFC2021 – für aus dem EFRE (Ziel “Investitionen in Beschäftigung und Wachstum”), dem ESF+, dem Kohäsionsfonds und dem EMFAF unterstützte Programme – Artikel 21 Absatz 3” .

[1056] See the TOC of the DARP: “Komponente 1.1 Dekarbonisierung, insb. durch erneuerbaren Wasserstoff Komponente 1.2 Klimafreundliche Mobilität Komponente 1.3 Klimafreundliches Bauen und Sanieren, Komponente 2.1 Daten als Rohstoff der Zukunft, Komponente 2.2 Digit alisierung der Wirtschaft, Komponente 3.1 Digit alisierung der Bildung 597, Komponente 4.1 Stärkung der Sozialen Teilhabe, Komponente 5.1 Stärkung eines pandemieresilienten Gesundheitssystems, Komponente 6.1 Moderne öffentliche Verwaltung. Komponente 6.2 Abbau von Investitionshemmnissen” .

Germany receives 1,2 billion euros from REACT-EU, which is part of the overall resilience strategy plan.

The cohesion policy from 2021–2027 in Germany can be summarised as follows: (see the next table "Table 'Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Austria (2021–2027)'"). **48**

Table 19: Structural funds and national administrative authorities – Cohesion policy acc. to the CFR Regulation in Germany (2021–2027)[1057]

Fund	**Sum**	**Managing authority**
The European Regional Development Fund (ERDF) – includes European Territorial Cooperation (Interreg)	EU funds for Germany: 11,2 billion euros	Division EB2 at the Federal Ministry for Economic Affairs and Climate Action[1058]
Just Transition fund	EU funds for Germany: 2,5 billion euros	Federal Ministry for Economic Affairs and Climate Action.[1059]
European Social Fund Plus (ESF+)	EU funds for Germany: 6,5 billion euros	Division VI Group EF 1 – European Social Fund Managing Authority at the Federal Ministry of Labour and Social Affairs[1060] and e.g. Ministries of Labour, Energy and Finances in the Länder.
European Maritime, Fisheries and Aquaculture Fund (EMFAF)	EU funds for Germany: 212 million euros	Federal Ministry of Food and Agriculture.[1061]
Asylum, Migration and Integration Fund (AMIF)	EU funds for Germany: 1,950.3 million euros	Federal Office for Migration and Refugees.[1062]

[1057] All information displayed in the table are taken from the national the websites oft the federal ministries.
[1058] Referat EB2 im Bundesministerium für Wirtschaft und Klimaschutz.
[1059] Bundesministerium für Wirtschaft und Klimaschutz (BMWK).
[1060] Referat VI Gru EF 1 - Europäischer Sozialfonds, Verwaltungsbehörde im Bundesministerium für Arbeit und Soziales.
[1061] Bundesministerium für Ernährung und Landwirtschaft (BMEL).
[1062] See the German website of the AMIF. online: https://www.eu-migrationsfonds.de/DE/AMIF/Verwaltungsbehoerde/verwaltungsbehoerde_node.html. Accessed 31 December 2024.

Internal Security Fund (ISF)	EU funds for Germany: 133.5 million euros	Federal Criminal Police Office[1063] as part of the Federal Ministry of the Interior.[1064]
Instrument for Financial Assistance in the Field of Border Management and Visa (BMVI)	EU funds for Germany: 205.6 million euros	Federal Police Headquarters.[1065]
European Rural Development Fund (EAFRD) * Not part of the CFR Regulation anymore (as of 2023)	EU funds for Germany: 7,888.2 million euros	On federal level the Federal Ministry of Food and Agriculture[1066] is the managing authority, but the *Länder* oversee the implementation, e.g. in Hesse the Hessian Ministry for the Environment, Energy, Agriculture and Consumer Protection[1067] and in Bavaria the Bavarian State Ministry for Food, Agriculture and Forestry.[1068]

Applicable national law:

49 See Principle of investigation, ss. 24 et seq., 35, 36, 37, 48, 49, 50, 51 VwVfG. And see ss. 121, 364 AO.

(bb) Internal policies

50 The most common internal policies are agriculture, food safety and environmental promotion.

[1063] Bundeskriminalamt BKA.
[1064] See the German website of the ISF. online: https://innerersicherheitsfonds.de/ueber-den-isf/was-ist-der-isf. Accessed 31 December 2024.
[1065] See the German website of the Bundespolizei. online: https://bundespolizei.de/unsere-aufgaben/grenzschutz/finanzinstrumente-der-eu/ueber-die-instrumente. Accessed 31 December 2024.
[1066] Bundesministerium für Ernährung und Landwirtschaft BMEL.
[1067] Hessisches Ministerium für Umwelt, Energie, Ländlicher Raum und Verbraucherschutz.
[1068] Bayerisches Staatsministerium für Ernährung, Landwirtschaft und Forsten.

The following laws are not fully representative but might apply in the execution of the most common areas of internal policies and the accompanying administrative proceedings in Germany: **51**

- Art. 110 para. 2, 3 (*Grundgesetz*, GG)
- Federal Budget Act (*Bundeshaushaltsordnung*)
- Market Organisation Act (*Marktorganisationsgesetz*, MOG)
- fictitious competence by factual connection (fiktive Zuständigkeit kraft Sachzusammenhangs[1069]): s. 44 BHO i.V.m. ss. 24 ff. VwVfG

Sources and national sections 10: Overview for Germany – Art. 3 OLAF Regulation **52**
Administrative provisions for investigations in the area of internal policies expenditure

Funding areas explored by national policies and laws	**Provisions and authorities**
Agricultural policy	Competent authority: Federal Office for Agriculture and Food[1070].[1071]
	Provisions: - Direct Payments Implementation Act:[1072] s. 1 DirektZahlDurchfG in conjunction with ss. 1 et seq. MOG - Direct Payments Implementation Regulation:[1073] Competences to monitor and calculate the funds available in the national reserve, ss. 1, 14 DirektZahlDurchfV - Agricultural Organisations and Supply Chains Act (*Agrarorganisationen-und-Lieferketten-Gesetz AgrarOLkG*): Scope of application and competences, ss. 1, 3 AgrarOLkG Principle of investigation, s. 39 AgrarOLkG Landwirtschaftsgesetz ss. 1, 4 This funding area has a long history and has been researched quite well.

[1069] See Gemmel, p. 186.
[1070] Bundesanstalt für Landwirtschaft und Ernährung.
[1071] See https://www.ble.de/EN/Topics/Agriculture/agriculture_node.html. Accessed 31 December 2024.
[1072] Direktzahlungs-Durchführungsgesetz DirektZahlDurchfG, Gesetz zur Durchführung der Direktzahlungen an Inhaber landwirtschaftlicher Betriebe im Rahmen von Stützungsregelungen der Gemeinsamen Agrarpolitik.
[1073] Direktzahlungs-Durchführungsverordnung DirektZahlDurchfV.

Food safety	Competent authorities: Federal Office for Agriculture and Food[1074];[1075] Federal Office of Consumer Protection and Food Safety.[1076]
	Provisions: - Food and Feed Code[1077]: Competences and tasks, s. 38 LFGB
Environment standards	Competent authorities: Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection; Federal Environment Agency;[1078] Federal Agency for Nature Conservation.[1079]
	Provision: - Federal Immission Control Act[1080] Purpose and scope of application, ss. 1, 2 BImSchG - Federal Nature Conservation Act[1081] Competences, tasks and powers, s. 3 BNatSchG

Source: The authors.

(d) Administrative provisions in the area of the common organisation of the markets (*gemeinsame Marktoranisation*) =expenditure

53 - Competences, s. 31 Market Organisation Act (MOG)[1082]
- Reporting obligations, s. 32 MOG
- Provision for import taxes apply to export taxes, s. 23 MOG

(e) Administrative provisions in the area of direct expenditure (*Direktausgaben*)

54 A common example for direct expenditure is that the Commission makes direct financial contributions in the form of grants, to support projects or organisations which further EU interests or help implement an EU programme or policy.[1083] The current situation of procurement is transformed by the Regulation (EU) 2019/1780.

[1074] Bundesanstalt für Landwirtschaft und Ernährung.
[1075] https://www.ble.de/EN/Topics/Nutrition-Food/nutrition-food_node.html. Accessed 31 December 2024.
[1076] Bundesamt für Verbraucherschutz und Lebensmittelsicherheit.
[1077] Lebensmittel- und Futtermittelgesetzbuch LFGB.
[1078] Umweltbundesamt.
[1079] Bundesamt für Naturschutz.
[1080] Bundes-Immissionsschutzgesetz BImSchG.
[1081] Bundesnaturschutzgesetz BNatSchG.
[1082] Marktorganisationsgesetz.
[1083] See https://ec.europa.eu/info/strategy/eu-budget/how-it-works/annual-lifecycle/implementation/grants-and-procurement_en (Accessed 31 December 2024); further EUROPEAN COMMISSION/EUROPEAN ANTI-FRAUD OFFICE (OLAF) Directorate D: Policy Unit D.2: Fraud Prevention, Reporting and Analysis Fraud in Public Procurement, A collection of Red Flags and Best Practices, Brussels 2017 (Ref. Ares(2017)6254403 - 20/12/2017).

Nota bene: The Anti-Fraud Knowledge Centre hosted by the EU Commission provides information on fraud patterns, prevention tools and case studies.

Following provisions might apply: **55**

- s. 1 para. 1a MOG in conjunction with s. 1 Law on the implementation of direct payments financed under the Common Agricultural Policy.[1084]

(f) Administrative provisions in the area of external aid (*Außenhilfe*) =expenditure

- Humanitarian aid **56**
- Environmental standards

The present Compendium does not take a closer look at the rights and provisions in the area of external aid.

(2) Investigative powers

(a) Investigative powers in the area of customs duties and VAT (*Zölle und MwSt.*), ss. 399 et seq. AO

The area of customs duties and VAT irregularities is complex and concerns many different investigative powers. **57**

The powers of the tax authorities derive from the Federal Tax aka Fiscal Code (*Abgabenordnung*, AO): **58**

Powers of the tax authorities during fiscal supervision in special cases, ss. 210 et seq., 213 AO

- Entering premises to conduct audits (*Nachschau*), s. 210 para. 1, 2 sentence 1 AO
- Search of private homes and business premises, s. 210 para. 2 sentence 2 AO
- Stopping ships and other vehicles, s. 210 para. 3 sentence 1 AO
- Identification, s. 210 para. 3 sentence 2 AO
- Request of information (*Auskunftsverlangen*), s. 210 para. 3 sentence 2, 211 para. 1 AO
- Presentation of documents, s. 210 para. 3 sentence 3, 211 para. 1 AO
- Taking samples free of charge, s. 210 para. 3 sentence 4 AO
- → External audit, s. 210 para. 4 AO in conjunction with ss. 193 et seq. AO
- Special supervisory measures, s. 213 AO
- Securing of goods, s. 214 AO
- Transferring into the ownership of the government, s. 216 AO

[1084] Gesetz zur Durchführung der im Rahmen der Gemeinsamen Agrarpolitik finanzierten Direktzahlungen GAPDZG.

59 Powers of the tax authorities in criminal procedures, ss. 399 et seq. Fiscal Code (AO)
- Application for issuance of a penalty order, s. 400 AO
- Rights and obligations of tax authority during criminal investigation led by public prosecutor, s. 402 AO

60 ss. 99 (Entering property and rooms) et seq.
ss. 399 et seq.

Federal Tax Code
2nd subsection
Investigative proceedings

I. General
[…]
II. Proceedings of the tax authorities in the event of tax crimes
Section 399 Rights and obligations of the tax authority
Section 400 Application for a penal order
Section 401 Application for the ordering of ancillary consequences in independent proceedings

61 *See below* → Single measures (investigative powers).

62 In the area of customs duties following sections might apply:

Customs Administration Act (Zollverwaltungsgesetz ZollVG)
Tasks of the customs administration, s. 1 ZollVG
Customs supervision, s. 10 ZollVG
- Stopping of persons and means of transport, s. 10 para. 1 sentence 1 ZollVG
- Identification, s. 10 para. 1 sentence 1 ZollVG
- Presentation of documents (or mailings), s. 10 para. 1 sentence 3(, para. 4a) ZollVG
- Entering premises, s. s. 10 para. 1 sentence 4, para. 4 ZollVG
- Taking samples free of charge, s. 10 para. 1 sentence 6 ZollVG
- Controls outside the border area, s. 10 para. 2 ZollVG
- Body searches, s. 10 para. 3 ZollVG
- Entering premises of postal service provider, s. 10 para.

63 Powers in security and safety measures of customs officers in the enforcement areas of the Customs Administration, s. 10a ZollVG
Data transmission abroad and to supranational or intergovernmental bodies, s. 11 ZollVG

Supervision of cross-border transactions with cash and equivalent means of payment, s. 12a ZollVG
Powers of the customs investigation service (prosecution of internationally organized money laundering), s. 12b ZollVG
Monitoring of cross-border movements of excisable goods, s. 12e ZollVG
Federal Budget Code (Bundeshaushaltsordnung BHO)
Presentation of documents, s. 95 BHO

(b) Investigative powers in the area of structural funds and internal policies (*Strukturfonds und interne Politiken*)

Structural funds are prone to frauds in many ways. The investigative powers are determined by the area of irregularities. The authorities, that might be competent are vast.[1085] **64**

General administrative provisions **65**

- ss. 24 et seq. Administrative Procedure Act (VwVfG) aka General administrative law

Nota bene: The text of these provisions – especially of s. 26 VwVfG – is printed below → Single measures (investigative powers) =numerus clausus of measures and powers under the VwVfG.

From the point-of-view of the administrative penalties act it is questionable whether s. 46 of the Administrative Penalties Act (OwiG) applies. **66**

[1085] See for the period 2023–2028. online: https://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura_14/spl_57/pdfs/36.pdf. And the GAP-Strategieplan, which contains an annex with all "Kontrollstellen, Verwaltungsstellen, Prüfstellen" and report obligations of German authorities. For Hesse see here: https://www.esf-hessen.de/esf-hessen/foerderhandbuch-2021-2027/grundsaetze-2021-2027 (Accessed 31 December 2024). In our case example we use winemakers and fruit wine producers as example. The competence for this area is a shared-one, see https://landwirtschaft.hessen.de/naturschutz/streuobstwiesenstrategie (Accesed 31 December 2024).See Beschreibung des Verwaltungs- und Kontrollsystems des Landes Hessen für den Europäischen Sozialfonds Plus in der Förderperiode 2021 bis 2027, https://www.esf-hessen.de/resource/blob/esf-hessen/foerderhandbuch-2021-2027/grundsaetze-2021-2027/620818/f91940cae5530ea8d5d39ff82217b06a/beschreibung-des-verwaltungs-und-kontrollsystems-fuer-den-esf-hessen-2021-2027-data.pdf (Accessed 31 December 2024). In Hesse the WiBank is competent as a Payment authority below the managing authorities (Bewilligungsbehörden) https://www.wibank.de/wibank (Accessed 31 December 2024). See Wollenschläger 2017, pp. 23 et seq. for how EU law is implemented and executed under Art. 51 para. 1 CFR.

67 **Section 46 Application of the provisions on criminal proceedings Administrative Penalities & Fines Act**[1086]

(1) Unless this Act provides otherwise, the provisions of the general laws on criminal proceedings, namely the Code of Criminal Procedure, the Judicial Constitution Act and the Juvenile Court Act, shall apply mutatis mutandis to the fine proceedings.

(2) Unless otherwise provided by this Act, the prosecuting authority shall have the same rights and duties in fine proceedings as the public prosecutor in the prosecution of criminal offences.

(3) Institutionalisation, arrest and provisional detention, seizure of mail and telegrams and requests for information on circumstances subject to postal and telecommunications secrecy are inadmissible. Section 160 para. 3 sentence 2 of the Code of Criminal Procedure on court assistance shall not apply. There shall be no proceedings to enforce a complaint. The provisions on the participation of the injured party in the proceedings

[1086] **§ 46 Anwendung der Vorschriften über das Strafverfahren OwiG**

(1) Für das Bußgeldverfahren gelten, soweit dieses Gesetz nichts anderes bestimmt, sinngemäß die Vorschriften der allgemeinen Gesetze über das Strafverfahren, namentlich der Strafprozeßordnung, des Gerichtsverfassungsgesetzes und des Jugendgerichtsgesetzes.

(2) Die Verfolgungsbehörde hat, soweit dieses Gesetz nichts anderes bestimmt, im Bußgeldverfahren dieselben Rechte und Pflichten wie die Staatsanwaltschaft bei der Verfolgung von Straftaten.

(3) Anstaltsunterbringung, Verhaftung und vorläufige Festnahme, Beschlagnahme von Postsendungen und Telegrammen sowie Auskunftsersuchen über Umstände, die dem Post- und Fernmeldegeheimnis unterliegen, sind unzulässig. § 160 Abs. 3 Satz 2 der Strafprozeßordnung über die Gerichtshilfe ist nicht anzuwenden. Ein Klageerzwingungsverfahren findet nicht statt. Die Vorschriften über die Beteiligung des Verletzten am Verfahren und über das länderübergreifende staatsanwaltschaftliche Verfahrensregister sind nicht anzuwenden; dies gilt nicht für § 406e der Strafprozeßordnung.

(4) § 81a Abs. 1 Satz 2 der Strafprozeßordnung ist mit der Einschränkung anzuwenden, daß nur die Entnahme von Blutproben und andere geringfügige Eingriffe zulässig sind. Die Entnahme einer Blutprobe bedarf abweichend von § 81a Absatz 2 Satz 1 der Strafprozessordnung keiner richterlichen Anordnung, wenn bestimmte Tatsachen den Verdacht begründen, dass eine Ordnungswidrigkeit nach den §§ 24a und 24c des Straßenverkehrsgesetzes begangen worden ist. In einem Strafverfahren entnommene Blutproben und sonstige Körperzellen, deren Entnahme im Bußgeldverfahren nach Satz 1 zulässig gewesen wäre, dürfen verwendet werden. Die Verwendung von Blutproben und sonstigen Körperzellen zur Durchführung einer Untersuchung im Sinne des § 81e der Strafprozeßordnung ist unzulässig.

(4a) § 100j Absatz 1 Satz 1 Nummer 2 der Strafprozessordnung, auch in Verbindung mit § 100j Absatz 2 der Strafprozessordnung, ist mit der Einschränkung anzuwenden, dass die Erhebung von Bestandsdaten nur zur Verfolgung von Ordnungswidrigkeiten zulässig ist, die gegenüber natürlichen Personen mit Geldbußen im Höchstmaß von mehr als fünfzehntausend Euro bedroht sind.

(5) Die Anordnung der Vorführung des Betroffenen und der Zeugen, die einer Ladung nicht nachkommen, bleibt dem Richter vorbehalten. Die Haft zur Erzwingung des Zeugnisses (§ 70 Abs. 2 der Strafprozessordnung) darf sechs Wochen nicht überschreiten.

(6) Im Verfahren gegen Jugendliche und Heranwachsende kann von der Heranziehung der Jugendgerichtshilfe (§ 38 des Jugendgerichtsgesetzes) abgesehen werden, wenn ihre Mitwirkung für die sachgemäße Durchführung des Verfahrens entbehrlich ist.

(7) Im gerichtlichen Verfahren entscheiden beim Amtsgericht Abteilungen für Bußgeldsachen, beim Landgericht Kammern für Bußgeldsachen und beim Oberlandesgericht sowie beim Bundesgerichtshof Senate für Bußgeldsachen.

(8) Die Vorschriften zur Durchführung des § 191a Absatz 1 Satz 1 bis 4 des Gerichtsverfassungsgesetzes im Bußgeldverfahren sind in der Rechtsverordnung nach § 191a Abs. 2 des Gerichtsverfassungsgesetzes zu bestimmen.

and on the transnational register of proceedings of the public prosecutor shall not apply; this shall not apply to section 406e of the Code of Criminal Procedure.
(4) Section 81a para. 1 sentence 2 of the Code of Criminal Procedure shall apply with the restriction that only the taking of blood samples and other minor interventions are permissible. By way of derogation from section 81a para. 2, first sentence, of the Code of Criminal Procedure, the taking of a blood sample does not require a court order if certain facts give rise to the suspicion that an administrative offence under sections 24a and 24c of the Road Traffic Act has been committed. Blood samples and other body cells taken in criminal proceedings, the taking of which would have been permissible in the fine proceedings pursuant to sentence 1, may be used. The use of blood samples and other body cells to conduct an examination within the meaning of section 81e of the Code of Criminal Procedure shall be inadmissible.
(4a) Section 100j, paragraph 1, sentence 1, number 2 of the Code of Criminal Procedure, also in conjunction with section 100j, paragraph 2 of the Code of Criminal Procedure, shall apply with the restriction that the collection of inventory data shall only be permissible for the prosecution of administrative offences that are punishable against natural persons with fines of a maximum of more than fifteen thousand euros.
(5) The order to produce the person concerned and witnesses who fail to comply with a summons shall be reserved to the judge. Detention to compel testimony (section 70 para. 2 of the Code of Criminal Procedure) shall not exceed six weeks.
(6) In proceedings against juveniles and adolescents, the involvement of the juvenile court assistance (section 38 of the Juvenile Courts Act) may be dispensed with if their participation is dispensable for the proper conduct of the proceedings.
(7) In judicial proceedings, the Local Court shall have divisions for matters relating to administrative penalties, the Regional Court shall have divisions for matters relating to administrative penalties and the Higher Regional Court and the Federal Supreme Court shall have senates for matters relating to administrative penalties.
(8) The provisions for the implementation of section 191a, paragraph 1, sentences 1 to 4 of the Judicature Act in fine proceedings shall be determined in the statutory instrument pursuant to section 191a, paragraph 2 of the Judicature Act.

Agricultural policy **68**

Investigative powers in the area of granting of special benefits, s. 1 DirektZahlDurchfG in conjunction with s. 33 MOG

Powers of the enforcement authority, s. 28 AgrarOLkG:

- Investigations ex officio, s. 28 para. 1 no 1
- Hearings, s. 28 para. 1 no 2

Powers during judicial penalty proceedings (Bußgeldverfahren), s. 48 AgrarOLkG

69 Food Safety

Measures taken by the authorities responsible for monitoring food, feed and consumer goods, ss. 39 Food and Feed Code (Lebensmittel- und Futtermittelgesetzbuch LFBG)
Sample extraction (police), s. 43 LFBG
Obligations to comply, cooperate and provide information, s. 44 LFBG

70 Environmental standards

Monitoring, s. 52 BImSchG:

- On-site visits, monitoring of emissions and review of internal reports and follow-up documents, review of self-control, review of techniques used, s. 52 para. 1b BImSchG
- Entering premises and private homes, s. 52 para. 2 BImSchG
- Requiring of information, s. 52 para. 2 BImSchG
- Providing of documents, s. 52 para. 2 BImSchG
- Providing of auxiliary means, in particular fuels and drive units, s. 52 para. 2 BImSchG
- Sample extraction, s. 52 para. 3 BImSchG

Tasks and powers, s. 3 para. 2 BNatSchG
Right to information, documents and access, s. 52 BNatSchG
Powers of the customs authorities (criminal cases), s. 73 BNatSchG

(c) Investigative powers in the area of common market organisations (*gemeinsame Marktorganisation*)

71 This is a very special area primarly determined by Union law but as well supported by sections from German law:

72 General audit rights and duties to provide information, s. 33 Market Organisation Act (Marktorganisationsgesetz MOG)

- Request for information (*Auskunftsverlangen*), s. 33 para. 1 sentence 1, para. 2 MOG
- Presentation of documents (*Urkundenvorlage*), s. 33 para. 1 sentence 2 MOG
- Entering properties (*Betreten von Grundstücken*), s. 33 para. 1 sentence 3 MOG

Applicability of provisions on penalties and fines of the Fiscal Code, s. 35 MOG
Powers of the customs authorities in a criminal case, s. 37 MOG

(d) Investigative powers in the area of direct expenditure (*Direktausgaben*)

73 The investigative powers for the area of external aid are commonly presented in special contracts with the beneficiary and can therefore only be deduced from e.g. grant agreements. The national AFCOS (see below → Art. 12a OLAF Regulation) might be of help

to coordinate the investigations with relevance to direct expenditure. Due to the Federal system of the Federal Republic of Germany this might be a complex investigation. The Länder in Germany have special clearing houses and country offices for EU direct funds working with or on behalf of the EU Commission.

(3) Protection of information

(a) Tax secrecy (*Steuergeheimnis*) s. 30 AO

Federal Tax Code[1087] **74**

Section 30[1088]

(1) Public officials shall be obliged to observe tax secrecy.

(2) Public officials shall be in breach of tax secrecy if they

1. disclose or make use of, without authorisation, a third person's personal data that they have gained access to

a) in the course of an administrative procedure, an auditing procedure or judicial proceedings in tax matters,

b) in the course of criminal proceedings for tax crimes or administrative fine proceedings for tax-related administrative offences,

c) for other reasons, based on a notification from a revenue authority or based on the legally required submission of a tax assessment notice or of a certification of findings made during the taxation process

or

[1087] Translation provided by the Language Service of the Federal Ministry of Finance.

[1088] **§ 30 Abgabenordnung Steuergeheimnis**

(1) Amtsträger haben das Steuergeheimnis zu wahren.

(2) Ein Amtsträger verletzt das Steuergeheimnis, wenn er

1. personenbezogene Daten eines anderen, die ihm

a) in einem Verwaltungsverfahren, einem Rechnungsprüfungsverfahren oder einem gerichtlichen Verfahren in Steuersachen,

b) in einem Strafverfahren wegen einer Steuerstraftat oder einem Bußgeldverfahren wegen einer Steuerordnungswidrigkeit,

c) im Rahmen einer Weiterverarbeitung nach § 29c Absatz 1 Satz 1 Nummer 4, 5 oder 6 oder aus anderem dienstlichen Anlass, insbesondere durch Mitteilung einer Finanzbehörde oder durch die gesetzlich vorgeschriebene Vorlage eines Steuerbescheids oder einer Bescheinigung über die bei der Besteuerung getroffenen Feststellungen, bekannt geworden sind, oder

2. ein fremdes Betriebs- oder Geschäftsgeheimnis, das ihm in einem der in Nummer 1 genannten Verfahren bekannt geworden ist, (geschützte Daten) unbefugt offenbart oder verwertet oder

3. geschützte Daten im automatisierten Verfahren unbefugt abruft, wenn sie für eines der in Nummer 1 genannten Verfahren in einem automationsgestützten Dateisystem gespeichert sind.

(3) Den Amtsträgern stehen gleich

1. die für den öffentlichen Dienst besonders Verpflichteten (§ 11 Abs. 1 Nr. 4 des Strafgesetzbuchs),

1a. die in § 193 Abs. 2 des Gerichtsverfassungsgesetzes genannten Personen,

2. amtlich zugezogene Sachverständige,

3. die Träger von Ämtern der Kirchen und anderen Religionsgemeinschaften, die Körperschaften des öffentlichen Rechts sind.

2. disclose or make use of, without authorisation, a corporate or commercial secret that has become known to them in the course of procedures/proceedings specified under number 1 above,
(the data under numbers 1 and 2 above are hereinafter referred to as “protected data”) or
3. electronically retrieve, without authorisation, protected data that have been stored in an automated filing system for procedures/proceedings specified under number 1 above.
(3) The following shall be deemed to be of equivalent status to public officials:
1. persons under special obligations to the civil service (section 11para. 1 number 4 of the Criminal Code),
1a. the persons designated in section 193 para. 2 of the Act on the Constitution of Courts,
2. officially consulted experts,
3. holders of offices of the churches and other religious communities being public-law entities.
(4)[1089] The disclosure or use of protected data shall be permissible insofar as

[1089] (4) Die Offenbarung oder Verwertung geschützter Daten ist zulässig, soweit
1. sie der Durchführung eines Verfahrens im Sinne des Absatzes 2 Nr. 1 Buchstaben a und b dient,
1a. sie einer Verarbeitung durch Finanzbehörden nach Maßgabe des § 29c Absatz 1 Satz 1 Nummer 4 oder 6 dient,
1b. sie der Durchführung eines Bußgeldverfahrens nach Artikel 83 der Verordnung (EU) 2016/679 im Anwendungsbereich dieses Gesetzes dient,
2. sie durch Bundesgesetz ausdrücklich zugelassen ist,
2a. sie durch Recht der Europäischen Union vorgeschrieben oder zugelassen ist,
2b. sie der Erfüllung der gesetzlichen Aufgaben des Statistischen Bundesamtes oder für die Erfüllung von Bundesgesetzen durch die Statistischen Landesämter dient,
2c. sie der Gesetzesfolgenabschätzung dient und die Voraussetzungen für eine Weiterverarbeitung nach § 29c Absatz 1 Satz 1 Nummer 5 vorliegen,
3. die betroffene Person zustimmt,
4. sie der Durchführung eines Strafverfahrens wegen einer Tat dient, die keine Steuerstraftat ist, und die Kenntnisse
a) in einem Verfahren wegen einer Steuerstraftat oder Steuerordnungswidrigkeit erlangt worden sind; dies gilt jedoch nicht für solche Tatsachen, die der Steuerpflichtige in Unkenntnis der Einleitung des Strafverfahrens oder des Bußgeldverfahrens offenbart hat oder die bereits vor Einleitung des Strafverfahrens oder des Bußgeldverfahrens im Besteuerungsverfahren bekannt geworden sind, oder
b) ohne Bestehen einer steuerlichen Verpflichtung oder unter Verzicht auf ein Auskunftsverweigerungsrecht erlangt worden sind,
5. für sie ein zwingendes öffentliches Interesse besteht; ein zwingendes öffentliches Interesse ist namentlich gegeben, wenn
a) die Offenbarung erforderlich ist zur Abwehr erheblicher Nachteile für das Gemeinwohl oder einer Gefahr für die öffentliche Sicherheit, die Verteidigung oder die nationale Sicherheit oder zur Verhütung oder Verfolgung von Verbrechen und vorsätzlichen schweren Vergehen gegen Leib und Leben oder gegen den Staat und seine Einrichtungen,
b) Wirtschaftsstraftaten verfolgt werden oder verfolgt werden sollen, die nach ihrer Begehungsweise oder wegen des Umfangs des durch sie verursachten Schadens geeignet sind, die wirtschaftliche Ordnung erheblich zu stören oder das Vertrauen der Allgemeinheit auf die Redlichkeit des geschäftlichen Verkehrs oder auf die ordnungsgemäße Arbeit der Behörden und der öffentlichen Einrichtungen erheblich zu erschüttern, oder
c) die Offenbarung erforderlich ist zur Richtigstellung in der Öffentlichkeit verbreiteter unwahrer Tatsachen, die geeignet sind, das Vertrauen in die Verwaltung erheblich zu erschüttern; die Entscheidung trifft die zuständige oberste Finanzbehörde im Einvernehmen mit dem Bundesministerium der Finanzen; vor der Richtigstellung soll der Steuerpflichtige gehört werden.

1. such disclosure or use facilitates procedures/proceedings within the meaning of para. 2 number 1(a) and (b) above,
1a. such disclosure or use facilitates processing by revenue authorities in accordance with section 29c para. 1, first sentence, number 4 or 6,
1b. such disclosure or use facilitates administrative fine proceedings in accordance with Article 83 of Regulation (EU) 2016/679 within the scope of this Code,
2. such disclosure or use is expressly permitted by federal law,
2a. such disclosure or use is prescribed or permitted by European Union law,
2b. such disclosure or use helps the Federal Statistical Office perform its statutory functions,
2c. such disclosure or use facilitates regulatory impact assessments, and the conditions for further processing under section 29c para. 1, first sentence, number 5 have been met,
3. the persons concerned give their consent,
4. such disclosure or use facilitates criminal proceedings for a crime other than a tax crime, and such information
a) was obtained in the course of proceedings for tax crimes or tax-related administrative offences; however, this shall not apply in relation to facts which a taxpayer has disclosed while unaware that criminal proceedings or administrative fine proceedings have commenced or which have already become known in the course of the taxation procedure before the commencement of such proceedings, or
b) was obtained in the absence of any tax liability or by waiver of a right to withhold information,
5. there is a compelling public interest in such disclosure or use; such compelling public interest shall be deemed to exist in particular if
a) such disclosure is necessary to prevent significant harm to the public interest, to avert threats to public security, defence or national security, or to prevent or prosecute crimes or deliberate serious offences that aim to cause human injury or loss of life or that aim to cause damage to the state and its institutions,
b) economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are likely to substantially disrupt the economic order or to substantially undermine general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions, or
c) such disclosure is necessary to correct publicly disseminated incorrect facts which are likely to substantially undermine confidence in the administration; such decision shall be taken by the highest revenue authority responsible in mutual agreement with Federal Ministry of Finance; the taxpayer is to be consulted before correction of the facts.

(5)[1090] Wilfully false statements by the person concerned may be disclosed to the law enforcement authorities.
(6) The retrieval of protected data that have been stored in an automated filing system for one of the procedures/proceedings specified under para. 2 number 1 above shall be permissible only insofar as such retrieval facilitates a procedure/proceedings described under para. 2 number 1a or 1b above or facilitates the permissible transmission of protected data by a revenue authority to the data subject or to a third party. To protect tax secrecy, the Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, which technical and organisational measures must be adopted to prevent the unauthorised retrieval of data. In particular, the Federal Ministry of Finance may adopt more detailed rules on the type of data that are permissible to retrieve and on the set of public officials who are authorised to retrieve such data. Ordinances pertaining to motor vehicle tax, aviation tax, insurance tax, import and export

[1090] (5) Vorsätzlich falsche Angaben der betroffenen Person dürfen den Strafverfolgungsbehörden gegenüber offenbart werden.
(6) Der Abruf geschützter Daten, die für eines der in Absatz 2 Nummer 1 genannten Verfahren in einem automationsgestützten Dateisystem gespeichert sind, ist nur zulässig, soweit er der Durchführung eines Verfahrens im Sinne des Absatzes 2 Nummer 1 Buchstabe a und b oder der zulässigen Übermittlung geschützter Daten durch eine Finanzbehörde an die betroffene Person oder Dritte dient. Zur Wahrung des Steuergeheimnisses kann das Bundesministerium der Finanzen durch Rechtsverordnung mit Zustimmung des Bundesrates bestimmen, welche technischen und organisatorischen Maßnahmen gegen den unbefugten Abruf von Daten zu treffen sind. Insbesondere kann es nähere Regelungen treffen über die Art der Daten, deren Abruf zulässig ist, sowie über den Kreis der Amtsträger, die zum Abruf solcher Daten berechtigt sind. Die Rechtsverordnung bedarf nicht der Zustimmung des Bundesrates, soweit sie die Kraftfahrzeugsteuer, die Luftverkehrsteuer, die Versicherungsteuer sowie Einfuhr- und Ausfuhrabgaben und Verbrauchsteuern, mit Ausnahme der Biersteuer, betrifft.
(7) Werden dem Steuergeheimnis unterliegende Daten durch einen Amtsträger oder diesem nach Absatz 3 gleichgestellte Personen nach Maßgabe des § 87a Absatz 4 oder 7 über De-Mail-Dienste im Sinne des § 1 des De-Mail-Gesetzes versendet, liegt keine unbefugte Offenbarung, Verwertung und kein unbefugter Abruf von dem Steuergeheimnis unterliegenden Daten vor, wenn beim Versenden eine kurzzeitige automatisierte Entschlüsselung durch den akkreditierten Diensteanbieter zum Zweck der Überprüfung auf Schadsoftware und zum Zweck der Weiterleitung an den Addressaten der De-Mail-Nachricht stattfindet.
(8) Die Einrichtung eines automatisierten Verfahrens, das den Abgleich geschützter Daten innerhalb einer Finanzbehörde oder zwischen verschiedenen Finanzbehörden ermöglicht, ist zulässig, soweit die Weiterverarbeitung oder Offenbarung dieser Daten zulässig und dieses Verfahren unter Berücksichtigung der schutzwürdigen Interessen der betroffenen Person und der Aufgaben der beteiligten Finanzbehörden angemessen ist.
(9) Die Finanzbehörden dürfen sich bei der Verarbeitung geschützter Daten nur dann eines Auftragsverarbeiters im Sinne von Artikel 4 Nummer 8 der Verordnung (EU) 2016/679 bedienen, wenn diese Daten ausschließlich durch Personen verarbeitet werden, die zur Wahrung des Steuergeheimnisses verpflichtet sind.
(10) Die Offenbarung besonderer Kategorien personenbezogener Daten im Sinne des Artikels 9 Absatz 1 der Verordnung (EU) 2016/679 durch Finanzbehörden an öffentliche oder nicht-öffentliche Stellen ist zulässig, wenn die Voraussetzungen der Absätze 4 oder 5 und ein Ausnahmetatbestand nach Artikel 9 Absatz 2 der Verordnung (EU) 2016/679 oder nach § 31c vorliegen.
(11) Wurden geschützte Daten
1. einer Person, die nicht zur Wahrung des Steuergeheimnisses verpflichtet ist,
2. einer öffentlichen Stelle, die keine Finanzbehörde ist, oder
3. einer nicht-öffentlichen Stelle nach den Absätzen 4 oder 5 offenbart, darf der Empfänger diese Daten nur zu dem Zweck speichern, verändern, nutzen oder übermitteln, zu dem sie ihm offenbart worden sind. Die Pflicht eines Amtsträgers oder einer ihm nach Absatz 3 gleichgestellten Person, dem oder der die geschützten Daten durch die Offenbarung bekannt geworden sind, zur Wahrung des Steuergeheimnisses bleibt unberührt.

duties, and excise duties with the exception of beer duty shall not require the consent of the Bundesrat.
(7) In the event that data subject to tax secrecy are transmitted in accordance with section 87a para. 4 or 7 by a public official or persons of equivalent status under para. 3 above using DE-Mail services within the meaning of section 1 of the DE-Mail Act, no unauthorised disclosure or use and no unauthorised retrieval of data subject to tax secrecy shall be deemed to have occurred if during transmission a temporary automated decryption is performed by an accredited service provider for the purpose of checking for malware and for the purpose of forwarding the data to the addressee of the DE-Mail message.
(8) The establishment of an automated procedure that enables protected data to be cross-checked within a revenue authority or among various revenue authorities shall be permissible insofar as the further processing or the disclosure of such data is permissible and such procedure is suitable in light of the legitimate interests of the data subject and the functions to be performed by the participating revenue authorities.
(9) When personal data are to be processed, revenue authorities may use the services of a processor as defined in Article 4 para. 8 of Regulation (EU) 2016/679 only if the data in question are processed exclusively by persons who are required to observe tax secrecy.
(10) Revenue authorities shall be permitted to disclose special categories of personal data as described in Article 9 para. 1 of Regulation (EU) 2016/679 to public or non-public entities if the conditions stipulated in para. 4 or 5 above have been met and an exception under Article 9 para. 2 of Regulation (EU) 2016/679 or under section 31c applies.
(11) If protected data have been disclosed in accordance withparas. 4 or 5 above to
1. a person who is not required to observe tax secrecy,
2. a public entity that is not a revenue authority, or
3. a non-public entity,
the recipient may store, alter, use or transmit these data only for the purpose for which they were disclosed to him. In cases where such protected data become known to public officials or persons of equivalent status under para. 3 above on the basis of such a disclosure, their obligation to observe tax secrecy shall remain unaffected.

Section 31[1091] **Disclosure of tax bases**

(1) The revenue authorities shall be obliged to disclose to public-law entities, including religious communities which are public-law entities, tax bases, base amounts of non-personal taxes and other tax amounts for the purpose of assessing such levies connected with these tax bases, base amounts of non-personal taxes or other tax amounts. The obligation to disclose shall not apply insofar as this would involve a disproportionate amount of time and effort. Upon request, the revenue authorities may disclose to public-law entities the names and addresses of their members who are obliged, in principle, to pay levies within the meaning of the first sentence above as well as the duties assessed by the revenue authority with regard to the entity, insofar as knowledge of these data is necessary for the discharge of public tasks falling within the entity's responsibility and insofar as the data subject has no overriding interests that merit protection.

(2) Revenue authorities shall be obliged to disclose data subjects' data that are protected under section 30 to statutory social insurance providers, the Federal Employment Agency and the Artists' Social Security Fund, insofar as knowledge of such data is necessary to determine insurance requirements or to assess contributions, including artists' social security contributions, or insofar as the data subject submits an application for disclosure. This disclosure obligation shall not apply if carrying out such a disclosure would involve a disproportionate effort.

(3) The names and addresses of owners of real property which have become known through the administration of real property tax and which are protected under section 30 may be used by the authorities responsible for administering real property tax for the administration of other fiscal charges and for the discharge of other public tasks or may be disclosed by those authorities on request to the responsible courts, authorities or legal

[1091] **§ 31 AO Mitteilung von Besteuerungsgrundlagen**

(1) Die Finanzbehörden sind verpflichtet, Besteuerungsgrundlagen, Steuermessbeträge und Steuerbeträge an Körperschaften des öffentlichen Rechts einschließlich der Religionsgemeinschaften, die Körperschaften des öffentlichen Rechts sind, zur Festsetzung von solchen Abgaben mitzuteilen, die an diese Besteuerungsgrundlagen, Steuermessbeträge oder Steuerbeträge anknüpfen. Die Mitteilungspflicht besteht nicht, soweit deren Erfüllung mit einem unverhältnismäßigen Aufwand verbunden wäre. Die Finanzbehörden dürfen Körperschaften des öffentlichen Rechts auf Ersuchen Namen und Anschriften ihrer Mitglieder, die dem Grunde nach zur Entrichtung von Abgaben im Sinne des Satzes 1 verpflichtet sind, sowie die von der Finanzbehörde für die Körperschaft festgesetzten Abgaben übermitteln, soweit die Kenntnis dieser Daten zur Erfüllung von in der Zuständigkeit der Körperschaft liegenden öffentlichen Aufgaben erforderlich ist und überwiegende schutzwürdige Interessen der betroffenen Person nicht entgegenstehen.

(2) Die Finanzbehörden sind verpflichtet, die nach § 30 Absatz 2 Nummer 1 geschützten personenbezogenen Daten der betroffenen Person den Trägern der gesetzlichen Sozialversicherung, der Bundesagentur für Arbeit und der Künstlersozialkasse mitzuteilen, soweit die Kenntnis dieser Daten für die Feststellung der Versicherungspflicht oder die Festsetzung von Beiträgen einschließlich der Künstlersozialabgabe erforderlich ist oder die betroffene Person einen Antrag auf Mitteilung stellt. Die Mitteilungspflicht besteht nicht, soweit deren Erfüllung mit einem unverhältnismäßigen Aufwand verbunden wäre.

(3) Die für die Verwaltung der Grundsteuer zuständigen Behörden sind berechtigt, die nach § 30 geschützten Namen und Anschriften von Grundstückseigentümern, die bei der Verwaltung der Grundsteuer bekannt geworden sind, zur Verwaltung anderer Abgaben sowie zur Erfüllung sonstiger öffentlicher Aufgaben zu verwenden oder den hierfür zuständigen Gerichten, Behörden oder juristischen Personen des öffentlichen Rechts auf Ersuchen mitzuteilen, soweit nicht überwiegende schutzwürdige Interessen der betroffenen Person entgegenstehen.

persons under public law, as long as the data subject has no overriding interests that merit protection.

Section 31a[1092] **Disclosure for the purpose of countering unlawful employment and the misappropriation of benefits**

(1) The disclosure of a data subject's data that are protected under section 30 shall be permissible insofar as such disclosure is necessary

1. to conduct criminal proceedings, administrative fine proceedings or any other court or administrative proceedings with the aim of

a) countering unlawful employment or undeclared work, or

b) deciding whether

aa) a licence under the Temporary Employment Act should be issued, withdrawn or revoked, or

bb) benefits paid from public funds should be approved, granted, recovered, refunded, continued to be granted or allowed to be retained,

or

2. to assert a claim for repayment of benefits paid from public funds.

(2) In the cases referred to in para. 1 above, the revenue authorities shall be obliged to disclose to the competent body the facts required in each case. In the cases referred to in para. 1 numbers 1 lit. b and 2 above, information shall also be disclosed upon application by the data subject. The obligation to disclose referred to in the first and second sentence of this paragraph shall not apply insofar as this would involve a disproportionate amount of time and effort.

[1092] **§ 31a AO Mitteilungen zur Bekämpfung der illegalen Beschäftigung und des Leistungsmissbrauchs**
(1) Die Offenbarung der nach § 30 geschützten Daten der betroffenen Person ist zulässig, soweit sie
1.für die Durchführung eines Strafverfahrens, eines Bußgeldverfahrens oder eines anderen gerichtlichen oder Verwaltungsverfahrens mit dem Ziel
a)der Bekämpfung von illegaler Beschäftigung oder Schwarzarbeit oder
b)der Entscheidung
aa)über Erteilung, Rücknahme oder Widerruf einer Erlaubnis nach dem Arbeitnehmerüberlassungsgesetz oder
bb)über Bewilligung, Gewährung, Rückforderung, Erstattung, Weitergewährung oder Belassen einer Leistung aus öffentlichen Mitteln
oder
2.für die Geltendmachung eines Anspruchs auf Rückgewähr einer Leistung aus öffentlichen Mitteln
erforderlich ist.
(2) Die Finanzbehörden sind in den Fällen des Absatzes 1 verpflichtet, der zuständigen Stelle die jeweils benötigten Tatsachen mitzuteilen. In den Fällen des Absatzes 1 Nr. 1 Buchstabe b und Nr. 2 erfolgt die Mitteilung auch auf Antrag der betroffenen Person. Die Mitteilungspflicht nach den Sätzen 1 und 2 besteht nicht, soweit deren Erfüllung mit einem unverhältnismäßigen Aufwand verbunden wäre.

Section 31b[1093] **Disclosure for the purposes of countering money laundering and terrorist financing**

(1) The disclosure, to the respective competent body, of a data subject's data that are protected under section 30 shall be permissible, even in the absence of a request, insofar as such disclosure serves one of the following purposes:

1. conducting criminal proceedings for money laundering or terrorist financing in accordance with section 1paras. 1 and 2 of the Money Laundering Act,
2. preventing, detecting and combating money laundering or terrorist financing in accordance with section 1paras. 1 and 2 of the Money Laundering Act,

[1093] **§ 31b Mitteilungen zur Bekämpfung der Geldwäsche und der Terrorismusfinanzierung**
(1) Die Offenbarung der nach § 30 geschützten Daten der betroffenen Person an die jeweils zuständige Stelle ist auch ohne Ersuchen zulässig, soweit sie einem der folgenden Zwecke dient:
1.der Durchführung eines Strafverfahrens wegen Geldwäsche oder Terrorismusfinanzierung nach § 1 Absatz 1 und 2 des Geldwäschegesetzes,
2.der Verhinderung, Aufdeckung und Bekämpfung von Geldwäsche oder Terrorismusfinanzierung nach § 1 Absatz 1 und 2 des Geldwäschegesetzes,
3.der Durchführung eines Bußgeldverfahrens nach § 56 des Geldwäschegesetzes gegen Verpflichtete nach § 2 Absatz 1 Nummer 13 bis 16 des Geldwäschegesetzes,
4.dem Treffen von Maßnahmen und Anordnungen nach § 51 Absatz 2 des Geldwäschegesetzes gegenüber Verpflichteten nach § 2 Absatz 1 Nummer 13 bis 16 des Geldwäschegesetzes oder
5.der Wahrnehmung von Aufgaben nach § 28 Absatz 1 des Geldwäschegesetzes durch die Zentralstelle für Finanztransaktionsuntersuchungen.
(2) Die Finanzbehörden haben der Zentralstelle für Finanztransaktionsuntersuchungen unverzüglich Sachverhalte unabhängig von deren Höhe mitzuteilen, wenn Tatsachen vorliegen, die darauf hindeuten, dass
1.es sich bei Vermögensgegenständen, die mit dem mitzuteilenden Sachverhalt im Zusammenhang stehen, um den Gegenstand einer Straftat nach § 261 des Strafgesetzbuchs handelt oder
2.die Vermögensgegenstände im Zusammenhang mit Terrorismusfinanzierung stehen.
Mitteilungen an die Zentralstelle für Finanztransaktionsuntersuchungen sind durch elektronische Datenübermittlung zu erstatten; hierbei ist ein sicheres Verfahren zu verwenden, das die Vertraulichkeit und Integrität des Datensatzes gewährleistet. Im Fall einer Störung der Datenübertragung ist ausnahmsweise eine Mitteilung auf dem Postweg möglich. § 45 Absatz 3 und 4 des Geldwäschegesetzes gilt entsprechend.
(2a) Die Finanzbehörden übermitteln der Zentralstelle für Finanztransaktionsuntersuchungen folgende Daten nach Maßgabe des § 31 Absatz 5 des Geldwäschegesetzes im automatisierten Verfahren, soweit dies zur Wahrnehmung der Aufgaben der Zentralstelle für Finanztransaktionsuntersuchungen nach § 28 Absatz 1 Satz 2 Nummer 2 des Geldwäschegesetzes erforderlich ist:
1.beim Bundeszentralamt für Steuern die nach § 5 Absatz 1 Nummer 13 des Finanzverwaltungsgesetzes vorgehaltenen Daten,
2.bei den Landesfinanzbehörden die zu einem Steuerpflichtigen gespeicherten Grundinformationen, die die Steuernummer, die Gewerbekennzahl, die Grund-und Zusatzkennbuchstaben, die Bankverbindung, die vergebene Umsatzsteuer-Identifikationsnummer sowie das zuständige Finanzamt umfassen.
(2b) Wird von der Verordnungsermächtigung des § 22a des Grunderwerbsteuergesetzes zur elektronischen Übermittlung der Anzeige im Sinne des § 18 des Grunderwerbsteuergesetzes Gebrauch gemacht, übermitteln die Landesfinanzbehörden die dort eingegangenen Datensätze nach Maßgabe des § 31 Absatz 5a des Geldwäschegesetzes der Zentralstelle für Finanztransaktionsuntersuchungen zur Wahrnehmung ihrer Aufgaben nach § 28 Absatz 1 Satz 2 Nummer 2 des Geldwäschegesetzes im automatisierten Verfahren.Absatz 2 Satz 2 gilt entsprechend.
(3) Die Finanzbehörden haben der zuständigen Verwaltungsbehörde unverzüglich solche Tatsachen mitzuteilen, die darauf schließen lassen, dass
1.ein Verpflichteter nach § 2 Absatz 1 Nummer 13 bis 16 des Geldwäschegesetzes eine Ordnungswidrigkeit nach § 56 des Geldwäschegesetzes begangen hat oder begeht oder
2.die Voraussetzungen für das Treffen von Maßnahmen und Anordnungen nach § 51 Absatz 2 des Geldwäschegesetzes gegenüber Verpflichteten nach § 2 Absatz 1 Nummer 13 bis 16 des Geldwäschegesetzes gegeben sind.
(4) § 47 Absatz 3 des Geldwäschegesetzes gilt entsprechend.

3. conducting administrative fine proceedings in accordance with section 56 of the Money Laundering Act against obligated parties under section 2 para. 1 numbers 13 to 16 of the Money Laundering Act,
4. taking measures or issuing orders in accordance with section 51 para. 2 of the Money Laundering Act against obligated parties under section 2 para. 1 numbers 13 to 16 of the Money Laundering Act or
5. the performance of tasks by the Financial Intelligence Unit as specified in section 28 para. 1 of the Money Laundering Act.
(2) Revenue authorities must report matters to the Financial Intelligence Unit without undue delay, and irrespective of the value involved, if there are facts indicating that
1. the assets connected to the reportable matter are the object of a crime under section 261 of the Criminal Code or
2. the assets are connected to terrorist financing.
Reports to the Financial Intelligence Unit shall be sent via electronic data transmission, using a secure method that guarantees the confidentiality and integrity of the data set. In exceptional cases, a report may be sent via regular mail if data transmission is disrupted. Section 45 paras. 3 and 4 of the Money Laundering Act shall apply accordingly.
(3) The revenue authorities shall notify the competent administrative authority, without delay, of facts indicating that
1. an obligated party under section 2 para. 1 numbers 9 to 13 of the Money Laundering Act has committed or is committing an administrative offence under section 56 of the Money Laundering Act or
2. the conditions have been met to take measures or issue orders in accordance with section 51 para. 2 of the Money Laundering Act against obligated parties under section 2 para. 1 numbers 13 to 16 of the Money Laundering Act.
(4) Section 47 para. 3 of the Money Laundering Act shall apply accordingly.

Section 31c[1094] **The processing of special categories of personal data for statistical purposes by revenue authorities**

(1) Notwithstanding the provisions of Article 9 para. 1 of Regulation (EU) 2016/679, revenue authorities shall be permitted to process special categories of personal data as described in Article 9 para. 1 of Regulation (EU) 2016/679 for statistical purposes, even without the consent of the data subject, if such processing for statistical purposes is necessary and the interests of the controller in processing the data significantly override the data subject's interests in not having the data processed. The controller shall provide for suitable and specific measures to safeguard the data subject's interests; the second sentence of section 22 para. 2 of the Federal Data Protection Act shall apply accordingly.

(2) The rights of data subjects laid down in Articles 15, 16, 18 and 21 of Regulation (EU) 2016/679 shall be restricted to the extent that (a) such rights are likely to render impossible, or to substantially impede, the achievement of these statistical purposes and (b) such restriction is necessary for the fulfilment of these statistical purposes.

(3) In addition to the measures specified in the second sentence of section 22 para. 2 of the Federal Data Protection Act, special categories of personal data as described in Article 9 para. 1 of Regulation (EU) 2016/679 that are processed for statistical purposes shall be pseudonymised or anonymised as soon as possible after the statistical purpose has been achieved, unless such pseudonymisation or anonymisation runs counter to the legitimate interests of the data subject. Until such pseudonymisation or anonymisation occurs, those data items that enable specific details about personal or material circumstances to be attributed to an identified or identifiable person shall be stored separately. Such data items may be merged with such specific details only insofar as this is necessary to achieve the statistical purpose.

[1094] **§ 31c AO Verarbeitung besonderer Kategorien personenbezogener Daten durch Finanzbehörden zu statistischen Zwecken**

(1) Abweichend von Artikel 9 Absatz 1 der Verordnung (EU) 2016/679 ist die Verarbeitung besonderer Kategorien personenbezogener Daten im Sinne des Artikels 9 Absatz 1 der Verordnung (EU) 2016/679 durch Finanzbehörden auch ohne Einwilligung der betroffenen Person für statistische Zwecke zulässig, wenn die Verarbeitung zu diesen Zwecken erforderlich ist und die Interessen des Verantwortlichen an der Verarbeitung die Interessen der betroffenen Person an einem Ausschluss der Verarbeitung erheblich überwiegen. Der Verantwortliche sieht angemessene und spezifische Maßnahmen zur Wahrung der Interessen der betroffenen Person vor; § 22 Absatz 2 Satz 2 des Bundesdatenschutzgesetzes gilt entsprechend.

(2) Die in den Artikeln 15, 16, 18 und 21 der Verordnung (EU) 2016/679 vorgesehenen Rechte der betroffenen Person sind insoweit beschränkt, als diese Rechte voraussichtlich die Verwirklichung der Statistikzwecke unmöglich machen oder ernsthaft beinträchtigen und die Beschränkung für die Erfüllung der Statistikzwecke notwendig ist.

(3) Ergänzend zu den in § 22 Absatz 2 Satz 2 des Bundesdatenschutzgesetzes genannten Maßnahmen sind zu statistischen Zwecken verarbeitete besondere Kategorien personenbezogener Daten im Sinne des Artikels 9 Absatz 1 der Verordnung (EU) 2016/679 zu pseudonymisieren oder anonymisieren, sobald dies nach dem Statistikzweck möglich ist, es sei denn, berechtigte Interessen der betroffenen Person stehen dem entgegen. Bis dahin sind die Merkmale gesondert zu speichern, mit denen Einzelangaben über persönliche oder sachliche Verhältnisse einer bestimmten oder bestimmbaren Person zugeordnet werden können. Sie dürfen mit den Einzelangaben nur zusammengeführt werden, soweit der Statistikzweck dies erfordert.

Section 88[1095] **Principle of investigation**

[…] (3) To ensure the timely and consistent execution of tax laws, the highest revenue authorities may, for identified or identifiable categories of cases, issue instructions on the type and scope of investigations and the processing of data collected or recorded, unless otherwise required by law. Such instructions may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account. Such instructions may not be made public if doing so could jeopardise the consistency and lawfulness of taxation. Instructions by the highest Land revenue authorities in accordance with the first sentence above shall require the agreement of the Federal Ministry of Finance if the Land revenue authorities administer taxes on behalf of the Federation.

(4) When they receive data meant for forwarding to Land revenue authorities, both the Federal Central Tax Office and the central agency as defined in section 81 of the Income Tax Act may refrain from forwarding such data to the Land revenue authorities if attributing or assigning the data to a specific taxpayer or tax office is impossible or requires unreasonable effort. Data attributed or assigned to a specific taxpayer or tax office in accordance with the first sentence above shall be forwarded to the Länder, taking into account any instructions issued by the Federal Ministry of Finance in accordance with para. 3 above. Data not forwarded to Land revenue authorities shall be stored by the Federal Central Tax Office for the purpose of proceedings described in section 30 para. 2 numbers 1a) and 1b), until the expiration of the 15th year following the year when the data were received. Data stored in accordance with the third sentence above may be processed only for use in proceedings described in section 30 para. 2 numbers 1a) and 1b) and for purposes of monitoring data protection.

(5) […]

[1095] **§ 88 AO Untersuchungsgrundsatz**

[…] (3) Zur Gewährleistung eines zeitnahen und gleichmäßigen Vollzugs der Steuergesetze können die obersten Finanzbehörden für bestimmte oder bestimmbare Fallgruppen Weisungen über Art und Umfang der Ermittlungen und der Verarbeitung von erhobenen oder erfassten Daten erteilen, soweit gesetzlich nicht etwas anderes bestimmt ist. Bei diesen Weisungen können allgemeine Erfahrungen der Finanzbehörden sowie Wirtschaftlichkeit und Zweckmäßigkeit berücksichtigt werden. Die Weisungen dürfen nicht veröffentlicht werden, soweit dies die Gleichmäßigkeit und Gesetzmäßigkeit der Besteuerung gefährden könnte. Weisungen der obersten Finanzbehörden der Länder nach Satz 1 bedürfen des Einvernehmens mit dem Bundesministerium der Finanzen, soweit die Landesfinanzbehörden Steuern im Auftrag des Bundes verwalten.

(4) Das Bundeszentralamt für Steuern und die zentrale Stelle im Sinne des § 81 des Einkommensteuergesetzes können auf eine Weiterleitung ihnen zugegangener und zur Weiterleitung an die Landesfinanzbehörden bestimmter Daten an die Landesfinanzbehörden verzichten, soweit sie die Daten nicht oder nur mit unverhältnismäßigem Aufwand einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zuordnen können. Nach Satz 1 einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zugeordnete Daten sind unter Beachtung von Weisungen gemäß Absatz 3 des Bundesministeriums der Finanzen weiterzuleiten. Nicht an die Landesfinanzbehörden weitergeleitete Daten sind vom Bundeszentralamt für Steuern für Zwecke von Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b bis zum Ablauf des 15. Jahres nach dem Jahr des Datenzugangs zu speichern. Nach Satz 3 gespeicherte Daten dürfen nur für Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b sowie zur Datenschutzkontrolle verarbeitet werden.

(5) […]

Section 88a[1096] **Collection of protected data**
To the extent required to ensure the uniform assessment and levying of taxes, the revenue authorities may process data protected under section 30 in filing systems, including for future procedures/proceedings as described in section 30 para. 2 numbers 1a and 1b, in particular to obtain comparable values. Processing of the data shall be permissible only for procedures/proceedings as described in section 30 para. 2 numbers 1a and 1b.

Section 117[1097] **International legal and administrative assistance in tax matters**
(1) The revenue authorities may avail themselves of international legal and administrative assistance subject to the provisions of German law.

[1096] **§ 88a AO Sammlung von geschützten Daten**
Soweit es zur Sicherstellung einer gleichmäßigen Festsetzung und Erhebung der Steuern erforderlich ist, dürfen die Finanzbehörden nach § 30 geschützte Daten auch für Zwecke künftiger Verfahren im Sinne des § 30 Abs. 2 Nr. 1 Buchstabe a und b, insbesondere zur Gewinnung von Vergleichswerten, in Dateisystemen verarbeiten. Eine Verarbeitung ist nur für Verfahren im Sinne des § 30 Abs. 2 Nr. 1 Buchstabe a und b zulässig.

[1097] **§ 117 AO Zwischenstaatliche Rechts- und Amtshilfe in Steuersachen**
(1) Die Finanzbehörden können zwischenstaatliche Rechts- und Amtshilfe nach Maßgabe des deutschen Rechts in Anspruch nehmen.
(2) Die Finanzbehörden können zwischenstaatliche Rechts- und Amtshilfe auf Grund innerstaatlich anwendbarer völkerrechtlicher Vereinbarungen, innerstaatlich anwendbarer Rechtsakte der Europäischen Union sowie des EU-Amtshilfegesetzes leisten.
(3) Die Finanzbehörden können nach pflichtgemäßem Ermessen zwischenstaatliche Rechts- und Amtshilfe auf Ersuchen auch in anderen Fällen leisten, wenn
1.die Gegenseitigkeit verbürgt ist,
2.der ersuchende Staat gewährleistet, dass die übermittelten Auskünfte und Unterlagen nur für Zwecke seines Besteuerungs- oder Steuerstrafverfahrens (einschließlich Ordnungswidrigkeitenverfahren) verwendet werden, und dass die übermittelten Auskünfte und Unterlagen nur solchen Personen, Behörden oder Gerichten zugänglich gemacht werden, die mit der Bearbeitung der Steuersache oder Verfolgung der Steuerstraftat befasst sind,
3.der ersuchende Staat zusichert, dass er bereit ist, bei den Steuern vom Einkommen, Ertrag und Vermögen eine mögliche Doppelbesteuerung im Verständigungswege durch eine sachgerechte Abgrenzung der Besteuerungsgrundlagen zu vermeiden und
4.die Erledigung des Ersuchens die Souveränität, die Sicherheit, die öffentliche Ordnung oder andere wesentliche Interessen des Bundes oder seiner Gebietskörperschaften nicht beeinträchtigt und keine Gefahr besteht, dass dem inländischen Beteiligten ein mit dem Zweck der Rechts- und Amtshilfe nicht zu vereinbarender Schaden entsteht, falls ein Handels-, Industrie-, Gewerbe- oder Berufsgeheimnis oder ein Geschäftsverfahren, das auf Grund des Ersuchens offenbart werden soll, preisgegeben wird.
Soweit die zwischenstaatliche Rechts- und Amtshilfe Steuern betrifft, die von den Landesfinanzbehörden verwaltet werden, entscheidet das Bundesministerium der Finanzen im Einvernehmen mit der zuständigen obersten Landesbehörde.
(4) Bei der Durchführung der Rechts- und Amtshilfe richten sich die Befugnisse der Finanzbehörden sowie die Rechte und Pflichten der Beteiligten und anderer Personen nach den für Steuern im Sinne von § 1 Abs. 1 geltenden Vorschriften. § 114 findet entsprechende Anwendung. Bei der Übermittlung von Auskünften und Unterlagen gilt für inländische Beteiligte § 91 entsprechend; soweit die Rechts- und Amtshilfe Steuern betrifft, die von den Landesfinanzbehörden verwaltet werden, hat eine Anhörung des inländischen Beteiligten abweichend von § 91 Abs. 1 stets stattzufinden, es sei denn, die Umsatzsteuer ist betroffen, es findet ein Informationsaustausch auf Grund des EU-Amtshilfegesetzes statt oder es liegt eine Ausnahme nach § 91 Abs. 2 oder 3 vor.
(5) Das Bundesministerium der Finanzen wird ermächtigt, zur Förderung der zwischenstaatlichen Zusammenarbeit durch Rechtsverordnung mit Zustimmung des Bundesrates völkerrechtliche Vereinbarungen über die gegenseitige Rechts- und Amtshilfe auf dem Gebiete des Zollwesens in Kraft zu setzen, wenn sich die darin übernommenen Verpflichtungen im Rahmen der nach diesem Gesetz zulässigen zwischenstaatlichen Rechts- und Amtshilfe halten.

(2) The revenue authorities may provide international legal and administrative assistance on the basis of nationally applicable international agreements, nationally applicable legal instruments of the European Union and the EU Mutual Assistance Act.
(3) Using due discretion, the revenue authorities may provide international legal and administrative assistance upon request in other cases where
1. reciprocity is assured,
2. the requesting state guarantees that the information and the documents supplied will be used only for the purposes of its taxation or criminal tax procedure (including procedures related to administrative offences) and that the information and the documents supplied will be disclosed only to such persons, authorities or courts as are concerned with the processing of the tax case or the prosecution of the tax crime;
3. the requesting state guarantees that it is prepared to avoid any double taxation on income, capital gains and assets by way of mutual agreement procedure through the appropriate adjustment of the tax base, and
4. compliance with the request is not detrimental to the sovereignty, security, public order or other essential interests of the Federation or its political subdivisions and there is no danger of the person concerned in Germany incurring damage incompatible with the purpose of the legal and administrative assistance in the event that a trade, industrial, commercial or professional secret or a business process which is to be communicated on the basis of the request is disclosed.
To the extent that international legal and administrative assistance pertains to taxes administered by *Land* revenue authorities, the Federal Ministry of Finance shall take a decision in mutual agreement with the competent highest authority of the *Land* concerned.
(4) When implementing legal and administrative assistance, the powers of the revenue authorities and the rights and obligations of the participants and other persons shall be based on the provisions applying to taxes as defined in section 1 para. 1. Section 114 shall apply accordingly. Section 91 shall apply accordingly with regard to domestic participants where information and documents are transmitted; notwithstanding section 91 para. 1, domestic participants shall invariably be consulted where legal and administrative assistance pertains to taxes administered by *Land* revenue authorities, unless VAT is concerned, an information exchange is taking place on the basis of the EU Mutual Assistance Act, or exceptional circumstances exist within the meaning of section 91para. 2 or (3).
(5) For the purposes of promoting international cooperation, the Federal Ministry of Finance shall be authorised, by way of ordinances issued with the consent of the Bundesrat, to enact international agreements on mutual legal and administrative assistance in customs matters if the obligations thus assumed do not go beyond the scope of the international legal and administrative assistance permissible under this Code.

Section 117a[1098] **Transmission of personal data to Member States of the European Union**

(1) At the request of a public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes, the offices of the revenue authorities charged with tax investigation may transmit personal data in connection with the remit stipulated in section 208 for the purposes of preventing crimes. The provisions on data transmission in the domestic context shall apply accordingly for the transmission of this data.

(2) Transmission of personal data pursuant to para. 1 above shall only be permissible if the request contains at least the following details:

1. the name and address of the requesting authority,
2. description of the crime for the prevention of which the data are required,
3. description of the facts of the case on which the request is based,
4. designation of the purpose for which the data are sought,
5. the connection between the purpose for which the information or intelligence are sought and the person who is the subject of the information,

[1098] **§ 117a AO Übermittlung personenbezogener Daten an Mitgliedstaaten der Europäischen Union**
(1) Auf ein Ersuchen einer für die Verhütung und Verfolgung von Straftaten zuständigen öffentlichen Stelle eines Mitgliedstaates der Europäischen Union können die mit der Steuerfahndung betrauten Dienststellen der Finanzbehörden personenbezogene Daten, die in Zusammenhang mit dem in § 208 bestimmten Aufgabenbereich stehen, zum Zweck der Verhütung von Straftaten übermitteln. Für die Übermittlung dieser Daten gelten die Vorschriften über die Datenübermittlung im innerstaatlichen Bereich entsprechend.
(2) Die Übermittlung personenbezogener Daten nach Absatz 1 ist nur zulässig, wenn das Ersuchen mindestens folgende Angaben enthält:
1.die Bezeichnung und die Anschrift der ersuchenden Behörde,
2.die Bezeichnung der Straftat, zu deren Verhütung die Daten benötigt werden,
3.die Beschreibung des Sachverhalts, der dem Ersuchen zugrunde liegt,
4.die Benennung des Zwecks, zu dem die Daten erbeten werden,
5.den Zusammenhang zwischen dem Zweck, zu dem die Informationen oder Erkenntnisse erbeten werden, und der Person, auf die sich diese Informationen beziehen,
6.Einzelheiten zur Identität der betroffenen Person, sofern sich das Ersuchen auf eine bekannte Person bezieht, und
7.Gründe für die Annahme, dass sachdienliche Informationen und Erkenntnisse im Inland vorliegen.
(3) Die mit der Steuerfahndung betrauten Dienststellen der Finanzbehörden können auch ohne Ersuchen personenbezogene Daten im Sinne von Absatz 1 an eine für die Verhütung und Verfolgung von Straftaten zuständige öffentliche Stelle eines Mitgliedstaates der Europäischen Union übermitteln, wenn im Einzelfall die Gefahr der Begehung einer Straftat im Sinne des Artikels 2 Absatz 2 des Rahmenbeschlusses 2002/584/JI des Rates vom 13. Juni 2002 über den Europäischen Haftbefehl und die Übergabeverfahren zwischen den Mitgliedstaaten (ABl. L 190 vom 18.7.2002, S. 1), der zuletzt durch den Rahmenbeschluss 2009/299/JI (ABl. L 81 vom 27.3.2009, S. 24) geändert worden ist, besteht und konkrete Anhaltspunkte dafür vorliegen, dass die Übermittlung dieser personenbezogenen Daten dazu beitragen könnte, eine solche Straftat zu verhindern.
(4) Für die Übermittlung der Daten nach Absatz 3 gelten die Vorschriften über die Datenübermittlung im innerstaatlichen Bereich entsprechend. Die Datenübermittlung unterbleibt, soweit, auch unter Berücksichtigung des besonderen öffentlichen Interesses an der Datenübermittlung, im Einzelfall schutzwürdige Interessen der betroffenen Person überwiegen. Zu den schutzwürdigen Interessen gehört auch das Vorhandensein eines angemessenen Datenschutzniveaus im Empfängerstaat. Die schutzwürdigen Interessen der betroffenen Personen können auch dadurch gewahrt werden, dass der Empfängerstaat oder die empfangende zwischen- oder überstaatliche Stelle im Einzelfall einen Schutz der übermittelten Daten garantiert.

6. details about the identity of the person concerned insofar as the request relates to a known person, and
7. reasons for believing the relevant information and intelligence are available in Germany.
(3) The offices of the revenue authorities charged with tax investigation may also spontaneously transmit personal data within the meaning of para. 1 above to a public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes where, in the individual case, there is a risk of the commission of a crime within the meaning of Article 2 para. 2 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18 July 2002, p. 1), most recently amended by Framework Decision 2009/299/JHA (OJ L 81, 27 February 2009, p. 24), and there are solid indications that the transmission of this personal data could contribute to preventing such a crime.
(4) The provisions on data transmission in the domestic context shall apply accordingly for the transmission of data pursuant to para. 3 above. There shall be no data transmission insofar as, and with due regard to the specific public interest in the transmission of the data, the legitimate interests of the person concerned are overriding in the individual case. Legitimate interests shall also include the existence of an appropriate level of data protection in the receiving state. The legitimate interests of the person concerned may also be safeguarded by the receiving state or the receiving international or supranational agency guaranteeing, in the individual case, the protection of the transmitted data.
(5)[1099] There shall be no data transmission pursuant to paras. 1 and 3 above where
1. this would impair the essential security interests of the Federation or the *Länder*,

[1099] (5) Die Datenübermittlung nach den Absätzen 1 und 3 unterbleibt, wenn
1.hierdurch wesentliche Sicherheitsinteressen des Bundes oder der Länder beeinträchtigt würden,
2.die Übermittlung der Daten zu den in Artikel 6 des Vertrages über die Europäische Union enthaltenen Grundsätzen in Widerspruch stünde,
3.die zu übermittelnden Daten bei der ersuchten Behörde nicht vorhanden sind und nur durch das Ergreifen von Zwangsmaßnahmen erlangt werden können oder
4.die Übermittlung der Daten unverhältnismäßig wäre oder die Daten für die Zwecke, für die sie übermittelt werden sollen, nicht erforderlich sind.
(6) Die Datenübermittlung nach den Absätzen 1 und 3 kann unterbleiben, wenn
1.die zu übermittelnden Daten bei den mit der Steuerfahndung betrauten Dienststellen der Finanzbehörden nicht vorhanden sind, jedoch ohne das Ergreifen von Zwangsmaßnahmen erlangt werden können,
2.hierdurch der Erfolg laufender Ermittlungen oder Leib, Leben oder Freiheit einer Person gefährdet würde oder
3.die Tat, zu deren Verhütung die Daten übermittelt werden sollen, nach deutschem Recht mit einer Freiheitsstrafe von im Höchstmaß einem Jahr oder weniger bedroht ist.
(7) Als für die Verhütung und Verfolgung von Straftaten zuständige öffentliche Stelle eines Mitgliedstaates der Europäischen Union im Sinne der Absätze 1 und 3 gilt jede Stelle, die von diesem Staat gemäß Artikel 2 Buchstabe a des Rahmenbeschlusses 2006/960/JI des Rates vom 18. Dezember 2006 über die Vereinfachung des Austauschs von Informationen und Erkenntnissen zwischen den Strafverfolgungsbehörden der Mitgliedstaaten der Europäischen Union (ABl. L 386 vom 29.12.2006, S. 89, L 75 vom 15.3.2007, S. 26) benannt wurde.
(8) Die Absätze 1 bis 7 sind auch anzuwenden auf die Übermittlung von personenbezogenen Daten an für die Verhütung und Verfolgung von Straftaten zuständige öffentliche Stellen eines Schengen-assoziierten Staates im Sinne von § 91 Absatz 3 des Gesetzes über die internationale Rechtshilfe in Strafsachen.

2. the transmission of data would contradict the principles contained in Article 6 of the Treaty on European Union,
3. the data to be transmitted are not held by the requested authority and can only be obtained by taking coercive measures, or
4. the transmission of the data would be disproportionate or the data are not required for the purposes for which they are to be transmitted.
(6) The data transmission pursuant to paras. 1 and 3 above may be refrained from where
1. the data to be transmitted are not held by the offices of the revenue authorities charged with tax investigation but can be obtained without the taking of coercive measures,
2. this would present a risk to the success of on-going investigations or to a person's body, life or freedom, or
3. the act, for the prevention of which the data are to be transmitted, is punishable under German law by means of imprisonment for a maximum one year or less.
(7) The public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes within the meaning of paras. 1 and 3 above shall be any agency appointed by this state pursuant to Article 2(a) of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386 of 29 December 2006, p. 89, OJ L 75 of 15 March 2007, p. 26).
(8) Paras. 1 to 7 above shall also apply to the transmission of personal data to public agencies of a Schengen associated state responsible for the prevention and prosecution of crimes within the meaning of section 91 para. 3 of the Act on International Judicial Assistance in Criminal Matters.

Section 117b[1100] **Use of data to be supplied pursuant to Framework Decision 2006/960/JHA**

(1) Data which have been transmitted pursuant to Framework Agreement 2006/960/JHA to the offices of the revenue authorities charged with tax investigation may only be used for the purposes for which they were transmitted or to avert a present and substantial threat to public security. The data may only be used for other purposes or as evidence in judicial proceedings if the transmitting state has given its consent. The conditions set for the use of the data by the transmitting state are to be observed.

(2) The offices of the revenues authorities charged with tax investigation shall furnish information to the transmitting state, at that state's request for the purposes of monitoring data protection, about how the transmitted data were used.

Section 117c Implementation of nationally applicable international agreements to improve international tax compliance

(1)[1101] The Federal Ministry of Finance shall be authorised, for the purposes of fulfilling obligations under nationally applicable international agreements that serve to improve

[1100] **§ 117b AO Verwendung von den nach dem Rahmenbeschluss 2006/960/JI des Rates übermittelten Daten**
(1) Daten, die nach dem Rahmenbeschluss 2006/960/JI an die mit der Steuerfahndung betrauten Dienststellen der Finanzbehörden übermittelt worden sind, dürfen nur für die Zwecke, für die sie übermittelt wurden, oder zur Abwehr einer gegenwärtigen und erheblichen Gefahr für die öffentliche Sicherheit verwendet werden. Für einen anderen Zweck oder als Beweismittel in einem gerichtlichen Verfahren dürfen sie nur verwendet werden, wenn der übermittelnde Staat zugestimmt hat. Von dem übermittelnden Staat für die Verwendung der Daten gestellte Bedingungen sind zu beachten.
(2) Die mit der Steuerfahndung betrauten Dienststellen der Finanzbehörden erteilen dem übermittelnden Staat auf dessen Ersuchen zu Zwecken der Datenschutzkontrolle Auskunft darüber, wie die übermittelten Daten verwendet wurden.

[1101] **§ 117c AO Umsetzung innerstaatlich anwendbarer völkerrechtlicher Vereinbarungen zur Förderung der Steuerehrlichkeit bei internationalen Sachverhalten**
(1) Das Bundesministerium der Finanzen wird ermächtigt, zur Erfüllung der Verpflichtungen aus innerstaatlich anwendbaren völkerrechtlichen Vereinbarungen, die der Förderung der Steuerehrlichkeit durch systematische Erhebung und Übermittlung steuerlich relevanter Daten dienen, durch Rechtsverordnungen mit Zustimmung des Bundesrates Regelungen zu treffen über
1.die Erhebung der nach diesen Vereinbarungen erforderlichen Daten durch in diesen Vereinbarungen dem Grunde nach bestimmte Dritte,
2.die Übermittlung dieser Daten nach amtlich vorgeschriebenem Datensatz im Wege der Datenfernübertragung an das Bundeszentralamt für Steuern,
3.die Weiterleitung dieser Daten an die zuständige Behörde des anderen Vertragsstaates sowie
4.die Entgegennahme entsprechender Daten von dem anderen Vertragsstaat und deren Weiterleitung nach Maßgabe des § 88 Absatz 3 und 4 an die zuständige Landesfinanzbehörde.
In einer Rechtsverordnung nach Satz 1 kann dem Bundeszentralamt für Steuern das Recht eingeräumt werden, die Daten und Meldungen nach § 9 Absatz 1 und 2 der FATCA-USA-Umsetzungsverordnung zur Erfüllung der dem Bundeszentralamt für Steuern gesetzlich übertragenen Aufgaben auszuwerten. Auswertungen der Meldungen nach § 9 Absatz 2 der FATCA-USA-Umsetzungsverordnung durch die jeweils zuständige Landesfinanzbehörde bleiben hiervon unberührt.
(2) Bei der Übermittlung von Daten durch das Bundeszentralamt für Steuern an die zuständige Finanzbehörde des anderen Vertragsstaates nach einer auf Grund des Absatzes 1 Satz 1 erlassenen Rechtsverordnung findet eine Anhörung der Beteiligten nicht statt.

tax compliance by means of the systematic collection and transmission of relevant tax data, to adopt, by way of ordinances issued with the consent of the Bundesrat, rules on
1. the collection of the data required under these agreements by third parties who are specified in principle in these agreements,
2. the transmission of these data to the Federal Central Tax Office, using officially prescribed data sets sent via remote data transmission,
3. the forwarding of these data to the competent authorities of other contracting states and
4. the receipt of relevant data from other contracting states and the forwarding of such data to the competent *Land* revenue authority in accordance with section 88(3) and (4).
Ordinances issued in accordance with the first sentence above may grant the Federal Central Tax Office the right to analyse, for the purpose of fulfilling its legally assigned responsibilities, the data and reports it receives in accordance with section 9paras. 1 and 2 of the FATCA Implementation Ordinance. This shall have no effect on analyses by competent *Land* revenue authorities of reports received in accordance with section 9 para. 2 of the FATCA Implementation Ordinance.
(2) In cases where data are transmitted by the Federal Central Tax Office to the competent revenue authority of the other contracting state pursuant to an ordinance issued on the basis of the first sentence of para. 1 above, no consultation of the participants shall be conducted.
(3) The Federal Central Tax Office shall be entitled to examine facts and circumstances that are of relevance for the fulfilment of obligations to collect and transmit data pursuant to an ordinance issued on the basis of para. 1 above, or that require clarification, in relation to parties obliged to collect these data and transmit them to the Federal Central Tax Office. Articles 193 to 203 shall apply *mutatis mutandis*.
(4) The data collected by the Federal Central Tax Office on the basis of an ordinance pursuant to para. 1 above or as part of an examination pursuant to para. 3 above may be used only for the purposes specified in the underlying international agreements. Where country-by-country reports are transmitted by the Federal Central Tax Office in accordance with section 138a para. 7, first to third sentences, no consultation of the participants shall be conducted.

(3) Das Bundeszentralamt für Steuern ist berechtigt, Verhältnisse, die für die Erfüllung der Pflichten zur Erhebung und Übermittlung von Daten nach einer auf Grund des Absatzes 1 erlassenen Rechtsverordnung von Bedeutung sind oder der Aufklärung bedürfen, bei den zur Erhebung dieser Daten und deren Übermittlung an das Bundeszentralamt für Steuern Verpflichteten zu prüfen. Die §§ 193 bis 203 gelten sinngemäß.
(4) Die auf Grund einer Rechtsverordnung nach Absatz 1 oder im Rahmen einer Prüfung nach Absatz 3 vom Bundeszentralamt für Steuern erhobenen Daten dürfen nur für die in den zugrunde liegenden völkerrechtlichen Vereinbarungen festgelegten Zwecke verwendet werden. Bei der Übermittlung der länderbezogenen Berichte durch das Bundeszentralamt für Steuern gemäß § 138a Absatz 7 Satz 1 bis 3 findet keine Anhörung der Beteiligten statt.

Section 117d[1102] **Statistics on Intergovernmental Administrative and Legal Assistance**

Information processed in the course of intergovernmental administrative and judicial assistance may be processed statistically in pseudonymised or anonymised form. These statistical data may be made publicly accessible.

(b) Administrative secrecy (*Verwaltungsgeheimnis*)

Section 30 Confidentiality[1103] **75**

The parties involved have the right that their secrets, in particular the secrets belonging to the personal sphere of life as well as the trade and business secrets, are not disclosed by the authority without authorisation.

(c) Data secrecy (*Datengeheimnis*)

Law on administrative court order **76**

Section 99[1104]

(1) Authorities are obliged to submit certificates or files, to transmit electronic documents and to provide information. If disclosure of the content of these certificates, files, electronic documents or this information would be detrimental to the welfare of the federal or state government or if the processes must be kept secret by law or by their nature, the competent supreme supervisory authority may require the submission of documents or files, the transmission of electronic documents and the provision of information. […]

[1102] **§ 117d AO Statistiken über die zwischenstaatliche Amts- und Rechtshilfe**
Informationen, die im Zuge der zwischenstaatlichen Amts- und Rechtshilfe verarbeitet werden, dürfen statistisch pseudonymisiert oder anonymisiert aufbereitet werden. Diese statistischen Daten dürfen öffentlich zugänglich gemacht werden.

[1103] **§ 30 Geheimhaltung Verwaltungsverfahrensgesetz**
Die Beteiligten haben Anspruch darauf, dass ihre Geheimnisse, insbesondere die zum persönlichen Lebensbereich gehörenden Geheimnisse sowie die Betriebs- und Geschäftsgeheimnisse, von der Behörde nicht unbefugt offenbart werden.

[1104] **§ 99 VwGO**
(1) Behörden sind zur Vorlage von Urkunden oder Akten, zur Übermittlung elektronischer Dokumente und zu Auskünften verpflichtet. Wenn das Bekanntwerden des Inhalts dieser Urkunden, Akten, elektronischen Dokumente oder dieser Auskünfte dem Wohl des Bundes oder eines Landes Nachteile bereiten würde oder wenn die Vorgänge nach einem Gesetz oder ihrem Wesen nach geheim gehalten werden müssen, kann die zuständige oberste Aufsichtsbehörde die Vorlage von Urkunden oder Akten, die Übermittlung der elektronischen Dokumente und die Erteilung der Auskünfte verweigern. [...]

Customs Intelligence Service Act

Section 24[1105] **Prohibitions on transmission and reasons for refusal**

(1) The transmission of personal data under this paragraph is omitted if

1. it is recognizable for the Customs Criminal Police Office that, taking into account the type of data and their collection, the interests of the data subject worthy of protection outweigh the general interest in the transmission, or

2. conflict with special federal usage regulations; the obligation to maintain statutory confidentiality obligations or special official secrets that are not based on statutory provisions remains unaffected.

Sentence 1 number 1 does not apply to transmissions to public prosecutors and courts.

(2) The data transmission according to ss. 22 and 23 is also omitted if

1. essential security interests of the federal or state governments would be adversely affected as a result,

2. this would endanger the success of ongoing investigations or the life, limb or freedom of a person,

3. the data to be transmitted are not available at the Customs Criminal Police Office and can only be obtained by taking coercive measures,

4. there is reason to believe that it would violate the purpose of a German law, or

5. there are actual indications that the transmission of the data would contradict the principles contained in the Charter of Fundamental Rights of the European Union, in particular because the processing of the transmitted data in the recipient country could violate elementary principles of the rule of law or violate human rights.

[1105] **§ 24 Übermittlungsverbote und Verweigerungsgründe Zollfahndungsdienstgesetz**

(1) Die Übermittlung personenbezogener Daten nach diesem Unterabschnitt unterbleibt, wenn

1. für das Zollkriminalamt erkennbar ist, dass unter Berücksichtigung der Art der Daten und ihrer Erhebung die schutzwürdigen Interessen der betroffenen Person das Allgemeininteresse an der Übermittlung überwiegen, oder

2. besondere bundesgesetzliche Verwendungsregelungen entgegenstehen; die Verpflichtung zur Wahrung gesetzlicher Geheimhaltungspflichten oder besonderer Amtsgeheimnisse, die nicht auf gesetzlichen Vorschriften beruhen, bleibt unberührt.

Satz 1 Nummer 1 gilt nicht für Übermittlungen an Staatsanwaltschaften und Gerichte.

(2) Die Datenübermittlung nach den §§ 22 und 23 unterbleibt darüber hinaus, wenn

1. hierdurch wesentliche Sicherheitsinteressen des Bundes oder der Länder beeinträchtigt würden,

2. hierdurch der Erfolg laufender Ermittlungen oder Leib, Leben oder Freiheit einer Person gefährdet würde,

3. die zu übermittelnden Daten beim Zollkriminalamt nicht vorhanden sind und nur durch das Ergreifen von Zwangsmaßnahmen erlangt werden können,

4. Grund zu der Annahme besteht, dass durch sie gegen den Zweck eines deutschen Gesetzes verstoßen würde, oder

5. tatsächliche Anhaltspunkte dafür vorliegen, dass die Übermittlung der Daten zu den in der Charta der Grundrechte der Europäischen Union enthaltenen Grundsätzen in Widerspruch stünde, insbesondere dadurch, dass durch die Verarbeitung der übermittelten Daten im Empfängerstaat Verletzungen von elementaren rechtsstaatlichen Grundsätzen oder Menschenrechtsverletzungen drohen.

Section 88 Fiscal Code[1106] **Principle of investigation**

[…] (3) To ensure the timely and consistent execution of tax laws, the highest revenue authorities may, for identified or identifiable categories of cases, issue instructions on the type and scope of investigations and the processing of data collected or recorded, unless otherwise required by law. Such instructions may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account. Such instructions may not be made public if doing so could jeopardise the consistency and lawfulness of taxation. Instructions by the highest Land revenue authorities in accordance with the first sentence above shall require the agreement of the Federal Ministry of Finance if the Land revenue authorities administer taxes on behalf of the Federation.

(4) When they receive data meant for forwarding to Land revenue authorities, both the Federal Central Tax Office and the central agency as defined in section 81 of the Income Tax Act may refrain from forwarding such data to the Land revenue authorities if attributing or assigning the data to a specific taxpayer or tax office is impossible or requires unreasonable effort. Data attributed or assigned to a specific taxpayer or tax office in accordance with the first sentence above shall be forwarded to the Länder, taking into account any instructions issued by the Federal Ministry of Finance in accordance with para. 3 above. Data not forwarded to Land revenue authorities shall be stored by the Federal Central Tax Office for the purpose of proceedings described in section 30 para. 2 numbers 1a) and 1b), until the expiration of the 15th year following the year when the data were received. Data stored in accordance with the third sentence above may be processed only for use in proceedings described in section 30 para. 2 numbers 1a) and 1b) and for purposes of monitoring data protection.

(5) […].

[1106] **§ 88 AO Untersuchungsgrundsatz**

[…] (3) Zur Gewährleistung eines zeitnahen und gleichmäßigen Vollzugs der Steuergesetze können die obersten Finanzbehörden für bestimmte oder bestimmbare Fallgruppen Weisungen über Art und Umfang der Ermittlungen und der Verarbeitung von erhobenen oder erfassten Daten erteilen, soweit gesetzlich nicht etwas anderes bestimmt ist. Bei diesen Weisungen können allgemeine Erfahrungen der Finanzbehörden sowie Wirtschaftlichkeit und Zweckmäßigkeit berücksichtigt werden. Die Weisungen dürfen nicht veröffentlicht werden, soweit dies die Gleichmäßigkeit und Gesetzmäßigkeit der Besteuerung gefährden könnte. Weisungen der obersten Finanzbehörden der Länder nach Satz 1 bedürfen des Einvernehmens mit dem Bundesministerium der Finanzen, soweit die Landesfinanzbehörden Steuern im Auftrag des Bundes verwalten.

(4) Das Bundeszentralamt für Steuern und die zentrale Stelle im Sinne des § 81 des Einkommensteuergesetzes können auf eine Weiterleitung ihnen zugegangener und zur Weiterleitung an die Landesfinanzbehörden bestimmter Daten an die Landesfinanzbehörden verzichten, soweit sie die Daten nicht oder nur mit unverhältnismäßigem Aufwand einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zuordnen können. Nach Satz 1 einem bestimmten Steuerpflichtigen oder einem bestimmten Finanzamt zugeordnete Daten sind unter Beachtung von Weisungen gemäß Absatz 3 des Bundesministeriums der Finanzen weiterzuleiten. Nicht an die Landesfinanzbehörden weitergeleitete Daten sind vom Bundeszentralamt für Steuern für Zwecke von Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b bis zum Ablauf des 15. Jahres nach dem Jahr des Datenzugangs zu speichern. Nach Satz 3 gespeicherte Daten dürfen nur für Verfahren im Sinne des § 30 Absatz 2 Nummer 1 Buchstabe a und b sowie zur Datenschutzkontrolle verarbeitet werden.

(5) […]

Section 88a Fiscal Code[1107] Collection of protected data
To the extent required to ensure the uniform assessment and levying of taxes, the revenue authorities may process data protected under section 30 in filing systems, including for future procedures/proceedings as described in section 30 para. 2 numbers 1a and 1b, in particular to obtain comparable values. Processing of the data shall be permissible only for procedures/proceedings as described in section 30 para. 2 numbers 1a and 1b.

Section 34a Market Organisation Act[1108] Operating data
(1) Operating data are the data designated in the Annex,
1. which are required for the implementation of
a) of schemes within the meaning of section 1 para. 2 in respect of market organisation goods or direct payments,
b) this Act, or
c) the statutory instruments issued on the basis of this Act
are collected or transmitted, or
2.collected in the course of monitoring compliance with regulations within the meaning of number 1.
(2) Operational data to which the Fiscal Code is applicable under section 12 para. 1, first sentence, shall be exempt from para. 1.

Section 34b Market Organisation Act[1109] Processing of Data by the Competent Authority
The competent authority under this Act or under section 31 para. 2 or 3 or the competent authority under Land law shall process operational data under section 34a para. 1 within its area of responsibility for the purpose of implementing and monitoring regulations within the meaning of section 34a para. 1 sentence 1.

[1107] **§ 88a AO Sammlung von geschützten Daten**
Soweit es zur Sicherstellung einer gleichmäßigen Festsetzung und Erhebung der Steuern erforderlich ist, dürfen die Finanzbehörden nach § 30 geschützte Daten auch für Zwecke künftiger Verfahren im Sinne des § 30 Abs. 2 Nr. 1 Buchstabe a und b, insbesondere zur Gewinnung von Vergleichswerten, in Dateisystemen verarbeiten. Eine Verarbeitung ist nur für Verfahren im Sinne des § 30 Abs. 2 Nr. 1 Buchstabe a und b zulässig.

[1108] **§ 34a MOG Betriebsdaten**
(1) Betriebsdaten sind die in der Anlage bezeichneten Daten,
1.die zur Durchführung
a) von Regelungen im Sinne des § 1 Absatz 2 hinsichtlich Marktordnungswaren oder Direktzahlungen,
b) dieses Gesetzes oder
c) der auf Grund dieses Gesetzes erlassenen Rechtsverordnungen
erhoben oder übermittelt werden oder
2. die bei der Überwachung der Einhaltung von Vorschriften im Sinne der Nummer 1 erhoben werden.
(2) Betriebsdaten, auf die nach § 12 Absatz 1 Satz 1 die Abgabenordnung anwendbar ist, sind von Absatz 1 ausgenommen.

[1109] **§ 34b MOG Verarbeitung von Daten durch die zuständige Behörde**
Die nach diesem Gesetz oder auf Grund des § 31 Absatz 2 oder 3 zuständige Behörde oder die nach Landesrecht zuständige Behörde verarbeitet in ihrem Zuständigkeitsbereich Betriebsdaten nach § 34a Absatz 1 zum Zwecke der Durchführung und Überwachung von Vorschriften im Sinne des § 34a Absatz 1 Nummer 1.

Section 34c Market Organisation Act[1110] Transmission of Data
(1) The competent authority under this Act or on the basis of section 31 paras. 2 or 3 or the competent authority under Land law shall transmit operational data under section 34a para. 1 to the competent authority for this purpose for the purpose of legal and technical supervision, insofar as this is provided for in regulations within the meaning of section 34a para. 1 number 1.
(2) If several authorities are responsible for the implementation and supervision of a regulation within the meaning of Section 34a para. 1 sentence 1, they shall mutually transmit operational data pursuant to Section 34a para. 1 to each other for the purpose of implementation and supervision, insofar as this is provided for in regulations within the meaning of Section 34a para. 1 sentence 1.
(3) If an establishment has more than one site, the authority competent under this Act or on the basis of section 31 para. 2 or 3 or the authority competent under Land law shall transmit operational data pursuant to section 34a para. 1 to the authority competent for the other sites for the purpose of implementing and monitoring regulations within the meaning of section 34a para. 1 sentence 1.

Section 34d Market Organisation Act[1111] Deletion periods
(1) The operational data shall be deleted by the authorities processing the data without delay as soon as the data are no longer required to fulfil the purpose for which they were processed, but no later than the end of the tenth year following the year in which the data were collected.
(2) The deletion shall be replaced by the restriction of processing insofar as the deletion of the data conflicts with statutory retention periods.

[1110] **§ 34c MOG Übermittlung von Daten**
(1) Die nach diesem Gesetz oder auf Grund des § 31 Absatz 2 oder 3 zuständige Behörde oder die nach Landesrecht zuständige Behörde übermittelt Betriebsdaten nach § 34a Absatz 1 zum Zwecke der Rechts- und Fachaufsicht an die hierfür zuständige Behörde, soweit dies in Vorschriften im Sinne des § 34a Absatz 1 Nummer 1 vorgesehen ist.
(2) Sind für die Durchführung und Überwachung einer Vorschrift im Sinne des § 34a Absatz 1 Nummer 1 mehrere Behörden zuständig, so übermitteln diese sich wechselseitig Betriebsdaten nach § 34a Absatz 1 zum Zwecke der Durchführung und Überwachung, soweit dies im Rahmen von Vorschriften im Sinne des § 34a Absatz 1 Nummer 1 vorgesehen ist.
(3) Hat ein Betrieb mehrere Standorte, so übermittelt die nach diesem Gesetz oder auf Grund des § 31 Absatz 2 oder 3 zuständige Behörde oder die nach Landesrecht zuständige Behörde der für die weiteren Standorte zuständigen Behörde Betriebsdaten nach § 34a Absatz 1 zum Zwecke der Durchführung und Überwachung von Vorschriften im Sinne des § 34a Absatz 1 Nummer 1.
[1111] **§ 34d MOG Löschungsfristen**
(1) Die Betriebsdaten sind durch die die Daten verarbeitenden Behörden unverzüglich zu löschen, sobald die Daten zur Erfüllung des Zwecks, zu dem sie verarbeitet worden sind, nicht mehr erforderlich sind, spätestens jedoch nach Ablauf des zehnten Jahres, das auf das Jahr folgt, in dem die Daten erhoben worden sind.
(2) An die Stelle der Löschung tritt die Einschränkung der Verarbeitung, soweit einer Löschung der Daten gesetzliche Aufbewahrungsfristen entgegenstehen.

Section 34e Market Organisation Act[1112] Processing of Further Data in the Case of Exceptional Measures

The competent paying agencies within the meaning of the Integrated Administration and Control System for measures of the Common Agricultural Policy shall transmit to the market organisation agency farm data within the meaning of Section 2 of the IACS Data Act provided for in regulations within the meaning of Section 34a para. 1 sentence 1 for the purpose of implementing and monitoring exceptional measures. The market organisation body shall process the data transmitted pursuant to sentence 1 for the purpose of implementing and monitoring exceptional measures. Section 34d shall apply mutatis mutandis.

Section 34f Market Organisation Act[1113] Authorisations

(1) The Federal Ministry is authorised to regulate by ordinance, with the consent of the Bundesrat, the administrative procedure and technical and organisational measures for data processing in order to properly implement provisions within the meaning of section 34a para. 1 sentence 1.

(2) The Federal Ministry shall be empowered to adapt the Annex by statutory order with the consent of the Bundesrat to the respective applicable regulations within the meaning of section 1 para. 2.

(3) Statutory ordinances pursuant to paras. 1 and 2 may be issued without the consent of the Bundesrat if their immediate entry into force is necessary for the implementation of regulations within the meaning of section 1 para. 2 nos. 1 to 3. They shall expire no later than six months after their entry into force; their period of validity may be extended only with the consent of the Bundesrat.

[1112] **§ 34e MOG Verarbeitung weiterer Daten bei außergewöhnlichen Maßnahmen**
Die zuständigen Zahlstellen im Sinne des Integrierten Verwaltungs- und Kontrollsystems für Maßnahmen der Gemeinsamen Agrarpolitik übermitteln der Marktordnungsstelle zur Durchführung und Überwachung außergewöhnlicher Maßnahmen Betriebsdaten im Sinne des § 2 des InVeKoS-Daten-Gesetzes, die in Vorschriften im Sinne des § 34a Absatz 1 Nummer 1 vorgesehen sind. Die Marktordnungsstelle verarbeitet die nach Satz 1 übermittelten Daten zum Zwecke der Durchführung und Überwachung außergewöhnlicher Maßnahmen. § 34d gilt entsprechend.

[1113] **§ 34f MOG Ermächtigungen**
(1) Das Bundesministerium wird ermächtigt, durch Rechtsverordnung mit Zustimmung des Bundesrates das Verwaltungsverfahren und technische und organisatorische Maßnahmen bei der Datenverarbeitung zu regeln, um Vorschriften im Sinne des § 34a Absatz 1 Nummer 1 sachgerecht durchzuführen.
(2) Das Bundesministerium wird ermächtigt, durch Rechtsverordnung mit Zustimmung des Bundesrates die Anlage an die jeweils geltenden Regelungen im Sinne des § 1 Absatz 2 anzupassen.
(3) Rechtsverordnungen nach den Absätzen 1 und 2 können ohne Zustimmung des Bundesrates erlassen werden, wenn ihr unverzügliches Inkrafttreten zur Durchführung von Regelungen im Sinne des § 1 Absatz 2 Nummer 1 bis 3 erforderlich ist. Sie treten spätestens sechs Monate nach ihrem Inkrafttreten außer Kraft; ihre Geltungsdauer kann nur mit Zustimmung des Bundesrates verlängert werden.

Section 9 Agricultural Organisations and Supply Chains Act[1114]
Notification and publication of data
(1) The competent bodies may communicate data obtained in the course of recognition or supervision to the following bodies insofar as this is necessary to comply with the requirements of agricultural organisation law:
1. Other competent bodies in the same country,
2. the competent bodies of other countries,
3. the competent bodies of the Confederation,
4. the competent bodies of other Member States of the European Union, and
5. the bodies of the European Union.
(2) If the competent body is a federal body, this body may publish non-personal data for statistical or scientific purposes in compliance with the requirements of the protection of trade and business secrets and functioning competition.

Section 30 Agricultural Organisations and Supply Chains Act [1115]
Mutual Administrative Assistance by Enforcement Authorities
(1) The enforcement authority shall provide information and administrative assistance to the enforcement authorities of the other Member States of the European Union and to the European Commission to the extent necessary for the uniform implementation and application of Directive (EU) 2019/633. The administrative assistance shall in particular

[1114] **§ 9 AgrarOLkG Mitteilungen und Veröffentlichung von Daten**
(1) Die zuständigen Stellen können Daten, die sie im Rahmen der Anerkennung oder Überwachung gewonnen haben, den folgenden Stellen mitteilen, soweit dies zur Einhaltung der Anforderungen des Agrarorganisationenrechts erforderlich ist:
1.anderen zuständigen Stellen desselben Landes,
2.den zuständigen Stellen anderer Länder,
3.den zuständigen Stellen des Bundes,
4.den zuständigen Stellen anderer Mitgliedstaaten der Europäischen Union und
5.den Organen der Europäischen Union.
(2) Ist die zuständige Stelle eine Stelle des Bundes, so kann diese Stelle nichtpersonenbezogene Daten zu statistischen oder wissenschaftlichen Zwecken unter Einhaltung der Anforderungen des Schutzes von Betriebs- und Geschäftsgeheimnissen und eines funktionierenden Wettbewerbs veröffentlichen.
[1115] **§ 30 AgrarOLkG Gegenseitige Amtshilfe der Durchsetzungsbehörden**
(1) Die Durchsetzungsbehörde hat den Durchsetzungsbehörden der anderen Mitgliedstaaten der Europäischen Union sowie der Europäischen Kommission Informationen zu übermitteln und Amtshilfe zu leisten, soweit dies für eine einheitliche Umsetzung und Anwendung der Richtlinie (EU) 2019/633 erforderlich ist. Die Amtshilfe betrifft insbesondere Auskunftsersuchen sowie Untersuchungen bei Käufern, die in Deutschland niedergelassen sind.
(2) Die Durchsetzungsbehörde hat alle geeigneten Maßnahmen zu ergreifen, um Amtshilfeersuchen unverzüglich und spätestens innerhalb von sechs Wochen nach deren Eingang nachzukommen. Hat die ersuchende Durchsetzungsbehörde des anderen Mitgliedstaates der Europäischen Union darauf hingewiesen, dass ein Antrag auf Vertraulichkeit vorliegt, so ist § 26 entsprechend anzuwenden.
(3) Die Durchsetzungsbehörde darf Amtshilfeersuchen nur ablehnen, wenn
1.sie für den Gegenstand des Ersuchens oder für die Maßnahmen, die sie durchführen soll, nicht zuständig ist oder
2.ein Eingehen auf das Ersuchen gegen Rechtsvorschriften verstoßen würde.
[…]

concern requests for information as well as investigations of purchasers established in Germany.
(2) The enforcement authority shall take all appropriate measures to comply with requests for mutual assistance without undue delay and at the latest within six weeks of their receipt. If the requesting enforcement authority of the other Member State of the European Union has indicated that there is a request for confidentiality, Section 26 shall apply accordingly.
(3) The enforcement authority may only refuse requests for mutual assistance if
1. it is not competent for the subject matter of the request or for the measures it is to carry out, or
2. complying with the request would be contrary to law.

(d) Official secrecy (*Amtsverschwiegenheit*)

77

Federal Civil Servants Act

Section 61 Performance of duties, behaviour and appearance[1116]

(1) Civil servants must dedicate themselves to their profession with full personal commitment. They have to carry out the office assigned to them unselfishly to the best of their conscience. Their conduct, both on and off duty, must reflect the respect and trust that their job requires.
(2) When carrying out their duties or in activities directly related to their duties, civil servants must also take into account the trust placed in their office with regard to their appearance. In particular, the wearing of certain items of clothing, jewellery, symbols and tattoos in visible areas, as well as the type of hair and beard style, can be restricted

[1116] **§ 61 Wahrnehmung der Aufgaben, Verhalten und Erscheinungsbild Bundesbeamtengesetz**
(1) Beamtinnen und Beamte haben sich mit vollem persönlichem Einsatz ihrem Beruf zu widmen. Sie haben das ihnen übertragene Amt uneigennützig nach bestem Gewissen wahrzunehmen. Ihr Verhalten innerhalb und außerhalb des Dienstes muss der Achtung und dem Vertrauen gerecht werden, die ihr Beruf erfordert.
(2) Beamtinnen und Beamte haben bei Ausübung des Dienstes oder bei einer Tätigkeit mit unmittelbarem Dienstbezug auch hinsichtlich ihres Erscheinungsbilds Rücksicht auf das ihrem Amt entgegengebrachte Vertrauen zu nehmen. Insbesondere das Tragen von bestimmten Kleidungsstücken, Schmuck, Symbolen und Tätowierungen im sichtbaren Bereich sowie die Art der Haar- und Barttracht können von der obersten Dienstbehörde eingeschränkt oder untersagt werden, soweit die Funktionsfähigkeit der Verwaltung oder die Pflicht zum achtungs- und vertrauenswürdigen Verhalten dies erfordert. Das ist insbesondere dann der Fall, wenn Merkmale des Erscheinungsbilds nach Satz 2 durch ihre über das übliche Maß hinausgehende besonders individualisierende Art geeignet sind, die amtliche Funktion der Beamtin oder des Beamten in den Hintergrund zu drängen. Religiös oder weltanschaulich konnotierte Merkmale des Erscheinungsbilds nach Satz 2 können nur dann eingeschränkt oder untersagt werden, wenn sie objektiv geeignet sind, das Vertrauen in die neutrale Amtsführung der Beamtin oder des Beamten zu beeinträchtigen. Das Bundesministerium des Innern, für Bau und Heimat, das Bundesministerium der Finanzen sowie das Bundesministerium der Justiz und für Verbraucherschutz werden ermächtigt, jeweils für ihren Geschäftsbereich die Einzelheiten zu den Sätzen 2 bis 4 durch Rechtsverordnung zu regeln. Die Verhüllung des Gesichts bei der Ausübung des Dienstes oder bei einer Tätigkeit mit unmittelbarem Dienstbezug ist stets unzulässig, es sei denn, dienstliche oder gesundheitliche Gründe erfordern dies.
(3) Beamtinnen und Beamte sind verpflichtet, an Maßnahmen der dienstlichen Qualifizierung zur Erhaltung oder Fortentwicklung ihrer Kenntnisse und Fähigkeiten teilzunehmen.

or prohibited by the supreme service authority, insofar as this is necessary for the functionality of the administration or the obligation to behave in a respectful and trustworthy manner. This is particularly the case if features of the appearance according to sentence 2 are suitable for pushing the official function of the civil servant into the background due to their particularly individualizing nature that goes beyond the usual extent. Appearance features with religious or ideological connotations pursuant to sentence 2 can only be restricted or prohibited if they are objectively capable of impairing trust in the neutral conduct of the office by the civil servant. The Federal Ministry of the Interior, Building and Community, the Federal Ministry of Finance and the Federal Ministry of Justice and Consumer Protection are authorized to regulate the details of sentences 2 to 4 by statutory order for their respective areas of responsibility. The covering of the face during the performance of the service or in an activity directly related to the service is always inadmissible, unless this is required for official or health reasons.
(3) Civil servants are obliged to take part in official qualification measures to maintain or develop their knowledge and skills.

Civil Servants Status Act (BeamStG)

Section 37 Duty of confidentiality

(1)[1117] Civil servants must maintain secrecy about official matters that have become known to them during or on the occasion of their official work. This also applies beyond the area of an employer and after termination of the civil service relationship.

[1117] **§ 37Verschwiegenheitspflicht Beamtenstatusgesetz**
(1) 1Beamtinnen und Beamte haben über die ihnen bei oder bei Gelegenheit ihrer amtlichen Tätigkeit bekannt gewordenen dienstlichen Angelegenheiten Verschwiegenheit zu bewahren. 2Dies gilt auch über den Bereich eines Dienstherrn hinaus sowie nach Beendigung des Beamtenverhältnisses.
(2) 1Absatz 1 gilt nicht, soweit
1. Mitteilungen im dienstlichen Verkehr geboten sind,
2. Tatsachen mitgeteilt werden, die offenkundig sind oder ihrer Bedeutung nach keiner Geheimhaltung bedürfen, oder
3. gegenüber der zuständigen obersten Dienstbehörde, einer Strafverfolgungsbehörde oder einer durch Landesrecht bestimmten weiteren Behörde oder außerdienstlichen Stelle ein durch Tatsachen begründeter Verdacht einer Korruptionsstraftat nach den §§ 331 bis 337 des Strafgesetzbuches angezeigt wird.
2 Im Übrigen bleiben die gesetzlich begründeten Pflichten, geplante Straftaten anzuzeigen und für die Erhaltung der freiheitlichen demokratischen Grundordnung einzutreten, von Absatz 1 unberührt.
(3) 1Beamtinnen und Beamte dürfen ohne Genehmigung über Angelegenheiten, für die Absatz 1 gilt, weder vor Gericht noch außergerichtlich aussagen oder Erklärungen abgeben. 2Die Genehmigung erteilt der Dienstherr oder, wenn das Beamtenverhältnis beendet ist, der letzte Dienstherr. 3Hat sich der Vorgang, der den Gegenstand der Äußerung bildet, bei einem früheren Dienstherrn ereignet, darf die Genehmigung nur mit dessen Zustimmung erteilt werden. 4Durch Landesrecht kann bestimmt werden, dass an die Stelle des in den Sätzen 2 und 3 genannten jeweiligen Dienstherrn eine andere Stelle tritt.
(4) 1Die Genehmigung, als Zeugin oder Zeuge auszusagen, darf nur versagt werden, wenn die Aussage dem Wohl des Bundes oder eines deutschen Landes erhebliche Nachteile bereiten oder die Erfüllung öffentlicher Aufgaben ernstlich gefährden oder erheblich erschweren würde. 2Durch Landesrecht kann bestimmt werden, dass die Verweigerung der Genehmigung zur Aussage vor Untersuchungsausschüssen des Deutschen Bundestages oder der

(2) Paragraph 1 does not apply if
1. notifications in official dealings are required,
2. Facts are communicated that are obvious or do not require secrecy due to their importance, or
3. a factually founded suspicion of a corruption offence under Sections 331 to 337 of the Criminal Code is reported to the competent supreme service authority, a criminal prosecution authority or another authority or external agency determined by state law.
Otherwise, the statutory obligations to report planned criminal offences and to stand up for the maintenance of the free democratic basic order remain unaffected by paragraph 1.
(3) Officials may not testify in court or out of court or make statements without permission on matters to which para. 1 applies. Approval is granted by the employer or, if the civil service relationship has ended, by the last employer. If the event that is the subject of the statement occurred at the hands of a previous employer, approval may only be granted with his consent. It can be determined by state law that the respective employer named in sentences 2 and 3 is replaced by another position.
(4) Permission to testify as a witness may only be refused if the testimony would cause significant disadvantages to the welfare of the Federation or a German state or would seriously endanger or significantly impede the performance of public duties. It can be determined by state law that the refusal of permission to testify before investigative committees of the German Bundestag or the parliament of a state can be subject to a review. The approval to provide an expert opinion can be denied if the refund would be detrimental to the interests of the service.
(5) If civil servants are parties or suspects in judicial proceedings or if their submissions serve to safeguard their legitimate interests, approval may only be refused, even if the requirements of para. 4 sentence 1 are met, if the official considerations absolutely require this. If it is denied, civil servants are to be granted the protection permitted by official considerations.
(6) Even after the end of the civil service relationship, civil servants must, at the request of the employer or the last employer, hand over official documents, drawings, images

Volksvertretung eines Landes einer Nachprüfung unterzogen werden kann. 3Die Genehmigung, ein Gutachten zu erstatten, kann versagt werden, wenn die Erstattung den dienstlichen Interessen Nachteile bereiten würde.
(5) 1Sind Beamtinnen oder Beamte Partei oder Beschuldigte in einem gerichtlichen Verfahren oder soll ihr Vorbringen der Wahrnehmung ihrer berechtigten Interessen dienen, darf die Genehmigung auch dann, wenn die Voraussetzungen des Absatzes 4 Satz 1 erfüllt sind, nur versagt werden, wenn die dienstlichen Rücksichten dies unabweisbar erfordern. 2Wird sie versagt, ist Beamtinnen oder Beamten der Schutz zu gewähren, den die dienstlichen Rücksichten zulassen.
(6) 1Beamtinnen und Beamte haben, auch nach Beendigung des Beamtenverhältnisses, auf Verlangen des Dienstherrn oder des letzten Dienstherrn amtliche Schriftstücke, Zeichnungen, bildliche Darstellungen sowie Aufzeichnungen jeder Art über dienstliche Vorgänge, auch soweit es sich um Wiedergaben handelt, herauszugeben. 2Die gleiche Verpflichtung trifft ihre Hinterbliebenen und Erben.

and records of any kind on official processes, including reproductions. The same obligation applies to their survivors and heirs.

(4) Investigation reports

Federal Tax Code 78

Section 202[1118] **Content and disclosure of the audit report**

(1) A written report (audit report) is issued on the result of the external audit. In the audit report, the audit findings that are significant for taxation are to be presented in factual and legal terms as well as the changes in the tax bases. If the external audit does not lead to a change in the basis of taxation, it is sufficient if the taxpayer is informed of this in writing.

(2) The financial authority shall send the taxpayer the audit report prior to its evaluation upon request and give the taxpayer the opportunity to comment on it within a reasonable period of time.

Section 29 Agricultural Organisations and Supply Chains Act[1119]

Activity Report of the Enforcement Authority

The enforcement authority shall publish an annual report on its activities. The report shall include the following for the respective previous year:

1.The number of complaints received and the number of investigations initiated and completed; and

2.To the extent consistent with an application under section 26 para. 1, for each investigation completed, a summary description of the facts, the outcome of the investigation and, where applicable, the decision taken.

[1118] **§ 202 Inhalt und Bekanntgabe des Prüfungsberichts Abgabenordnung**

(1) Über das Ergebnis der Außenprüfung ergeht ein schriftlicher Bericht (Prüfungsbericht). Im Prüfungsbericht sind die für die Besteuerung erheblichen Prüfungsfeststellungen in tatsächlicher und rechtlicher Hinsicht sowie die Änderungen der Besteuerungsgrundlagen darzustellen. Führt die Außenprüfung zu keiner Änderung der Besteuerungsgrundlagen, so genügt es, wenn dies dem Steuerpflichtigen schriftlich mitgeteilt wird.

(2) Die Finanzbehörde hat dem Steuerpflichtigen auf Antrag den Prüfungsbericht vor seiner Auswertung zu übersenden und ihm Gelegenheit zu geben, in angemessener Zeit dazu Stellung zu nehmen.

[1119] **§ 29 AgrarOLkG Tätigkeitsbericht der Durchsetzungsbehörde**

Die Durchsetzungsbehörde veröffentlicht jährlich einen Bericht über ihre Tätigkeit. Der Bericht hat für das jeweilige Vorjahr Folgendes zu umfassen:

1.die Zahl der eingegangenen Beschwerden sowie die Zahl der eingeleiteten und der abgeschlossenen Untersuchungen und

2.soweit mit einem Antrag nach § 26 Absatz 1 vereinbar, für jede abgeschlossene Untersuchung eine zusammenfassende Beschreibung des Sachverhalts, das Ergebnis der Untersuchung und gegebenenfalls die getroffene Entscheidung.

(5) Support to the inspectors

79

Federal Tax Code

Section 90[1120] **Obligation of the Parties to Cooperate**

(1) The parties concerned shall be obliged to cooperate in the investigation of the facts. They shall comply with the duty to cooperate in particular by fully and truthfully disclosing the facts relevant to taxation and by providing the evidence known to them. The extent of these obligations shall depend on the circumstances of the individual case.

(2) If facts relating to transactions outside the scope of this Act are to be determined and assessed for tax purposes, the parties concerned shall clarify these facts and obtain the necessary evidence. In doing so, they shall exhaust all legal and factual possibilities available to them. A party may not plead that it is unable to clarify facts or obtain evidence if, in the circumstances of the case, it could have obtained the opportunity to do so or had it obtained.

(3) A taxpayer shall keep records of the nature and content of its business relations within the meaning of Section 1 para. 4 of the Foreign Tax Act. The duty to keep records

[1120] **§ 90 Mitwirkungspflichten der Beteiligten Abgabenordnung**

(1) Die Beteiligten sind zur Mitwirkung bei der Ermittlung des Sachverhalts verpflichtet. Sie kommen der Mitwirkungspflicht insbesondere dadurch nach, dass sie die für die Besteuerung erheblichen Tatsachen vollständig und wahrheitsgemäß offenlegen und die ihnen bekannten Beweismittel angeben. Der Umfang dieser Pflichten richtet sich nach den Umständen des Einzelfalls.

(2) Ist ein Sachverhalt zu ermitteln und steuerrechtlich zu beurteilen, der sich auf Vorgänge außerhalb des Geltungsbereichs dieses Gesetzes bezieht, so haben die Beteiligten diesen Sachverhalt aufzuklären und die erforderlichen Beweismittel zu beschaffen. Sie haben dabei alle für sie bestehenden rechtlichen und tatsächlichen Möglichkeiten auszuschöpfen. Ein Beteiligter kann sich nicht darauf berufen, dass er Sachverhalte nicht aufklären oder Beweismittel nicht beschaffen kann, wenn er sich nach Lage des Falls bei der Gestaltung seiner Verhältnisse die Möglichkeit dazu hätte beschaffen oder einräumen lassen können.

(3) Ein Steuerpflichtiger hat über die Art und den Inhalt seiner Geschäftsbeziehungen im Sinne des § 1 Absatz 4 des Außensteuergesetzes Aufzeichnungen zu erstellen. Die Aufzeichnungspflicht umfasst neben der Darstellung der Geschäftsvorfälle (Sachverhaltsdokumentation) auch die wirtschaftlichen und rechtlichen Grundlagen für eine den Fremdvergleichsgrundsatz beachtende Vereinbarung von Bedingungen, insbesondere Preisen (Verrechnungspreisen), sowie insbesondere Informationen zum Zeitpunkt der Verrechnungspreisbestimmung, zur verwendeten Verrechnungspreismethode und zu den verwendeten Fremdvergleichsdaten (Angemessenheitsdokumentation). Hat ein Steuerpflichtiger Aufzeichnungen im Sinne des Satzes 1 für ein Unternehmen zu erstellen, das Teil einer multinationalen Unternehmensgruppe ist, so gehört zu den Aufzeichnungen auch ein Überblick über die Art der weltweiten Geschäftstätigkeit der Unternehmensgruppe und über die von ihr angewandte Systematik der Verrechnungspreisbestimmung, es sei denn, der Umsatz des Unternehmens hat im vorangegangenen Wirtschaftsjahr weniger als 100 Millionen Euro betragen. Eine multinationale Unternehmensgruppe besteht aus mindestens zwei in verschiedenen Staaten ansässigen, im Sinne des § 1 Absatz 2 des Außensteuergesetzes einander nahestehenden Unternehmen oder aus mindestens einem Unternehmen mit mindestens einer Betriebsstätte in einem anderen Staat. Die Finanzbehörde soll die Vorlage von Aufzeichnungen im Regelfall nur für die Durchführung einer Außenprüfung verlangen. Die Vorlage richtet sich nach § 97. Sie hat jeweils auf Anforderung innerhalb einer Frist von 60 Tagen zu erfolgen. Aufzeichnungen über außergewöhnliche Geschäftsvorfälle sind zeitnah zu erstellen und innerhalb einer Frist von 30 Tagen nach Anforderung durch die Finanzbehörde vorzulegen. In begründeten Einzelfällen kann die Vorlagefrist nach den Sätzen 7 und 8 verlängert werden. Die Aufzeichnungen sind auf Anforderung der Finanzbehörde zu ergänzen. Um eine einheitliche Rechtsanwendung sicherzustellen, wird das Bundesministerium der Finanzen ermächtigt, mit Zustimmung des Bundesrates durch Rechtsverordnung Art, Inhalt und Umfang der zu erstellenden Aufzeichnungen zu bestimmen.

shall include, in addition to the presentation of the business transactions (factual documentation), the economic and legal basis for an agreement on terms and conditions, in particular prices (transfer prices), which complies with the arm's length principle, and, in particular, information on the time of the transfer price determination, the transfer price method used and the arm's length data used (reasonableness documentation). If a taxpayer has to prepare records within the meaning of the first sentence for an enterprise that is part of a multinational group of enterprises, the records shall also include an overview of the nature of the group's worldwide business activities and of the transfer pricing methodology used by the group, unless the enterprise's turnover in the preceding fiscal year was less than 100 million euros. A multinational group of enterprises consists of at least two enterprises located in different states and related to each other within the meaning of Section 1 para. 2 of the Foreign Tax Act, or of at least one enterprise with at least one permanent establishment in another state. As a rule, the tax authority shall require the submission of records only for the purpose of conducting an external audit. The submission of records shall be governed by Section 97 and shall be made upon request within a period of 60 days. Records of extraordinary business transactions shall be prepared promptly and submitted within a period of 30 days after request by the tax authority. In justified individual cases, the submission period may be extended in accordance with sentences 7 and 8. The records shall be supplemented upon request by the tax authority. In order to ensure uniform application of the law, the Federal Ministry of Finance is authorized, with the consent of the Bundesrat, to determine by ordinance the type, content and scope of the records to be prepared.

Section 200[1121] **Duties of the taxpayer to cooperate**

(1) The taxpayer has to participate in determining the facts that may be significant for taxation. In particular, he must provide information, submit records, books, business papers and other documents for inspection and examination, provide the explanations required to understand the records and support the financial authority in exercising its

[1121] **§ 200 Mitwirkungspflichten des Steuerpflichtigen Abgabenordnung**
(1) Der Steuerpflichtige hat bei der Feststellung der Sachverhalte, die für die Besteuerung erheblich sein können, mitzuwirken. Er hat insbesondere Auskünfte zu erteilen, Aufzeichnungen, Bücher, Geschäftspapiere und andere Urkunden zur Einsicht und Prüfung vorzulegen, die zum Verständnis der Aufzeichnungen erforderlichen Erläuterungen zu geben und die Finanzbehörde bei Ausübung ihrer Befugnisse nach § 147 Abs. 6 zu unterstützen. Sind der Steuerpflichtige oder die von ihm benannten Personen nicht in der Lage, Auskünfte zu erteilen, oder sind die Auskünfte zur Klärung des Sachverhalts unzureichend oder versprechen Auskünfte des Steuerpflichtigen keinen Erfolg, so kann der Außenprüfer auch andere Betriebsangehörige um Auskunft ersuchen. § 93 Absatz 2 Satz 2 gilt nicht.
(2) Die in Absatz 1 genannten Unterlagen hat der Steuerpflichtige in seinen Geschäftsräumen oder, soweit ein zur Durchführung der Außenprüfung geeigneter Geschäftsraum nicht vorhanden ist, in seinen Wohnräumen oder an Amtsstelle vorzulegen. Ein zur Durchführung der Außenprüfung geeigneter Raum oder Arbeitsplatz sowie die erforderlichen Hilfsmittel sind unentgeltlich zur Verfügung zu stellen.
(3) Die Außenprüfung findet während der üblichen Geschäfts- oder Arbeitszeit statt. Die Prüfer sind berechtigt, Grundstücke und Betriebsräume zu betreten und zu besichtigen. Bei der Betriebsbesichtigung soll der Betriebsinhaber oder sein Beauftragter hinzugezogen werden.

powers under Section 147 para. 6. If the taxpayer or the persons named by him are not in a position to provide information, or if the information is insufficient to clarify the facts, or if the information provided by the taxpayer does not promise any success, the auditor can also ask other employees for information. Section 93 paragraph 2 sentence 2 does not apply.
(2) The documents referred to in paragraph 1 must be submitted by the taxpayer to his business premises or, if a business premises suitable for carrying out the external audit is not available, to his living quarters or to an official office. A room or workplace suitable for carrying out the external audit and the necessary tools must be made available free of charge.
(3) The external audit takes place during normal business or working hours. The inspectors are authorized to enter and inspect property and business premises. The company owner or his representative should be consulted during the company inspection.

(6) Preservation of evidence (*Sicherung der Beweismittel*)

80

Administrative Procedure Act (VwVfG)

Section 26[1122] **Evidence**

(1) The authority uses the evidence that it considers necessary to determine the facts according to its best judgment. In particular, she can
1. obtain information of any kind,
2. Hear participants, hear witnesses and experts or obtain written or electronic statements from participants, experts and witnesses,
3. obtain documents and files,
4. take the look.

[1122] **§ 26 Beweismittel Verwaltungsverfahrensgesetz**
(1) Die Behörde bedient sich der Beweismittel, die sie nach pflichtgemäßem Ermessen zur Ermittlung des Sachverhalts für erforderlich hält. Sie kann insbesondere
1. Auskünfte jeder Art einholen,
2. Beteiligte anhören, Zeugen und Sachverständige vernehmen oder die schriftliche oder elektronische Äußerung von Beteiligten, Sachverständigen und Zeugen einholen,
3. Urkunden und Akten beiziehen,
4. den Augenschein einnehmen.
(2) Die Beteiligten sollen bei der Ermittlung des Sachverhalts mitwirken. Sie sollen insbesondere ihnen bekannte Tatsachen und Beweismittel angeben. Eine weitergehende Pflicht, bei der Ermittlung des Sachverhalts mitzuwirken, insbesondere eine Pflicht zum persönlichen Erscheinen oder zur Aussage, besteht nur, soweit sie durch Rechtsvorschrift besonders vorgesehen ist.
(3) Für Zeugen und Sachverständige besteht eine Pflicht zur Aussage oder zur Erstattung von Gutachten, wenn sie durch Rechtsvorschrift vorgesehen ist. Falls die Behörde Zeugen und Sachverständige herangezogen hat, erhalten sie auf Antrag in entsprechender Anwendung des Justizvergütungs- und -entschädigungsgesetzes eine Entschädigung oder Vergütung.

(2) The parties involved should participate in determining the facts of the case. In particular, they should state facts and evidence known to them. A further obligation to cooperate in determining the facts, in particular an obligation to appear in person or to make a statement, only exists if this is specifically provided for by law.
(3) Witnesses and experts are obliged to testify or to provide expert opinions if this is provided for by law. If the authority has consulted witnesses and experts, they will receive compensation or reimbursement upon request in corresponding application of the Judicial Remuneration and Compensation Act.

Federal Tax Code

Section 92[1123] **Evidence**
The tax authority uses the evidence that it considers necessary to determine the facts of the case according to its best judgment. In particular, she can
1. Obtain information of any kind from those involved and other persons,
2. call in experts
3. obtain documents and files,
4. take the look.

g) Single measures (investigative powers)

This area has already been partly explored by German academia in the past.[1124] The next part shows provisions that will typically be available for OLAF Units if they investigate a case of a e.g. a German economic operator or someone residing here. In case of resistance the *Sigma Orionis* jurisprudence of the CJEU will apply (see above). The Customs Act, the Tax Act, the VAT Act and the Administrative Act will apply. OLAF may interview persons, take statements or inspect premises and organize searches in case of a reasonable suspicion of an irregularity. All measure need to be assessed prior to their execution and can be legally contested ex-post due to s. 40 VwGO before an administrative court. It is important to distinguish the measures – there are preventive and repressive measures. If an administrative organ acts against the law and infringes the rights of the economic operator, s. 839 Civil Code overs the possibility to contest the act for damages, which is possible as well if a Union organ acts as OLAF acts can be contested as well. All single measures need to be legally correct from a formal and material viewpoint, which requires to assess the requestites and the legal consequence. **81**

[1123] **§ 92 Beweismittel Abgabenordnung**
Die Finanzbehörde bedient sich der Beweismittel, die sie nach pflichtgemäßem Ermessen zur Ermittlung des Sachverhalts für erforderlich hält. Sie kann insbesondere
1. Auskünfte jeder Art von den Beteiligten und anderen Personen einholen,
2. Sachverständige zuziehen,
3. Urkunden und Akten beiziehen,
4. den Augenschein einnehmen.

[1124] See Böse and Schneider 2019, pp. 132–156.

aa. Interviewing / questioning of "persons concerned" (in relation to suspects/defendants)

82

Customs Investigation Service Act – ZFdG

s. 9 ZFdG[1125] Questioning and duty to provide information

(1) The Customs Criminal Investigation Office may question a person if facts justify the assumption that the person can provide relevant information for the performance of the duties incumbent on the Customs Criminal Investigation Office pursuant to Section 3 paras. 1, 2, 5 and 7.

(2) Persons who are responsible in accordance with ss. 17, 18 of the Federal Police Act shall be obliged to provide information to the Customs Criminal Investigation Office immediately upon request if facts justify the assumption that they can provide relevant information for the performance of a task incumbent upon the Customs Criminal Investigation Office in accordance with s. 3 paras. 1, 2, 5 and 7. Sentence 1 shall apply mutatis mutandis

1. to other persons if

a) a present considerable danger is to be averted,

[1125] **§ 9 Befragung und Auskunftspflicht ZFdG**

(1) Das Zollkriminalamt kann eine Person befragen, wenn Tatsachen die Annahme rechtfertigen, dass die Person sachdienliche Angaben für die Erfüllung der dem Zollkriminalamt nach § 3 Absatz 1, 2, 5 und 7 obliegenden Aufgaben machen kann.

(2) Personen, die entsprechend den §§ 17, 18 des Bundespolizeigesetzes verantwortlich sind, sind verpflichtet, auf Verlangen dem Zollkriminalamt unverzüglich Auskunft zu erteilen, wenn Tatsachen die Annahme rechtfertigen, dass sie sachdienliche Angaben für die Erfüllung einer dem Zollkriminalamt nach § 3 Absatz 1, 2, 5 und 7 obliegenden Aufgabe machen können. Satz 1 gilt entsprechend

1. für sonstige Personen, wenn

a) eine gegenwärtige erhebliche Gefahr abzuwehren ist,

b) Maßnahmen gegen die entsprechend § 17 oder § 18 des Bundespolizeigesetzes Verantwortlichen nicht oder nicht rechtzeitig möglich sind oder keinen Erfolg versprechen,

c) das Zollkriminalamt die Gefahr nicht oder nicht rechtzeitig selbst oder durch einen Beauftragten abwehren kann und

d) die Personen ohne erhebliche eigene Gefährdung und ohne Verletzung höherwertiger Pflichten in Anspruch genommen werden können, sowie

2. für Personen, für die gesetzliche Handlungspflichten bestehen.

Im Falle des Satzes 2 Nummer 1 gilt § 20 Absatz 1 Satz 2 des Bundespolizeigesetzes entsprechend. Unbeschadet der Sätze 1 und 2 dürfen Personen von sich aus oder auf Ersuchen des Zollkriminalamtes Auskunft erteilen; im letzteren Fall ist auf die Freiwilligkeit der Auskunft hinzuweisen.

(3) Unter den in den §§ 52 bis 55 der Strafprozessordnung bezeichneten Voraussetzungen ist die betroffene Person zur Verweigerung der Auskunft berechtigt. Dies gilt nicht, soweit die Auskunft zur Abwehr einer Gefahr für den Bestand oder die Sicherheit des Bundes oder eines Landes oder Leib, Leben oder Freiheit einer Person erforderlich ist. Eine in § 53 Absatz 1 Satz 1 Nummer 1 bis 3 oder Nummer 4 der Strafprozessordnung genannte Person ist auch in den Fällen des Satzes 2 zur Verweigerung der Auskunft berechtigt. Die betroffene Person ist über ihr Recht zur Verweigerung der Auskunft zu belehren. Auskünfte, die nach Satz 2 erlangt wurden, dürfen nur für den dort bezeichneten Zweck verwendet werden. Für Personen nach § 53 Absatz 1 Satz 1 Nummer 3 der Strafprozessordnung gilt Satz 3 nur, wenn es sich um Rechtsanwälte und Kammerrechtsbeistände handelt.

(4) § 136a der Strafprozessordnung gilt entsprechend. § 12 des Verwaltungsvollstreckungsgesetzes findet keine Anwendung.

(5) Die Absätze 1 bis 4 gelten für Befragungen von juristischen Personen, Gesellschaften und anderen Personenvereinigungen des privaten Rechts entsprechend.

b) measures against the persons responsible in accordance with s. 17 or s. 18 of the Federal Police Act are not possible or not possible in time or do not promise success,
c) the Customs Criminal Investigation Office cannot avert the danger itself or cannot avert it in time or cannot avert it through an authorized representative, and
d) the persons can be called upon without considerable danger to themselves and without violating higher-ranking duties, and
2. for persons for whom legal duties to act exist.
In the case of sentence 2 no. 1, Section 20 para. 1 sentence 2 of the Federal Police Act shall apply mutatis mutandis. Notwithstanding sentences 1 and 2, persons may provide information on their own initiative or at the request of the Customs Criminal Investigation Office; in the latter case, reference shall be made to the voluntary nature of the information.
(3) Under the conditions specified in Sections 52 to 55 of the Code of Criminal Procedure, the person concerned shall be entitled to refuse to provide the information. This shall not apply if the information is required to avert a danger to the existence or security of the Federation or of a Land or to the life, limb or freedom of a person. A person named in section 53 para. 1, first sentence, numbers 1 to 3 or number 4 of the Code of Criminal Procedure shall also be entitled to refuse to provide information in the cases referred to in sentence 2. The person concerned shall be informed of his or her right to refuse to provide information. Information obtained in accordance with sentence 2 may only be used for the purpose specified therein. Sentence 3 shall apply to persons pursuant to Section 53 para. 1 sentence 1 number 3 of the Code of Criminal Procedure only if they are attorneys-at-law and chamber counsel.
(4) Section 136a of the Code of Criminal Procedure shall apply mutatis mutandis. s. Section 12 of the Administrative Enforcement Act shall not apply.
(5) Paragraphs 1 to 4 shall apply mutatis mutandis to interviews with legal persons, companies and other associations of persons under private law.

s. 29 ZFdG[1126] **Questioning and duty to provide information**
In the performance of duties under sections 4 to 7, section 9 shall apply mutatis mutandis to the authorities of the Customs Investigation Service.

bb. The taking of statements from economic operators

In Germany Economic Operators (such as farmers, industrial managers, wholesalers and operators from other branches) are governed by many special laws such as e.g. the Commercial Code (*Handelsgesetzbuch*, HGB) and the Agricultural Payments Obligations **83**

[1126] **§ 29 Befragung und Auskunftspflicht ZFdG**
Bei der Wahrnehmung von Aufgaben nach den §§ 4 bis 7 ist für die Behörden des Zollfahndungsdienstes § 9 entsprechend anzuwenden.

Act. These Acts obligate the operators to "open their books" to audit staff and financial controllers.

cc. Interviewing / questioning of witnesses

84 *Sources and national sections 11: Art. 3 Interviewing and questioning witnesses during external investigations*

Market Organisation Act and Act implementing direct payments to farmers under support schemes under the Common Agricultural Policy[1127] and - Agricultural Payments Obligations Act [1128] and the - Law on the processing of data within the framework of the integrated administration and control system in accordance with the EU regulations for agricultural payments[1129]	ss. 33 et seq. MOG
CPC	ss. 48–71 CPC
Further provisions can be consulted in the Customs Code, the accompanying codes and the Tax Code.	

[1127] Gesetz zur Durchführung der Direktzahlungen an Inhaber landwirtschaftlicher Betriebe im Rahmen von Stützungsregelungen der Gemeinsamen Agrarpolitik.
[1128] Agrarzahlungen-Verpflichtungengesetz – AgrarZahlVerpflG.
[1129] Gesetz über die Verarbeitung von Daten im Rahmen des Integrierten Verwaltungs- und Kontrollsystems nach den unionsrechtlichen Vorschriften für Agrarzahlungen (InVeKoS-Daten-Gesetz - InVeKoSDG).

dd. Inspections

s. 33 Market Organisation Act[1130] **85**

General examination rights and information obligations

(1) The Federal Ministry, the Federal Court of Auditors, the main customs office, the market regulation office and, if the federal states implement regulations within the meaning of Section 1 para. 2 or participate in the implementation of these regulations, the authorities responsible under state law can request information, insofar as this is necessary, to monitor compliance with directly applicable regulations within the meaning of Section 1 para. 2 with regard to market regulation goods or direct payments as well as compliance with this law and the statutory ordinances issued on the basis of this law. ***For this purpose, they can request that the business documents be presented to them. You can also carry out checks on the persons responsible for providing information for the purpose mentioned. The bodies named in sentence 1 can carry out the tests, the members of their bodies and their employees and agents enter the property, business premises and, to prevent urgent threats to public safety and order, also the living quarters of the person obliged to provide information***; the fundamental right of Article 13 [inviolability of the home] of the Basic Law [Grundgesetz] is restricted in this respect.

(2) Anyone who produces, mines, treats or processes, transfers, imports or exports, owns or has owned market regulation goods or who directly or indirectly participates or has participated in business transactions with such goods or has applied for, receives or has received direct payments is obliged to provide information has.

(3) /

[1130] **§ 33 Allgemeine Prüfungsrechte und Auskunftspflichten MOG**

(1) Das Bundesministerium, der Bundesrechnungshof, das Hauptzollamt, die Marktordnungsstelle und, wenn die Länder Regelungen im Sinne des § 1 Absatz 2 durchführen oder an der Durchführung dieser Regelungen mitwirken, die nach Landesrecht zuständigen Behörden können Auskünfte verlangen, soweit dies erforderlich ist, um die Einhaltung von unmittelbar geltenden Regelungen im Sinne des § 1 Absatz 2 hinsichtlich Marktordnungswaren oder Direktzahlungen sowie die Einhaltung dieses Gesetzes und der auf Grund dieses Gesetzes erlassenen Rechtsverordnungen zu überwachen. Zu diesem Zweck können sie verlangen, dass ihnen die geschäftlichen Unterlagen vorgelegt werden. Sie können zu dem genannten Zweck auch Prüfungen bei den Auskunftspflichtigen vornehmen. Zur Vornahme der Prüfungen können die in Satz 1 genannten Stellen, die Mitglieder ihrer Organe und ihre Bediensteten und Beauftragten Grundstücke, Geschäftsräume und zur Verhütung dringender Gefahren für die öffentliche Sicherheit und Ordnung auch Wohnräume des Auskunftspflichtigen betreten; das Grundrecht des Artikels 13 des Grundgesetzes wird insoweit eingeschränkt.

(2) Auskunftspflichtig ist, wer Marktordnungswaren erzeugt, gewinnt, be- oder verarbeitet, verbringt, ein- oder ausführt, besitzt oder besessen hat oder wer unmittelbar oder mittelbar am Geschäftsverkehr mit solchen Waren teilnimmt oder teilgenommen hat oder Direktzahlungen beantragt hat, erhält oder erhalten hat.

(3) (weggefallen)

(4) Der zur Erteilung einer Auskunft Verpflichtete kann die Auskunft auf solche Fragen verweigern, deren Beantwortung ihn selbst oder einen der in § 383 Absatz 1 Nummer 1 bis 3 der Zivilprozessordnung bezeichneten Angehörigen der Gefahr strafgerichtlicher Verfolgung oder eines Verfahrens nach dem Gesetz über Ordnungswidrigkeiten aussetzen würde.

(4) The person obliged to provide information ***may refuse to provide information on questions*** the answer to which would expose him/herself or one of the relatives referred to in Section 383 para. 1 numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or proceedings under the Administrative Offences Act would.

s. 97 General Tax Code[1131] **Submission of documents**
(1) Those involved and other persons shall submit books, records, business papers and other documents to the financial authority upon request for inspection and examination. The request for submission must indicate whether the documents are required for the taxation of the person requested to submit them or for the taxation of other persons. Section 93 paragraph 1 sentences 2 and 3 applies accordingly.
(2) The revenue authority may require the documents referred to in paragraph 1 to be submitted to the official office or they may be viewed by the party required to submit them if the latter agrees or the documents are unsuitable for submission to an official office. Section 147 para. 5 applies accordingly.

s. 147 para. 6 AO [regulations for the storage of documents, right to inspect stored data]

s. 200 AO Duties of the taxpayer to cooperate

s. 395 AO file inspection of the financial authority

86 **Customs Administration Act (ZollVG)**

s. 10 Customs supervision [including stops & inspections]
(1)[1132] Irrespective of Sections 209 to 211 of the General Tax Code, the officials of the customs administration **may stop persons and means of transport** in order to carry out

[1131] **§ 97 Vorlage von Urkunden AO**
(1) Die Beteiligten und andere Personen haben der Finanzbehörde auf Verlangen Bücher, Aufzeichnungen, Geschäftspapiere und andere Urkunden zur Einsicht und Prüfung vorzulegen. Im Vorlageverlangen ist anzugeben, ob die Urkunden für die Besteuerung des zur Vorlage Aufgeforderten oder für die Besteuerung anderer Personen benötigt werden. § 93 Absatz 1 Satz 2 und 3 gilt entsprechend.
(2) Die Finanzbehörde kann die Vorlage der in Absatz 1 genannten Urkunden an Amtsstelle verlangen oder sie bei dem Vorlagepflichtigen einsehen, wenn dieser einverstanden ist oder die Urkunden für eine Vorlage an Amtsstelle ungeeignet sind. s. 147 Abs. 5 gilt entsprechend.

[1132] **§ 10 Zollamtliche Überwachung Zollverwaltungsgesetz**
(1) Unbeschadet der §§ 209 bis 211 der Abgabenordnung können die Bediensteten der Zollverwaltung zur Durchführung der in s. 1 genannten Aufgaben im grenznahen Raum (s. 14 Abs. 1) Personen und Beförderungsmittel anhalten. Die zum Anhalten aufgeforderte Person hat auf Verlangen der Zollbediensteten stehenzubleiben und sich auszuweisen. Führer von Beförderungsmitteln haben auf Verlangen zu halten und die Beförderungspapiere vorzulegen. Sie haben den Zollbediensteten auf Verlangen auch zu ermöglichen, an Bord und von Bord zu gelangen. Gepäck, Beförderungsmittel und ihre Ladung können zur Feststellung der Einhaltung der Zollvorschriften an Ort

the tasks specified in Section 1 in the area close to the border (Section 14 para. 1). The person asked to stop must stop at the request of the customs officials and identify themselves. Drivers of means of transport **must stop on request** and present the transport documents. You must also allow customs officials to board and disembark on request. Baggage, means of transport and their cargo may be checked on the spot or at another suitable place to determine compliance with customs regulations. Those affected by the inspection must indicate the origin of the goods upon request,

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und Stelle oder einem anderen geeigneten Ort geprüft werden. Die von der Prüfung Betroffenen haben auf Verlangen die Herkunft der Waren anzugeben, die Entnahme von unentgeltlichen Proben zu dulden und die nach den Umständen erforderliche Hilfe zu leisten.
(2) Für örtlich und zeitlich begrenzte Kontrollen außerhalb des grenznahen Raums gilt Absatz 1, wenn Grund zu der Annahme besteht, daß Waren, die der zollamtlichen Überwachung nach dem gemeinschaftlichen Zollrecht oder diesem Gesetz unterliegen, von Personen oder in Beförderungsmitteln mitgeführt werden.
(3) Personen können bei Vorliegen zureichender tatsächlicher Anhaltspunkte dafür, daß sie vorschriftswidrig Waren mitführen, die der zollamtlichen Überwachung nach dem gemeinschaftlichen Zollrecht oder diesem Gesetz unterliegen, angehalten und an einem hierfür geeigneten Ort körperlich durchsucht werden. Personen dürfen nur von Bediensteten ihres Geschlechts durchsucht werden; dies gilt nicht, wenn eine sofortige Durchsuchung zum Schutz gegen eine Gefahr für Leib oder Leben erforderlich ist. Personen können festgehalten und zur Dienststelle oder einer sonstigen geeigneten Örtlichkeit mitgenommen werden, wenn die Durchsuchung auf andere Weise nicht oder nur unter erheblichen Schwierigkeiten durchgeführt werden kann.
(3a) Im Rahmen der Erfassung des Warenverkehrs kann durch Überholung am Ort der Gestellung geprüft werden, ob Nichtgemeinschaftswaren eingeführt worden sind oder ob der Gestellungspflicht vollständig genügt worden ist. Stehen dafür erforderliche Einrichtungen am Amtsplatz oder einem anderen für die Gestellung zugelassenen Ort nicht zur Verfügung, so kann für die Überholung der nächste geeignete Ort bestimmt werden. Der Gestellungspflichtige hat die Überholung zu ermöglichen. Er hat dabei selbst oder durch andere auf seine Kosten und Gefahr die erforderliche Hilfe nach zollamtlicher Anweisung zu leisten. Er hat auf Verlangen schwer feststellbare, zur Aufnahme von Waren geeignete Stellen anzugeben sowie Beschreibungen des Beförderungsmittels, Verzeichnisse der Ausrüstungsstücke und Ersatzteile und andere Unterlagen über das Beförderungsmittel vorzulegen. Diese Pflichten treffen für das Beförderungsmittel den Fahrzeugführer.
(4) Die Postdienstleister sind verpflichtet, den Zollbediensteten für die Durchführung der Aufgaben nach Satz 2 während der Betriebs- und Geschäftszeiten Zutritt zu ihren Geschäfts- und Betriebsräumen zu gewähren. Die Zollbediensteten
1. prüfen, ob der Postdienstleister seiner Verpflichtung gemäß § 5 Absatz 1 nachgekommen ist,
2. überprüfen die Postsendungen, die der Postdienstleister gemäß § 5 Absatz 1 anzuzeigen und auf Verlangen vorzulegen hat, sofern diese noch nicht gemäß § 5 Absatz 1 bei der zuständigen Zollstelle angezeigt oder vorgelegt wurden,
3. führen zur Erfüllung der in § 1 Absatz 4 und 5 genannten Aufgaben stichprobenweise oder risikoorientierte Zollkontrollen durch oder
4. führen alle anderen stichprobenweisen oder risikoorientierten Zollkontrollen durch, die erforderlich sind, um die ordnungsgemäße Anwendung der zollrechtlichen und sonstigen Vorschriften über den Eingang, den Ausgang, den Versand, die Beförderung und die besondere Verwendung von Waren, die zwischen dem Zollgebiet der Union und Drittländern oder zwischen den Mitgliedstaaten der Europäischen Union befördert werden, sowie über das Vorhandensein von Waren ohne Unionsstatus zu gewährleisten. Die Sätze 1 und 2 finden entsprechende Anwendung auf Fahrzeuge, die sich auf den Betriebsgrundstücken der Postdienstleister befinden und die für den Transport von Postsendungen genutzt werden.
(4a) Der Postdienstleister hat die im Rahmen der Kontrollen nach Absatz 4 Satz 2 Nummer 1, 3 und 4 von den Zollbediensteten ausgewählten Postsendungen auf Verlangen vorzulegen. Er trägt die ihm hierdurch entstehenden Kosten. Die Zollbediensteten dürfen Postsendungen, die nach Satz 1 oder § 5 Absatz 1 anzuzeigen und auf Verlangen vorzulegen sind, sowie solche, die der zollamtlichen Kontrolle nach den Absätzen 1, 2 und 3a unterliegen, öffnen und prüfen.
(5) Das Grundrecht auf Freiheit der Person, das Brief- und Postgeheimnis sowie das Grundrecht auf Unverletzlichkeit der Wohnung (Artikel 2 Abs. 2, Artikel 10 und Artikel 13 Abs. 1 des Grundgesetzes) werden nach Maßgabe der Absätze 1 bis 4a eingeschränkt.

(2) Para. 1 shall apply to **locally and temporarily limited controls outside the border area if there is reason to assume that goods which are subject to customs supervision under Community customs law or this Act** are being carried by persons or in means of transport.
(3) Persons **may be stopped and physically searched** at a suitable location if there are sufficient factual indications that they are illegally carrying goods that are subject to customs supervision under Community customs law or this Act. Persons may only be searched by officers of their sex; this does not apply if an immediate search is required to protect against danger to life or limb. Persons can be detained and taken to the police station or another suitable location if the search cannot be carried out in any other way or can only be carried out with considerable difficulty.
(3a) As part of the registration of the movement of goods, it can be checked by overhauling at the place of presentation whether non-Community goods have been imported or whether the obligation to present them has been fully met. If the facilities required for this are not available at the office or at another location approved for presentation, the next suitable location can be determined for the overhaul. The person obliged to present the goods must enable the overhaul. He has to provide the necessary help himself or through others at his own expense and risk according to customs instructions. Upon request, he must indicate locations that are difficult to identify and suitable for picking up goods, as well as descriptions of the means of transport, Lists of equipment and spare parts and other documents relating to the means of transport. These obligations apply to the vehicle driver for the means of transport.
(4) The postal service providers are obliged to grant the customs officials access to their business and business premises during business hours to carry out the tasks pursuant to sentence 2. The Customs Officers
1. check whether the postal service provider has fulfilled its obligation under Section 5 para. 1,
2. check the postal items that the postal service provider has to report pursuant to Section 5 para. 1 and to present upon request, provided they have not yet been reported or presented to the responsible customs office pursuant to Section 5 para. 1,
3. carry out random or risk-oriented customs controls to fulfil the tasks specified in Article 1 paragraphs 4 and 5, or
4. carry out all other random or risk-based customs controls necessary to ensure the proper application of customs and other regulations governing the entry, exit, transit, carriage and end-use of goods transported between the customs territory of the Union and third countries or are transported between the Member States of the European Union, as well as to ensure the existence of goods without Union status. Sentences 1 and 2 apply accordingly to vehicles that are on the premises of the postal service provider and that are used to transport postal items.

(4a) The postal service provider must present the postal items selected by the customs officials as part of the controls pursuant to para. 4 sentence 2 numbers 1, 3 and 4 upon request. He shall bear the costs incurred as a result. The customs officials may open and examine postal items that are to be displayed in accordance with sentence 1 or Section 5 para. 1 and presented on request, as well as those that are subject to customs control in accordance with paras. 1, 2 and 3a.
(5) The fundamental right to personal liberty, the privacy of letters and post, and the fundamental right to the inviolability of the home (Article 2, paragraph 2, Article 10 and Article 13, paragraph 1 of the Basic Law) are restricted in accordance with paragraphs 1 to 4a.

In case of money laundering offences, the *Bundespolizei* may be assigned with measures, see s. 12 c ZollVG. **87**

ee. Searches

s. 53 Administration of Offences Act[1133] **Tasks of the police** **88**
(1) The authorities and officers of the police service shall, at their best discretion, investigate administrative offences and make all orders that cannot be postponed in order to prevent the matter from being obscured. Unless otherwise provided in this Act, when investigating administrative offences you have the same rights and obligations as when prosecuting criminal offences. 3 They send their files immediately to the administrative authority, in cases of connection (section 42) to the public prosecutor's office.
(2) The police officers who are appointed investigators of the public prosecutor's office/civil servants (Section 152 of the Courts Constitution Act) ***may order seizures, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure*** that apply to them.
- see ss. 97, 105 et seq. CPC

s. 37 MOG Powers of the customs authorities
[…] (4) In these cases, the main customs offices and customs investigation offices and their officials may carry out confiscations, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure applicable to investigators of the public prosecutor's office; under the conditions of s. 111p paragraph

[1133] See **§ 53 Aufgaben der Polizei OWiG**
(1) 1Die Behörden und Beamten des Polizeidienstes haben nach pflichtgemäßem Ermessen Ordnungswidrigkeiten zu erforschen und dabei alle unaufschiebbaren Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten. 2Sie haben bei der Erforschung von Ordnungswidrigkeiten, soweit dieses Gesetz nichts anderes bestimmt, dieselben Rechte und Pflichten wie bei der Verfolgung von Straftaten. 3Ihre Akten übersenden sie unverzüglich der Verwaltungsbehörde, in den Fällen des Zusammenhangs (§ 42) der Staatsanwaltschaft.
(2) Die Beamten des Polizeidienstes, die zu Ermittlungspersonen der Staatsanwaltschaft bestellt sind (§ 152 des Gerichtsverfassungsgesetzes), können nach den für sie geltenden Vorschriften der Strafprozeßordnung Beschlagnahmen, Durchsuchungen, Untersuchungen und sonstige Maßnahmen anordnen.

2 sentence 2 of the Code of Criminal Procedure, the main customs offices can also order the emergency sale.

Customs Administration Act (ZollVG)

s. 12e Monitoring of cross-border traffic with goods subject to excise duty[1134]

(1) Customs officials ***can secure goods and associated containers and enclosures up to the end of the fifth working day after they have been found and take them into customs custody*** if there is reason to believe that goods subject to excise duty transported in cross-border traffic or goods and equipment suitable for the production of such goods are to be brought with the intention of committing a tax offence pursuant to Section 369 of the General Tax Code. The measures according to sentence 1 serve to check the legality of the intended use of the goods. Section 12a paragraph 7 sentences 2 to 6 applies accordingly.

(2) Affected persons must, upon request, provide evidence that a customer will actually receive the delivery and is entitled to accept it. The requirements must be clear and easily verifiable from the supporting documents. Sections 102 and 103 of the tax code apply accordingly. The receipts may also be used for taxation proceedings and for criminal proceedings for tax crimes; Section 30 paragraph 4 number 3 and 5 of the tax code remains unaffected.

(3) Article 12a paragraph 8 applies accordingly.

There are different applicable codes:

- The system of the measure in Germany's General Administrative Act, Customs Administration Act, Federal Tax Code, CPC and Market Organisation Act
- Seizure of weapons and instruments, Criminal procedure Code/Customs Code/Customs Administration Act

[1134] **§ 12e Überwachung des grenzüberschreitenden Verkehrs mit verbrauchsteuerpflichtigen Waren Zollverwaltungsgesetz (ZollVG)**

(1) Zollbedienstete können Waren sowie dazugehörige Behältnisse und Umschließungen bis zum Ablauf des fünften Werktages nach dem Auffinden sicherstellen und in zollamtliche Verwahrung nehmen, wenn Grund zu der Annahme besteht, dass im grenzüberschreitenden Verkehr beförderte verbrauchsteuerpflichtige Waren oder zur Herstellung solcher Waren geeignete Waren und Geräte in der Absicht der Begehung einer Steuerstraftat nach § 369 der Abgabenordnung verbracht werden sollen. Die Maßnahmen nach Satz 1 dienen der Überprüfung der Rechtmäßigkeit des Verwendungszwecks der Waren. § 12a Absatz 7 Satz 2 bis 6 gilt entsprechend.

(2) Betroffene Personen haben auf Aufforderung durch Belege nachzuweisen, dass ein Abnehmer die Lieferung tatsächlich erhalten wird und zur Abnahme berechtigt ist. Die Voraussetzungen müssen sich aus den Belegen eindeutig und leicht nachprüfbar ergeben. Die §§ 102 und 103 der Abgabenordnung gelten entsprechend. Die Belege dürfen auch für Besteuerungsverfahren und für Strafverfahren wegen Steuerstraftaten verwendet werden; § 30 Absatz 4 Nummer 3 und 5 der Abgabenordnung bleibt unberührt.

(3) § 12a Absatz 8 gilt entsprechend.

ff. Digital forensic operations within inspections or on-the-spot checks

These special (digital) activities, which can only be conducted upon **prior authorisation** of the **Director General** are regulated by Internal Guidelines and subsequent national law: "According to the case-law of the EU Courts, an inspection of an institution's premises conducted by OLAF is unlawful if OLAF did not already have evidence giving rise to legitimate suspicions that there were unlawful activities falling within its competence. The aim of any such inspection must be to gather evidence relating to the suspected unlawful activities[1135]."[1136] Against any decision within these operations a **complaint** which is assessed by the Controller of procedural guarantees in due course, is available for the person concerned. The operations aim at the **seizure of smartphones or laptops** in order to get access to stored information concerning potentially relevant conduct. The German national law contains more details for the subject areas and a digital forensic operation in these areas: **89**

Law on the Customs Criminal Police Office and the Customs Investigation Offices (Customs Investigation Service Act – ZFdG) **90**

⇒ s. 72 Monitoring of telecommunications as well as letter and mail traffic

This provision (s. 72 ZFdG) is restricted to special security operations, that are called *Gefahrenabwehrmaßnahmen* in Germany and shall not be confused with criminal or administrative investigation/s (measures). **91**

Section 147 Federal Tax Code Regulatory requirements for the retention of documents **92**

(1)[1137] The following documents shall be kept in an orderly manner:

[1135] Case C-130/19, *Pinxten v ECA*, paragraph 151; See also, by analogy, Case C-37/13 P, *Nexans and Nexans France v Commission*, paragraph 37.

[1136] OLAF Supervisory Committee 2024, ACTIVITY REPORT OF THE SUPERVISORY COMMITTEE OF OLAF – 2022 (C/2024/5673), pp. 12–13.

[1137] **§ 147 Ordnungsvorschriften für die Aufbewahrung von Unterlagen Abgabenordnung**
(1) Die folgenden Unterlagen sind geordnet aufzubewahren:
1. Bücher und Aufzeichnungen, Inventare, Jahresabschlüsse, Lageberichte, die Eröffnungsbilanz sowie die zu ihrem Verständnis erforderlichen Arbeitsanweisungen und sonstigen Organisationsunterlagen,
2. die empfangenen Handels- oder Geschäftsbriefe,
3. Wiedergaben der abgesandten Handels- oder Geschäftsbriefe,
4. Buchungsbelege,
4a. Unterlagen nach Artikel 15 Absatz 1 und Artikel 163 des Zollkodex der Union,
5. sonstige Unterlagen, soweit sie für die Besteuerung von Bedeutung sind.
(2) Mit Ausnahme der Jahresabschlüsse, der Eröffnungsbilanz und der Unterlagen nach Absatz 1 Nummer 4a, sofern es sich bei letztgenannten Unterlagen um amtliche Urkunden oder handschriftlich zu unterschreibende nicht förmliche Präferenznachweise handelt, können die in Absatz 1 aufgeführten Unterlagen auch als Wiedergabe auf einem Bildträger oder auf anderen Datenträgern aufbewahrt werden, wenn dies den Grundsätzen ordnungsmäßiger Buchführung entspricht und sichergestellt ist, dass die Wiedergabe oder die Daten
1. mit den empfangenen Handels- oder Geschäftsbriefen und den Buchungsbelegen bildlich und mit den anderen Unterlagen inhaltlich übereinstimmen, wenn sie lesbar gemacht werden,

1. Books and records, inventories, annual financial statements, management reports, the opening balance sheet as well as the work instructions and other organisational documents required for their understanding,
2. The received commercial or business letters,
3. Reproductions of the commercial or business letters sent,
4. Accounting documents,
4a. Documents referred to in Article 15 para. 1 and Article 163 of the Union Customs Code,
5. Other documents, insofar as they are relevant for taxation.
(2) With the exception of the annual financial statements, the opening balance sheet and the documents referred to in paragraph 1(4a), provided that the latter documents are official documents or non-formal preferential documents requiring handwritten signatures, the documents referred to in paragraph 1 may also be kept as a reproduction on an

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2. während der Dauer der Aufbewahrungsfrist jederzeit verfügbar sind, unverzüglich lesbar gemacht und maschinell ausgewertet werden können.
(3) Die in Absatz 1 Nr. 1, 4 und 4a aufgeführten Unterlagen sind zehn Jahre, die sonstigen in Absatz 1 aufgeführten Unterlagen sechs Jahre aufzubewahren, sofern nicht in anderen Steuergesetzen kürzere Aufbewahrungsfristen zugelassen sind. Kürzere Aufbewahrungsfristen nach außersteuerlichen Gesetzen lassen die in Satz 1 bestimmte Frist unberührt. Bei empfangenen Lieferscheinen, die keine Buchungsbelege nach Absatz 1 Nummer 4 sind, endet die Aufbewahrungsfrist mit dem Erhalt der Rechnung. Für abgesandte Lieferscheine, die keine Buchungsbelege nach Absatz 1 Nummer 4 sind, endet die Aufbewahrungsfrist mit dem Versand der Rechnung. Die Aufbewahrungsfrist läuft jedoch nicht ab, soweit und solange die Unterlagen für Steuern von Bedeutung sind, für welche die Festsetzungsfrist noch nicht abgelaufen ist; § 169 Abs. 2 Satz 2 gilt nicht.
(4) Die Aufbewahrungsfrist beginnt mit dem Schluss des Kalenderjahrs, in dem die letzte Eintragung in das Buch gemacht, das Inventar, die Eröffnungsbilanz, der Jahresabschluss oder der Lagebericht aufgestellt, der Handels- oder Geschäftsbrief empfangen oder abgesandt worden oder der Buchungsbeleg entstanden ist, ferner die Aufzeichnung vorgenommen worden ist oder die sonstigen Unterlagen entstanden sind.
(5) Wer aufzubewahrende Unterlagen in der Form einer Wiedergabe auf einem Bildträger oder auf anderen Datenträgern vorlegt, ist verpflichtet, auf seine Kosten diejenigen Hilfsmittel zur Verfügung zu stellen, die erforderlich sind, um die Unterlagen lesbar zu machen; auf Verlangen der Finanzbehörde hat er auf seine Kosten die Unterlagen unverzüglich ganz oder teilweise auszudrucken oder ohne Hilfsmittel lesbare Reproduktionen beizubringen.
(***6) Sind die Unterlagen nach Absatz 1 mit Hilfe eines Datenverarbeitungssystems erstellt worden,*** hat die Finanzbehörde im Rahmen einer Außenprüfung das Recht, Einsicht in die gespeicherten Daten zu nehmen und das Datenverarbeitungssystem zur Prüfung dieser Unterlagen zu nutzen. Sie kann im Rahmen einer Außenprüfung auch verlangen, dass die Daten nach ihren Vorgaben maschinell ausgewertet oder ihr die gespeicherten Unterlagen und Aufzeichnungen auf einem maschinell verwertbaren Datenträger zur Verfügung gestellt werden. Teilt der Steuerpflichtige der Finanzbehörde mit, dass sich seine Daten nach Absatz 1 bei einem Dritten befinden, so hat der Dritte
1. der Finanzbehörde Einsicht in die für den Steuerpflichtigen gespeicherten Daten zu gewähren oder
2. diese Daten nach den Vorgaben der Finanzbehörde maschinell auszuwerten oder
3. ihr die für den Steuerpflichtigen gespeicherten Unterlagen und Aufzeichnungen auf einem maschinell verwertbaren Datenträger zur Verfügung zu stellen.
Die Kosten trägt der Steuerpflichtige. In Fällen des Satzes 3 hat der mit der Außenprüfung betraute Amtsträger den in § 3 und § 4 Nummer 1 und 2 des Steuerberatungsgesetzes bezeichneten Personen sein Erscheinen in angemessener Frist anzukündigen. Sofern noch nicht mit einer Außenprüfung begonnen wurde, ist es im Fall eines Wechsels des Datenverarbeitungssystems oder im Fall der Auslagerung von aufzeichnungs- und aufbewahrungspflichtigen Daten aus dem Produktivsystem in ein anderes Datenverarbeitungssystem ausreichend, wenn der Steuerpflichtige nach Ablauf des fünften Kalenderjahres, das auf die Umstellung oder Auslagerung folgt, diese Daten ausschließlich auf einem maschinell lesbaren und maschinell auswertbaren Datenträger vorhält.

image carrier or on other data carriers if this complies with the principles of proper accounting and if it is ensured that the reproduction or the data
1. correspond visually with the received commercial or business letters and the accounting documents and with the other documents in terms of content, if they are made legible,
2. are available at any time during the retention period, can be made readable without delay and can be evaluated by machine.
(3) The documents listed in paragraph 1 No. 1, 4 and 4a shall be kept for ten years, the other documents listed in paragraph 1 for six years, unless shorter retention periods are permitted under other tax laws. Shorter retention periods under non-tax laws shall not affect the period specified in sentence 1. In the case of received delivery bills which are not accounting documents in accordance with paragraph 1 number 4, the retention period shall end upon receipt of the invoice. For dispatched delivery bills that are not accounting documents pursuant to paragraph 1 number 4, the retention period shall end upon dispatch of the invoice. However, the retention period shall not expire insofar and for as long as the documents are of significance for taxes for which the assessment period has not yet expired; Section 169 para. 2 sentence 2 shall not apply.
(4) The retention period shall commence at the end of the calendar year in which the last entry was made in the book, the inventory, the opening balance sheet, the annual financial statements or the management report was drawn up, the commercial or business letter was received or dispatched or the accounting document was created, furthermore the recording was made or the other documents were created.
(5) Whoever submits documents to be kept in the form of a reproduction on an image carrier or on other data carriers shall be obliged to provide at his own expense such aids as are necessary to make the documents readable; at the request of the tax authority he shall immediately print out the documents in whole or in part at his own expense or provide readable reproductions without aids.
(6) If the documents referred to in paragraph 1 have been prepared with the aid of a data processing system, the tax authority shall have the right, within the framework of an external audit, to inspect the stored data and to use the data processing system to examine such documents. In the course of an external audit, it may also demand that the data be evaluated by machine in accordance with its specifications or that the stored documents and records be made available to it on a machine-processable data carrier. If the taxpayer informs the tax authority that its data pursuant to paragraph 1 are held by a third party, the third party must
1. grant the tax authority access to the data stored for the taxpayer, or
2. evaluate these data mechanically in accordance with the instructions of the tax authority or
3. To provide the tax authority with the documents and records stored for the taxpayer on a machine-processable data carrier.

The costs shall be borne by the taxpayer. In cases of sentence 3, the official entrusted with the external audit shall give reasonable notice of his appearance to the persons specified in s. 3 and s. 4 numbers 1 and 2 of the Tax Consultancy Act. Provided that an external audit has not yet commenced, it shall be sufficient in the case of a change in the data processing system or in the case of outsourcing of data subject to recording and retention requirements from the productive system to another data processing system if the taxpayer, after the expiry of the fifth calendar year following the change or outsourcing, retains such data exclusively on a machine-readable and machine-interpretable data carrier.

(1) General remarks

93 Taxpayers and custom debtors are required to **keep various documents under german law** in an **organized manner**, including books, records, inventories, annual financial statements, management reports, opening balance sheets, business correspondence (both received and sent), and accounting documents.[1138] In an investigation into tax irregularities or fraud, the **completeness and correctness** of the taxpayer's retained documents **are critical**. Any discrepancies or failure to meet the retention requirements could suggest intent to conceal financial activities, making the taxpayer more vulnerable to legal action.



Tip for all customs debtors, managing directors, exporters and importers as well as taxpayers: If you are a member of a professional self-administration, e.g. a chamber of industry and commerce, you will find valuable information on obligations and possibly also legal advice there, even if no advice is provided for which lawyers and tax consultants are responsible in Germany under the BRAO and tax laws.[1139]

(2) Formal requirements

94 Documents like customs declarations under the Union Customs Code (Art. 15 para. 1 and 163) and any other relevant tax documents must also be retained. The retention can be done in **physical or digital form**, provided that the digital reproduction adheres to proper accounting principles and can be made readable and machine-evaluable. Documents related to books, accounting, and customs must be **kept for 10 years**.[1140] All other relevant documents must be **retained for 6 years** unless other tax laws specify shorter periods. Retention periods may extend if the documents are relevant for taxes where the assessment period has not yet expired. The retention period starts at the end of the calendar year in which the document was last updated, created, or received.

[1138] See Haselmann 2024, § 147 Mn. 1–5, 6–12 listing all items.
[1139] See IHK Stuttgart. online: https://www.ihk.de/stuttgart/fuer-unternehmen/international/import-export/zollverfahren/aufbewahrungsvorschriften-fuer-zolldokumente-675304. Accessed 31 December 2024.
[1140] Ibid.

During external audits, tax authorities have the right to inspect the taxpayer's digital records and data. If the records are held by a third party, the taxpayer must ensure the authorities can access, evaluate, or obtain the data in a machine-readable format. If records are kept digitally, taxpayers must provide the necessary tools to make the records readable at their own expense. The tax authority can request printed or readable copies of any document during an audit.

(3) Substantive requirements

It is important that all documents reflect accurate financial transactions, following established accounting standards i.e. not german but EU ones. This includes maintaining clarity in books, records, and any documents essential for taxation. Even if a tax worker (*Steuerberater*) has the papers, the taxpayer remains responsible for ensuring that the tax authorities have access to these records during audits. **95**

(a) Fraud-related peculiarities

It should be kept in mind that on the one hand properly kept records can help demonstrate that the taxpayer has adhered to legal requirements and on the other hand missing or incomplete records may indicate wrongdoing. The timeframes should be obeyed closely. In summary, failure to meet these formal and substantive requirements under Section 147 can raise red flags in tax investigations, leading OLAF's national partners in Germany and OLAF inspectors or Units to question the legitimacy of the taxpayer's filings. **96**

(b) Examples and precedents

(aa) In national case-law

The German Federal Financial Court has e.g. decided in 2007 that digitally stored data must be accessible and the taxpayer cannot circumvent this request by saying he would print the papers off.[1141] **97**

(bb) In the case-law of the ECJ and ECtHR

Exporters and suppliers in the EU are required to retain specific documents related to supplier declarations and preferential proof for exports. These retention obligations apply to suppliers, who must retain copies of supplier declarations and supporting documentation that verifies the accuracy of these declarations and exporters, who must keep copies of preferential proofs and all documents verifying the origin of the products in question. **98**

[1141] BFH 26.9.2007 – I B 53, 54/07.

gg. Investigative missions in third countries

99 The investigation missions in third countries are mainly based on special contracts. In countries, which are part of a pre-accession treaty with the EU, this contract provides for special clauses that allow the OLAF to investigate and carry out on-the-spot checks e.g. in Georgia, Ukraine or the countries on the western Balkan such as Albania, Bosnia and Herzegovina (see → Art. 1 Commentary on PIF Directive).

100 The OLAF may conduct investigative mission in third countries. A good example is the case that the Financial Court of Kassel had to decide in 2015[1142], which shows that these missions can be fruitful. There was a dispute about the subsequent collection of anti-dumping duties. The plaintiff took action against a subsequent assessment notice. Ultimately, it was proven that the claim that the tariffs were from South Korea was not correct. OLAF undertook a mission to Korea and dealt with the local customs authorities and the criminal investigations there.

101 The German court found the foreign, Korean convictions and criminal investigations to be probable even in the post-clearance proceedings [proceedings report, part of the Judgment]:

"The auditor's assertion in the report dated May 8, 2009 that the wire ropes originated in the People's Republic of China was based on investigations conducted by the European Anti-Fraud Office (OLAF) since August 2006 into suspected false declarations of origin for steel wire ropes imported from South Korea, of which the Member States had been informed. As part of these investigations, which also concerned Company A, OLAF carried out mission trips to South Korea in November 2009 and May 2010. Regardless of these investigations, the Customs Criminal Police Office (ZKA) discontinued the investigation in March 2009 Request for verification regarding the disputed imports to the Korean authorities. As part of the customs inspection, the defendant's inspection service had copied the original certificates of origin in the plaintiff's documents and sent these copies to the ZKA. According to the defendant, this request has remained unanswered to this day.

With regard to the investigations mentioned, the defendant let the objection proceedings rest with a ruling of September 4th, 2009.

In the letter of transmission dated May 20, 2010 for sending the OLAF report dated April 27, 2010 on the Community mission in November 2009 to the Member States, which the defendant received in August 2010, the head of division pointed out that the origin of the 2005 European Union (EU) steel wire ropes imported from South Korea

[1142] See FG Kassel, Judgment of 15.04.2015 - 7 K 440/12.

remain unclear. OLAF officers would meet with the relevant Korean services in the second half of May 2010 to finalize this matter. The defendant then intended to waive the subsequently levied anti-dumping duties and asked the Federal Finance Directorate (BFD) West for approval. However, the BFD suggested waiting for the report on the second mission trip.

In March 2011, the defendant received OLAF's interim report of January 7, 2011. It states that according to a notification from the Korean Customs Service (KCS) dated January 10, 2008, shipments exported by Company A in the period October 5, 2004 to September 28, 2006 originated in the People's Republic of China. The correspondence also shows that company A was prosecuted and convicted. According to this report, in May 2010 OLAF received the complete wording of the sentences passed against Company A, among others, 'including precise information on the programs... (lists of criminal offences)' A list of criminal offences against the Foreign Trade Act and the Customs Act for the export of Chinese steel cables under the pretence of a Korean origin was attached to the judgment against Company A of June 15, 2007. According to the report, evaluations of these crime lists confirmed the information provided by the KCS. Attached to the report as Annex C.1, among other things, were Excel spreadsheets relating to Company A for the periods October 5, 2004 to December 31, 2005 (Summary Crime List 2, violations of the Customs Act) and January 2006 to September 28, 2006 about shipments whose declared origin was Korea and actual origin was China. These lists also include numerous shipments to the plaintiff.

On August 11, 2011, the defendant resumed the objection proceedings and, with a decision of October 25, 2011, rejected the objection against the notice of subsequent collection of December 10, 2008, after the ZKA had sent him a translation of the OLAF report of January 7, 2011, as well as two against the Criminal judgments issued to company A – in addition to the judgment of 06/15/2007 mentioned, the appeal judgment of 10/18/2007 – had been received. He now considered the Chinese origin of the steel wire ropes to be proven on the basis of the OLAF investigations. Finally, in December 2011, the defendant also received the OLAF final report of 03/24/2011. In this report, the plaintiff is mentioned by name insofar as, on the one hand, she is one of the buyers according to the notification by the Liaison Committee of the EU Wire Rope Industries (EWRIS) in December 2005 about the suspicion of importing Chinese wire ropes from South Korea and, on the other hand, she is already in other OLAF investigation was involved. In January and February 2012, the defendant also rejected the objections to the eight remaining notices of subsequent collection.

On November 23, 2011 (7 K 2803/11) and February 24, 2012 (7 K 440/12), the plaintiff brought an action. The two lawsuits were combined with the decision of the Senate on March 22nd, 2013 for a joint hearing and decision.
The plaintiff submits that the contested notices of subsequent collection are formally unlawful because the defendant failed to hear them before the notices were issued. The plaintiff refers to extensive case law of the European Court of Justice (ECJ). A hearing was not carried out as part of the customs inspection, nor was it possible to make up for a hearing that was omitted in the objection proceedings.

However, the notices of subsequent collection are also substantively unlawful. Because the South Korean origin of the wire ropes has been proven by valid certificates of origin, visit reports and supplier declarations. The imports at issue here have no correspondence in the summaries of the crime lists drawn up by OLAF on the exports from company A to the plaintiff. Neither the Korean criminal judgments nor the crime lists have a binding effect in German customs procedures. Rather, it is about unofficial findings, and there are considerable doubts as to their correctness. It is not clear on what assumptions the South Korean investigative authorities assumed the wire ropes had a Chinese origin. The OLAF report contains neither any indication of this nor any indication that the correctness of the conclusions of the Korean investigative authorities was checked. The OLAF report of January 7th, 2011 is also based on insufficient knowledge. The conclusions drawn by OLAF are untenable. The Korean criminal judgments against company A could not have any probative value due to a lack of objective findings on the alleged Chinese origin of the wire ropes. The judgments are not valid.

In this context, the plaintiff emphasizes that she is not identical to the persons sentenced under criminal law in South Korea and has no way of recording or even approximately reconstructing the procedural situation there and the preliminary investigations against company A. Company A also no longer exists and its managing director can no longer be found. It is therefore not possible to raise substantiated objections to the criminal law findings in question and to submit corresponding applications for evidence. In such a context, fairness dictates that the foreign criminal law findings should not be accepted unchecked, but should be checked for correctness of content and compatibility with basic German procedural principles. The necessity of such a review also results from the public policy reservation for foreign court judgments. An appropriate examination of the Korean verdict calls for investigating certain questions, for example how “free” the accused was during his testimony, whether the findings could easily be adopted one-to-one in German legal terms, and what are the requirements for an effective confession and would be asked to be questioned by the police.

Here the Korean origin of the wire ropes is confirmed by the irrevocable certificates of origin from the Busan Chamber of Commerce and Industry, the visit reports from both the plaintiff – an affidavit by the plaintiff's managing director was submitted – and from B GmbH, as well as the supplier's declaration of April 13th. 2006 clearly proven.

[…] [Judgment part]
It is true that this judgment has no binding effect on proceedings in Germany. However, the Senate assigns a probative value to it and the crime lists attached to it within the framework of the judicial persuasion pursuant to Section 96 para. 1 FGO. Neither this judgment nor the appeal judgment of October 18, 2007 2007/1164 contain any indications that the proceedings would have been conducted in disregard of the rule of law minimum standards for criminal proceedings. The first-instance judgment of June 15, 2007 also contains objective statements on the Chinese origin of the wire ropes. In the "criminal relevant facts" listed, the court, which had the Korean import and export declarations and a comparison table of the imports (to South Korea) and the exports (from South Korea) of company A, held that with regard to the managing director (1.) expressly stated the period and type of exports as well as the quantity of Chinese steel cables exported (from South Korea) and the number of cases on the one hand as violations of the Foreign Trade Act (A.) and on the other hand – due to the incorrect indication of origin in the export declarations – as Violations of the Customs Act (B.).

The fact that the plaintiff is unable to raise substantiated objections to the above findings of the district court and to submit corresponding requests for evidence does not reduce the probative value of the Korean judgments. In principle, foreign criminal judgments can also be used in German administrative and court proceedings (cf. the decision of the Federal Fiscal Court [BFH] of December 18, 2014 VII B 199/13 with further references). The Senate agrees with the plaintiff to the extent that foreign criminal law findings are not to be accepted without verification. However, checking the correctness of the content is neither necessary nor possible with justifiable effort. Rather, the tax court can adopt the findings of a criminal judgment, including a foreign one, if the court proceedings in question are compatible with the legal principles of the proceedings under the AO and the FGO (BFH loc.cit.). In the present case, the Senate sees no reason to doubt the determination of the Chinese origin of the wire ropes, particularly on the basis of the numerous pieces of evidence given in the judgment of June 15, 2007, the admission of the managing director of company A and the agreement with the investigation results of the KCS. There are no indications whatsoever that the minimum requirements for the recognition of a foreign criminal judgment, as set out in the ordre public sought by the plaintiff and e.g. B. derived from Art. 6 ECHR, would not have been fulfilled. With regard to the references in the crime list available to the parties involved, reference

is made to the summary of the tax collections sent to the parties involved in a letter dated January 20, 2015.

bb) Art. 220 Para. 2 Letter b UA 1 ZK did not oppose the subsequent levies, because in the import processes still at issue no active error causal for the non-levying of the anti-dumping duties within the meaning of the case law can be determined (on the term cf. Witte/ Alexander, Customs Code Art. 220 Rz. 11 ff. with numerous references in case law).

aaa) There is no error by the MKE here because its review, initiated by OLAF, related to company A's exports in the period April 10, 2007 to May 12, 2008.

bbb) The files available to the Senate do not contain any indications as to whether the statement by Company A about the Korean origin of the wire ropes delivered to the plaintiff in the export declarations was checked by the responsible Korean export customs office as part of the export clearance. Even if that was the case and there was an active error on the part of this authority, this error would not have been the cause of the non-levying of the respective anti-dumping duty by the customs office (ZA) where the import clearances in the EU took place. There is no necessary causality if a customs authority other than the one responsible for levying the duty made a mistake and this other customs authority – as here – had no influence on the failure to collect the legally owed amount of duty (cf. Deimel in Hübschmann/Hepp/ Spitaler [HHSp.], Art. 220 ZK margin no. 87 a.E. with reference to the BFH case law).

ccc) It can be left open whether the opinion of the FG Düsseldorf in its judgment of October 2nd, 2013 4 K 1568/12 Z that the Busan Chamber of Commerce & Industry did not act as a customs authority when issuing the certificates of origin certifying Korean origin, is to follow. Because from the documents submitted, including the OLAF reports, it cannot be inferred that the certificates of origin submitted were only issued after checking the information from company A, there was therefore an active error on the part of the Chamber of Commerce. The exhibition was only "to the best of its knowledge and believe". In the case of an incorrect indication of origin, this is not in itself an active error within the meaning of Art. 220 Para. 1 Letter b UA 1 ZK.

ddd) According to the documentation on the customs treatment in the ATLAS system in the context of clearance for import into the EU, the alleged South Korean origin of the goods was not checked for the import transactions that are still the subject of the dispute. This also applies in the few cases in which a general certificate of origin was not only presented during the subsequent external audit, but already during import clearance (AT/C/40/016702/09/2006 of 08.09.2006 and AT/C/40/ 023976/09/2006 of

09/13/2006). Because if an origin check takes place, this is noted in the ATLAS system. In the process AT/C/40/023976/09/2006, the document check carried out was expressly limited to the bill of lading. The mere listing of a certificate of origin in the "Submitted documents" mask does not mean that the origin specified in the customs declaration has also been checked – in the present case, for example, on the cable reels.
[…]
bbb) With regard to the import tax notice of October 10, 2014, the ***Senate is convinced that the respective EUSt, insofar as it has not already been levied at the time of import clearance, applies to all disputed import transactions due to tax evasion committed as an indirect perpetrator (s. 370 para. 1 No. 1 AO in conjunction with Section 25 Paragraph 1, 2nd alternative of the Criminal Code***) arose with the result that the ***period for subsequent collection pursuant to Article 221 Paragraph 4 ZK in conjunction with Section 169 Paragraph 2 Clause 2 AO was not three but ten years*** cheated.

aaaa) By stating the Korean origin of the wire ropes ordered by the plaintiff in the export declarations, company A gave the Korean export customs office and thus a tax authority incorrect information about tax-related facts. In particular, due to the criminal proceedings against Company A and its managing director and their conviction, there is no doubt that Company A not only knew about the Chinese origin of the goods delivered to the plaintiff, but was also aware that in the EU an anti-dumping duty was envisaged on steel wire ropes originating in China and the origin was therefore a relevant fact for tax purposes. According to the findings of the district court in the judgment of June 15, 2007, the wrong country of origin was stated in the export declarations and the goods were marked as Korean 'to avoid anti-dumping duties from buyers in Europe, where Chinese steel cables are subject to high anti-dumping duties'.

The incorrect export customs declarations in South Korea, but possibly also the false certificates of origin requested by A against their better knowledge and the inaccurate supplier declarations of A – as far as those of the plaintiff's representative in the import clearance, C GmbH & Co. KG, templates – resulted in the fact that after the goods had been imported into the customs area of the EU, the plaintiff's representative, who submitted the customs declarations for the release of the goods for free circulation, declared the goods with the incorrect origin South Korea ('KR') and in this way vis-à-vis the German import customs office was given incorrect information about tax-relevant facts.

bbbb) Both the plaintiff herself – according to her own statement – and her representative acted in good faith in this respect. They were therefore not themselves tax evaders and, in the absence of intent, were not involved in tax evasion in a criminal manner. However, they were the so-called intermediaries (or 'tools') of company A, which caused the declaration of an incorrect country of origin in the customs declarations for

the transfer of the goods for free circulation in the EU through the above-mentioned actions.

Contrary to the opinion of the plaintiff, company A had control of the crime. Because there was neither for the plaintiff – who was known to company A as a customer – nor for her representative from the documents or other indications that the goods had an origin other than South Korea. The imprint 'KR' was also found on the cable reels used, as was determined during origin tests. Company A therefore reached the registration of a wrong country of origin at the German import customs office through the wrong export declarations, possibly also through certificates of origin and supplier declarations. This false statement by the unsuspecting representative of the plaintiff exhausted the "foreign execution behaviour" because only this led to the avoidance of the levying of the anti-dumping duty as desired by company A. Company A was able to reveal the actual origin to the plaintiff or its representative at any time up to the arrival of a delivery in Europe, which would have been possible quickly and easily in the days of telephony and electronic information transmission.
[…]"[1143]

h) National procedural rules for "checks and inspections" by the assisting national authoritiy

102 The rules are mainly governed by the Customs Investigation Service Act – ZFdG and the Federal Tax Code (Abgabenordnung).

i) Cooperation (*Amtshilfe*) and mutual assistance agreements

103 Cooperation is the keyword of the future. The Commission and the Council are always trying to create new opportunities in this respect.
The Joint Investigation Teams, coordinated by Eurojust, have existed for a long time.

104 Investigators should always consider the possibility of contacting Eurojust when several countries are involved in a case.

105 Digitalisation has also been praised in this area, in order to facilitate access to data, investigation reports and the like. There was massive and harsh criticism that customs should not have access to this, which is indeed incomprehensible, since it must be technically possible to extend data protection in such a way that the customs investigation

[1143] Excerpt from the judgment: https://oj.is/2170442. Accessed 31 December 2024.

offices, which are more or less the customs police, also have access. There is a need for improvement here.[1144]

The most important provisions in this area are presented in full-length: **106**

Customs Investigation Service Act (ZFdG) **107**

Section 69 ZFdG[1145] **Assistance by other authorities**

(1) Officials of the main customs offices and of the tax investigation department of the state revenue administration who are entrusted with enforcement duties, as well as federal and state police enforcement officers may, in individual cases, perform official acts within the area of responsibility of the customs investigation service upon request or with the consent of the competent authority of the customs investigation service.

(2) If employees of the main customs offices or of the tax investigation department of the Land fiscal administration, who are entrusted with enforcement tasks, or police enforcement officers of the Federation and the Länder take action in accordance with paragraph 1, they shall have the same powers as the officers of the authorities of the Customs Investigation Service. Their measures shall be deemed to be measures of that authority of the Customs Investigation Service for which they are acting; to that extent they shall be subject to the instructions of that authority.

[1144] Monroy 2022 Netzpolitik. Gemeinsame Ermittlungsgruppen: Europäische Polizei- und Justizbehörden erhalten digitale Kooperationsplattform. online: https://netzpolitik.org/2022/gemeinsame-ermittlungsgruppen-europaeische-polizei-und-justizbehoerden-erhalten-digitale-kooperationsplattform/. Accessed 31 December 2024.

[1145] **§ 69 Unterstützung durch andere Behörden Zollfahndungsdienstgesetz - ZFdG**

(1) Bedienstete der Hauptzollämter und der Steuerfahndung der Landesfinanzverwaltung, die mit Vollzugsaufgaben betraut sind, sowie Polizeivollzugsbeamte des Bundes und der Länder können im Einzelfall auf Anforderung oder mit Zustimmung der zuständigen Behörde des Zollfahndungsdienstes Amtshandlungen im Zuständigkeitsbereich des Zollfahndungsdienstes vornehmen.

(2) Werden Bedienstete der Hauptzollämter oder der Steuerfahndung der Landesfinanzverwaltung, die mit Vollzugsaufgaben betraut sind, oder Polizeivollzugsbeamte des Bundes und der Länder nach Absatz 1 tätig, haben sie die gleichen Befugnisse wie die Beamten der Behörden des Zollfahndungsdienstes. Ihre Maßnahmen gelten als Maßnahmen derjenigen Behörde des Zollfahndungsdienstes, für die sie tätig sind; sie unterliegen insoweit der Weisung dieser Behörde.

§ 70 Unterstützung anderer Behörden Zollfahndungsdienstgesetz - ZFdG

(1) Vollzugsbeamte des Zollfahndungsdienstes dürfen im Zuständigkeitsbereich eines Landes tätig werden, soweit das jeweilige Landesrecht dies vorsieht.

(2) Vollzugsbeamte des Zollfahndungsdienstes dürfen im Zuständigkeitsbereich der Bundespolizei und des Bundeskriminalamtes tätig werden, soweit das Bundespolizeigesetz oder das Bundeskriminalamtgesetz dies vorsehen.

(3) Werden Vollzugsbeamte des Zollfahndungsdienstes in Erfüllung ihrer Aufgaben nach § 3 Absatz 6 Nummer 3 und § 5 Absatz 3 Nummer 1 auf Anforderung für eine weitere ermittlungsführende Dienststelle der Zollverwaltung tätig, richten sich die Befugnisse zur Eigensicherung sowie zur Durchführung von Sicherungs- und Schutzmaßnahmen nach diesem Gesetz.

Section 70 ZFdG Support of other authorities
(1) Law enforcement officers of the Customs Investigation Service may act within the area of responsibility of a Land, insofar as the respective Land law provides for this.
(2) Law enforcement officers of the customs investigation service may act within the area of responsibility of the Federal Police and the Federal Criminal Police Office, insofar as the Federal Police Act or the Federal Criminal Police Office Act provide for this.
(3) If law enforcement officers of the Customs Investigation Service, in the performance of their duties pursuant to Section 3 para. 6 No. 3 and Section 5 para. 3 No. 1, act upon request for another investigating agency of the Customs Administration, their powers to secure themselves and to carry out security and protective measures shall be governed by this Act.

⚖ **Supranational Legislation:**

- ECJ, 09/30/2021 – C-186/20

Summarizing our collection of applicable laws and the short analysis, we can say that under Art. 3, especially para 2 of OLAF Regulation, OLAF is empowered to carry out on-the-spot checks and inspections within Germany. These measures serve the protection of the Union's financial interests, as part of the broader integrated control and management system (see e.g. the old Art. 96 para 3 of Regulation (EU) No. 1306/2013 and Art. 24 para 1 of Implementing Regulation (EU) No. 809/2014). Even when not based on specific suspicion, e.g. an irregularity report (in an OLAF system), such checks may be conducted randomly, provided they remain effective, proportionate and dissuasive (Art. 2 para 1 of Regulation (EC, Euratom) No. 2988/95). German administrative, customs, and tax laws govern procedural implementation (see above for the laws) including ss. 22–26 VwVfG, ss. 44 LHO, ss. 209, 210, 278 AO, s. 37 para 4 MOG, s. 21 para 4 AWG, § 55 GewO, s. 74 AMG, §§ 20–21 WeinFöGewV, § 10 para 3 ZollVG, and ss. 14, 16, 44–46 ZFdG. Failure to grant access during such checks may result in a denial of EU subsidies.[1146] Economic operators subject to an OLAF on-the-spot check should follow practices known amongst defence arguments: 1. request a copy of the search warrant or on-the-spot checks document and review its legality and scope (including proportionality and specific description of premises and objectives); 2. ask for official IDs of the officers and document them; 3. immediately request legal counsel and seek to delay the inspection until their arrival; 4. cooperate by allowing access and providing requested documents within the legal limits, but avoid discussing the facts - even if this is no criminal procedure it may lead to one and this has an impact on nemo tenetur.[1147]

[1146] Cf. VG Lüneburg, 05.12.2023 – 3 A 47/21; BVerwG, 19.09.2013 – 3 C 25.12.
[1147] See for the admissibility of evidence from the administrative procedure in the criminal investigation due to § 161 CPC Schlothauer FS Fezer, 2008, 267 ff., Köhler, in Schmitt/Köhler 2025, 161, mn. 1e.

5. Article 4 Internal investigations

1. Investigations within the institutions, bodies, offices and agencies in the areas referred to in Article 1 shall be conducted ***in accordance with this Regulation and with the decisions adopted by the relevant institution, body, office or agency*** ('internal investigations').[…]
8. Without prejudice to Article 12c para. 1, where, before a decision has been taken whether or not to open an internal investigation, the Office handles information which suggests that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union, it may inform the institution, body, office or agency concerned. Upon request, the institution, body, office or agency concerned shall inform the Office of any action taken and of its findings on the basis of such information.
Where necessary, the Office shall also inform the ***competent authorities of the Member State concerned***. In this case, the procedural requirements laid down in the second and third subparagraphs of Article 9(4) shall apply. If the competent authorities decide to ***take any action on the basis of the information transmitted to them, in accordance with national law***, they shall, upon request, inform the Office thereof.

a) References to national law, para. 8

The phrase "take any action on the basis of the information transmitted to them, in accordance with national law" shall be analysed within a non-exhaustive list. Especially disciplinary proceedings against EU Civil Service members may result from internal investigations within the IBOAs and effect the position or legal standing of the person in the Member States.[1148] **1**

Additional payments: **2**

- National additional payments (*Steuernachzahlung*) according to Art. 101–103 Union Customs Codex and see Art. 88–90 of the Delegated Regulation[1149]
- Additonal tax (*Nacherhebung*)[1150]

[1148] See Mader 2024, pp. 202–216 and on p. 204 on the possibility of failures of staff members and see pp. 293, 294 and 297 on statistics.
[1149] Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.
[1150] FG Hamburg, Beschluss 08.10.2020 - 4 V 101/20 =openJur 2021, 3940 [Formally unlawful subsequent collection of anti-dumping duties & suspension of enforcement due to a lack of justification and failure to notify the tax bases & obligation to disclose an OLAF report]. Cf. as well Höink, in: Markus Adick, Carsten Höink, Gabriel Kurt (eds.), Umsatzsteuer und Strafrecht: Strafrechtliche Aspekte im Umsatzsteuer- und Zollrecht, 2nd chapter, Margin Number 99 et seq. See FG Düsseldorf, 02.10.2013 - 4 K 1568/12 Z [Subsequent levying of anti-dumping duties as part of the declaration of the import of steel cables from the People's Republic of China instead of South Korea].

3 Withdrawl of acts from beneficiaries

- ss. 48 (Withdrawal of an illegal administrative act), 49 (Revocation of a lawful administrative act),[1151] 50 (Reimbursement, Interest) Administrative Procedure Act (VwVfG)

4 Specials laws:

- Judicial Enforcement Act/*Justizbeitreibungsgesetz* (JBeitrG)
- Administrative Offencess Act/Ordnungswidrigkeitengesetz (OwiG)

5 Special regulations in customs matters:

- s. 13 (Expolitation of goods), s. 27 ZollVG

6 Enforcement of claims in tax/customs matters/administrative matters:

- ss. 222 (deferment), 227 (decree), 309, 314, 315 Federal Tax Code/AO
- ss. 22 Confiscation of objects, 23 Extended conditions of confiscation, 24 Principle of Proportionality, 25 Confiscation of Value Replacement, 26 Effect of Confiscation, 27 Independent order, 28 Compensation, 29 Special provision for organs and representatives, 29a, 30 (fine for legal entities) OwiG

b) Competent authorities

7 Which are these national authorities?[1152]

- Customs Criminal Investigation Office
- Tax offices (see e.g. Finanzamt für Steuerstrafsachen und Steuerfahndung Münster[1153])
- Public prosecutor's offices of the federal states
- Federal Public Prosecutor's Office
- Police departments of the federal states in conncetion with Public prosecutor's offices of the federal states

[1151] VG München, 12.04.2018 - M 12 K 17.215, VGH Bayern, 21.04.2020 - 6 ZB 18.2153 [relates to Commission Regulation (EC) No. 1975/2006 of December 7, 2006 with implementing provisions for Council Regulation (EC) No. 1698/2005 with regard to control procedures and compliance with other obligations in the case of measures to support rural development (OJ e.g. No. L 368 from 23.12.2006, p. 74) in conjunction with Art. 73 Regulation (EG) No. 796/2004 there is a period of 10 years for the revocation of the donation [Hopfengerüstanlage].

[1152] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Bundeskriminalamt, Staatsanwaltschaften der Länder, Bundesanwaltschaft, Polizeidienstellen der Länder, Ermittlungspersonen der Staatsanwaltschaften (§ 152 GVG in conncention with guidelines from the Länder).

[1153] Judgment of the Court (Fourth Chamber) of 2 September 2021, Tax Office for Criminal Tax Matters and Tax Investigation Münster against XK, ECLI:EU:C:2021:670 [Finanzamt continues tob e a judicial authority due to § 399 para. 1 AO].

6. Article 5 Opening of investigations

[…] 5. If the Director-General decides not to open an investigation, he or she may without delay send any relevant information, as appropriate, to the ***competent authorities of the Member State concerned*** for appropriate ***action to be taken in accordance with Union and national law*** or to the institution, body, office or agency concerned for appropriate action to be taken in accordance with the rules applicable to that institution, body, office or agency. The Office shall agree with that institution, body, office or agency, if appropriate, on suitable measures to protect the confidentiality of the source of that information and shall, if necessary, ask to be informed of the action taken.

a) Competent authorities

Sources and national sections 12: Overview for Germany – Art. 5 OLAF Regulation (Opening of investigations) **1**

CPC, GVG	ss. 152 GVG, 163 CPC Ermittlungspersonen der StA, StA, Polizeidienststellen
Administrative Offences Act/OwiG	ss. 35–45 OWiG and 53–64 OWiG (rules on investigations)
BKAG, GVG	see 4 para. 2 BKAG (request); s. 74c GVG, Federal Criminal Police Office, Department "Serious and Organized Crime" (SO)
Finances, Taxes - **AO**	- Federal Ministry of Finance [*Bundesministerium für Finanzen*] (S. 6 AO para. 2 no. 1) - highest *Land* authorities responsible for revenue administration [Für die Finanzverwaltung zuständigen obersten Landesbehörden] (s. 6 AO para. 2 no. 1) - Federal Central Tax Office [*Bundeszentralamt für Steuern* (als Bundesoberbehörde)] (s. 6 AO para. 2 no. 2) - Central Customs Authority (s. 6 AO para. 2 no. 2) - *Land* revenue authorities with powers acc. to s. 17 para. 2 sentence 3 no 3 Fiscal Administration Act or *Land* legislation [*Landesfinanzbehörden mit Zuständigkeit nach § 17 Abs. 2 S. 3 Nr. 3 Finanzverwaltungsgesetz*] (s. 6 AO para. 2 no. 3) - Main customs offices [*Hauptzollämter*] (s. 6 AO para. 2 no. 5)

	- Customs investigation offices [*Zollfahndungsämter*] (s. 6 AO para. 2 no. 5) - Local tax offices [*Finanzämter*] (s. 6 AO para. 2 no. 5) - Child benefit disbursement offices [*Familienkassen*] (s. 6 AO para. 2 no. 6) - Federal Financial Supervisory Authority [*Bundesanstalt für Finanzdienstleistungsaufsicht BaFin*]
Customs - **Zollverwaltungsgesetz (ZollVG)** - **Zollverordnung (ZollV)** - **Zollfahndungsdienstgesetz (ZFdG)**	- Zollkriminalamt - Zollfahndungsämter - Hauptzollämter in den Ländern[1154] - Customs criminal investigation office [*Zollkriminalamt*] - Customs investigation office [*Zollfahndungsämter*] · Zollfahndungsamt Berlin-Brandenburg · Zollfahndungsamt Dresden · Zollfahndungsamt Essen · Zollfahndungsamt Frankfurt am Main · Zollfahndungsamt Hamburg · Zollfahndungsamt Hannover · Zollfahndungsamt München · Zollfahndungsamt Stuttgart - Main customs offices of the *Länder* [*Hauptzollämter in den Ländern*][1155] - Centre for Information Processing and Information Technology [*Zentrum für Informationsverarbeitung und Informationstechnik*] - Customs Risk Analysis Centre [*Zentralstelle Risikoanalyse Zoll*]
Money Laundering/*Gesetz über das Aufspüren von Gewinnen aus schweren*	s. 27 et seq. GwG - Financial Intelligence Unit (FIU) – Zentralstelle für Finanztransaktionsuntersuchungen

[1154] See a list with all competent authorities in custom (fraud) matters. online: https://www.zoll.de/DE/Der-Zoll/Struktur-des-Zolls/struktur-des-zolls_node.html. Accessed 31 December 2024.
[1155] See a list with all competent authorities in custom (fraud) matters. online: https://www.zoll.de/DE/Der-Zoll/Struktur-des-Zolls/struktur-des-zolls_node.html. Accessed 31 December 2024.

Straftaten (Geldwäschegesetz, GwG)	
General Administrative law/VwVfG	Competencies according to European Social Funds[1156] Landes- und Bundesbehörden e.g.[1157] - Federal Ministry for Family Affairs, Senior Citizens, Women and Youth [*Bundesministerium für Familie, Senioren, Frauen und Jugend, Referat* Z15 – Europäischer Sozialfonds - Federal Ministry of Eduation and Research [*Bundesministerium für Bildung und Forschung*], Referat 313 – Qualifizierung des Personals in der beruflichen Bildung; ESF - Federal Ministry of Labour and Social Affairs, EF 1: European Social Fund Managing Authority: administrative authority [*Bundesministerium für Arbeit und Soziales*, Referat EF 1 – Europäischer Sozialfonds: Verwaltungsbehörde] On the level of the Länder, cf. eg: - Senate Department for Economics, Energy and Public Enterprises Berlin Unit IV C European Structural Funds [(Berliner) Senatsverwaltung für Wirtschaft, Energie und Betriebe, Referat IV C – *Europäische Strukturfondsförderung*] - Saxon State Ministry for Energy, Climate Protection, Environment and Agriculture, Dep. 1 – Administration and Law, Dep. 2 – Policy Issues, EU, Promotion [*Sächsische Staatsministerium für Energie, Klimaschutz, Umwelt und Landwirtschaft*, Abteilung 1 – Verwaltung und Recht, Abteilung 2 – Grundsatzfragen, EU, Förderung] Competences according to Agricultural funds distribution in Germany (examples):

[1156] See e.g. https://www.bva.bund.de/DE/Das-BVA/Aufgaben/Z/Zuwendungen_international/Meldung_Betrugsverdacht/MeldungBetrugsverdacht_node.html. Accessed 31 December 2024.
[1157] For a full list, see https://www.esf.de/portal/DE/Ueber-den-ESF/ESF-Kontaktstellen/inhalt.html. Accessed 31 December 2024.

	- Bundesministerium für Landwirtschaft und Ernährung/Abteilung 6/Unterabteilungen 61/611/612/613/615 (Agrarfinazierung)/617 (Direktzahlungen) - Bundesverwaltungsamt (European Social Fund)[1158] - Landesministerien mit zentralen Dienststellen Competences according to funds, grants and loans under the Resilience facility mechanism (covid-19 recovery) until 2027: E.g. servies of economic crime (Resilience, Federal Ministry of Finance [*Dienststellen der Wirtschaftskriminalität* (Resilienzpolitik until 2027)/Bundesministerium für Finanzen]

b) National rules

2 - "appropriate action to be taken in accordance with Union and national law"

Sources and national sections 13: Art. 5 OLAF Regulation – Overview for Germany

Administrative Procedures Act [Verwaltungsverfahrensgesetz VwVfG]	Sections 9 et seq. (procedural principles, especially: 24 (investigation principle), 26 (Evidence)), 35 et seq. (administrative act [*Verwaltungsakt*]) VwVfG
Administrative Procedures Act at the Länder level e.g. Hessian Administrative Procedures Act [Hessisches Verwaltungsverfahrensgesetz HVwVfG]	Sections 9 et seq. (procedural principles), 24 (investigation principle), 26 (evidence), 35 et seq. (administrative act [*Verwaltungsakt*]) HVwVfG
Code of Administrative Court Procedure [Verwaltungsgerichtsordnung VwGO]	Sections 40 et seq., 54 et seq. VwGO

[1158] *Bundesverwaltungsamt*, Meldung von Betrugsverdachtsfällen i.V.m. dem Europäischen Sozialfonds (ESF): "Bei Vorliegen eines Betrugsverdachts ist jede an der Umsetzung der EU-Förderung beteiligte Stelle verpflichtet, die erforderlichen Schritte zur Sachverhaltsaufklärung vorzunehmen und umgehend die ESF-Verwaltungsbehörde zu informieren. Sofern sich der Sachverhalt konkretisiert, erfolgt seitens der Verwaltung eine Anzeige bei den zuständigen nationalen Ermittlungsstellen und unter Umständen beim Europäischen Amt für Betrugsbekämpfung (OLAF)"

Fiscal Code [Abgabenordnung AO]	Sections 85 et seq. (Taxation principle, evidence – general: especially section 88 (investigation principle) or section 92 (evidence), 93 et seq. (evidence through information and expert opinion), 97 et seq. (documentary evidence and evidence by inspection), 193 et seq. (external audit), 208f. (tax/customs investigations), 209 et seq. (fiscal supervision in special cases) AO
Customs Administration Act [Zollverwaltungsgesetz ZollVG]	Sections 1 (tasks of the customs administration), 10 et seq. (powers of the customs administration) ZollVG
Customs Investigations Service Act [Zollfahndungsdienstgesetz ZFdG]	Sections 3 et seq. (tasks of the Customs Criminal Investigation Office as central office), 8 et seq. (data processing by the central office), [*Section 2 Powers of the authorities of the customs investigation service in the prevention and prosecution of offences and administrative offences and in the context of in the context of security and protective measures, Subsection 1 Data processing by the authorities of the Customs Investigation Service*] 26 et seq., *[Subsection 2 General measures for the prevention of danger and to provide for the future prosecution of criminal offences*] 39 et seq., [*Subsection 3 Special security measures*] 47 et seq., [*Section 3 Special powers of the Customs Criminal Investigation Office Subsection 1 General measures for the prevention of danger*] 71 (duty to provide information in foreign trade), [*Subsection 2 special security measures*] 72 et seq. ZFdG

Banking Act [Kreditwesengesetz KWG]	s. 6, [*Information and inspections*] 44 (Information from and inspections of institutions…), 44a (cross-border information and audits), 44b (Information from and inspections of the holders of major participating interests), 44c (Prosecution of unauthorised banking business and financial services) KWG

Source: The authors.

[Article 6 Access to information in databases prior to the opening of an investigation – omitted]

7. Article 7 Investigations procedure

[…] 3. The ***competent authorities of Member States*** shall give the necessary assistance to enable the staff of the Office to fulfil their tasks in accordance with this Regulation effectively and without undue delay. When providing such assistance, the competent authorities of Member States shall ***act in accordance with any national procedural rules applicable to them***.

3a. At the request of the Office, which shall be explained in writing, in relation to matters under investigation, the relevant ***competent authorities of the Member States*** shall***, under the same conditions as those that apply to the national competent authorities***, provide the Office with the following:

(a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) 2015/849 of the European Parliament and of the Council (4);

(b) where strictly necessary for the purposes of the investigation, the record of transactions.

The request of the Office shall include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Such request shall refer only to information referred to in points (a) and (b) of the first subparagraph.

Member States shall notify to the Commission the relevant competent authorities for the purposes of points (a) and (b) of the first subparagraph.

[…]

6. Where investigations show that it might be appropriate to take precautionary administrative measures to protect the financial interests of the Union, the Office shall without delay inform the institution, body, office or agency concerned of the investigation in progress. The information supplied shall include the following:

(a) the identity of the official, other servant, member of an institution or body, head of office or agency, or staff member concerned and a summary of the facts in question;
(b) any information that could assist the institution, body, office or agency concerned in deciding on the appropriate precautionary administrative measures to be taken in order to protect the financial interests of the Union;
(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority, ***in accordance with the national rules applicable to investigations***.
The institution, body, office or agency concerned may at any time consult the Office with a view to taking, in close cooperation with the Office, any appropriate precautionary measures, including measures for the safeguarding of evidence. The institution, body, office or agency concerned shall inform the Office without delay about any precautionary measures taken.
7. Where necessary, it shall be for the competent authorities of the Member States, at the Office's request, to take the ***appropriate precautionary measures under their national law***, in particular measures for the safeguarding of evidence.

a) References to national law

Sources and national sections 14: Overview for Art 7 OLAF Regulation (investigation procedures) **1**

Para 3 [Which are these national procedural rules applicable to them?]	AO: The national procedural rules may differ from the task of the compeent authority, see e.g. s. 393 AO. In tax matters the *Steuerfahndung* (SteuFA), s. 208 AO must be distinguished from the *Straf- und Bußgeldsachenstelle* (BuStrA). ss. 85 et seq. (Taxation principle, evidence – general: especially section 88 (investigation principle) or section 92 (evidence)), 93 et seq. (evidence through information and expert opinion), 97 et seq. (documentary evidence and evidence by inspection), 193 et seq. (external audit), 209 et seq. (fiscal supervision in special cases) ZFdG: ss. 3 para. 12, 52, 8 et seq. (data processing by the central office),

	[*Section 2 Powers of the authorities of the customs investigation service in the prevention and prosecution of offences and administrative offences and in the context of in the context of security and protective measures, Subsection 1 Data processing by the authorities of the Customs Investigation Service*] 26 et seq., *[Subsection 2 General measures for the prevention of danger and to provide for the future prosecution of criminal offences*] 39 et seq., [*Subsection 3 Special security measures*] 47 et seq., [*Section 3 Special powers of the Customs Criminal Investigation Office Subsection 1 General measures for the prevention of danger*] 71 (duty to provide information in foreign trade), [*Subsection 2 special security measures*] 72 et seq. ZFdG ZollVG: ss. 1 (tasks of the customs administration), 10 et seq. (powers of the customs administration), 12c (*Bundespolizei*), ZISAG:[1159] s. 3, 4, 6 (this law is probably useful for proceedings, which are mainly related to Eurojust and Europol) VwVfG: Sections 9 et seq. (procedural principles, especially: 24 (investigation principle), 26 (Evidence)), 35 et seq. (administrative act [*Verwaltungsakt*]) VwVfG [similar provisions e.g. in the Hessian Administrative Procedures Act]

[1159] Gesetz zur Ausführung des Beschlusses 2009/917/JI des Rates vom 30. November 2009 über den Einsatz der Informationstechnologie im Zollbereich sowie zur Verordnung (EG) Nr. 515/97 des Rates vom 13. März 1997 über die gegenseitige Amtshilfe zwischen Verwaltungsbehörden der Mitgliedstaaten und die Zusammenarbeit dieser Behörden mit der Kommission im Hinblick auf die ordnungsgemäße Anwendung der Zoll- und der Agrarregelung (ZIS-Ausführungsgesetz)

Para 3a (a) (b) [What are these conditions that apply to national competent authorities? And what are these national authorities by the way?]	s. 11 ZollVG[1160] (*Dienststellen der Zollverwaltung*), ss. 88 et seq. AO, 117a (applies in cases of requests by authorities from other EU Member States)
Para 6 (c) [What are these national rules applicable to investigations?]	s. 52 ZFdG (points for rights of the customs police (*Behörden des Zollfahndungsdienstes*) at the applicability of the provisions of the CPC, i.e. the provisions that apply if the normal police or the civil servants, that work for the public prosecutor (*Ermittlungspersonen der StA*) investigate. s. 404 AO addresses the *Zollfahndungsdienst* and the *Dienstellen der Landesfinazbehörden* (*Steuerfahndung*) and grants them the same rights. Their civil servants are as well Ermittlungspersonen der StA. In criminal tax investigations the same rule applies to the Finanzbehörden ("tax police"), s. 402 AO.
Para 7 para. 7 [What are those appropriate precautionary measures under national law? And what domestic rules exist in this regard?]	AO: ss. 209 et seq.: 210 (search), 211 (obligations of the persons affected → providing of records, accounts, business papers, other documents, and with information), 213 (supervisory measures), 215 (seizures) ZFdG: ss. [*Section 2 Powers of the authorities of the customs investigation service in the prevention and prosecution of offences and administrative offences and in the context of in the context of security and protective measures, Subsection 1 Data processing*

[1160] **§ 11 Datenübermittlung ins Ausland sowie an über- oder zwischenstaatliche Stellen Zollverwaltungsgesetz**
(1) Die Dienststellen der Zollverwaltung, die Aufgaben nach § 1 wahrnehmen, können an Zoll-, Polizei-, Justiz- und Verwaltungsbehörden sowie an sonstige für die Verhütung oder Verfolgung von Straftaten zuständige öffentliche Stellen anderer Staaten sowie zwischen- und überstaatliche Stellen, die mit Aufgaben der Verhütung oder Verfolgung von Straftaten befasst sind, personenbezogene Daten übermitteln, soweit dies erforderlich ist
1. zur Erfüllung einer ihnen nach diesem Gesetz obliegenden Aufgabe,
2. zur Verfolgung von Straftaten und zur Strafvollstreckung nach Maßgabe der Vorschriften über die internationale Rechtshilfe in strafrechtlichen Angelegenheiten oder der Vorschriften über die Zusammenarbeit mit dem Internationalen Strafgerichtshof oder
3. zur Abwehr einer im Einzelfall bestehenden erheblichen Gefahr für die öffentliche Sicherheit.
Gleiches gilt, wenn Anhaltspunkte dafür vorliegen, dass Straftaten von erheblicher Bedeutung begangen werden sollen.
[...]

	by the authorities of the Customs Investigation Service] 26 et seq., *[Subsection 2 General measures for the prevention of danger and to provide for the future prosecution of criminal offences*] **39 et seq.: ss.** 40 (Securing [Sicherstellung]), 41 (safekeeping [Verwahrung]), 44 (search of persons), 45 (search of property), 46 (entering and searching private homes), 47 (special means of data collection such as observation) [*Subsection 5 securing and protection measures*] 53 et seq. [*Subsection 2 special security measures*] 72 et seq.

Source: The authors.

b) References to national authorities, para. 3, 3a

2 Which are these national authorities?[1161]

In short:

- Customs Criminal Investigation Office
- Customs investigation offices
- Tax offices
- Federal Public Prosecutor's Office
- Investigators of the public prosecutor's offices (s. 152 GVG in conncention with guidelines from the Länder)

3 *Sources and national sections 15: Overview for Germany – Art. 7 OLAF Regulation: National authorities en detail*

Finances, Taxes - **AO** - **KWG**	- Federal Ministry of Finance [*Bundesministerium für Finanzen*] (S. 6 AO para. 2 no. 1) - highest *Land* authorities responsible for revenue administration [Für die Finanzverwaltung zuständigen obersten Landesbehörden] (s. 6 AO para. 2 no. 1) - Federal Central Tax Office [*Bundeszentralamt für Steuern* (*als Bundesoberbehörde*)] (s. 6 AO para. 2 no. 2) - Central Customs Authority (s. 6 AO para. 2 no. 2)

[1161] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Ermittlungspersonen der Staatsanwaltschaften (s. 152 GVG in conncention with guidelines from the Länder).

	- *Land* revenue authorities with powers acc. to s. 17 para. 2 sentence 3 no 3 Fiscal Administration Act or *Land* legislation [*Landesfinanzbehörden mit Zuständigkeit* nach § 17 Abs. 2 S. 3 Nr. 3 *Finanzverwaltungsgesetz*] (s. 6 AO para. 2 no. 3) - Main customs offices [*Hauptzollämter*] (s. 6 AO para. 2 no. 5) - Customs investigation offices [*Zollfahndungsämter*] (s. 6 AO para. 2 no. 5) - Local tax offices [*Finanzämter*] (s. 6 AO para. 2 no. 5) - Child benefit disbursement offices [*Familienkassen*] (s. 6 AO para. 2 no. 6) - Tax assistants [*Steuerhilfspersonen*], s. 217 AO - Federal Financial Supervisory Authority [*Bundesanstalt für Finanzdienstleistungsaufsicht* BaFin]
Customs - **Customs Administration Act (ZollVG)** - **Customs Regulation (ZollV)** - **Customs Investigations Service Act (ZFdG)**	- Customs administration [Zollverwaltung], s. 1 ZollVG - Customs criminal investigation office [*Zollkriminalamt*[- Customs investigation office [*Zollfahndungsämter*] - Main customs offices of the *Länder* [*Hauptzollämter in den Ländern*][1162]

Source: The authors.

[1162] See a list with all competent authorities in custom (fraud) matters.online: https://www.zoll.de/DE/Der-Zoll/Struktur-des-Zolls/struktur-des-zolls_node.html. Accessed 31 December 2024.

8. Article 8 Duty to inform the Office

[…] 2. The institutions, bodies, offices and agencies and, unless ***prevented by national law***, the competent authorities of the Member States shall, at the request of the Office or on their own initiative, transmit without delay to the Office any document or information they hold which relates to an ongoing investigation by the Office. […]
3. The institutions, bodies, offices and agencies and, unless ***prevented by national law***, the competent authorities of Member States shall transmit without delay to the Office, at the request of the Office or on their own initiative, any other information, documents or data considered pertinent which they hold, relating to the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

Sources and national sections 16: Overview for Art. 8 OLAF Regulation (Duty to inform the Office)

Customs Investigations Service Act (ZFdG)	s. 22 (Data transfer to intergovernmental and supranational bodies of the European Union and to the Member States of the European Union), s. 24 (Prohibitions on disclosure and grounds for refusal),[1163] s. 82 (protection of professional secrets entitled to refuse to testify)
Fiscal Code (AO)	ss. 29b et seq (especially s. 30 – tax secrecy), 93, 97, 385 et seq.
Administrative Procedure Act (VwVfG)	ss. 5 (requirements and limits of administrative assistance), 8d, 30 (secrecy)
Banking Act (KWG)	s. 9
Criminal Procedure Code (StPO)	ss. 152 para. 2 + provisions on statute of limitation, prosecution before the trial court, opposing legal validity?

[1163] § 24 Übermittlungsverbote und Verweigerungsgründe ZFdG, s. 68 ZFdG Übermittlungsverbote und Verweigerungsgründe.

II. References to national law in the OLAF Regulation (Art. 9–17 OLAF Regulation)

1. Article 9 Procedural guarantees

[…] 3. As soon as an investigation reveals that an official, other servant, member of an institution or body, head of office or agency, or staff member may be a person concerned, that official, other servant, member of an institution or body, head of office or agency, or staff member shall be informed to that effect, provided that this does not prejudice the conduct of the investigation or of any investigative proceedings ***falling within the remit of a national judicial authority.***
4. […] In duly justified cases where necessary to preserve the confidentiality of the investigation or an ongoing or future criminal investigation by the EPPO or a national judicial authority, the Director-General may, where appropriate after consulting the EPPO or ***the national judicial authority concerned***, decide to defer the fulfilment of the obligation to invite the person concerned to comment. […]

a) Art. 9 para. 3 – remit of a national judicial authority

A short example can exemplify how important the respect to procedural guarantees is: **1**

Example: In an EU fraud investigation, OLAF officials seized electronic devices from the office of a company executive suspected of misusing EU funds. Contrary to standard forensic procedure, which requires placing **devices** in **sealed containers** and delaying access until a legally supervised search they immediately accessed the contents of a laptop without prior indexation or filtering. During this premature access, they opened emails clearly marked as **confidential correspondence** between the executive and her legal counsel. These communications were reviewed and referenced in an internal OLAF report. By bypassing proper sealing and search protocols, OLAF infringed upon the legal professional privilege (LLP), potentially compromising the suspect's right to defence and rendering parts of the investigation legally questionable.[1164]

[1164] See OLAF Supervisory Commitee C/2024/5673, 2024, p. 13: "[The] Controller then recalled that the protection of legal professional privilege is a general legal principle and a fundamental right guaranteed by Articles 7, 47 and 48 of the Charter of Fundamental Rights. Legal professional privilege serves to protect communications between a client and a lawyer and is an essential aspect of the client's right of defence (14). As previously confirmed by a ruling of the European Court of Human Rights, Article 8(1) of the European Convention on Human Rights protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients (15), the protection of which covers not only the activity of defence, but also legal advice. Article 7 of the Charter of Fundamental Rights mguarantees the secrecy of that legal consultation, as regards both its content and its existence. Any person who consults a mlawyer can reasonably expect that their communication is private and confidential." Tip: For further information nas an SNE or investigatior follow closely the Guidelines and hereby ensure that the data or evidence gathered is considered lawfully gathered in the ex-post control.

2 OLAF's administrative investigations may infringe procedural guarantees.[1165] In general this may be a judicial authority or it may be any public prosecutor's offices of the federal states (but see → Art. 27 EPPO Regulation) or any investigating judge (*Ermittlungsrichter*). The administrative authorities (*Verwaltungsbehörden*), which are mentioned in the Administrative Offences Act (OwiG) may be consulted as well but they are no judicial authorities.

3 Remit:

- ss. 1 (Misuse of European Union financial services distributed via public funds), 2 (Unlawful reduction of revenues of the European Union), 3 (Bribery and bribery related to the financial interests of the European Union) *EU-Finanzschutzstärkungsgesetz* – EUFinSchStG
  Judicial authority: Public prosecutor's offices of the federal states (but see Art. 27 EPPO Regulation)
- ss. 108e, 129, 260 (eg tobacco products, see OLAF investigations Art. 3 below), 261 (AML/customs offences), 263 Betrug (fraud), 263a *Computerbeturg* (computer fraud), 264 *Subventionsbetrug* (subsidy fraud) in conncetion with ss. 2, 6 *Subventionsgesetz*, 266 Untreue (embezzlement), 267 *Urkundenfälschung* (Forgery of documents), 271, 274 (inextricably linked offences might as well be: 298, 299, 331, 332, 333, 334), corruption offences: 335, 335a., 353, 353a, 355 CC
  Judicial authority: Public prosecutor's offices of the federal states (but see → Art. 27 EPPO Regulation)
- ss. 369 tax crimes indicating that customs offences (*Zollstraften*) are tax crimes as well, 370 tax evasion in conncetion with s. 3 para. 3 AO (*Steuerhinzerziehung*), 370a (repealed), 371 Self-disclosure for tax evasion, 372 breach of a ban, 373 Commercial, violent gang smuggling, 374 receiving of untaxed goods (*Steuerhehlerei*) Federal Tax Code/Abgabenordnung in conncetion with the Union Customs Codex

Judicial authority: Public prosecutor's offices of the federal states (but see → Art. 27 EPPO Regulation above).

[1165] See Mader 2024, pp. 204 et seq. on defence rights in administrative investigations; see OLAF Supervisroy Committee 2024, ACTIVITY REPORT OF THE SUPERVISORY COMMITTEE OF OLAF – 2022 (C/2024 /5673) analysed by Julia Laffranque, see p. 5 on comnplaints submitted.

b) Art. 9 para. 4 – national judicial authorities

The clause Art. 9 para 4[1166] describes an exception to the right to be heard. It limits when a person under investigation must be informed or invited to comment during an administrative (usually OLAF or Commission) procedure.[1167] Normally, before a finding or administrative report is finalised for example, by OLAF the person concerned must be given the **opportunity to comment** this is the procedural **right to be heard**, based as well on Article 41 para 2 of the EU Charter of Fundamental Rights. Exceptionally, e.g. if there is reason that informing that person could compromise an ongoing EPPO criminal investigation, an ongoing national criminal investigation, or the confidentiality or integrity of OLAF's own inquiries, then the Director-General of OLAF may "defer" (see the hearing third sub-paragraph) that step. It is true as known from national (drug e.g. ANOM and EncroChat cases and organized crime) cases, that if OLAF informed a suspect too early, it could alert them somehow or reveal sensitive evidence that the EPPO or national prosecutors are relying on. From temporal viewpoint, it is important for the lead investigator at the OLAF Unit, to make sure that when he/she assumes that once confidentiality is no longer at risk, the person must still be given a chance to be heard. **4**

➢ **Which are these national authorities?**[1168] **5**

- Customs Criminal Investigation Office
- Administrative authorities according to the Administrative Offences Act (OWiG)
- Investigating judges at a local court, a country court or at the Federal Criminal Court
- Financial Courts (*Finanzgerichte*)
- Tax offices (see e.g. Finanzamt für Steuerstrafsachen und Steuerfahndung Münster[1169])
- Public prosecutor's offices of the federal states
- Federal Public Prosecutor's Office
- Police departments of the federal states in conncetion with Public prosecutor's offices of the federal states

[1166] Actions for annulment were rightly unsuccessful ECJ, Case T-124/21, *Thierry Mariani and Others v European Parliament*, mn. 7, 13, 36.

[1167] GC, Case T-81/21, *Sistem ecologica v EU Commission,* ECLI:EU:T:2022:641, Mn. 94–123. The applicant claimed OLAF breached its procedural rights, including Article 9 para 4 of Regulation 883/2013 (right to be heard), and sought annulment of the OLAF report and damages. The applicant was not entitled to be heard before the June 2020 communication, because that was an operational step to alert customs authorities. GC said as well that OLAF reports are non-binding and cannot be directly annulled. Thus during OLAF's investigations there are no "full criminal-style" defence rights.

[1168] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Bundeskriminalamt, Staatsanwaltschaften der Länder, Bundesanwaltschaft, Polizeidienstellen der Länder, Ermittlungspersonen der Staatsanwaltschaften (§ 152 GVG in conncention with guidelines from the Länder) [not exhaustive].

[1169] Judgment of the Court (Fourth Chamber) of 2 September 2021, Tax Office for Criminal Tax Matters and Tax Investigation Münster against XK, ECLI:EU:C:2021:670 [Finanzamt continues to be a judicial authority due to § 399 para. 1 AO].

2. Article 10 Confidentiality and data protection

[…] 3. The institutions, bodies, offices or agencies concerned shall ensure that the confidentiality of the investigations conducted by the Office is respected, together with the legitimate rights of the persons concerned, and, where *judicial proceedings have been initiated*, that ***all national rules applicable to such proceedings*** have been adhered to. […]

a) National rules applicable to judicial proceedings in the MS, Art. 10 para. 3 OLAF Regulation

1 Even if OLAF has gathered information or evidence, it cannot be used or relied upon in a German court unless it was obtained and handled in a way compatible with German procedural safeguards (e.g. judicial approval for searches, proper suspect notification, and defence rights).

2 - **General administrative law** ("judicial proceedings have been initiated"): German Basic Law (GG), Criminal Procedure Code (StPO), Code of Administrative Court Procedure (VwGO), ss. 67–80a Administrative Offences Act (OWiG)

3 - **Customs matters** (special rules from the investigation phase with relevance to judicial proceedings)**:**
  - ss. 26, 27 ZFdG
  - s. 31 Daten zu Verurteilten, Beschuldigten, Tatverdächtigen und sonstigen Anlasspersonen ZFdG
  - s. 32 ZFdG
  - ss. 33–37 ZFdG

b) Specifications

4 By reading the different sections mentioned it becomes clear that judicial proceedings in Art. 10 must relate to administrative judicial proceedings as OLAF is uncapable of conducting investigations into criminal conduct (see Art. 12e OLAF RG). But if the OLAF investigation overlaps with or leads to criminal proceedings in Germany, national authorities (e.g. Staatsanwaltschaften, Gerichte) must ensure that all German procedural rules notably those in the Strafprozessordnung are respected

3. Article 11 Investigation report and action to be taken following investigations

[…] 2. In drawing up the reports and recommendations referred to in paragraph 1, account shall be taken of the relevant provisions of Union law and, in so far as it is applicable, ***of the national law of the Member State concerned***.
Reports drawn up on the basis of the first subparagraph, together with all evidence in support and annexed thereto, shall constitute admissible evidence:
(a) in judicial proceedings of a non-criminal nature before national courts and in administrative proceedings in the Member States;
(b) in ***criminal proceedings of the Member State*** in which their use proves necessary in the ***same way and under the same conditions*** as administrative reports drawn up by ***national administrative inspectors*** and shall be subject to the ***same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors*** and shall have the same evidentiary value as such reports;
(c) in judicial proceedings before the CJEU and in administrative proceedings in the institutions, bodies, offices and agencies.
Member States shall notify to the Office ***any rules of national law relevant*** for the purposes of point (b) of the second subparagraph.
With regard to point (b) of the second subparagraph, Member States shall, upon request of the Office, send to the Office the ***final decision of the national courts*** once the ***relevant judicial proceedings*** have been finally ***determined*** and the final court decision has become ***public***.
The power of the CJEU and national courts and competent bodies ***in administrative and criminal proceedings to freely assess the evidential value*** of the reports drawn up by the Office shall not be affected by this Regulation. […]
3. Reports and recommendations drawn up following an external investigation and any relevant related documents shall be sent to the ***competent authorities of the Member States*** concerned in accordance with the rules relating to external investigations and, if necessary, to the institution, body, office or agency concerned. The competent authorities of the Member State concerned and, if applicable, the institution, body, office or agency shall take such action as the results of the external investigation warrant and shall report thereon to the Office within a time limit laid down in the recommendations accompanying the report and, in addition, at the request of the Office. ***Member States may notify to the Office the relevant national authorities competent to deal with such reports, recommendations and documents***.

The OLAF Report is an important, if not the most important document that OLAF creates. It can be used as evidence in a criminal trial dealing with offences to the detriment of the financial interests of the Union (see above, Part A on the EPPO in Germany). **1**

Some regard this as an instrumentalization of the national criminal prosecution services by OLAF, which might result in liability of OLAF.[1170] The problem with the Reports is that they are *de jure* not obligatory evidence and thus *de facto* soft law evidence. The value of the Report in a trial thus depends on the view on evidence in general. In the German criminal trial the criminal judge (Strafrichter) must determine the value of an OLAF Report from case to case. Art. 11 OLAF Regulation refers frequently, if not too much to national law and thus creates a certain legal uncertainty. The following table tries to solve some of this uncertainity:

a) References to national law

2 *Sources and national sections 17: Overview for Germany – Art. 11 OLAF Regulation*

Para 2	ss. 12a para. 5 ZollVG (in money laundering cases)
Para 2 (a)	Verwaltungsgerichtsordnung (VwGO), Ververwaltungsverfahrensgesetz des Bundes (BVwVfG) and Verwaltungsverfahrensgesetze der Länder (LVwVfG) See National legislation[1171]
Para 2 (b)	(StPO)/Criminal Procedure Code – especially the sections on the main proceedings (Hauptverfahren) - *Numerus clausu*s of evidence in German criminal proceedings: · Witnesses, experts, documents, inspection and testimony of the accused. Reports must therefore fall under the category of "documents". But they may as well be seen as "*Sachverständingenbeweis*" (expert reports). Abgabenordnung/Federal tax Code

[1170] Heil 2022, pp. 90 et seq., 94; Engel 2015, pp. 109 et seq.
[1171] VG Hannover, 06.06.2013 - 6 B 4440/13 [Leuphana University =no right to access the investigation report of the EU Anti-Fraud Office].

	- Numerus cluasus of evidence in German tax procedures, ss. 92 et seq. AO.
Para 2 (c) [What are these final decisions under national law and what rules apply for them? What are relevant judicial proceedings? What means determination from a domestic viewpoint? What are the requirements for such publication?] **[What are these national rules of assessment?]**	VwGO: Beschluss (decision/verdict), Urteil (Judgment)

b) National authority, para. 3

Which are these competent authorities of the Member States? **3**

- Customs Criminal Investigation Office
- Administrative authorities according to the Administrative Offences Act (OWiG)
- Tax offices (see e.g. Finanzamt für Steuerstrafsachen und Steuerfahndung Münster[1172])
- Public prosecutor's offices of the federal states (in relation with Art. 12 et seq. OLAF Regulation)
- Police departments of the federal states in conncetion with Public prosecutor's offices of the federal states(in relation with Art. 12 et seq. OLAF Regulation)

* Our data request for Art. 11 para. 3 (notifications) was not answered by OLAF in March 2022. It remains questionable if these notifications even exist.

[1172] Judgment of the Court (Fourth Chamber) of 2 September 2021, Tax Office for Criminal Tax Matters and Tax Investigation Münster against XK, ECLI:EU:C:2021:670 [Finanzamt continues tob e a judicial authority due to § 399 para. 1 AO].

4. Article 12 Exchange of information

1. Without prejudice to Articles 10 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96, the Office may transmit to the ***competent authorities of the Member States concerned*** information obtained in the course of external investigations in due time to enable them to ***take appropriate action in accordance with their national law.*** It may also transmit such information to the institution, body, office or agency concerned.
2. Without prejudice to Articles 10 and 11, the Director-General shall transmit to the ***judicial authorities of the Member State concerned*** information obtained by the Office, in the course of internal investigations, concerning facts which fall within the ***jurisdiction of a national judicial authority***.
In accordance with Article 4 and without prejudice to Article 10, the Director-General shall also transmit to the institution, body, office or agency concerned the information referred to in the first subparagraph of this paragraph, including the identity of the person concerned, a summary of the facts established, their preliminary classification in law and the estimated impact on the financial interests of the Union.
Article 9(4) shall apply.
3. The ***competent authorities of the Member State concerned*** shall, unless ***prevented by national law***, inform the Office without delay, and in any event within 12 months of receipt of the information transmitted to them in accordance with this Article, of the action taken on the basis of that information.
*Old version: 3. The **competent authorities of the Member State** concerned shall, unless prevented by **national law**, inform the Office within one month of the action taken on the basis of the information transmitted to them under this Article."*
4. The Office may provide evidence in proceedings before national courts and tribunals in conformity with ***national law*** and the Staff Regulations.
5. The Office may provide relevant information to the Eurofisc network established by Regulation (EU) No 904/2010. Eurofisc working field coordinators may transmit relevant information from the Eurofisc network to the Office under the conditions laid down in Regulation (EU) No 904/2010.

a) Art. 12 para. 1 OLAF Regulation (competent authorities & appropriate action in accordance with their national law)

1 Competent authorities

- Police authorities (Regional Police, Federal Police, Federal Criminal Police Office)
- Federal financial authorities: main customs offices [Hauptzollämter], customs investigation offices [Zollfahndungsdienst] (also in e.g. environmental offences, ss. 73 BNatSchG, 21 AWG), customs criminal investigation office [Zollkriminalamt]

- Regional tax authorities [Landesfinanzbehörden] (tax offices, tax investigation offices)
- Forestry and Hunting Administration of the Federation, Forestry, Hunting and Fisheries Administrations and Mountain Offices of the Federal States
- Other authorities whose employees are authorised as investigators according to the respective Federal State regulation [Landesverordnung] (s. 152 para. 2 GVG).
- Control officers of the Federal Agency for Agriculture and Food in the context of fish inspection outside the coastal waters in accordance with s. 16 para. 3 SeeFischG
- Federal Agency for Nature Conservation (Bundesamt für Naturschutz BfN) (s. 70 BNatSchG)

Appropriate action acc. to national law **2**

- National follow-up acc. to the General Administrative law, see above C.I.4.aa Administrative procedure in general.
- National follow-up acc. to the special Administrarive laws e.g. Customs Administration Act (ZollVG), Market Organisation Act, Admininistrative Penalties Act, Law on the Customs Criminal Police Office and the Customs Investigation Offices (Customs Investigation Service Act – ZFdG), General Tax Code

b) Art. 12 para. 2 OLAF Regulation (judicial authorities of the Member State concerned)

The transfer of information from the Director General to the judicial authorities iun Gemarny is part of the way of the transfer of informal information in an European administrative community.[1173] **3**

Which are these national authorities?[1174] **4**

For all offences:

- Customs Criminal Investigation Office
- Tax offices (see e.g. Finanzamt für Steuerstrafsachen und Steuerfahndung Münster[1175])
- Public prosecutor's offices of the federal states
- Federal Public Prosecutor's Office

[1173] Heil 2022, pp. 89 et seq.

[1174] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Bundeskriminalamt, Staatsanwaltschaften der Länder, Bundesanwaltschaft, Polizeidienstellen der Länder, Ermittlungspersonen der Staatsanwaltschaften (§ 152 GVG in conncention with guidelines from the Länder).

[1175] Judgment of the Court (Fourth Chamber) of 2 September 2021, Tax Office for Criminal Tax Matters and Tax Investigation Münster against XK, ECLI:EU:C:2021:670 [Finanzamt continues to be a judicial authority due to § 399 para. 1 AO]. See Böse 2021, pp. 385 et seq.

- Police departments of the federal states in conncetion with Public prosecutor's offices of the federal states
- Especially for corruption offences:
- Verwaltungsgerichte/Bundesverwaltungsgericht als zuständige(s) Organ(e) für Bundesdisziplinarsachen[1176]
- Dienstgerichte für Richter (eg Dienstgericht für Richter für das Land Nordrhein-Westfalen)
- Dienstgericht für Beamte

c) Art. 12 para. 3 OLAF Regulation (Information to the Office by competent authorities of the Member State concerned)

5 These are the authorities, which were presented under a) and b) above. They are obliged to fullfill the time-limit by virtue of Art. 12 para. 3 OLAF Regulation.

6 **Prevention by national law**
The right to withhold information (for a certain time) may result from provisions, which ensure the secrecy of an action under national law.

d) Art. 12 para. 4 OLAF Regulation (Providing evidence in court proceedings before national courts and tribunals in conformity with national law)

7 The Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) will apply if providing evidence in court proceedings before national administrative courts and tribunals. And the Criminal Procedure Code (*Strafprozessordnung*) might apply if providing evidence in national court proceedings before criminal courts and tribunals.

8

Code of Administrative Court Procedure

Section 82

(1) The action must designate the plaintiff, the defendant and the subject-matter of what is at stake in the action. It should contain a specific motion. ***The facts and evidence serving as reasoning should be stated***; the original or a duplicate of the impugned order and the ruling on an objection should be enclosed.

(2) If the action does not meet these requirements, the presiding judge or the competent professional judge (reporting judge) in accordance with section 21g of the Courts Constitution Act shall call on the plaintiff to provide the required supplement within a specific period. He/she may set a deadline to the plaintiff for the supplement with exclusive

[1176] But see the high treshold for administrative, disciplinary measures in cases of suspected subsidy fraud against a major OVG Mecklenburg-Vorpommern, 25.11.2008 - 2 M 156/08 =openJur 2012, 54727, Margin Number 17: "First, it must be clarified that not every unresolved situation in cases of investigative and/or disciplinary proceedings against a mayor or similar official necessarily establishes a public interest in enforcing an imposed prohibition on carrying out official duties. Rather, the specific circumstances of each individual case must be assessed."

effect if one of the requirements named in para. 1, first sentence, is not met. Section 60 shall apply mutatis mutandis to restitutio in integrum.

Section 86
(1) The court shall investigate the facts ex officio; those concerned shall be consulted in doing so. It shall not be bound to the submissions and to the motions for the taking of evidence of those concerned.
(2) A motion for the taking of evidence made in the oral hearing may only be rejected by a court order, which shall require to be reasoned.
(3) The presiding judge shall endeavour to ensure that formal errors are remedied, unclear requests explained, proper motions made, inadequate factual information supplemented, as well as all declarations submitted which are material to the establishment and judgment of the facts.
(4) Those concerned should submit written statements to prepare the oral hearing. The presiding judge can call on them to do so, setting a deadline. The written statements shall be communicated to those concerned ex officio.
(5) Duplicates of the certificates or electronic documents to which reference is made shall be enclosed in full or in part with the written statements. If the certificates are already known to the opponent or are very extensive, the precise designation shall be sufficient, coupled with the offer to grant inspection in the court.

Section 87
(1) The presiding judge or the reporting judge shall already issue all orders prior to the oral hearing that are necessary in order to deal with the dispute where possible in one oral hearing. He/she may in particular
1. subpoena those concerned to discuss the facts and the dispute and to reach an amicable settlement of the dispute and accept a settlement;
2. instruct those concerned to supplement or explain their prepared written statements, submit certificates, transmit electronic documents and submit other objects for deposit with the court, in particular set a deadline to explain certain points that are in need of clarification;
3. obtain information;
4. order the submission of certificates or the transmission of electronic documents;
5. order the personal appearance of those concerned; section 95 shall apply mutatis mutandis;
6. subpoena witnesses and experts to the oral hearing.
7. (repealed)
(2) Those concerned shall be informed of each order.
(3) The president or the reporting judge may take individual items of evidence. This may only take place insofar as it is expedient to simplify the hearing before the court and it

can be presumed from the outset that the court is able to appreciate the result of the evidence properly, even without obtaining a direct impression of the course of the taking of evidence.

Section 87b

(1) The presiding judge or the reporting judge may set the plaintiff a deadline to state the facts by whose consideration or non-consideration in the administrative procedure he/she considers him/herself to have been aggrieved. The deadline set in accordance with the first sentence may be combined with the deadline set in accordance with section 82, para. 2, second sentence.

(2) The presiding judge or the reporting judge can instruct a party concerned, setting a deadline, with regard to certain events

1. to state facts or designate items of evidence,
2. to submit certificates or other movables and to transmit electronic documents insofar as the party concerned is obliged to do so.

(3) The court may reject declarations and items of evidence which are not submitted until after expiry of a deadline set in accordance with paras. 1 and 2 and rule without any further investigations if

1. in the freely-formed conviction of the court its admission would delay the conclusion of the dispute, and
2. the party concerned does not provide sufficient excuses for the lateness, and
3. the party concerned has been notified of the consequences of missing the deadline.

The excuse shall be credibly demonstrated on request by the court. The first sentence shall not apply if it is possible with slight effort to ascertain the facts without the cooperation of the party concerned.

Section 96

(1) ***The court shall take evidence in the oral hearing***. It may in particular inspect evidence and question witnesses, expert witnesses and those concerned, and consult certificates.

(2) In suitable cases, the court may already have evidence taken prior to the oral hearing by one of its members acting as a commissioned judge or, by designating the individual evidence questions, request another court to take evidence.

Section 108

(1) The court shall rule in accordance with its free conviction gained from the overall outcome of the proceedings. The judgment shall state the grounds which were decisive for the judicial conviction.

(2) The ***judgment may only be based on facts and results of evidence*** on which those concerned have been able to make a statement.

5. Article 12a Anti-fraud coordination services

1. Each Member State shall, for the purposes of this Regulation, designate a service (the 'anti-fraud coordination service') to facilitate effective cooperation and exchange of information, including information of an operational nature, with the Office. Where appropriate, ***in accordance with national law***, the anti-fraud coordination service may be regarded as a competent authority for the purposes of this Regulation. […]

National anti-fraud coordination service:

- German Federal Ministry of Justice (Departement for the fight against fraud detrimental to the Union's budget).

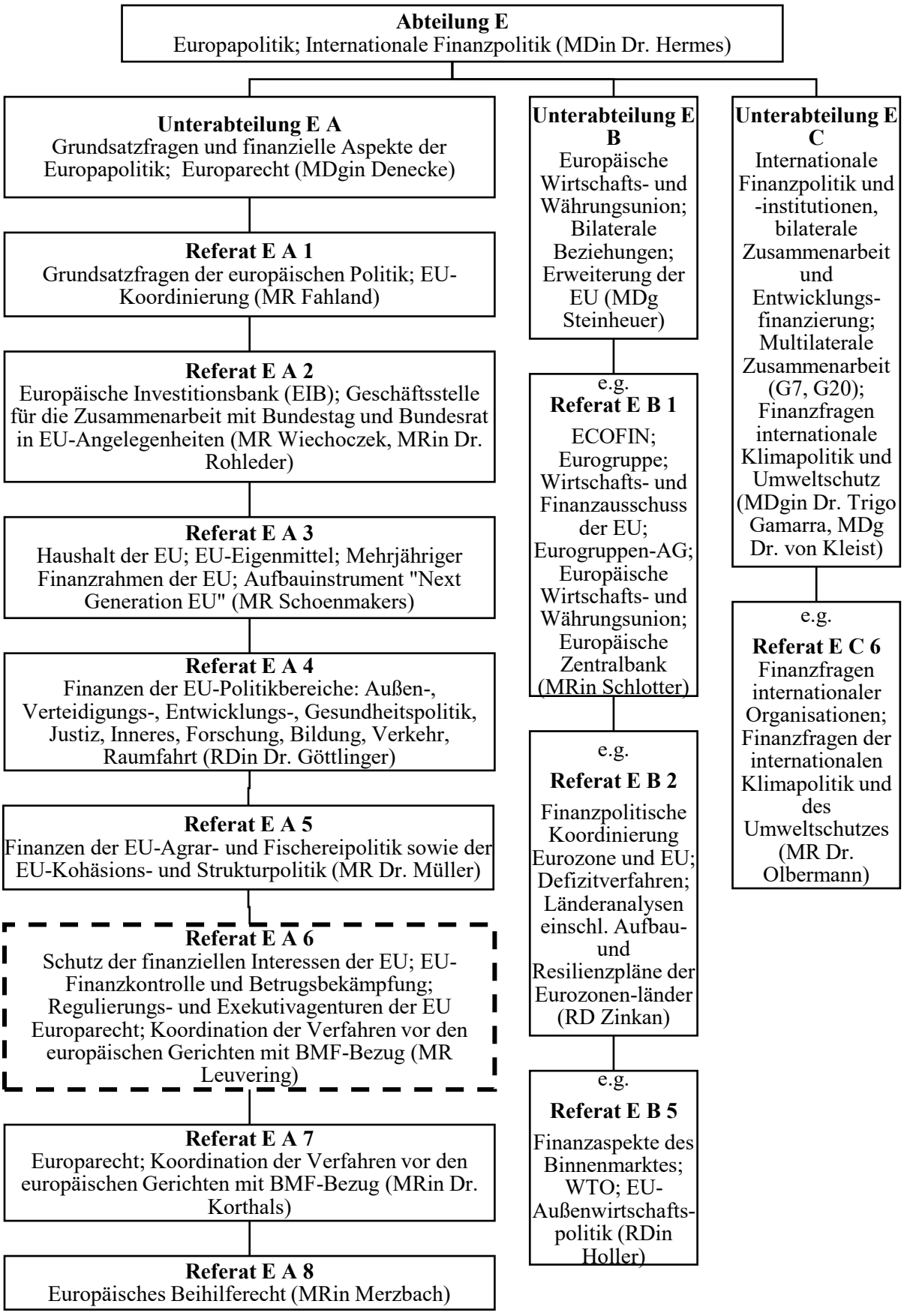
If the area of tax and customs (revenue side mainly) is relevant for the protection of the financial interests in Germany, the Federal Ministry of Finance is responsible for safeguarding the financial interests of the Union by providing assistance to OLAF and other national anit-fraud bodies such as the customs units specialised for fraud detection. In the area of taxes the Federal Ministry of Finance can only guide the authorities of the Länder as it itself is not competent for the structure of the authorities in the Länder. **1**

Inside the Ministry there are special offices, which are also listed in the organisational chart of the ministry, which is currently headed by Minister Lindner, a minister of the traffic light coalition of FDP, SPD and Bündnis 90 Die Grünen. **2**

Department E is responsible for European and international policy. Unit E. A. 3 and E.A. 4, as well as E.A. 5, contain sub-areas concerning EU revenues and levies. Unit E.A. 6 (Referat E.A. 6) is even dedicated to the financial interests of the Union.[1177] **3**

[1177] See Bundesministerium der Finanzen 2022 Die europapolitische Rolle des Bundesministeriums der Finanzen. online: https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Europa/europapolitische-rolle-des-bmf.html. Accessed 31 December 2024.

4 *Figure 14: German Ministry of Finance: AFCOS (excerpt)*



[Article 12b–12d omitted]

6. Article 12e The Office's support to the EPPO

1. In the course of an investigation by the EPPO, and at the request of the EPPO in accordance with Article 101(3) of Regulation (EU) 2017/1939, the Office shall, in accordance with its mandate, support or complement the EPPO's activity, in particular by:
(a) providing information, analyses (including forensic analyses), expertise and operational support;
(b) facilitating coordination of specific actions of ***the competent national administrative authorities*** and bodies of the Union; […].

Which are these national authorities?[1178]

- Customs Criminal Investigation Office as federal agency under the Federal Ministry of Finance responsible for investigating serious customs and excise offences, including fraud affecting the EU budget (e.g., customs duties, VAT).
- Customs investigation offices operate as regional branches of the ZKA conducting operational investigations into customs and excise offences (see above Part B, Art. 28).
- Tax offices within the States (Länder) as authorities responsible for tax collection and administrative enforcement of tax law, including cooperation in cases of tax fraud (notably VAT). They can provide financial/tax data and administrative support, especially in VAT fraud cases that affect the EU's financial interests.
- Federal Public Prosecutor's Office may liaise with EPPO for high-level coordination, although ordinary fraud cases are usually handled by Länder prosecutors and in case of evocation or an EPPO case by EDPs.
- Investigators of the public prosecutor's offices (s. 152 GVG in conncention with guidelines from the *Länder*) carry out criminal investigations on behalf of the EPPO (through delegated prosecutors) within the German criminal justice system.

[Article 12f–g omitted]

[1178] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Ermittlungspersonen der Staatsanwaltschaften (§ 152 GVG in conncention with guidelines from the Länder).

7. Article 13 Cooperation of the Office with Eurojust and Europol

1. […] Where this may support and strengthen coordination and cooperation between ***national investigating and prosecuting authorities,*** or where the Office has forwarded to the competent authorities of the Member States information giving grounds for suspecting the existence of fraud, corruption or any other illegal activity affecting the financial interests of the Union in the form of serious crime, it shall transmit relevant information to Eurojust, within the mandate of Eurojust. […]

Which are these national authorities?[1179]

- Customs criminal investigation office [*Zollkriminalamt*]
- Customs investigation offices [*Zollfahndungsämter*]
- Main customs offices [*Hauptzollämter*]
- Tax authorities of the *Länder*[*Finanzämter*]
- Federal Office of Justice [*Bundesamt für Justiz*]
- Federal Criminal Police Office [*Bundeskriminalamt*]
- Public prosecution offices of the *Länder* (e.g. Hessian Public Prosecution Office in Frankfurt am Main or Gießen) [Landesstaatsanwaltschaften]
- Public prosecutors offices at the higher regional courts (OLG) [*Generalstaatsanwaltschaften*]
- Federal Attorney General at the Supreme Court [*Generalbundesanwalt beim BGH* § 142b Abs. 2 GVG]
- Investigative personnel of the public prosecution offices (s. 152 GVG in connection with guidelines from the *Länder*)
- Federal Agency for Nature Conservation (Bundesamt für Naturschutz BfN) (s. 70 BNatSchG) in case of funds in this area.
- Police authorities (Police of the *Länder*, Federal Police, Federal Criminal Police Office)
- Other special funding/management authorities.

[Article 14–16 omitted]

[1179] Zollkriminalamt, Zollfahndungsämter, Finanzämter, Bundeskriminalamt, Staatsanwaltschaften der Länder, Bundesanwaltschaft, Polizeidienstellen der Länder, Ermittlungspersonen der Staatsanwaltschaften (§ 152 GVG in conncention with guidelines from the Länder).

8. Article 17 Director-General

4. The Director-General shall report regularly, and at least annually, to the European Parliament, to the Council, to the Commission and to the Court of Auditors on the findings of investigations carried out by the Office, the action taken and the problems encountered, whilst respecting the confidentiality of the investigations, the legitimate rights of the persons concerned and of informants, and, where appropriate***, national law applicable to judicial proceedings***. Those reports shall also include an assessment of the actions taken by the ***competent authorities of Member States*** and the institutions, bodies, offices and agencies, following reports and recommendations drawn up by the Office.
7. The Director-General shall put in place an internal advisory and control procedure, including a legality check, relating, inter alia, to the respect of procedural guarantees and fundamental rights of the persons concerned and ***of the national law of the Member States concerned***, with particular reference to Article 11 para. 2. The legality check shall be carried out by Office staff who are experts in law and investigative procedures. Their opinion shall be annexed to the final investigation report.

Article 17 contains provisions regarding the office's reporting obligations and the safeguarding of procedural guarantees in the course of its investigations. Paras 4 and 7, in particular, – this is the *telos* – underline OLAF's efforts to balance effective investigative action with the protection of fundamental rights. **1**

The Supervisory Committee noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.[1180] They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the quality of checks and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the importance of compliance with rights and procedural rules in promoting the rights of those affected. **2**

Article 17 para 4 specifies that the OLAF Director-General is required to **report regularly and at least annually**, to major EU IBOA. The reports should cover the findings of OLAF's investigations, the actions taken and any problems encountered during them. Importantly, these reports must respect the confidentiality of investigations and the legitimate rights of individuals involved, including informants. The provision also requires OLAF to consider national laws applicable to judicial proceedings. **3**

[1180] Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

Next, Article 17 para 7 further emphasizes procedural guarantees and compliance with fundamental rights. It mandates the establishment of an internal advisory and control procedure, including a legality check, which OLAF did in the past.

4 The **legality check** should be carried out by OLAF staff who are experts in law and investigative procedures and focus on the procedural safeguards. This internal control mechanism is relevant for ensuring that national laws are respected. The opinion resulting from this check should then be annexed to the final investigation report, thereby providing transparency and accountability for the decisions made throughout the investigative process.

5 As noted in an article by *Mavromati* and *Riochet* it is recalled that this check was introduced as a new internal advisory and control procedure in the past.[1181] This change, unlike its predecessor (Regulation 1073/1999), was designed to **include an internal legality** check that assesses, among other things, the respect for procedural guarantees and the fundamental rights of individuals under investigation. This internal process is vital for ensuring that OLAF's actions remain compliant with both EU and national standards, e.g. for upholding the rule of law and protecting the rights of individuals. Moreover, the importance of these procedural safeguards has been by the ECL C-787/22, which related to the respect for the rights of defence and procedural guarantees during OLAF's investigations were at the center of the dispute.[1182] It was reiterated the need for OLAF to operate in a manner that respects fundamental rights, including the right to be heard and the right to avoid self-incrimination.

a) National law applicable to judicial proceeding and competent authorities

6 The Supervisory Committee noted that OLAF's country mini-profiles provided some information on national laws but were insufficient for compensating occasional expertise issues.[1183] They also reviewed **OLAF's legality check procedures**, recognizing the importance of expertise in all EU Member States' legal systems. Good relations between investigators and reviewers were seen to positively impact the **quality of checks** and reviews. OLAF's legality check ensures compliance with legal rules and addresses any breaches swiftly. The check focuses on procedural aspects and may lead to modifications or abandonment of actions if it fails. The committee emphasized the **importance of compliance with rights and procedural rules** in promoting the rights of those affected.

[1181] Mavromati and Riochet 2024, eucrim, pre-print.
[1182] ECJ, Case C-787/22 P, *Sistem ecologica production v EU Commission*, Judgment of 30 November 2023, ECLI:EU:C:2023:940.
[1183] Supervisory Committee, Opinion No 2/2015, Legality check and review in OLAF, p. 6 et seq.

National law applicable to judicial proceeding The Administrative Courts Procedure Act (Verwaltungsgerichtsordnung, VwGO) and the Criminal Procedure Code (Strafprozessordnung, StPO) as well as the Administrative Offences Act (OWiG) may apply. **7**

Sources and national sections 18: Overview for Art. 17 OLAF Regulation – Competent authorities and theire actions taken according to para. 4 **8**

Competent authorities	Federal Ministry of Finance highest Land authorities responsible for revenue administration Federal Central Tax Office Central Customs Authority Land revenue authorities with powers acc. to s. 17 para. 2 sentence 3 no 3 Fiscal Administration Act or Land legislation Main customs offices Local tax offices Child benefit disbursement offices Customs criminal investigation office Customs investigation offices Main customs offices of the Länder Competences according to Agricultural funds distribution in Germany (examples): Bundesministerium für Landwirtschaft und Ernährung/Abteilung 6/Unterabteilungen 61/611/612/613 /615 (Agrarfinazierung)/617 (Direktzahlungen) Bundesverwaltungsamt (European Social Fund)[1184] Landesministerien mit zentralen Dienststellen Federal Agency for Nature Conservation (Bundesamt für Naturschutz BfN) (s. 70 BNatSchG)

[1184] *Bundesverwaltungsamt*, Meldung von Betrugsverdachtsfällen i.V.m. dem Europäischen Sozialfonds (ESF): "Bei Vorliegen eines Betrugsverdachts ist jede an der Umsetzung der EU-Förderung beteiligte Stelle verpflichtet, die erforderlichen Schritte zur Sachverhaltsaufklärung vorzunehmen und umgehend die ESF-Verwaltungsbehörde zu informieren. Sofern sich der Sachverhalt konkretisiert, erfolgt seitens der Verwaltung eine Anzeige bei den zuständigen nationalen Ermittlungsstellen und unter Umständen beim Europäischen Amt für Betrugsbekämpfung (OLAF)."

	Ministry of Justice: Division for the protection of EU financial interests [AFCOS authority of Germany]
Code of Civil Procedure [Zivilprozessordnung ZPO]	ss. 128 et seq., 239 et seq. (Interruption and suspension of the proceedings), 286, 290, 293, 355 et seq., 373 et seq (383 et seq.)
Administrative Procedure Act [Verwaltungsverfahrensgesetz VwVfG] **Hessian Administrative Procedure Act [HVwVfG]**	Sections 5, 8a-8d (European administrative cooperation), 9 et seq. (procedural principles, especially: 24 (investigation principle), 26 (Evidence), 30 (secrecy), 35 et seq. (administrative act) VwVfG Sections 9 et seq. (procedural principles), 24 (investigation principle), 26 (evidence), 35 et seq. (administrative act [Verwaltungsakt]) HVwVfG
Administrative Court Act [Verwaltungsgerichtsgesetz VwGO]	Sections 40 et seq., 54 et seq.
Criminal Procedure Code [Strafprozessordnung StPO]	ss. 48 et seq. (Witnesses), 133 et seq. (interrogation), 137 et seq. (defence rights), 152 para. 2, 199 (indictment)

b) Internal advisory and control procedure: Legality check involving national law

9 *Sources and national sections 19: Overview for Germany –Art. 17 OLAF Regulation: Legality check involving national law*

Administrative Procedures Act [VwVfG] **Administrative Procedures Act at the *Länder* level e.g. Hessian Administrative Procedures Act [HVwVfG]**	ss. 9 et seq. (procedural principles, especially: 24 (investigation principle), 26 (Evidence)), 35 et seq. VwVfG ss. 9 et seq., 24, 26, 35 et seq. HVwVfG
Code of Administrative Court Procedure [VwGO]	ss. 40 et seq., 54 et seq. VwGO
Fiscal Code [AO]	ss. 85 et seq. (Taxation principle, evidence – general: especially section 88 (investigation principle) or section 92 (evidence)), 93 et seq., 97 et seq., 193 et seq., 208f., 209 et seq. AO

Customs Administration Act [ZollVG]	ss. 1, 10 et seq. ZollVG
Customs Investigations Service Act [ZFdG]	ss. 3 et seq., 8 et seq., 26 et seq., 39 et seq., 47 et seq., 71, 72 et seq. ZFdG
Banking Act [KWG]	ss. 6, 44, 44a, 44b, 44c

[Article 18–21 omitted]

D. Concluding Remarks

As concluding remarks, we highlight again important parts of this CNP volume above (Parts A, B and C): An **EPPO or OLAF investigation** in Germany begins with an initial (administrative) suspicion based e.g. on a (criminal ECR-) complaint, whistle-blower information or fraud detected in (EU-)customs/tax databases, aiming at a sufficient suspicion of an offence/irregularity (see → B. II. 2. a)). Depending on the investigation area – EPPO or OLAF – it proceeds according to the respective Regulation either to Art. 26, 27 EPPO Regulation in line with ss. 152 para 2 CPC covering PIF offences or Art. 3–4, 7 OLAF Regulation, covering irregularities such as customs, tax, subsidy fraud. The facts are clarified using the **investigative powers and measures available** (see above → Art. 30 EPPO, e.g. ss. 94 et seq. CPC, Art. 3 OLAF in combination with national powers in case of resistance), while safeguarding the suspect's rights (Art. 103 GG, ss. 136 et seq. CPC, Art. 9 OLAF). The **appointment of defence counsel in EPPO cases** follows s. 140 CPC and is guaranteed for administrative OLAF proceedings by Art. 9.[1185] Although EPPO proceedings are criminal and OLAF inquiries administrative both aim at establishing the material truth of an offence while protecting individual rights (see → Art. 29 EPPO, Art. 9 OLAF; Art. 47–48 EU Charter). Proceedings may end in EPPO-led **indictments** before German criminal courts (see → Annex I, II) or in **OLAF recommendations** leading to disciplinary or administrative actions (see → Art. 11 OLAF). Cooperation of German authorities (see above → Institutions) with EU bodies expresses Art. 325 TFEU and ensures protection of both EU and national finances while respecting defence rights. Future priorities (might) lie in stronger digital coordination and cooperation and in ensuring that EPPO and OLAF actions in Germany always comply with national criminal procedure to protect fundamental rights and ensure lawful, effective prosecution of EU financial crimes (see → B. II. 1. o)). **10**

[1185] ECJ, Case C-566/14 P, Marchiani v EU Parliament, mn 51: "[I]t should be recalled that the principle of respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a general principle of EU law which is applicable even in the absence of any specific rules in that regard. That principle requires that the addressees of decisions which significantly affect the interests of those addressees should be placed in a position in which they may effectively make known their views with regard to the evidence on which those decisions are based (see, to that effect, judgments of 12 February 1992 in Netherlands and Others v Commission, C-48/90 and C-66/90, EU:C:1992:63, paragraphs 44 and 45; 24 October 1996 in Commission v Lisrestal and Others, C-32/95 P, EU:C:1996:402, paragraph 30; and 9 June 2005 in Spain v Commission, C-287/02, EU:C:2005:368, paragraph 37)."

Annex I

Exemplary Training Investigation File[1186]

Case: Climate-Friendly Cider Orchard Project

EPPO Regional Office

Frankfurt am Main

File Number: EPPO-FR-2024/AG-1234

Processing by (name, official title)
EDP Dr. Thomas Müller
☎ **Telephone** 01567893210
E-Mail: drmuller@eppo.fankfurt.de
Frankfurt a. M. 1.9.2024

Order of the Regional EPPO Center

Create new file according to Internal Rules on Procedure

The person is suspected of the following allegation	Suspected subsidy fraud (s. 264 of the German Penal Code) by the applicant A (Mr Bauer) in connection with EU-funded subsidies for a climate-friendly cider orchard project.
Facts:	*A applied for subsidies to install a solar energy system. There are indications that no system was installed and that the accompanying invoices were forged.*

INTERNAL NOTE
To: EDP Müller
From: Service Centre – Frankfurt Regional Office
Subject: Forwarding of ECR – EPPO-FR-2024/AG-1234

Dear EDP Müller,
Please find attached the ECR. Who shall be instructed with investigations?

Best regards,
Durmeier
Service Centre Employee
EPPO Regional Office Frankfurt am Main.
Digitally Signed

[1186] This document is entirely fictional and serves purely for educational and illustrative purposes. It bears no resemblance to any actual cases or events. It is originally based on the exam case from *Schneider* and *Karakocaoğlu* 2024, pp. 543 et seq.

EUROPEAN PUBLIC
PROSECUTOR'S OFFICE

EPPO Crime Report

To: Regional Office Frankfurt, European Public Prosecutor's Office
From: Anonymous submission via the EPPO Online Crime Reporting Tool
Date: 01/09/2024
Subject: Alleged subsidy fraud involving EU funds

Reported Crime: In accordance with the EPPO's competence under Directive (EU) 2017/1371 and Article 22 of Regulation (EU) 2017/1939, this report concerns a suspected offence affecting the financial interests of the European Union. The anonymous informant alleges that Mr Richard Bauer, a winemaker and orchardist based in Kleinöd, Hesse, submitted falsified documentation to obtain subsidies under the EU-funded project "Climate-Friendly Cider Apple Cultivation" It is claimed that no solar energy system, which formed the basis of the grant application, was ever installed.

The alleged conduct may amount to intentional fraudulent behaviour within the meaning of Article 3 para 2(a) of Directive (EU) 2017/1371 (fraud relating to non-procurement expenditure), and falls within the territorial competence of the EPPO.

Competence and Registration: The report was received via the official web form. The EDP for Germany at the Frankfurt Regional Office conducted a preliminary verification and confirmed EPPO competence based on:

- The location of the alleged act within a participating Member State;
- The offence's classification as a PIF offence;
- The economic damage to the EU budget.

Next Steps: The case was registered and assigned reference number VNr. ST/1025337658. Investigations were initiated in coordination with the Hessian State Criminal Police Office (LKA), Department SO 20 for Economic and Financial Crime.

Action: On 03/09/2024, a case file was opened under police reference number VNr. ST/1025337658 by the SO 20 Department (Economic and Financial Crime) of the Hessian State Criminal Police Office (LKA). The EPPO was notified pursuant to Art. 24 EPPO Regulation. After internal review of the EPPO's rules of procedure, the case was assumed

by the EDP in Frankfurt. Investigations are being conducted in cooperation with Department 4 SO.

EPPO – REGIONAL OFFICE FRANKFURT AM MAIN
INTERNAL COMMUNICATION
To: LKA Hesse – Department SO 20
Subject: Case EPPO-FR-2024/AG-1234 – Initiation of Investigative Measures

Dear colleagues,

following receipt of the ECR concerning case reference EPPO-FR-2024/AG-1234, I hereby confirm that the matter falls under the material competence of the EPPO, as it concerns suspected fraud against the EU budget (Directive (EU) 2017/1371, implemented in conjunction with s. 264 German Criminal Code).

I instruct Department SO 20 to proceed with national investigative support in coordination with the EPPO Regional Office Frankfurt. Please report any investigative steps and outcome as usual.

All reports, minutes, and findings are to be submitted directly to the EPPO case file and uploaded via the secure channel under reference EPPO-FR-2024/AG-1234.

Please also preserve any communications and internal authorisation notes issued by the Regierungspräsidium Darmstadt in relation to the payment under the programme “Klimafreundlicher Apfelweinanbau”.

For any urgent matters or procedural authorisations, please contact my office directly.

Best regards,

Dr Klaus Müller

European Delegated Prosecutor
EPPO – Regional Office Frankfurt am Main

Information received:

State office of criminal investigations **LKA Hesse - Dept. SO 20 –** Hölderlinstraße 1–5, 65187 Wiesbaden Telefon: 0611 / 406-0	Case Reference: ST/1025332024 EPPO Case Number / EPPO Case Number Processing by (name, official title) **Lisa Huber, Chief Inspector** **Telephone 06423 / 406-0** / **Telephone 06423 / 406-0** / **Telephone 06423 / 406-0**

POLICE OPERATION REPORT I

Report prepared by: Chief Inspector Lisa Huber

1. On 01/09/2024, the EPPO, your office submitted a formal ECR report for further investigation indicating suspected subsidy fraud involving EU agricultural funds. The case concerns a grant of €90,000 awarded under the "Climate-Friendly Cider Apple Cultivation" programme, co-financed through the Common Agricultural Policy (CAP). Mr Richard Bauer is alleged to have submitted forged documents claiming to have purchased and installed a solar power system as required by the programme conditions, although no such installation is believed to have taken place.

   Mr Richard BAUER
   ***born on 12 July 1979 in Kleinöd,**
   resides at 17 Bergstraße, 61231 Kleinöd.
   He is a German citizen and works as a self-employed winemaker and cider producer. His estate includes orchards and a seasonal tavern. Due to mounting financial difficulties, including the risk of insolvency, Mr Bauer may have had financial incentive to commit the alleged offence. He has prior convictions for VAT fraud and general fraud handed down by the Regional Court in Wiesbaden and the District Court in Gelnhausen. He is now officially listed as a suspect in the current investigation.

2. The initial verification of the ECR information and the suspects communication with the *Regierungsprädium Darmstadt* revealed discrepancies between the submitted documents and any verifiable commercial activity. The invoice lists the

company “Powerful Sun GmbH”, but preliminary checks found no matching order or confirmed delivery. No corroborating documentation such as receipts, transport slips or installation records were found. Furthermore, we suggest an on-site inspection that could reveal there is no trace of the alleged solar equipment.

The following steps are scheduled:
Firstly, an interrogation with the suspect and potential witnesses. Secondly, we need a judicially approved search of Mr Bauer’s residential and business premises, the seizure and forensic evaluation of accounting records and IT systems, and the questioning of staff or associates who may be able to provide further information. A verification request has been issued to the supposed supplier for confirmation of invoice authenticity. Post-subsidy financial transactions will be tracked to assess the use of the disbursed funds. Additional inquiries will determine whether further individuals contributed to the suspected fraudulent scheme.

We will report on the matter to you as the handling EDP in Frankfurt for coordinated judicial action. Updates on progress will be provided following execution of these measures.

Lisa Huber
Chief Inspector

Summary:

1. Investigations were launched in response to an EPPO report received on 01/09/2024 regarding suspected fraud against the financial interests of the European Union.
2. Suspect Profile:

Name: Richard Bauer
Date of Birth: 12/07/1979
Place of Birth: Kleinöd, Hesse
Current Residence: 17 Bergstraße, 61231 Kleinöd, Germany
Nationality: German
Independent winemaker and cider producer (operates seasonal wine tavern and apple pressing facility)
Financial Status: Reports of significant financial distress; suspected insolvency proceedings pending

- Criminal Record: Documented convictions for VAT evasion and commercial fraud (Wiesbaden Regional Court, Gelnhausen District Court)

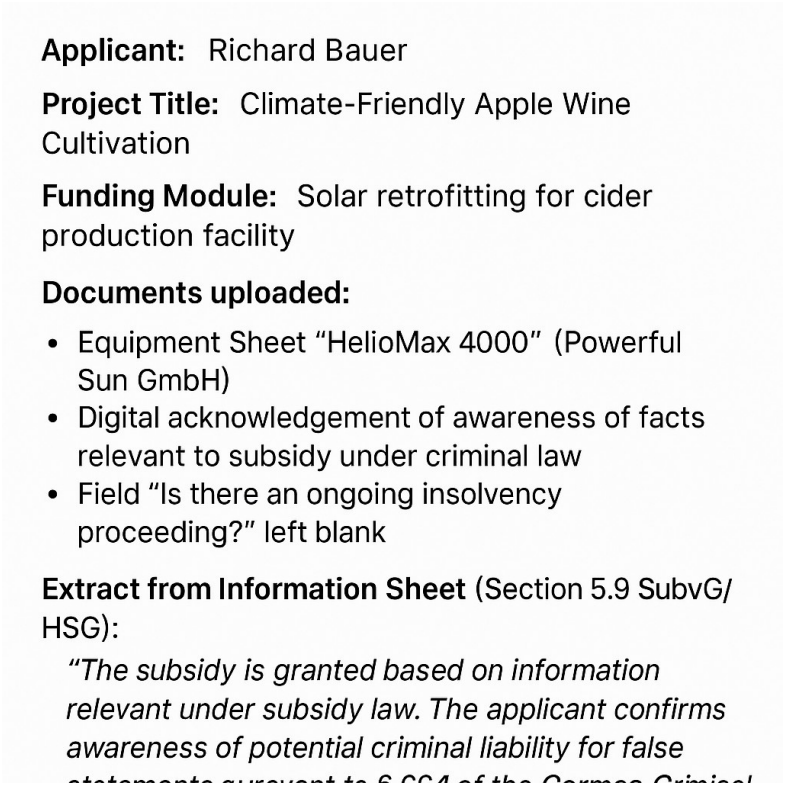
- Legal Status: Registered as a criminal suspect under German law; subject to ongoing investigation

3. Primary Allegation: Mr Bauer is suspected of having fraudulently applied for and received a €90,000 subsidy from a climate-linked agricultural funding scheme co-financed by the EU. He allegedly submitted false information and forged invoices claiming the purchase and installation of a qualifying solar power system, which, based on preliminary findings, was never delivered nor installed.
4. Initial Investigative Findings:
   - The submitted invoice lists a known supplier, "Powerful Sun GmbH," but there is no record of purchase or shipment.
   - No supporting documents such as delivery notes, photographic documentation, or installation records were found.
   - The claimed solar equipment does not appear to exist at the property in question.
   - The same supplier appears in other regional applications and is under parallel scrutiny.
5. Planned Investigative Measures:
   - Execution of a judicially authorised search at both residential and operational premises
   - Collection of digital and physical accounting records for forensic audit
   - Detailed interviews with employees, including administrative and financial staff of the business
   - Enquiry and cooperation request to "Powerful Sun GmbH" regarding authenticity of the invoice
   - Additional background check into potential co-conspirators or document forgers

The suspect has been formally notified of the investigation. Case escalation to the European Delegated Prosecutor (EDP) in Frankfurt is ongoing. Updates to follow upon execution of investigative actions.

Lisa Huber
Chief Inspector
Attachments

Attachment 1: Saved Screenshot of Agrarportal (submitted by *Rergierungspräsidium*, which has access via a interface)



Applicant: Richard Bauer

Project Title: Climate-Friendly Apple Wine Cultivation

Funding Module: Solar retrofitting for cider production facility

Documents uploaded:

- Equipment Sheet "HelioMax 4000" (Powerful Sun GmbH)
- Digital acknowledgement of awareness of facts relevant to subsidy under criminal law
- Field "Is there an ongoing insolvency proceeding?" left blank

Extract from Information Sheet (Section 5.9 SubvG/ HSG):

"The subsidy is granted based on information relevant under subsidy law. The applicant confirms awareness of potential criminal liability for false

The full text of the document is:

Erklärungen des Antragstellers (Vordruck)
zum Antrag auf Förderung von Investitionen zur Verbesserung der Verarbeitung und Vermarktung landwirtschaftlicher Erzeugnisse in Hessen

1. Subventionserhebliche Tatsachen

Ich weiß/wir wissen, dass alle Tatsachen, von denen die Bewilligung, Gewährung, Rückforderung oder das Belassen der beantragten Förderung abhängig sind, subventionserhebliche Tatsachen im Sinne von § 264 des Strafgesetzbuches in Verbindung mit § 2 des Gesetzes gegen missbräuchliche Inanspruchnahme von Subventionen (Subventionsgesetz) vom 29.07.1976 (BGB I. I Seite 2037) sind, und dass sich nach § 264 des Strafgesetzbuches strafbar macht, wer über subventionserhebliche Tatsachen falsche oder unrichtige Angaben macht oder Angaben hierüber unterlässt.

Zu den subventionserheblichen Tatsachen gehören insbesondere

- die Angaben dieses Antrags und in den beigefügten Anlagen sowie in den nachgereichten oder nachgeforderten Unterlagen,
- die Angaben in den Auszahlungsanträgen, den Verwendungsnachweisen und den Belegen über die durchgeführten Investitionen,
- die Sachverhalte, von denen der Widerruf oder die Rücknahme der Bewilligung und die Erstattung der Zuwendung abhängen.

Die Pflicht, Änderungen subventionserheblicher Tatsachen unverzüglich mitzuteilen, ist mir/uns bekannt.

Translation: “The subsidy is granted based on information relevant under subsidy law. The applicant confirms awareness of potential criminal liability for false statements pursuant to s. 264 of the German Criminal Code in conjunction with s. 2 of the Subsidy Act. Repayment is required in the event of misuse.”

Wirtschafts- und Infrastrukturbank Hessen
Hausanschrift
Kaiserleistraße 29-35
63067 Offenbach am Main

Digital Signature:

R. Bauer

on 20/08/2024

Attachment 2: Records of Interrogations

State office of criminal investigations

LKA Hesse - Dept. SO 20 –
Hölderlinstraße 1–5, 65187 Wiesbaden
Telefon: 0611 / 406-0

Case Reference: ST/1025332024

EPPO Case Number | EPPO Case Number

Processing by (name, official title)
Lisa Huber, Chief Inspector
Telephone 06423 / 406-0 | **Telephone 06423 / 406-0** | **Telephone 06423 / 406-0**

Wiesbaden, 7.9.2024

☐ Suspect Interrogation
☐ Personal Information
Please indicate: Adult, young adult, juvenile, foreign national, immigration authority, youth welfare office

☐ Report

SUSPECT INTERROGATION RECORD
Criminal Proceedings Protocol – Case Ref. ST/1025337658
1. Location: LKA Hesse, Department SO 20 – Financial Crimes Unit **2. Date of Interview:** 08/09/2024 **3. Time:** 10:00–10:15 hrs **4. Interrogating Officer:** Chief Inspector Lisa Huber **5. Suspect:** Richard Bauer, born 12/07/1979 in Kleinöd, residing at 17 Bergstraße, 61231 Kleinöd, Hesse, German citizen, occupation: Winemaker and orchardist **6. Start of interrogation**

NOTICE OF RIGHTS UNDER s. 136 para 1 German CPC, ss. 70a, 70b, 109 para 1 JGG

The suspect was informed: That he may remain silent regarding the accusations but must truthfully provide personal information. That he may request an interpreter or translator and receive translated core documents free of charge. That he has the right to submit evidence or request evidence to be taken. That he may contact a defence lawyer at any time and can apply for an assigned counsel. That if mandatory, defence coun-

sel must be present, and interviews may be deferred. That the interview may be audio/video recorded, and he may restrict access to such recordings. That legal guardians must be informed if the suspect is underage, unless exceptions apply. [1187]

Mr Bauer acknowledged the caution. A written confirmation of understanding and rights was signed.

INTERVIEW SUMMARY

Mr Bauer appeared without legal representation.

After being informed of his rights, he stated that he would not make any statement on the matter at this time.

No further information was provided by the suspect.

The interview was formally terminated at 10:15 am without substantive testimony.

Signature of the suspect:
Richard Bauer

Lisa Huber
Chief Inspector (signed)

[1187] Beschuldigtenvernehmung Formulare NRW: https://www.justiz.nrw.de/sites/default/files/imported/files/2021-07/2-Beschuldigtenbelehrung-englisch.pdf.

Witness Statement

State office of criminal investigations

LKA Hesse - Dept. SO 20 –
Hölderlinstraße 1–5, 65187 Wiesbaden
Telefon: 0611 / 406-0

Case Reference: ST/1025332024

EPPO Case Number

EPPO Case Number

Processing by (name, official title)
Lisa Huber, Chief Inspector

Telephone	**Telephone**	**Telephone**
06423 / 406-0	**06423 / 406-0**	**06423 / 406-0**

Record of Witness Statement

Date of Interview: 09/09/2024
Conducted by: Chief Inspector Lisa Huber
Witness: Sabine Klein, born 24/04/1992 in Bad Vilbel, Wetterau District, Germany,
Address: 22 Schillerstraße, 61118 Bad Vilbel
Nationality: German
Employment: Accountant at Company A.

Statement: *I was informed of my duty to tell the truth as a witness. I have the right to refuse testimony if I am related to or engaged to the accused. I was also informed that I may refuse to answer questions that might incriminate me or close relatives. I understand the caution and acknowledge that making false statements is a criminal offence.*

Statement: "I entered the invoices for the solar system into the system, but never saw any delivery notes or photographs. When I asked Mr Bauer, he said it was just for documentation purposes and the installation would follow later."

Ms Klein confirms that she was instructed to record the invoices without verifying their authenticity. This could implicate her and affect her credibility.

Signature of Witness:
Sabine Klein

Lisa Huber
Chief Inspector (signed)

Witness Statement

State office of criminal investigations

LKA Hesse - Dept. SO 20 –
Hölderlinstraße 1–5, 65187 Wiesbaden
Telefon: 0611 / 406-0

Case Reference: ST/1025332024

EPPO Case Number | EPPO Case Number

Processing by (name, official title)
Lisa Huber, Chief Inspector
Telephone 06423 / 406-0 | **Telephone 06423 / 406-0** | **Telephone 06423 / 406-0**

Record of Witness Statement

Date of Interview: 10/09/2024
Conducted by: Chief Inspector Lisa Huber
Witness: Anna Kleinhengst, born 01/03/1990 in Fulda, Germany
Address: Blumenstraße 6, 61231 Kleinöd
Nationality: German

As per s. 52, s. 55 German CPC and Art. 41, 42 EPPO Regulation: You are being questioned as a witness in criminal proceedings. You have the right to refuse testimony if you are related to or engaged to the accused (Richard Bauer). You also have the right to refuse to answer individual questions if the answer could incriminate you or close relatives. You are obligated to testify truthfully if you choose to testify and can face penalties for false statements.

Statement: "I know that Richard didn't buy any solar panels. We discussed it – he said it was just paperwork to get the funding. He seemed really desperate about his finances and said everyone was doing it."

Signature of Witness:
Anna Kleinhengst

Lisa Huber
Chief Inspector (signed)

District Court of Frankfurt am Main

The Investigating Judge (*Ermittlungsrichter*)

435 Gs 873/24 – 5 Js

EPPO Regional Office Frankfurt a. M.
Criminal Investigation against: Richard Bauer

ORDER

SEARCH WARRANT

Order dated: 06/09/2024 **Ref. No.:** 435 Gs 873/24

In the criminal investigation against **Richard Bauer**, residing at Bergstraße 17, 61231 Kleinöd,
Nationality: German

On: Suspicion of subsidy fraud,

based on the application submitted by European Delegated Prosecutor Dr Müller from the Regional Office of the European Public Prosecutor's Office in Frankfurt am Main the search of the suspect's residential and business premises, including any associated outbuildings on the property as well as vehicles assigned to him, is hereby ordered pursuant to Section 102 of the German Code of Criminal Procedure,

Furthermore, the seizure of items of evidence, particularly documents, invoices, correspondence, and electronic data storage devices, is ordered pursuant to Sections 94 and 98 German CPC.

Reasons:

I.

According to the present investigation findings it is claear that on 20/08/2024, the suspect submitted an application for funding via the Agrarportal Hessen under the programme "Climate-Friendly Apple Wine Cultivation." The application included, among

other documents, an invoice for the purchase and installation of a solar system from the company “Powerful Sun GmbH” in the amount of €89,350, as well as location maps and photos. On this basis, a payment of €75,300 was made to the suspect by the Hessische Wirtschaftbank on 04/09/2024, at the instruction of the Regional Council Darmstadt.

During the course of the investigation, concrete indications emerged that the solar system was never delivered or installed. The company “Powerful Sun GmbH” denies any business relationship with the suspect. The submitted documents appear to be forged. Furthermore, the field in the application concerning ongoing insolvency proceedings was left blank, despite public records indicating imminent insolvency.

There is reason to believe that evidence relevant to the investigation is located at the suspect’s premises, including original invoices, correspondence, subsidy approval documents, and electronic data. Information suggests that some of the documents are stored in a locked safe. There is a risk that these items may be destroyed or concealed.

II.

There is sufficient initial suspicion of subsidy fraud pursuant to Section 264 para. 1 nos. 1 and 2 German Criminal Code in conjunction with Section 2 of the Subsidy Act (SubvG). The legal requirements for a search pursuant to Sections 102 and 105 German CPC are fulfilled. It is to be expected that the search will lead to the discovery of relevant evidence.

As the purpose of the measure would otherwise be jeopardised, the search may be conducted without prior notification to the suspect. The use of force and the opening of locked containers is permitted.

Frankfurt am Main, 06/09/2024 **Dr Lena Weiss** Judge at the District Court of Frankfurt am Main

Police Search Report

17. Polizerevier Höchst
Frankfurt am Main Gebeschusstr. 10, 65929 Frankfurt am Main
Telefon: 069 855 12700
Fax: 069 758 11707

Date
Time: 6:00 AM

Officer in Charge:	Chief Inspector PHK Schmidt
Report:	*"The search of the business premises was conducted at 6:00 AM due to an anonymous informant's warning that evidence might be destroyed."*

EVIDENCE REPORT – PREMISES SEARCH

PHK Schmidt To: European Delegated Prosecutor Müller

From: CI Lisa Huber, LKA Hesse, Dept. SO 20 Date: 09/09/2024 on behalf of PHK Schmidt

Dear Mr Müller,

please find attached a summary report regarding the search of the residence and business premises of Mr Richard Bauer on 08/09/2024.

During the search, multiple items were seized, including:

- A forged invoice from "Powerful Sun GmbH" (see above)
- The original signed sales agreement for an apple press
- Several email printouts and draft correspondence related to the subsidy programme
- A funding confirmation letter from the Hessische Wirtschaftbank
- Copies of the online subsidy application downloaded from the Agrarportal Hessen

Two sealed envelopes marked "Solarprojekt" were taken from a locked office safe. The safe was opened without prior judicial authorisation based on an asserted imminent risk of evidence suppression. However, I must report that our internal documentation does not currently contain sufficient written justification to support the "imminent danger" requirement under s. 105 CPC. Furthermore, the officers responsible (PHK S. and PHK T.) failed to submit a complete operational log. This procedural

shortcoming could affect the admissibility of the documents retrieved from the safe, especially under the strict evidentiary rules set out in s. 136a German CPC.

Respectfully,
Lisa Huber CI

Purchase Agreement

Buyer: Richard Bauer **Seller:** Maschinenhandel Wetterau GmbH, Wiesenstraße 8, 61250 Usingen

Semi-automatic fruit press, Model "Müller 1250"
Date of Purchase: 03/10/2024
Purchase Price: €9,800 incl. VAT
Payment Method: Direct bank transfer (confirmed)

Delivery Confirmation: 05/10/2024 – Delivered and installed at Bergstraße 17, Kleinöd

The invoice and sales agreement are enclosed in the evidence file as part of the financial tracking of disbursed funds.

Sales Invoice

Date of Invoice: 18/08/2024
Seller: Powerful Sun GmbH, Sonnenallee 5, 60528 Frankfurt am Main
Buyer: Richard Bauer
Item Description: 1 x Solar Panel System "HelioMax 4000" incl. inverter and roof installation
Invoice Number: PS-INV-38715-24
Total Amount: €89,350 incl. VAT **Payment Status:** Marked as "PAID" on 22/08/2024
Remarks: "Delivered and installed on 25/08/2024 – signed off by client. For use in agricultural processing facility."
Observation: No corresponding delivery documents, installation proof, or photo documentation could be located. The supplier denies any commercial relationship with the buyer.
In subsequent communications, Mr Bauer stated via his legal counsel that the solar system was never actually delivered and suggested the invoice submission may have been an "administrative error" rather than an intentional attempt to deceive authorities.

Case Note on the Evaluation of Bank Accounts

Date: 07/09/2024	
Investigator: obtained by Chief Inspector Lisa Huber	

Bank Transaction Statement

TBANK TRANSFER CONFIRMATION – HESSISCHE WIRTSCHAFTSBANK

Issuer: Hessische Wirtschaftbank GmbH, Frankfurt am Main

Issued by order of: Regional Council Darmstadt – GAP Funding Division

Recipient: Richard Bauer

Recipient IBAN: DE32 5001 0010 0987 7654 11

Date of Payment: 04/09/2024

Amount: €75,300.00

Payment Purpose: Subsidy from the "Climate-Friendly Apple Wine Cultivation" programme – reimbursement based on claim submission dated 28/08/2024

Documentation submitted in support:

1. **Invoice from "Powerful Sun GmbH" in the amount of €89,350**
2. **Site map and photos of the allegedly installed solar system**

Funding Office Note: No further verification of authenticity was undertaken. Disbursement was made in accordance with internal administrative guidelines by officer F.

Remarks:

- Recipient flagged in past cases for subsidy fraud.
- No verifiable operational business activity detected.
- Invoices under review for authenticity.

Content/Notes and Summary	The company's bank transactions show several large transfers to a company called "SolarTech GmbH." An investigation of this company has revealed that it has been flagged in previous cases for subsidy fraud and that there are no signs of actual business activities. The suspicion that the invoices for the solar system were fabricated is thus reinforced. **Note from Prosecutor:** This file seems to have been invented by the suspect. The request to the Powerful Sun GmBH revealed that they never received money sums. This can be used as evidence.
Planed Steps: A further search warrant for "SolarTech GmbH" will be requested to secure additional evidence.	

Case Note on Follow-up Interview with Ms Klein

Date:	08/09/2024
Prosecutor:	Dr Thomas Müller
Content:	Ms Klein's testimony has further strengthened suspicions against Mr Bauer, as she confirmed that the invoices for the solar system were manipulated in the accounting records. Given the overall situation, it is assumed that Mr Bauer is sufficiently suspected of committing an offence under s. 264 of the German Penal Code.
Conclusion:	Based on the evidence, charges will be prepared in accordance with s. 170 para 2 of the German Code of Criminal Procedure. A detailed indictment will be drafted based on the collected evidence and witness statements.

EPPO Regional Office

Frankfurt am Main

File Number: EPPO-FR-2024/AG-1234

Processing by (name, official title)
EDP Dr. Thomas Müller
☎ **Telephone** 01567893210
E-Mail: drmuller@eppo.fankfurt.de
Frankfurt a. M. 1.9.2024

Order of the Regional EPPO Center

Create new file according to Internal Rules on Procedure

Case Note

EPPO ORDER (15/11/2024)

EDP Frankfurt: Investigation closed, sufficient suspicion established, arrest warrant issued.

Reason: Flight risk (ticket to South America, close family ties there).

Criminal Record Extract: Previous convictions for VAT fraud by Wiesbaden Regional Court and Gelnhausen District Court

***

District Court of Frankfurt am Main

Investigating Judge Order dated: 10/09/2024 **Ref. No.:** 567 Gs 902/24

A R R E S T W A R R A N T

In the criminal investigation against **Richard Bauer**, born 12/07/1979 in Kleinöd, residing at Bergstraße 17, 61231 Kleinöd, Nationality: German,

on suspicion of subsidy fraud under Section 264 of the German Criminal Code (StGB), the court hereby orders pre-trial detention.

I. The suspect is strongly suspected of having fraudulently obtained EU agricultural funding in the amount of €75,300 through the submission of falsified documents, including a forged invoice from "Powerful Sun GmbH" for a solar installation that was never delivered or installed. The application submitted on 20/08/2024 via Agrarportal Hessen omitted relevant subvention-related information, including pending insolvency. The funds were disbursed on 04/09/2024 through Hessische Wirtschaftbank upon order of the Regional Council Darmstadt. During the search of the suspect's premises on 07/09/2024, a forged invoice, a sales agreement for an apple press (purchased post-disbursement), and multiple documents contradicting the funding conditions were seized. The suspect is in a precarious financial situation and has family connections in South America. His conduct during the investigation raises concerns about attempts to conceal evidence.

II. There is strong suspicion of a criminal offence under s. 264 CC in conjunction with s. 2 SubvG. The risk of flight under s. 112 para. 2 no. 2 German CPC is substantiated. The accused is facing a substantial custodial sentence and lacks firm ties to the jurisdiction. In light of the international dimension and the availability of funds for relocation, it is feared the accused may abscond to evade prosecution.
The preconditions for pre-trial detention under s. 112 et seq. German CPC are met.
Frankfurt am Main, 10/09/2024
Dr Lena Weiss Judge at the District Court of Frankfurt am Main

Legal Remedy Notice: The accused may lodge a complaint against this arrest warrant. Alternatively, the accused may request a judicial review of the warrant (Haftprüfung) at any time while in pre-trial detention.

Immediately after the arrest warrant was issued, the accused was transferred to Frankfurt am Main I Prison for execution of pre-trial detention.

Falk & Fenauer & Böttcher – Kanzlei für Strafverteidigung

Fachanwalt für Strafrecht
Falk & Fenauer & Böttcher– Kanzlei für Strafverteidigung Mainzer Landstraße 20160326 Frankfurt am Main
Tel: +49 (0)69 9987 1234
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EPPO Regional Office FFM

Received 7.11.2024

Frankfurt am Main, 7.11.2024

Ref.: ST/1025337658 Submitted to: European Delegated Prosecutor Frankfurt a.M. **Submitted by:** Dr Thomas Falk

Date of Mandate: 04 November 2024 **Date of Submission:** 06 November 2024

Subject: Defence Submission – Objection to the Use of Procedurally Compromised Evidence / Request for Discontinuation of Proceedings (s. 170 para 2 German CPC)

Dear EDP Dr. Muller,

in the

investigation proceedings against Richard Bauer (EPPO-FR-2024/AG-1234).

I would like to thank you for granting me access to the file and return the file to you for my discharge.

On behalf of my client, Mr Richard Bauer, whose mandate I attach to the files, I hereby submit the following remarks and procedural objections after being granted access to the investigation file in accordance with the disclosure order issued on 01/11/2024 pursuant to s. 169a German CPC.

My client will remain silent on all allegations in future.

Upon detailed examination of the case file, I raise formal objections to the admissibility of essential pieces of evidence relied upon by the prosecution. In particular, I contest the validity of the police interview conducted on 08/09/2024. According to the transcript, the interview situation raises concerns under s. 136a German CPC (prohibition of improper methods of examination). My client was placed under psychological pressure

due to the unclear status of his right to remain silent, and the failure to properly assess his need for defence assistance. Any information of the financée cannot be used. In each case the admissibility of the obtained evidence is objected based on s. 257 CPC.

Additionally, I challenge the legality of the police search executed on 25/09/2024. The cited justification “imminent danger” is inadequately documented and lacks substantiating facts. The entry into a secured safe without prior judicial authorisation is in clear contravention of procedural safeguards guaranteed under national law and the EPPO Regulation (cf. Art. 30 and Art. 41 para. 3).

The absence of a judicial order renders the seizure of documents therein null and void, and any evidentiary use of such material inadmissible. Given the procedural defects identified, I hereby move, in accordance with s. 170 para. 2 CPC, to discontinue proceedings against my client.

The current chain of evidence is both insufficient in substance and flawed in its acquisition, rendering it incapable of supporting an indictment that would withstand judicial scrutiny.

The case file is hereby returned with this *memorandum* enclosed.

Yours sincerely,

Dr Thomas Falk

Late Case Memo

State office of criminal investigations

LKA Hesse - Dept. SO 20 –

Hölderlinstraße 1–5, 65187 Wiesbaden

Telefon: 0611 / 406-0

Case Reference: ST/1025332024

EPPO Case Number

EPPO Case Number

Processing by (name, official title)

Lisa Huber, Chief Inspector

Telephone 06423 / 406-0

Telephone 06423 / 406-0

Telephone 06423 / 406-0

Date: 03/11/2024

During follow-up preparations for the prosecution's final evidence list, Ms Kleinhengst, now legally confirmed as the fiancée of the accused Mr Bauer, submitted a formal declaration exercising her right under s. 52 German CPC to refuse testimony.

She invoked her personal relationship and declined to have her earlier statements used.

Concerns were also raised by defence counsel regarding undue pressure during the first interview, citing s. 136a German CPC.

Although no coercive methods were used, the statement will be excluded from the main trial due to the invocation of testimonial privilege.

EPPO Regional Office

Frankfurt am Main

File Number: EPPO-FR-2024/AG-1234

Processing by (name, official title)
EDP Dr. Thomas Müller
☎ **Telephone** 01567893210
E-Mail: drmuller@eppo.fankfurt.de
Frankfurt a. M. 1.9.2024

Order of the Regional EPPO Center

File Note: The case can or should be prepared for indictment. The following points need to be clarified:

- Whether the evidence obtained unlawfully (due to the search conducted outside permissible hours) is admissible or if an exclusion of evidence under s. 136a of the German Code of Criminal Procedure applies.
- Further examination of the financial records of "SolarTech GmbH" to confirm the company's involvement and identify any co-perpetrators.

End of the Investigation File

TASK DESCRIPTION

As part of your (fictious) delegated prosecutor training with this volume, you are instructed to assess and prepare internal documentation regarding the ongoing EPPO investigation against Richard Bauer, currently in custody, suspected of frauds under the German Criminal Code (StGB). Use the compendium to cite provisions and work with it, train it for daily practice.

Your assignment comprises three components:

1. Legal Assessment Memorandum (Part A)

Draft a legal memorandum assessing whether a sufficiently strong suspicion (*hinreichender Tatverdacht*) exists under s. 170 para. 1 in conjunction with s. 203 CPC to justify the initiation of intermediary proceedings (*Zwischenverfahren*). You must:

- Evaluate the factual findings from the investigation (cf. indictment).
- Analyse whether the evidence supports each element of the offence.
- Address the relevance and reliability of the evidence, including the testimonial privilege issue under s. 52 CPC.

- Conclude with a recommendation as to whether the main proceedings should be opened before the Economic Criminal Chamber pursuant to s. 74c GVG.

2. Procedural Summary and Operational Steps (Part B)

Prepare a brief procedural summary for internal use including:
- Current custody status under the arrest warrant (567 Gs 902/24).
- Next steps regarding confiscation measures under ss. 73 et seq. CC (including value-based confiscation).
- The potential application of MistrAG for asset tracing and freezing.
- A summary of what must now be communicated to:
- The Permanent Chamber in Luxembourg (progress report, confiscation proposal).
- Other competent authorities (e.g. LKA, court registry).

3. Draft of Final Prosecutorial Resolution

Draft a short formal resolution by the EDP in accordance with Art. 36 para. 1 EPPO Regulation, recommending:
- Closure of the investigation phase.
- Filing of the indictment before the competent court.

FORMATTING NOTES

Use EPPO standard internal formats. Reference official case numbers.

Use the relevant parts of this "Compendium Volume GER" to find the legal sources.

Once completed, upload your documents to the Case Management System and simulate communication with the Luxembourg EP and the Permanent Chamber.

Nota bene: Be aware that for an indictment preparation, if necessary, the EPPO Internal Rules of Procedure (IRP) suggest the following considerations: a) Evidence Collection and Management (IRP Articles 24–28 emphasizes proper documentation and chain-of-evidence handling); Cross-Border Cooperation (Articles 46–49 are relevant if the case involves multiple Member States, requiring coordination and compliance with EU jurisdictional protocols; Decision-Making Criteria (Articles 69–71 require focus on sufficient evidence for prosecution, especially in relation to EU budget protection and fraud prevention standards).

The proceedings against F have been severed in another proceeding. If charges are to be brought, then against B only.

A. Legal assessment of criminal liability and evidence for a reasonable suspicion of offences (ss. 170 para. 1, 203 German CPC)[1188]

Criminal liability of Richard Bauer

II. Subsidy fraud in a particularly serious case according to Section 264 para. 1 no. 1, para. 2 no. 1 of the German Criminal Code against F and to the detriment of the European Union by submitting the application

The suspect B could be sufficiently suspected, within the meaning of Sections 170 para. 1 and 203 of the German Code of Criminal Procedure (CPC), of having committed a particularly serious case of subsidy fraud pursuant to Section 264 para. 1 no. 1 and para. 2 no. 1 of the German Criminal Code (CC), in that he knowingly made false representations in a public funding application and submitted forged documents in order to obtain EU agricultural subsidies unlawfully.

A sufficiently strong suspicion (*hinreichender Tatverdacht*) exists pursuant to ss. 170 para. 1, 203 CPC, since, based on a preliminary assessment of the case file, there is a prevailing probability of conviction.[1189]

1. Objective facts

The objective elements of the offence are met if A, as the grantor of the subsidy, has provided incorrect or incomplete information to an authority responsible for granting a subsidy regarding facts relevant to the subsidy for himself or another person, which are advantageous to him or the other person.

a) Subsidy (Section 264 para. 8 Sentence 1 no. 2 of the German Criminal Code)

First, a subsidy within the meaning of Section 264 para. 8 CC would have to exist. Subsidy is legally defined in Section 264 para. 8 sentence 1 of the CC. The provision contains two definitions of subsidies that can be distinguished based on their legal basis.[1190] The broad definition of subsidy could[1191] be relevant. A subsidy in this sense is a benefit from public funds under European Union law that is granted at least in part without any commercial consideration. (Section 264 para. 8 sentence 1 no. 2 of the Criminal Code).[1192]

A benefit within the meaning of Section 264 para. 1 no. 1 CC is defined as a direct monetary benefit from the donor to the recipient "with the character of special support"[1193] This includes,

[1188] This fictious training case for students, prosecutors, readers etc. has been designed by Karakocaoğlu and Schneider 2024 for a lecture of Prof. Hauck in the EU-weeks 2023.
[1189] Cf. Meyer-Goßner/Schmitt, StPO, 67th ed. 2024, § 170 marginal no. 1.
[1190] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 4.
[1191] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 4.
[1192] Federal Court of Justice, decision of August 22, 2018, – 3 StR 449/17. This decision deals with an appeal decision that is very instructive, as it addresses eight cases concerning the issues of Section 264 of the German Criminal Code and the interpretation of its terms.
[1193] *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 264 Rn. 29.

in particular, cash payments[1194] from public funds if it is provided by a legal entity governed by public law.[1195] Under EU law, services financed from public funds come from the general budget of the EU or from budgets managed by the Union or on its behalf.[1196] It is irrelevant who provides the direct service whether it is the competent EU authorities or German administrative bodies.[1197]

The funding in question is based on a project by the state of Hesse called "Climate- Friendly Apple Wine Cultivation" as part of the nationwide support program (NSP) "Wine Cultivation Fit for the Future," implemented with EU funds. This project aims, among other things, to promote sustainable apple varieties and climate-friendly harvesting methods and, for this reason, provides them with a "peak grant" of up to EUR 90,000. The fine print for the funding project states that while the payment is made by Hessian state authorities, the funding comes from the European Union budget. The funds are provided from the EU's Common Agricultural Policy (CAP) on the basis of a current EU regulation.

A receives a direct and one-off payment of EUR 75,300 from these funds from the responsible Hessian state authority and thus a benefit within the meaning of Section 264 para. 1 no. 1 CC.

It should also be pointed out that it can also be examined whether in these cases there is deception about facts relevant to subsidies in accordance with Section 264 para. 8 no. 2 of the German Criminal Code in conjunction with Article 4 para. 3 of Council Regulation (EC, Euratom) no. 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. According to the Federal Court of Justice (BGH), "Article 4 para. 3 of Regulation (EC) no. 2988/95 [...] is a law within the meaning of Section 264 (8) no. 2 of the German Criminal Code [BGH, judgment of October 25, 2017 – 1 StR 339/16, wistra 2018, 302, 305, 306 et seq.]. According to this provision, acts which demonstrably aim to obtain an advantage that runs counter to the objectives of the relevant Community provisions by 'artificially' creating the conditions for obtaining this advantage result in the advantage in question not being granted or being withdrawn"[1198]

Furthermore, European secondary law forms the basis for the payment to A, which comes from the EU budget and is allocated by the authorities of the Member States. The allocation of funds is based on the criteria specified inthe project on the Darmstadt Regional Council website, primarily in the conditions and the "Information Sheet on the Grant Award" There is no mention of any consideration. The grant is a one – time amount that will be paid out after the completion of the purchase of solar systems, based on the payment application with proof of use.

[1194] *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 264 Rn. 29.
[1195] *Saliger*, in: SSW-StGB, 6th ed. 2024, § 264 Rn. 8.
[1196] BT-Drs. 13/10425, p. 7; *Gercke/Hembach,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the German Criminal Code, 3rd ed. 2020, § 264, marginal no. 11.
[1197] BT-Drs – 13/10425, p. 10; LG Saarbrücken, judgment of 14 January 2014 – 2 KLs 23/13, para. 113 (juris).
[1198] BGH, decision of August 22, 2018 – 3 StR 449/17, para. 54.

Essentially, these are EU subsidies[1199] awarded to promote the market economy and strengthen the "competitiveness of European apple and wine growing," to strengthen the European economic area as a whole and prepare it for the future. The fact that the expenditures are de facto made by a Hessian authority does not prevent the assumption that these are European budget funds. The distribution by the Hessian authority is solely for the purposes of the so-called shared management of subsidies by authorities of EU member states.

The benefit comes from public funds of the EU, so that the payment meets the requirements of Section 264 para. 8 sentence 1 no. 2 CC and thus represents an (EU) subsidy.

This is evident from the subsidy application dated 20 August 2024 and the reference to EU funds therein as well as from the information sheet on the subsidy. The documentary evidence is fully usable and demonstrates the subsidised nature of the funds with high probative value.

The fiancée Anna Kleinhengst can invoke her right to refuse to give evidence in accordance with Section 52 CPC.

As she has exercised this right, her statement may not be utilised, Section 252 CPC. Any earlier statements of her are subject to a ban on the utilisation of evidence.

b) Subsidy providers

Furthermore, only those subsidies are included that are awarded by a subsidy provider as part of a subsidy procedure.[1200] The subsidy provider is legally defined in no. 1 of the first para. as an authority responsible for approving a subsidy or another body or person involved in the subsidy procedure. The subsidy procedure refers to the administrative procedure that ranges from the application to the granting of the subsidy.[1201] F, who grants the payment to A as part of the subsidy under the "Climate-Friendly Apple Wine Cultivation" project, is an employee of the responsible disbursing authority in the state of Hesse. In his internal relationship with his employer, F exceeds his authority. However, in his external relationship, he continues to act as the responsible employee and acts on behalf of the regional council. A subsidy was therefore granted by the subsidy provider as part of a subsidy procedure.

c) Facts relevant to subsidies

To meet the objective criteria, A would have to have provided incorrect or incomplete information about subsidy-relevant facts. This includes both internal and external facts.[1202]

[1199] Federal Ministry of Food and Agriculture, National Support Programme for the Wine Sector, see https://www.bmel.de/DE/themen/landwirtschaft/pflanzenbau/weinbau/weinbau_node.html. Accessed 31 May 2025.
[1200] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 4 f.
[1201] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 6.
[1202] This is comparable to Section 263 of the German Criminal Code, which also covers both internal and external facts.

aa. Definition

Facts relevant to subsidies are legally defined in Section 264 para. 9 CC in order to create a clear framework for investigating subsidy fraud.[1203] In short, this includes all present or future circumstances that are designated as subsidy-relevant. In concrete terms, the subsidy-relevant nature of a fact according to Section 264 para. 9 no. 1 CC results from the law in the substantive[1204] sense (but not from administrative regulations and guidelines[1205], Alternative 1) or from the designations made by the subsidy provider on the basis of a law (Alternative 2). A fact must be specifically designated as subsidy-relevant[1206], although it is also argued that the subsidy provider does not have to use the term "subsidy-relevant" to describe the fact.[1207] It is sufficient if the chosen (equally meaningful) designation makes it clear beyond doubt that the fact in question is relevant for the approval of the subsidy. The designation must be sufficiently specific and related to the specific case.[1208]

Furthermore, a fact is also relevant to the subsidy if the granting or approval of the subsidy or the subsidy benefit depends on this fact by law or according to the subsidy contract (Section 264 para. 9 no. 2 CC).[1209]

bb. Derivation of subsidy significance

What is needed is a fact whose relevance to the subsidy can be clearly deduced from the law or contract before the act is committed.[1210] This legal basis, required for Section 264 para. 9 no. 1 CC, can also arise from EU law.[1211]

(1) Abstract scale

In this case, the subsidy provider must provide information on the subsidy's significance in the information or notification to the group of subsidy recipients, in such a way that access to the

[1203] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 17; BGH, decision of 22.8.2018 – 3 StR 449/17, paras. 33, 32 on the meaning and purpose of the term: "The meaning and purpose of the criterion of subsidy significance is, in view of the numerous normative concepts of subsidy law, to ensure that both the award conditions for the subsidy recipient and any acts of deception are as clearly identifiable as possible for the subsidy provider and the law enforcement authorities (BGH, judgment of 11.11.1998 – 3 StR 101/98 =BGHSt 44, 233, 238; *Tiedemann,* in: LK-StGB, vol. 9, 12th ed. 2012, § 264 para. 72; BT- Drs. 7/5291, p. 12 et seq.)"; BGH NStZ-RR 2019, 147 with further references.
[1204] BT-Drs. 7/5291, p. 13.
[1205] BGHSt 44, 233 (237) =NJW 1999, 1196.
[1206] BT-Drs. 7/5291, p. 13.
[1207] BayObLG NJW 1982, 2202 (2203); OLG Munich NJW 1982, 457; *Hellmann*, in: NK-StGB, Vol. 4, 6th ed. 2023, § 264, marginal no. 56.
[1208] BGHSt 44, 233 (238) =NJW 1999, 1196 (1197); BGH NStZ-RR 2011, 81; *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264 marginal no. 11.
[1209] BT-Drs. 7/5291, p. 13.
[1210] The so-called formal concept of subsidy significance. See also BT-Drs. 7/5291, p. 12 f.; BGH, decision of August 22, 2018 – 3 StR 449/17, para. 33; *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 para. 17.
[1211] BT-Drs. 7/5291, p. 13; *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 264, marginal no. 57.

subsidy recipients is possible.[1212] One of the variants of Section 264 para. 9 no. 1 CC could apply.

However, the facts of the case do not reveal any formal or substantive law that would designate subsidy-relevant facts in this specific case. In particular, no explicit designation from an EU regulation is evident. It can therefore be assumed that the subsidy-relevant facts were not designated "by law" within the meaning of Section 264 para. 9 no. 1 Alternative 1 CC.

The second alternative is a possibility. According to this, the subsidy provider would have to have designated certain facts as relevant to the subsidy based on a law. Therefore, a legal basis authorizing such action by the subsidy provider is first required. Subsequently, it is necessary to consider to what extent the "conditions" need to be specified in more detail and under which circumstances the designation of certain facts as relevant to the subsidy is sufficient.

It is obvious that the designation of subsidy significance could have been based on EU law. However, this is not apparent from the facts of the case or the cited EU regulation. The focus should therefore be on national law. A suitable legal basis may be Section 2 of the Subsidy Act in conjunction with Section 1 of the Hessian Subsidy Act, although the latter fully refers to the former. In terms of content, Section 2 of the Subsidy Act is therefore relevant, as it contains a general obligation to designate subsidy-relevant facts.[1213]

Despite the subsidies' origin in EU law, the application of Section 2 of the SubvG in conjunction with Section 1 of the Hessian SubvG is not precluded, especially since the award is made by state authorities and not by EU bodies. Section 2 of the SubvG applies without reservation even if subsidies are awarded under EU law, but this constitutes a case of indirect subsidy administration.[1214] In this respect, nothing precludes the application of Section 2 of the SubvG in conjunction with Section 1 of the Hessian SubvG.

(2) Concrete scale

Specifically, the authority responsible for granting the subsidy or another body or person involved in the subsidy procedure (subsidy provider) would have to have described the facts as relevant to the subsidy within the meaning of Section 264 of the Criminal Code to A, who is applying for a subsidy for himself or another person or is claiming a subsidy or a subsidy benefit (subsidy recipient), before the subsidy is approved or granted, in accordance with Section 2 para. 1 of the Subsidy Act .

[1212] *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264, Rn. 19. It must be noted that "the SubvG according to § 1 para. 2 [however] directly only applies to subsidies under federal law, including subsidies awarded by the federal government under EC or EU law, and also to subsidies under state law when the state norm refers to the SubvG, which has largely happened in the subsidy laws of the states (Sch / Sch / Perron § 264 Rn. 35) […], but not to EU subsidies awarded by EU bodies themselves (cf. BT- Drs. 7/5291 p. 13, 21; OLG Munich NJW 1982, 457 [458] [OLG Munich 01.07.1981 – 2 Ws 668/81]); Lackner/Kühl/ *Heger* § 264 Rn. 11) [applies]." So *Saliger,* in: SSW-StGB, 6th ed. 2024, § 264 Rn. 19.
[1213] *Hellmann*, in: NK-StGB, Vol. 4, 6th ed. 2023, § 264 Rn. 58.
[1214] *Halla -Heißen,* Subsidy fraud in agricultural exports, 2004, p. 199.

According to Section 2 para. 1 nos. 1 – 3 SubvG, those facts are to be designated as relevant to the subsidy which, according to the purpose of the subsidy (no. 1), the legal provisions, administrative provisions and guidelines on the award of subsidies (no. 2) and the other award requirements (no. 3), are relevant for the approval, granting, recovery, further granting or retention of a subsidy or a subsidy advantage.

This can be proven by the content of the information sheet and the subsidy application, which were signed by A. These documents are fully usable and have a high probative value with regard to the materiality of the information.

cc. Application of the standard to the case

In this specific case, the Darmstadt Regional Council is the responsible authority for apple and winegrowing subsidies and, at the same time, the responsible approval authority for the subsidies for the "Climate-Friendly Apple Wine Production" funding project. It explains the conditions of the funding on its website and maintains a digital "Information Sheet on the Granting of a Grant," which A also signs alongside the application and uploads via the "Hesse Agricultural Portal" The subsidy is then approved by F, the responsible employee of this authority.

The conditions specified by the Darmstadt Regional Council establish the prerequisites for receiving the subsidy from the aforementioned funding project. Furthermore, the information in the information sheet plays a role in that it identifies "subsidy-relevant facts," which A must familiarize itself with before submitting an application. Regardless of whether these facts satisfy the premise of Section 2 para. 1 of the Subsidy Act, they are attributable to the Darmstadt Regional Council as the responsible granting authority and thus originate from the subsidy provider. Furthermore, the designation as subsidy-relevant occurs before the subsidy is granted to A.

As part of the application, A provides information on the following topics, which are also included in the digital information sheet: 1. Information about personal details such as name, implementing agency, legal form, turnover, etc.; 2. Statement that no insolvency proceedings are currently imminent; and 3. Information in the proof of use after the purchase has been completed (numerical proof). He also states that he meets all the conditions of the subsidy and has purchased a solar system. It must be verified whether this information relates to facts relevant to the subsidy.

For this to be the case, they would have to have been designated as subsidy-relevant by the subsidy provider. This was expressly done in the digital information sheet under "Section 5.9," which contains information 1–3. Furthermore, the application also contains the note "that all facts to be stated in this application are subsidy-relevant with regard to the funding conditions" In this context, the funding conditions are included in the subsidy-relevant information on the Darmstadt Regional Council's website. This represents sufficient identification of subsidy-relevant information in the sense that A actually received it, gained knowledge of the subsidy-relevant information by reading and signing it, and the subsidy-relevant criteria were clearly evident from the pages and the information sheet, so that there could be no doubt about this.

The relevance of these three pieces of information is derived from the funding guidelines issued for the specific funding, in accordance with Section 2 para. 1 no. 2 of the SubvG in conjunction with Section 1 of the Hessian SubvG, as stated in the digital information sheet under item number 5.9 . Information 1–3 are to be considered facts that were to be designated as subsidy-relevant based on the funding guidelines.

With regard to the supposedly fulfilled subsidy conditions and the purchase of a solar system ("Powerful Sun"), which contributes to fulfilling the conditions, there is no explicit information on where the subsidy significance arises. It cannot be assumed that this information was taken from the relevant EU regulation. The regulation generally contains only a general policy direction for subsidies, which must be defined in detail by the member states under administrative law and must specify the concrete subsidy and assistance measures, whereby further conditions can be set to implement the objective of the regulation. Rather, the state of Hesse participates in the nationwide support program (NSP) "Winegrowing fit for the future," including with the funding project "Climate-friendly apple wine cultivation" The conditions regarding the use of solar energy and a list of eligible solar systems are a consequence of the very subsidy purpose of climate friendliness. The subsidy significance of the funding conditions therefore arises from Section 2 para. 1 no. 1 of the SubvG.

dd. Interim result

The stated facts are relevant to subsidies.

d) Offense: Providing false/incomplete information "for yourself or another"

Finally, the information provided by A for himself or another person would have to be incorrect or incomplete. Information provided by the perpetrator regarding the facts relevant to the subsidy is incorrect[1215] within the meaning of Section 264 para. 1 no. 1 CC if it does not correspond to reality. Information is incomplete if a single factual situation is only partially accurately represented and the omission of essential facts creates a false overall picture.[1216] A provides relevant information in the online form of the "Hesse Agricultural Portal"

A may have omitted information that, according to the digital information sheet, is considered relevant to the subsidy, especially since it is relevant for the grant assessment. In particular, A would have had to have informed the applicant about imminent insolvency proceedings. By leaving the field for the relevant question blank, he concealed the fact that insolvency proceedings are currently imminent against him and submitted the application, including the signed information sheet, in this form. He omitted a subsidy-relevant detail and thereby presented an incomplete picture.

A has provided false information regarding the use of solar energy and the purchase of the "Powerful Sun" solar system. He has neither used solar energy in the processing steps of cider production nor purchased a "Powerful Sun" solar system, and he does not intend to do so. Nevertheless, despite knowing that he does not qualify, he states on the online portal that he meets

[1215] BGH wistra 2010, 100 (101).
[1216] BGH NStZ 2006, 625 (627 f.).

all the conditions for the subsidy and attaches an invoice issued for him by R to the application. Accordingly, the information he provides in his application is untrue and therefore incorrect.

Ultimately, A applies for the subsidy for his own benefit – namely to help his business out of a financial emergency and to gain an economic advantage in view of the impending insolvency proceedings against him.

A concealed the impending insolvency and falsely stated that he had purchased a solar system from 'Powerful Sun GmbH'.

Even if he did not confess and remained silent in his interrogation as a defendant, this will be proven to him in the main hearing because it is evident from other objective evidence.

This can be seen from the submitted forged invoice dated 19 August 2024 and the testimony of the accountant Sabine Klein, who stated that no corresponding invoice or purchase was recorded in the system.

The forged invoice constitutes a non-genuine document that can be used as documentary evidence; the accountant's statement is credible and consistent in terms of content. Both pieces of evidence can be utilised without restriction.

e) Advantage "for him or the other"

The information about the facts relevant to the subsidy must also have been advantageous to A or another party. False information is advantageous within the meaning of Section 264 CC if it objectively improves the subsidy recipient's prospects for receiving or retaining the subsidy or the subsidy benefit compared to the actual situation[1217] and increases the chances of receiving the subsidy.[1218]

What could be problematic at this point is that F, in keeping with his attitude as an "apple wine lover and native of Hesse", would like to grant A the subsidy "one way or another" and then even enjoy the apple wine brewed by A, even if this would be an improper use of the subsidy.

The question is whether this eliminates the advantage of the incorrect information. F's attitude of wanting to grant A a subsidy "one way or another" could be interpreted to mean that A's situation has not objectively improved or that his chances of receiving an approved subsidy have not increased, since they were already high due to F's attitude. It is possible that the information he provided is indeed irrelevant in this case and not worthy of penalization.

However, the nature of Section 264 CC as an abstract endangerment offense and the classification of "incorrect statements about subsidy-relevant facts per se as a [threat] to state assets" argues against this.[1219] The legislature intends to criminalize deception per se – without the causally generated error.[1220] The abstract danger materialized through A's incorrect statements the moment A submitted the application and is certainly capable of increasing her chances of a positive response. This advance in criminal liability in Section 264 CC is legitimate, among

[1217] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264 Rn. 18.
[1218] BGHSt 34, 265 (269) =NJW 1987, 2093; BGHSt 36, 373 (376) =NJW 1990, 1921 (1922).
[1219] *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, Section 264, paragraph 94.
[1220] BGHSt 34, 265 (268 f.) =NJW 1987, 2093 (2093 f.); BGHSt 36, 373 (374 ff.) =NJW 1990, 1921 (1922).

other things, by the correspondingly high threshold for subsidy relevance. Nor is there a risk of subsidy fraud being transformed into an offense against mere administrative lying.[1221] The legislative intention to protect the functionality of the subsidy procedure and maintain effective state economic development is clear.[1222] The causal chain from deception through error to the disposal of assets is not a constituent element of Section 264 CC[1223] – although it is doubtful that F was *not* deceived by A. It is therefore irrelevant whether the subsidy provider believes the information or not.[1224]

The advantage of his statements is clear. The advantage of his incorrect and incomplete statements is in his own favour.

This can be proven by the payment confirmation from Hessische Wirtschaftbank dated 4 September 2024 and bank statements.

The documentary evidence is clear, provides direct proof of the payment and can be utilised.

2. Subjective elements

In the subjective element of the offense, Section 264 CC requires the presence of dolus eventualis. A must have acted with knowledge and intent regarding the circumstances constituting the offense.

A sees the numerical reference to "5.9" in the digital information sheet and the points of the online application form explained in more detail and specified in sufficient detail there, as well as the funding conditions on the regional council's website, and yet, knowing this, he still meets the objective criteria. "Well, if so," he thinks.[1225] The fact that he wanted to alleviate his financial hardship to avert insolvency does not preclude the assumption of conditional intent.

This is not clear from the minutes of the interrogation of 9 September 2024, in which A remains silent, which should not be interpreted to his disadvantage.

However, this can be seen from the statement of the accountant Klein, who refers to economic motives (impending insolvency) and can be heard as a witness.

The evidence is consistent in terms of content and can be utilised; the overall picture provides reliable circumstantial evidence for dolus eventualis.

3. Absence of justifying circumstances (*Rechtswidrigkeit*)

A would have acted unlawfully. There are no justifications that contradict the unlawfulness. A acted unlawfully. He is also not entitled to a subsidy.

[1221] *Gaede* in: Matt/ Renzikowski, Criminal Code, Commentary, 2nd ed. 2020, § 264, marginal no. 36; see also *Lüderssen,* wistra 1988, 43 (45 f.).
[1222] *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 264 Rn. 95.
[1223] *Ceffinato,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 264 para. 95.
[1224] *Hoyer,* in: SK-StGB, Vol. 5, 9th ed. 2019, § 264 Rn. 56.
[1225]For comparable requirements, see BGH, decision of 4 May 2021 – BGH 6 StR 137/21, para. 10 (juris); LG Hamburg, decision of 18 January 2021 – 608 Qs 18/20, para. 44 (juris).

This finding is based on the overall content of the investigation file. No indications of justifying circumstances, therefore fully admissible.

4. Guilt as criminal liability

A would have had to have acted culpably. There are no apparent grounds for excluding or excusing guilt. Therefore, B also acted culpably.

Sentencing Factors according to Section 264 para. 2 no. 1 CC

B could also have fulfilled the standard example under Section 264 para. 2 no. 1 CC if he obtained an unjustified subsidy of a large size for himself or another person out of gross self-interest or by using forged or falsified documents .

The documents used must be presented immediately at the time of the commission of the offense. According to Section 146 para. 1 CC, they are considered counterfeit if the produced false documents are likely to deceive the unsuspecting in ordinary business, without requiring excessively stringent requirements.[1226]

Evidence is defined as documents and technical records within the meaning of Section 267.[1227] Documents are embodied, human expressions of thought that are suitable and intended as evidence in legal transactions and that reveal their issuer.[1228] The invoice used by B contains the embodied expression of thought regarding the purchase of a solar system called "Powerful Sun" and was created in a deceptively authentic manner by R. This demonstrates its suitability as evidence in legal transactions and the issuer (seller of the "Powerful Sun"). The fictitious invoice is a document.

R created the invoice he created based on the original ("deceptively authentic"), which is therefore likely to deceive the unsuspecting in ordinary business. The fact that the deceived party, F, failed to comply with his further duty to verify does not change the fact that he, too, had no doubts about the authenticity of the invoice in this specific case.

A subsidy of substantial magnitude is considered to exist even at a sum of €50,000, based on Section 263 para. 3 CC.[1229] Since there should be no discrepancy between the offenses covered by Section 22 CC, this figure is convincing as a uniform value for interpreting this vague legal term. The transfer initiated by F to A amounted to €75,300, thus significantly exceeding the aforementioned amount.

B obtained an unjustified subsidy of a large size for himself by using forged documents and fulfilled the standard example of Section 264 para. 2 no. 1 CC.

[1226] BGH NJW 1995, 1844 (1845); BGH NStZ 2020, 155 (156); *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 146 marginal no. 4.
[1227] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264, marginal no. 25; *Saliger*, in: Esser/Rübenstahl/Saliger/ Tsambikakis, Economic Criminal Law, Commentary, 2017, § 264, marginal no. 36.
[1228] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 267 Rn. 2.
[1229] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264, marginal no. 25; Federal Court of Justice, decision of May 4, 2021 – BGH 6 StR 137/21, marginal no. 12 (juris); *Saliger,* in: Esser et al., Economic Criminal Law, Commentary, 2017, § 264, marginal no. 36.

By exploiting the assistance of a (European) official who abused his powers or position, B may have fulfilled another standard example – namely Section 264 para. 2 no. 3 CC. The responsible employee F of the state authority circumvented official regulations and granted B the funding without further investigation "one way or another", "even if it were used improperly". However, this fails due to A's lack of intentional awareness, who failed to consider F's potential willingness to help and did not want to exploit an opportunity created or permitted by F to obtain unjustified subsidies.[1230]

5. Result

As a result, B is guilty of particularly serious subsidy fraud pursuant to Section 264 para. 1 no. 1 and para. 2 no. 1 CC against F and to the detriment of the European Union.

III. Fraud in a particularly serious case according to Section 263 paras. 1, 3 no. 2 of the German Criminal Code against F and to the detriment of the European Union by submitting the application for financial benefits

B may be sufficiently suspected of having committed an offence by submitting an application for a subsidy of €90,000 and knowingly providing false information, whereupon F authorized a payment of €75,300 from EU funds; criminal liability arises primarily under Section 264 para. 1 no. 1 and para. 2 no. 1 CC as a *lex specialis* in relation to Section 263 StGB, so that prosecution under Section 263 para. 1 and 3 no. 2 StGB is precluded. Therefore,[1231] prosecution under Section 263 para. 1 and para. 3, no. 2 CC can be disregarded here.

IV. Forgery of documents in a particularly serious case according to Section 267 para. 1 Var. 3, para. 3 no. 2 of the German Criminal Code by uploading the invoice in the portal

B may have committed a particularly serious offence of using a forged document pursuant to Section 267 para. 1 Var. 3 and para. 3 no. 2 CC by uploading the invoice produced by R to the "Agrarportal Hessen" and attaching it to his application.

1. Objective facts

Fulfillment of the objective elements of the offence requires the existence of a forged document, which B must have used.

a) Object of the crime: Fake document

Given the above explanations, it is already clear that the invoice – prepared by R – is a document within the meaning of Section 267 para. 1 CC (cf. standard example according to Section 264

[1230] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264 para. 27.
[1231] BGH NStZ-RR 2020, 349; BGH, decision of August 22, 2018 – 3 StR 357/17, marginal no. 26; BGHSt 44, 233 (243); OLG Rostock, decision of January 17, 2012 – I Ws 404/11, marginal no. 14 (juris); *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 264 marginal no. 30.

para. 2 no. 1 CC). A document is spurious if the apparent issuer does not match the true issuer.[1232] This constitutes identity deception.[1233]

The issuer identified on the invoice is the apparent invoice issuer, the seller of the "Powerful Sun" solar system. From F's statement that he knows the invoice issuer "as a reputable supplier of solar systems," it is clear that he is identified as the issuer on that same invoice. This is supported by the statement in the facts that R issued a "deceptively authentic" invoice.

In this respect, there is a contradiction between the apparent issuer and R as the true author of the document. The document is therefore spurious.

A actively uploaded this invoice to the agricultural portal and thus used it in legal transactions.

This use is clear from the digital application system and was confirmed by witness Lisa Huber in her summary of the investigation.

Both the document and the statement of the investigating police officer can be used as evidence.

b) Act: Use of a false document

Now, B would have to have used this document. Use occurs when the forged document was made available to the potential recipient of the deception in such a way that they could have taken note of it.[1234] Actual knowledge is irrelevant.[1235] Furthermore, it is not necessary that B created the forged document himself.[1236]

By uploading R's "deceptively genuine" invoice to the Hessen agricultural portal and attaching it to his application for approval and submitting it, the fake document entered the sphere of the responsible employee F in such a way that he even took note of the document and was convinced of its "authenticity".

It is not an obstacle that R's original invoice only came into R's hands as a scanned (online) document. The electronic transmission of the scanned original is considered an indirect use of the fake document and also fulfils the third variant of the first para.[1237] It is also irrelevant that F failed to comply with his further inspection obligation, which would potentially reveal the inauthenticity of the document. Even upon close inspection, the document appears to be an original document and is deceptively similar to an original invoice. Whether further inspections reveal otherwise is irrelevant.

[1232] *Krell,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267 Rn. 28.
[1233] *Eisele,* Criminal Law, Special Part I, 6th ed. 2021, marginal no. 815; BGHSt 33, 159 (160); *Krell,* in: Leipold/ Tsambikakis / Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267 marginal no. 28.
[1234] BGHSt 36, 65; *Krell,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267, marginal no. 37.
[1235] BGHSt 36, 65; *ibid.,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267, marginal no. 37.
[1236] *Heger,* in: Lackner/Kühl/Heger, Criminal Code, Commentary, 30th ed. 2023, § 267, marginal no. 23; *Heine/Schuster,* in: Schönke/Schröder, Criminal Code, Commentary, 30th ed. 2019, § 267, marginal no. 75.
[1237] BGH wistra 2018, 263 (265).

Therefore, B used the forged document and, as a result, acted objectively in accordance with the facts of the case.

2. Subjective elements

B could also have fulfilled the subjective elements of the offense by knowingly and willingly fulfilling the objective elements of forgery under Section 267 para. 1 Var. 3 CC, in which case any conditional intent is sufficient.[1238] B involved R in his plan and clearly knew of the falsified origin of the invoice issued by R. In any case, he acted with direct intent.

Furthermore, the act must be deceptive in legal transactions, meaning that B would have to intend to influence legal life and induce another person to engage in legally relevant conduct.[1239] A's intention was precisely to deceive the responsible employee using the "deceptively authentic" invoice in such a way that the employee would be mistaken about its authenticity and approve the subsidy requested by A. This constitutes legally relevant conduct. B acted to deceive in legal transactions.

3. Absence of justifying circumstances (Rechtswidrigkeit)

There are no facts in the case that would call into question the unlawfulness of his act.

4. Blameworthiness (*Schuld*)

B also acted culpably, which means there are no exculpatory defences, i.e. he can individually be blamed for the act.

5. Standard example (*Regelbeispiel*) of Section 267 para. 3 no. 2 of the German Criminal Code

By using R's "deceptively authentic" invoice and receiving a subsidy of €75,300, B may have fulfilled the standard example of Section 267 para. 3, no. 2 CC. In particularly serious cases, a prison sentence of six months to ten years applies. According to no. 2 of the third para, such a case occurs when the perpetrator causes a significant loss of assets. A significant loss of assets occurs when the amount exceeds approximately €50,000.[1240] The loss occurs for the EU budget due to the misappropriation of the funding.

The question is whether the use of the forged document caused the substantial loss of assets. After all, F wants to grant B the subsidy "one way or another," "even if it were an improper use of the subsidy" Therefore, causality may be lacking. However, F assumes the invoice is authentic and does not recognize that it is a forged invoice. He fails to further examine the invoice—but he also finds no evidence of this; the invoice is "deceptively authentic" F, as an apple wine lover and native of Hesse, *wants* to grant B the subsidy. Whether this breaks the causal link

[1238] *Krell,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267 Rn. 39.
[1239] BGHSt 5, 149; 33, 105; *Krell,* in: Leipold/ Tsambikakis /Zöller, Lawyer's Commentary on the Criminal Code, 3rd ed. 2020, § 267 marginal no. 40.
[1240] BT-Drs. 13/8587, p. 4.

between the use of the forged document and the bringing about of the substantial loss of assets is doubtful.

Furthermore, it is questionable whether the implementation of Section 267 para. 1, Var. 3 CC led to a significant loss of assets, or whether the loss of assets would have occurred regardless. In that case, there would again be a lack of causation. It was precisely the use of the fake invoice that had a convincing effect on F and was simultaneously – among other things – a reason for F's approval of the application. The use of the fake document therefore contributed to the significant loss of assets.

B was aware of the high sum and sought to gain financial advantage by using R's invoice. He acted with quasi-intent in relation to the standard example within the meaning of Section 267 para. 3 no. 2 CC. The standard example of Section 267 para. 3 no. 2 CC is given.

6. Result

B committed a particularly serious offence under Section 267 para. 1 Var. 3 and para. 3 no. 2 CC for using a forged document.

V. Misuse of European Union services pursuant to Section 1 of the EU Financial Strengthening Act through use for purposes other than those intended

have committed an offense under Section 1 of the EU FinSchStG by using the funds granted to him by F in the name and on behalf of the authority in Darmstadt twice for purposes other than those intended.

Then B would have to have caused a detriment to the assets of the European Union by using benefits granted to him from public funds of the European Union, the use of which is restricted by law or contract, contrary to that restriction of use, with the intention of obtaining an unlawful financial advantage for himself or a third party.

1. Objective facts

a) Services financed from EU public funds

B would have been granted benefits originating from EU public funds. A benefit refers to any targeted and purposeful increase in someone else's assets, whereby funds or assets flow from a provider of benefits to a recipient.[1241] In short, this includes all sums paid out directly or indirectly via EU institutions of the nation states from the EU general budget or from "EU funds" created from it, which are managed by the EU on behalf of the EU.[1242] B received a sum of €75,300 from F, which was earmarked for use in Germany by the responsible German authority from EU funds. This therefore constitutes a benefit from EU public funds.[1243]

[1241] *Satzger,* in: SSW-StGB, 6th ed. 2024, EUFinSchStG § 1; § 2; § 3 Rn. 10, whereby the term is to be distinguished from that in § 264 StGB.
[1242] See, however, *Satzger,* in: SSW-StGB, 6th ed. 2024, EUFinSchStG § 1 Rn. 9 ff.
[1243] See BGH, decision of August 22, 2018 – 3 StR 449/17, marginal no. 58; and *Tiedemann,* in: LK-StGB, Vol. 9, 12th ed. 2012, § 264 marginal no. 70.

b) Restriction on use

Furthermore, there would have to have been a restriction on use. This includes a reduction of the use of funds to one explicitly stated purpose or several different purposes, which must result from a law or contract. The underlying regulation and the implementing law stipulated that the use of the funds for solar power is limited, thus constituting a restriction on use.

c) Violation of usage restrictions

B would have to have violated this use restriction. A violation generally occurs when the funds are used for a different purpose or several different purposes contrary to the restriction, thus counteracting the intended use. More specifically, it includes any disposal of the granted funds or assets that does not serve the purpose specified in the use restriction or is carried out in a manner prohibited by the[1244] use restriction .

The purpose of this element is to capture cases that jeopardize the allocation of funds for a specific purpose.[1245] The question is whether the purpose is still indirectly promoted. Although B used the funds for his own business (purchase of the apple press), he used the funds contrary to the actual purpose established by the regulatory authority (promoting the generation of solar power), thereby jeopardizing the original purpose.

d) Causal disadvantage for the EU's assets

Furthermore, a causal disadvantage to the EU's assets would have to have occurred. A disadvantage is causal if the act causing the damage to assets cannot be ignored without eliminating the disadvantage.

The question is which definition of assets should be used to determine detriment. On the one hand, the definition of assets familiar from the German Criminal Code, which is primarily based on the legal-economic definition of assets, could apply.[1246]

On the other hand, an autonomous concept of assets under EU law could be used as a basis, since EU assets are a very broad area and the assets mare intended to maintain a special organisation with its own legal personality (Article 47 TEU) which has the purpose of supporting the internal market and the Member States in their economic sphere.

This is a matter determined by European law, which is why the definition of assets under EU law should be preferred. [1247] This is supported by the specific circumstances regarding EU assets and the broad scope of protection, as well as the diverse constellations for the use of EU funds.

If B had used the funds for their intended purpose, there would have been no disadvantage to the EU's assets. Because he misused the funds, the EU's assets intended for the purpose are

[1244] *Satzger,* in: SSW-StGB, 6th ed. 2024, EUFinSchStG § 1; § 2; § 3 Rn. 11.
[1245]BT- Drs. 19/7886, p. 25.
[1246] *Satzger,* in: SSW-StGB, 6th ed. 2024, EUFinSchStG § 1; § 2; § 3 Rn. 12.
[1247]So in the end instead of all also *Satzger,* in: SSW-StGB, 6th edition 2024, EUFinSchStG § 1; § 2; § 3 Rn. 12, which establishes a deviation from the national definition of assets.

reduced, allowing the funds to be used for less appropriate projects. A reversal and return of the assets would not eliminate the disadvantage.

2. Subjective elements

a) Intention to cause harm (obtaining)

B would have had to have acted with the intention of obtaining an unlawful financial advantage. In European financial protection criminal law, intent is also the most common form of intent, which is similar to the intention to enrich oneself in Section 263 CC.[1248] It exists when the perpetrator's primary objective is to realize the financial advantage, i.e., when he acts with first-degree dolus directus. B was aware of the circumstances and nevertheless acted to realize the financial advantage for himself, thus indicating the intention to cause harm.

b) Procurement of an unlawful financial advantage

B would also have to have acted to obtain an unlawful financial advantage. A financial advantage is any more favourable arrangement of the legal situation. The advantage is unlawful if there is no entitlement to it. B acted precisely to obtain a sum from the authorities for the cider business, to which he was entitled through no entitlement or other reason, in order to avert insolvency and continue operating the cider mill. Thus, B acted to obtain an unlawful financial advantage.

3. Absence of justifying circumstances (*Rechtswidrigkeit*)

B also acted unlawfully with regard to the objective elements of the offense.

4. Blameworthiness (*Schuld*)

B also acted culpably as there are no exculpatory facts.

5. Result

B has therefore committed an offense under Section 1 of the FinSchStG (Financial Control Act). The penalty is based on the statutory imprisonment of up to five years or a fine.

Criminal liability of F

VI. Breach of trust pursuant to Section 266 para. 1 of the German Criminal Code by granting (without examination)

By granting A's application "one way or another" and thus not examining the granting of funds, F could have committed a criminal offense of breach of trust under Section 266 CC.

[1248] *Satzger,* in: SSW-StGB, 6th ed. 2024, EUFinSchStG § 1; § 2; § 3 marginal no. 13.

1. Objective facts

F would have to have fulfilled one of the two variants of Section 266 CC. Section 266 CC provides for an abuse variant and a breach of trust variant, Section 266 para. 1, Variant 2 CC. Both variants, according to widespread opinion, have in common that F would have violated a duty of care for assets.[1249]

a) Abuse variant, Section 266 Para. 1 Var. 1 German Criminal Code

F may have abused its internal asset management duty to manage funds from European budget funds awarded to grant recipients by the State of Hesse for the EU. Abuse requires the authority to dispose of someone else's assets and a breach of duty that exceeds the legal limits within the scope of legal authority.[1250]

aa. Authority to dispose or oblige

In that case, such an internal duty to manage assets would have to arise from a law, an official mandate, or a legal transaction. This duty exists when, through delegated authority, the person exercising the duty has been given the opportunity, as the asset owner's representative, to make binding decisions on their behalf regarding assets that are not their property.[1251] Some require that a public official must be able to act independently.[1252] The authority to dispose of assets could result from an official mandate. This exists when a public official is, by law and appointment to public office, sovereignly obligated to manage and dispose of public assets in a purposeful and lawful manner.[1253]

F is an employee under a public-law contract and appointed to the regional government administration to administer EU funds at the regional level. Although F is not a financial official, by law and the task assigned to his authority—administering EU funds in accordance with EU budgetary principles and financial aspects of administrative law—he has the sovereign authority to manage public-law assets on behalf of the donor, the EU, which has its own legal personality (see Article 47 TEU).

F is thus granted the authority by official order to directly dispose of the EU funding allocated indirectly to the State of Hesse to achieve the purposes of the Directive.

bb. Abuse of this power

F would have to have abused the authority granted to it internally to grant the money and distribute it according to established administrative rules in external relations.[1254] This is usually

[1249]For the dispute as to whether both variants require a duty to look after assets, see *Fischer,* Criminal Code with ancillary laws, Commentary, 71st edition 2024, § 266 marginal nos. 6 ff., 21 f.
[1250] *Dierlamm,* in: MüKo-StGB, Vol. 5, 4th ed. 2022, § 266, marginal no. 121; *Beukelmann,* in: Dölling et al., Entire Criminal Law, Commentary, 5th ed. 2022, StGB § 266, marginal no. 22.
[1251] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Commentary, 5th ed. 2022, StGB § 266 Rn. 8.
[1252] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Hand Commentary, 5th ed. 2022, StGB § 266 Rn. 17.
[1253] *Fischer,* Criminal Code with subsidiary laws, Commentary, 71st edition 2024, § 266 marginal nos. 10, 17.
[1254] *Fischer,* Criminal Code with subsidiary laws, Commentary, 71st edition 2024, § 266 Rn. 9.

the case when there is a misuse of legal power.[1255] It depends on the design of the authority in the internal relationship. The provisions relevant to F originate from the public service. They establish rules for the distribution of EU public assets. The EU budget legislator determines the use of funds for the EU as a whole by establishing rules on how these funds are to be managed and distributed in order to achieve the structural policy purpose pursued by the use of the funds. Accordingly, the funds should only be used for projects that comply with the law and, in particular, should not be granted if grounds for exclusion exist. This so-called political freedom of the subsidy provider is further specified by internal provisions of the Member States, budget laws, and the administrative regulations based on them, down to the level of the subsidy authority granting the funds.[1256] The question is whether abuse has already occurred simply because F violated the internal audit obligation established by a public regulation of the State of Hesse addressed to the regional councils. This is supported by the fact that F was expressly required to conduct an audit and had an internal limit vis-à-vis his employer, which makes it impossible for him to personally transfer funds for this project internally. While F is legally exercising his authority to dispose of third-party assets, as he is obligated to do so by his mandate within the regional council, he was neither authorized nor entitled to grant the specific subsidy internally. The limits arose from the administrative regulation specifying the management of EU funds. F has a duty to submit and audit, as he would have been required to inform his employer and his superiors for amounts exceeding €50,000. Furthermore, the asset owner did not give his consent in this specific case.

The dispute as to whether F must also have a duty to manage assets can be left aside, since there is in any case a mandate established by the subsidy authority. F has thus exceeded the authority granted to him internally in his external relations . He has thus also indirectly violated administrative financial regulations and budgetary rules.

b) Breach of trust variant

The breach of trust variant, which is broader and requires a breach of the duty to protect the financial interests of others, is also possible, since F, as the specially appointed administrator of EU funds allocated to the State of Hesse for distribution, has a particularly close relationship. Since the abuse variant of the breach of trust offense is a special case of the breach of trust variant, the abuse variant supersedes the breach of trust variant, so that an audit can be omitted.[1257]

c) Success

There would also have to have been a financial disadvantage equivalent to the financial loss in the case of fraud pursuant to Section 263 CC .[1258] Financial loss must therefore be assessed

[1255] *Fischer,* Criminal Code with subsidiary laws, Commentary, 71st edition 2024, § 266 marginal no. 24.
[1256] See BGH, judgment of 8 April 2003 – 5 StR 448/02, para. 22 =NJW 2003, 2179 (2180); BGH NJW 2001, 2413 (2413).
[1257] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Hand Commentary 5th ed. 2022, StGB § 266 Rn. 23, *Fischer,* Criminal Code with Ancillary Laws, Commentary, 71st ed. 2024, § 266 Rn. 194.
[1258] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Hand Commentary 5th ed. 2022, StGB § 266 Rn. 25, BGH, judgment of 14.12.2000 – 5 StR 123/00, Rn. 40 =NJW 2001, 2413.

within the framework of a differential damage hypothesis. It exists if a comparison of the financial situation after the breach of trust shows a worse financial situation.[1259] A comparison must therefore be made between the EU funds allocated to the State of Hesse before F's act with the situation before F's transfer to A. Ultimately, both an indirect, clearly financial reduction in the Union's financial resources in the amount granted, which was not intended for companies at risk of insolvency but for financially sound companies that want to convert to climate-friendly solutions, and immaterial damage due to the failure of the purpose can be determined.

2. Subjective elements

F would also have to have acted intentionally, although conditional intent is sufficient and this must relate to the breach of duty.[1260] F's behaviour was essentially indifferent, as he wanted to grant B the money "one way or another" He was also aware that he was violating internal rules in his internal relationship because, due to his position, he had administrative knowledge and, in particular, budgetary law related to the management of EU funds . He was also aware that he was disregarding principles and rules for the use of EU funds that originate from EU law and are laid down in administrative law, which always require an audit by the fund manager. In doing so, F at least knowingly accepted the possibility of financial loss.

3. Absence of justifying circumstances (*Rechtswidrigkeit*) and guilt

F would also have to have acted unlawfully and culpably. There is no evidence that F could have been authorized by a contract, agreement, or the like to decide on the granting of the money outside of his authority. F also acted culpably.

4. Section 266 para. 1 German Criminal Code in conjunction with Section 263 para. 3 German Criminal Code

A particularly serious case occurs when a significant loss of assets has occurred. The value limit of €50,000 is exceeded, which means that a particularly serious case can be assumed.

Section 266 para. 2 of the Criminal Code in conjunction with ss. 247, 248a German Criminal Code

According to Section 266 para. 2 CC in conjunction with Sections 247 and 248a CC, no criminal complaint had to be filed because the damage was not minor and there was no crime between household members.

5. Result

F has committed an offense under Section 266 para. 1 Var. 1 CC in conjunction with Section 263 para. 3 CC.

[1259] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Hand Commentary 5th ed. 2022, StGB § 266 Rn. 25, *Fischer,* Criminal Code with Ancillary Laws, Commentary, 71st ed. 2024, § 266 Rn. 121, 128, 129.
[1260] *Beukelmann,* in: Dölling et al., Complete Criminal Law, Hand Commentary 5th ed. 2022, StGB § 266 Rn. 40.

The differences to fraud are evident in the constituent elements of Section 264 of the Criminal Code. While Section 263 of the Criminal Code requires deception such that an error is created or maintained, which must subsequently lead to a disposal of assets that, although not evident in the wording of the law, is logically necessary and therefore recognized, and which causes financial loss to the victim, none of these constituent elements are required for Section 264 of the Criminal Code. Section 264 of the Criminal Code precedes the fraud offense and shifts the criminal liability. It is therefore not necessary for the potential victim to be under an error due to deception or for this error to be maintained. From a dogmatic point of view, Section 264 of the Criminal Code is therefore an abstract endangerment offense, whereas Section 263 of the Criminal Code is an injury offense.

B. Procedural questions

I. Jurisdiction of the EPPO

In principle, a public prosecutor's office is responsible for every judicial district in Germany (Sections 141 and 143 para. 1 of the Courts of Justice Act). However, pursuant to Section 142b of the Courts of Justice Act in conjunction with Articles 22 and 23 of the EPPO Regulation, the office of public prosecutor can be exercised by Delegated European Prosecutors if the EPPO 's jurisdiction is justified. In this case, the competent prosecutor's office would be the EPPO, not the national public prosecutor's office responsible under Section 143 para. 1 of the Courts of Justice Act, which would be competent based on the court's territorial jurisdiction (Sections 7 et seq. of the Code of Criminal Procedure).

The EPPO 's jurisdiction consists of a substantive and territorial/personnel level. It is regulated in Chapter 4 of the EPPO Regulation, in Articles 22 and 23. If jurisdiction exists under these articles, the EPPO could initiate the proceedings (Article 26 EPPO Regulation) or assume the proceedings (evocation under Article 27 EPPO Regulation).

1. Territorial jurisdiction, Art. 23 EPPO Regulation

The EPPO could have formal territorial jurisdiction pursuant to Article 23 of the EPPO Regulation.

2. General competence according to EPPO – territoriality

This is the case if these crimes a) were committed wholly or partly on the territory of one or more Member States, b) were committed by a national of a Member State, provided that a Member State has jurisdiction over such crimes when committed outside its territory, or c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or the Conditions of Employment at the time the crime was committed, provided that a Member State has jurisdiction over such crimes when committed outside its territory. Accordingly, the EPPO could have territorial jurisdiction pursuant to Article 22 (a) of the EPPO Regulation.

II. Jurisdiction of the EPPO centers within Germany

The German legislature decided on a derogation in Section 143 (6) of the German Courts of Justice Act (GVG). According to this provision, the European Delegated Prosecutors generally have nationwide jurisdiction. However, it is questionable whether this will result in further differentiation through the internal rules of procedure of the EPPO 's regional centers in Germany. According to the jurisdictional allocation, the Frankfurt am Main regional center is responsible for Hesse, Rhineland-Palatinate, and Baden-Württemberg.

B has received funding from the project "Climate-friendly apple wine cultivation" with false information about the solar system in Hesse. He committed the offense of subsidy fraud pursuant to Section 264 para. 1 no. 1 and para. 2 no. 1 CC (see above) – which constitutes a criminal offense within the meaning of Article 22 para. 1 of the EPPO Regulation in conjunction with Article 3 (2) (a) no. i of the PIF Directive[1261] – entirely in Germany. Germany is part of the European Union. Therefore, the EPPO has territorial jurisdiction pursuant to Article 23 (a) of the EPPO Regulation.

Note : The crime scene principle applies, but this is partially overridden by the EPPO 's internal agreement, insofar as the EPPO internally limits jurisdiction for crime scenes, despite nationwide competence . However, this regulation is not binding, meaning that even a DEStA from Munich could, if necessary, conduct investigations at a different crime scene or in another federal state, even if it defies an internal directive from the EPPO management.

III. Substantive jurisdiction, Articles 22 and 23 of the EU Regulation

The EPPO would have to have substantive jurisdiction. This is governed by Article 22 of the EPPO Regulation.

The EPPO could have jurisdiction pursuant to Article 22 para. 1 of the EPPO Regulation in conjunction with the PIF Directive or Article 22 para. 3 of the EPPO Regulation. Accordingly, the EPPO's jurisdiction encompasses the crimes affecting the financial interests of the Union defined in Directive (EU) 2017/1371 as transposed into national law, as well as all other crimes inextricably linked to them.

The financial interests of the Union are legally defined by the EPPO Regulation as all revenue, expenditure and assets included in, acquired by or owed to the Union's budget or to the budgets of the institutions, bodies, offices and agencies established under the Treaties or to the budgets managed and monitored by them, Article 2 para. 2 and para. 3 of the EPPO Regulation. This specific case concerns the subsidy awarded by the State of Hesse for the "Climate-Friendly Apple Wine Cultivation" project, which B received in the amount of €75,300 due to incorrect information. This funding is provided by the EU on the basis of an EU regulation and awarded by an employee of the responsible regional council, F. It is therefore an expenditure from the Union's budget, meaning that its financial interests are affected.

[1261]Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, pp. 29–41.

Furthermore, the crime must be one covered by the PIF Directive and transposed into national law. This directive is a directive of the European Parliament and of the Council, which deals with the criminal prosecution of fraud affecting the Union's financial interests. Articles 3 and 4 of the PIF Directive regulate crimes affecting the Union's financial interests.

Article 3 para. 2 (a) (i) and Article 4 para. 3 of the PIF Directive are affected. The implementation in German law is considered to be subsidy fraud under Section 264 CC and breach of trust under Section 266 para. 1 (Variant 1) CC.[1262]

The EPPO could also have jurisdiction over the crime of forgery of documents if this were inextricably linked to the subsidy fraud. Criminal offenses are inextricably linked if the EPPO's prosecution of the PIF offense would prevent the other offense from being prosecuted under the ne bis in idem principle.[1263] The circumstances of the unlawful conduct must be inextricably linked in time and space.[1264] B committed the offense of using a forged document in a particularly serious case pursuant to Section 267 para. 1 Var. 3 and para. 3 no. 1 CC by uploading the "deceptively authentic" invoice for the purchase of a solar system to the Hessen agricultural portal and attaching it to the subsidy application. He submitted both at the same time. This alone shows that the criminal act is one and the same. The ne bis in idem principle would be compromised if the prosecution were separate. The simultaneous sending of both documents to the same addressee for the same purpose highlights the inextricable connection between the crimes.

The EPPO is responsible for prosecuting subsidy fraud, breach of trust and forgery.

IV. Prosecution before national courts

The court's jurisdiction could arise from the provisions of the Code of Criminal Procedure and the Courts Constitution Act. Pursuant to Sections 74 and 74c para. 1 no. 5 of the Courts Constitution Act, a criminal chamber, acting as a commercial criminal chamber, is responsible for offenses involving subsidy fraud, provided that the Regional Court has jurisdiction under Section 74 para. 1 of the Courts Constitution Act as the court of first instance, and under Section 74 para. 3 of the Courts Constitution Act for hearing and deciding on appeals against judgments of lay judges.

The EPPO can therefore bring charges before the Regional Court of Frankfurt am Main if it has territorial and material jurisdiction in accordance with Article 36 of the EPPO Regulation.

[1262]Communication from the Federal Republic of Germany to the European Public Prosecutor's Office of 18 June 2021, p. 2 et seq., available at https://www.eppo.europa.eu/sites/default/files/2021-11/12-DE.pdf (May 3, 2024).
[1263] *Brodowski,* in: Herrnfeld/Brodowski/Burchard, European Public Prosecutor's Office, Article-by-Article Commentary, 2021, Art. 22 Rn. 102.
[1264] *Brodowski,* in: Herrnfeld/Brodowski/Burchard, European Public Prosecutor's Office, Article-by-Article Commentary, 2021, Art. 22 Rn. 102 f.

C. Internal Legal Memorandum

Prepared by: Dr Klaus Müller, European Delegated Prosecutor (EDP), Frankfurt Regional Office
Case Reference: EPPO-FR-2024/AG-1234
Date: 11/07/2025

I. Subject of assessment of whether a sufficiently strong suspicion (*hinreichender Tatverdacht*) exists to initiate the intermediate proceedings ("*Zwischenverfahren*") under s. 203 German CPC, following conclusion of the EPPO-led investigation.

II. Summary of conduct

The accused, Mr Richard Bauer, submitted a fraudulent subsidy application via the "*Agrarportal Hessen*", falsely declaring the acquisition and installation of a solar system under the EU-funded programme "Klimafreundlicher Apfelweinanbau". He uploaded a forged invoice and falsified documentation, which led to the disbursement of €75,300 in EU funds. No actual installation was undertaken, and funds were misused to settle private debt and acquire unrelated equipment (apple press).

III. Legal classification

The conduct fulfils the elements of **subsidy fraud pursuant to s. 264 para. 1 No. 1, para. 2, para. 3 German Criminal Code**, committed with intent and involving falsified documents. There is clear knowledge of subsidy relevant data ("*subventionserhebliche Tatsachen*") and wilful deception.

IV. Evaluation of evidence

The evidentiary material includes digital applications, forged invoice, banking records, and post-disbursement transaction trail. The statement of witness Sabine Klein, and the financial analysis report by *LKA Hesse*, corroborate the fictitious nature of the declared expenditure. The accused's own limited statement attempts to frame the matter as an administrative error but lacks credibility when viewed alongside seized documentation.

V. Conclusion

Given the corroborated evidence and in particular the clear documentary trail and the falsification of subvention-relevant facts, the threshold of s. 170 para. 1 German CPC is met. There is sufficient suspicion to open main proceedings.

Proposal: The matter is to be referred to the Economic Criminal Chamber of the Frankfurt Regional Court (s. 74c GVG). Charges should be admitted for trial.

Procedural Assessment and Required Measures

Internal note on procedural status and next steps prepared by: Dr Klaus Müller, EDP **Date:** 11/07/2025 **Case Ref.:** EPPO-FR-2024/AG-1234

I. Pre-trial detention

The accused remains in custody pursuant to arrest warrant 567 Gs 902/24 (10/09/2024). Grounds under ss. 112 para. 2 no. 2 (flight risk due to foreign ties) and 112a (risk of reoffending) continue to apply.

II. Confiscation measures (*Einziehung* ss. 73 ff. German Criminal Code) Given the unlawful gain of €75,300, confiscation is to be sought. The financial trace confirms the funds are no longer in the original account. Substitute confiscation (Wertersatz) under s. 73c German Criminal Code should be applied.

III. Asset recovery – MistrA measures

Notifications to the Hessian asset recovery registry have been initiated. Coordination with financial enforcement to secure bank accounts and machinery (apple press) is pending.

IV. Reporting obligations to EPPO chambers and EP

A formal Progress Report ("*Fortschrittsbericht*") will be submitted to the Permanent Chamber in Luxembourg, including:

- Summary of the pre-trial investigation
- Custody status
- Asset recovery measures
- Proposal for indictment admission
- Timeline for trial

D. Draft resolution of the EDP (*Entschließung*)

Pursuant to Article 36 para. 1 EPPO Regulation and s. 170 para. CPC, the investigation against the suspect Richard Bauer, who is called accused from this new stage on, shall be concluded and referred for prosecution before the Economic Criminal Chamber of the Frankfurt Regional Court. The suspicion of a criminal offence affecting the financial interests of the Union is sufficiently substantiated. The accused remains in pre-trial detention, and further measures for confiscation and recovery have been initiated.

EPPO Regional Public Prosecutor's Office Frankfurt am Main	Ref. No.: 457 Js 2987/24 Frankfurt am Main, 25/09/2024
	To the Regional Court of Frankfurt am Main – Economic Criminal Chamber –
	URGENT – CUSTODY CASE
	I N D I C T M E N T
See Annex I	Richard Bauer, born 12/07/1979 in Kleinöd, residing at Bergstraße 17, 61231 Kleinöd, Nationality: Germany
	is i n d i c t e d,
	from 4.8-29.8.2024 in Frankfurt and elsewehere
	is accused - with prosecution limited to s. 1 EUFinSchG –
	a) of having made false statements to an authority responsible for authorising a subsidy and to a person (subsidy provider) about subsidy-relevant information that is advantageous to him, whereby he obtained an unjustified large subsidy for himself

b) by using forged documents, and of having used a false document to deceive in legal transactions, whereby he caused a large-scale loss of assets,

See Annex I

The accused submitted an application via the "Agrarportal Hessen" on 20/08/2024 for funding under the programme "Climate-Friendly Apple Wine Production". He falsely stated that he had acquired and installed a subsidisable solar power system from the company "Powerful Sun GmbH". In support, he uploaded a forged invoice and fictitious location photos.

In the application form, the defendant left the field regarding pending insolvency blank, alt-hough his business was in severe financial distress. On 04/09/2024, €75,300 in EU agricultural subsidies were disbursed to the accused via the Hessische Wirtschaftbank on the instruction of the Regional Council of Darmstadt. In reality, the solar system was neither delivered nor installed. The funds were instead used to pay off debts and finance the purchase of an apple press.

Legal classification: Sections 264 para. 1 No. 1, para. 2 No. 1, para. 3 German Criminal Code; Section 2 SubvG; Section 53 German Criminal Code. Jurisdiction lies with the Economic Criminal Chamber of the Regional Court of Frankfurt am Main in accordance with Section 74c GVG, due to the high damage amount (over €50,000) and the seriousness of the offence.

See Annex I, A.

E v i d e n c e

I. **Suspect Information**

Defendant's statement:– Transcript of suspect interview dated 09/09/2024

See Annex I

II. **Witnesses:**

1 Dr Thomas F., case officer at the Regional Council of Darmstadt
2 Chief Inspector Lisa Huber, State Office of Criminal Investigation Hesse
3 Sabine Klein, accountant, GreenWave Innovations GmbH

See Annex I

III. **Documentary evidence:**

1 Subsidy application dated 20/08/2024 (Agrarportal Hessen)

2 Digital declaration of awareness of subsidy-relevant facts
3 Forged invoice from "Powerful Sun GmbH", dated 19/08/2024
4 Payment confirmation from Hessische Wirtschaftbank dated 04/09/2024
5 Sales contract for apple press, dated 08/09/2024
6 Search report from 07/09/2024
7 Investigation report EPPO Frankfurt, dated 10/09/2024

See Annex I

IV. **Visual Objects:**

Screenshot of the "Agrarportal"

Official Results of the Investigations (Short Version):

I. Information concerning the Person:

The accused, facing financial insolvency, intentionally fabricated key details in a public grant application, with the intent to deceive the disbursing authority and to secure unjustified EU funds.

II. Merits :

The seized documents and financial trace evidence confirm no solar system was installed. Attempts by the accused to reframe this as an administrative error are contradicted by material evidence.

Request:
a) That the indictment be admitted for main trial before the Economic Criminal Chamber of the Re-gional Court of Frankfurt am Main.

b) That the arrest warrant of 10/09/2024 (Ref: 567 Gs 902/24) remain in force. The court is asked to open and determine a date,

Frankfurt am Main, 25/09/2024

Dr Muller

Delegated Public Prosecutor (EPPO) * purely fictious for training purposes

Annex II

Case Study 10: Invention of a Case Study Sheet for EPPO and OLAF investigations for an EPPO/OLAF Trial Monitoring Idea (Gießen-Template draft)

CASE STUDY SHEET FOR EPPO & OLAF INVESTIGATIONS	
CASE NAME (unofficial) **INVESTIGATION ACRONYM** * Source: Landgericht Munich.	"The Coin Case" (case data can be requested under s. 476 et seq. CPC) if working as researcher.
RELATED CJEU CASES	C-354/03 – Judgment of the Court (Third Chamber) of 12 January 2006. Optigen Ltd (C-354/03), Fulcrum Electronics Ltd (C-355/03) and Bond House Systems Ltd (C-484/03) v Commissioners of Customs & Excise. Reference for a preliminary ruling: High Court of Justice (England & Wales), Chancery Division – United Kingdom. C-524/15 – Menci, Judgment of the Court (Grand Chamber) of 20 March 2018; Criminal proceedings against Luca Menci.
IMPORTANT ECHR CASES	CASE OF "BULVES" AD v. BULGARIA (Application no. 3991/03).
KEYWORDS/ AT ONE GLANCE:	Countries Involved/Member States concerned: GER, SI. (Suspected) Crime(s) and relevant Sections: s. 85 369, 370 Abs.1 Nr. 1, Abs. 3 Satz 1, Satz 2 Nr. 1, Nr. 5 AO, 53, 73, 73 c Criminal Code. Data: Extend of damage: 3.261.288,26 € **Investigative actions taken**: See → Assessement of Evidence. **Investigative authorities involved**: Bundeszentralamt Gewerbeamt Staatsanwaltschaft München Polizei Bayern Steuerfahndung Chemnitz

SUMMARY & FACTS

The accused was the owner of a sole proprietorship named *MEERE*, registered in Munich, Germany, with tax obligations at the local tax office. His business was used as a "buffer" entity in a VAT (Value Added Tax) carousel fraud scheme operated by a group engaged in ongoing VAT fraud within the platinum coin trade. This group used a loop system where platinum coins were initially exchanged for gold and later for monetary transfers, enabling them to evade VAT.

As part of the scheme, the defendant issued invoices for fictitious platinum coin sales to *Hamburg Münzhandelsgesellschaft mbH*, which acted as a distributor. He also received invoices from *WEB Handels GmbH*, a "missing trader" that failed to file VAT returns. These fake transactions allowed false input tax deductions in VAT prepayments, concealing the fraud. The defendant knowingly submitted falsified VAT returns to the tax office, overstating input VAT and underpaying owed VAT.

For his role, the defendant received 1% of the net revenue stated in his invoices as compensation, initially via bank transfers and later in cash. Through these actions, he avoided paying approximately €3.26 million in VAT, with fraudulent declarations spanning multiple months from 2019 to 2020.

The EPPO prosecuted the defendant for aiding VAT evasion and participating in the fraudulent scheme. The case was heard before the Munich Regional Court (*Landgericht München I*). The court accepted the charges but reclassified certain aspects, deciding not to treat the case as involving a criminal organisation. Parts of the case were dismissed under German procedural law (Sections 154 and 154a of the Criminal Procedure Code). The remaining proceedings focused on the defendant's core acts of VAT evasion through false input tax claims.

ASSESSMENT OF THE EVIDENCE

The court then turns to the assessment of the evidence. In this, it makes findings on the personal circumstances of the accused as well as on the facts of the case in relation to the points relevant to criminal law.

The following evidence is used to support the findings: the accused's statement (confession), extract from the Federal Central Register (*Bundeszentralregisterauszug*), witness statements (including those of tax investigators) and documents that are examined.

Among the examined documents the court namely mentions the following: business registration (*Gewerbeanmeldung*), so-called turnover tax monitoring sheets (*Umsatzsteuer-Überwachungsbögen*) for the calendar year 2019 and 2020, turnover tax advance return data (*Umsatzsteuer-Voranmeldungsdaten*), bookkeeping accounts (*Buchhaltungskonten*), incoming and outgoing invoices (*Ein- und Ausgangsrechnungen*) of the accused, account documents (*Kontounterlagen*) of the accused, chat

histories between the accused and the rest of the prosecuted persons e.g. on Viber chat or Threema chat, email mailboxes, trade register excerpts (*Handelsregisterauszüge*) and lists of shareholders (*Gesellschafterlisten*), communications from the tax authorities from Chemnitz and seized mobile phones.
Since the defendant already confessed at an early stage of the investigation phase and later again at the trial phase, and since his confession was consistent with the rest of the evidence, the court considers the defendant's confession to be credible. The majority of the facts of the case are based on this, whereby the course of events is reconstructed with further evidence (witness statements and documents).

The evidence that makes it possible to establish the fact of the offence are the turnover tax monitoring sheets. These are internal documents of the tax authorities showing the accused's advance VAT returns, which the accused made to the tax authorities on the basis of incorrect information about tax-relevant facts (s. 370 para. 1 no. 1 of the Fiscal Code). In each of these, the accused had falsely credited input tax. This conclusion was confirmed by the remaining account documents, bookkeeping accounts and invoices of the accused. (p. 12)
However, the fact that he was not entitled to deduct input tax was clear from his admission, the witness statements as well as the chat history with the other prosecuted persons in this case. (p. 12)
The court recognises that the accused was mostly acting on the instructions of others (pp. 12, 13). In doing so, the accused received and created invoices, which he then forwarded by email to the next company in the framework of the carousel. He forwarded these incoming and outgoing invoices to his accountant for the submission of the advance VAT return as a trader of platinum coins. (p. 12)
From the confession of the accused the court is "convinced that the defendant actually did not operate his own trade with platinum coins, but was only integrated into a billing chain [*Fakturierungskette*]."[1265]
Concerning to the other prosecuted persons and their companies, the court established the following: While company A is seen as the "Missing Trader", company C is considered the "Distributor". (p. 16) There is another company D that is based in a different European Member State (Slovakia). Through this foreign company, the platinum coins were reintroduced into economic traffic in Germany. The court assumes that C sold the platinum coins to D. (p. 14)
This results in the typical carousel situation: Company A does not file a VAT return, i.e., fails to pay the VAT. Company C, on the other hand, claims input tax from the tax office, which the tax office pays out to C. Thus, the VAT carousel leads to a loss that occurs at the tax authority and is detrimental to the financial interests of the EU.

[1265] Judgment, p. 14.

	(p. 14) The accused as the subject of the Judgment at hand played the role of the "buffer" (p. 5) with is company (here named) B, who received and issued invoices contributing to the functioning of the carousel and integrating himself into the so-called billing chain. Furthermore, the court establishes the gang status of the prosecuted persons. This finding is primarily based on the testimonies of the investigators and the notification of the tax authorities from Chemnitz regarding the suspicion, which led to the initiation of the investigation against the accused or his accomplices. Furthermore, the investigators examined the mobile phone of one of the accomplices in order to determine whether the group acted as a gang. The data obtained from this and the accused's admission favoured the court's finding that there was an exchange of information between the accused and his accomplices, that they agreed on the course of action and that instructions were given and received (p. 15). The accused passed on his email account data and password to the other members, which also speaks for the commission of the crime as a gang. (p. 16) Besides, chat histories, conversations and relationships of the gang members were evaluated. (pp. 16, 17) The court finds the existence of a gang agreement (*Bandenabrede*). (p. 1417) Relating to the subjective elements of the crime, the court concludes a deliberate commission of the offence. (p. 17) The intent also applies to the gang agreement.
LEGAL RESULTS / STEPS TAKEN - INDICTMENT - VERDICT - SETTLEMENT[1266] - NO ACTION	s. 85, 369, 370 Abs.1 Nr. 1, Abs. 3 Satz 1, Satz 2 Nr. 1, Nr. 5 AO, 53, 73, 73 c Criminal Code.
CASE ANALYSIS	**Basis for suspicion and initiation of investigations:** Notification by the Chemnitz tax authority regarding VAT evasion by one of the companies from the carousel. The decisive factor was the "change in the company's advance notification data". (p. 15) Up to 2016, the company had regular payment debits (*Zahllasten*), but from 2017 onwards, "large input tax surpluses were noticed"

[1266] See Lelieur 2023, p. 596 concluding that settlements are for example an option for the EPPO in France to tackle big crimes: "It is therefore a real policy of European prosecution by the EPPO that is needed to protect the EU's financial interests by means of criminal law."

	(*große Vorsteuerüberhänge*) due to "exports without turnover". (S. 15) **Initiator of investigations:** tax investigators (*Steuerfahnder*) (S. 12)
Prosecutor's/EPPO's Arguments	**Defendants Arguments**
We have no insight into the indictment by the EPPO.	Concerning objective elements The accused admitted the objective elements and his admission matched the material evidence as well as witness statements. Concerning subjective elements - The accused assumed that everything was correct; the accused claims a prohibition error (*Verbotsirrtum*) - The accused argued his accountant had not warned him - Accused pleads error as to the absence of real trade in platinum coins - The accused claims not to have known the exact business model - The accused states that he phoned one of the accomplices several times to make sure that everything was going correctly.
	Court's Reasoning in detail: Concerning objective elements of the crime: See above → **Assessment of the evidence** Concerning the subjective elements of the crime: - the accused received 1% of the net turnover in cash, which shows that he was aware of the untruthful input VAT declarations to the tax office + that the renumeration could not be lawful

	- he does not live from the profit of the trade with the platinum coins, which he was aware of - he did not communicate this remuneration to his tax accountant - He had enough prior knowledge to know that he was not trading in platinum coins. - He knew the gang agreement and was aware of his contribution to the crime, which was clear from the chats. - He knew that the invoices had to show VAT, which is clear from the chats. - He deliberately forwarded his email data, password and therefore his company to the other gang members - The fact that he repeatedly reassured himself that everything was correct shows his mistrust and his realisation that "something was not right" (p. 18).
JUDICIAL CONSIDERATIONS (RUBRIC) **JUDGMENT**	The court assessed the defendant's conduct as criminal under s. 370 Abs. 1, Abs. 3 Satz 2 Nr. 1 and Nr. 5 AO and s. 53 CC. The defendant was found guilty of ten counts of tax evasion committed as part of a criminal organisation, as follows: 1. **Elements of Tax evasion (s. 370 AO):** - The defendant was legally obligated under **s. 33 AO in conjunction with s. 18 Abs. 1 UStG (VAT Act)** to submit truthful and complete monthly VAT prepayments. - By submitting false invoices and claiming unwarranted input tax deductions from fictitious transactions, the defendant provided **false information about tax-relevant facts** to the tax authorities, causing significant financial losses. - The "missing trader" (*WEB Handels GmbH*) involved in the scheme did not qualify as a legitimate business under **s. 15 UStG**, invalidating the defendant's input VAT claims. 2. **Particularly Severe Cases of Tax Evasion (s. 370 Abs. 3 Satz 2 AO):**

	- The court identified the following aggravating circumstances: · **Large-scale tax evasion:** The financial threshold of €50,000 per offence (per BGH rulings) was exceeded in each of the ten offences. · **Criminal organisation involvement:** The defendant acted as part of a group organized to commit VAT carousel fraud, fulfilling the requirements of a "bande" (criminal gang) under s. 370 Abs. 3 Satz 2 Nr. 5 AO. The defendant knowingly collaborated with the group to obscure the fraudulent activity through his role as a buffer. 3. **Individual Criminal Responsibility:** - Each VAT prepayment represented a separate offence, resulting in **ten independent acts** of tax evasion, which were handled cumulatively under **s. 53 CC**. Legal assessment of tax evasion: Pages 19–21 **Sentencing and Sanctions** Sentencing Pages 21–22 1. **Penalties for Severe Tax Evasion (s. 370 Abs. 3 AO):** - The penalty range for each offence was **six months to ten years of imprisonment** due to the aggravating factors. 2. **Final Sentence:** - Individual sentences ranged between **one year and four months** to **one year and nine months** for each count. - The court consolidated these into a **total sentence of three years and three months of imprisonment**, taking into account: · The systemic and repetitive nature of the crimes. · The defendant's partial admission of guilt, which mitigated the final penalty.
ACADEMIC DISCUSSION (COMPARISON & FUNCTIONAL ANALYSIS)	A criminal gang is regularly assessed in case of two persons. The reason is that the objective danger is higher if two or more persons are involved in a criminal conduct. The courts refer to this low threshold as they

see it as a key provision to assess organized criminal conduct.

Further literature on the German perspective is offered by Heike Jochum, Joachim Englisch, Peter H. J. Essers, 2015, Taxing German-Dutch Cross-border Business Activities, A Legal Comparison with Particular Focus on the New Bilateral Tax Treaty, p. 311 et seq. who especially focus on the UStG.
And for the criminal law perspective see Mareike Schmidt, 2016, Die Nichtabführung von Umsatzsteuer als Straftat die ss. 26b, 26c UStG im Spannungsfeld gesetzgeberischer Intention und praktischer Defizite.

LESSONS LEARNED/FAILURES PERSPECTIVE FOR EDPs

The judgment demonstrates that the defendant's actions, including fabricating invoices and misusing VAT input claims, were criminally liable due to their systematic execution, involvement in a criminal organisation, and the significant financial harm caused. The court applied a stringent interpretation of German tax and criminal law provisions to hold the defendant accountable.
The court relied heavily on the accused's early confession, which aligned with other evidence, including documents, witness statements, and communications. An EDP should actively encourage cooperation during the investigation phase, as an early confession can significantly streamline case resolution.

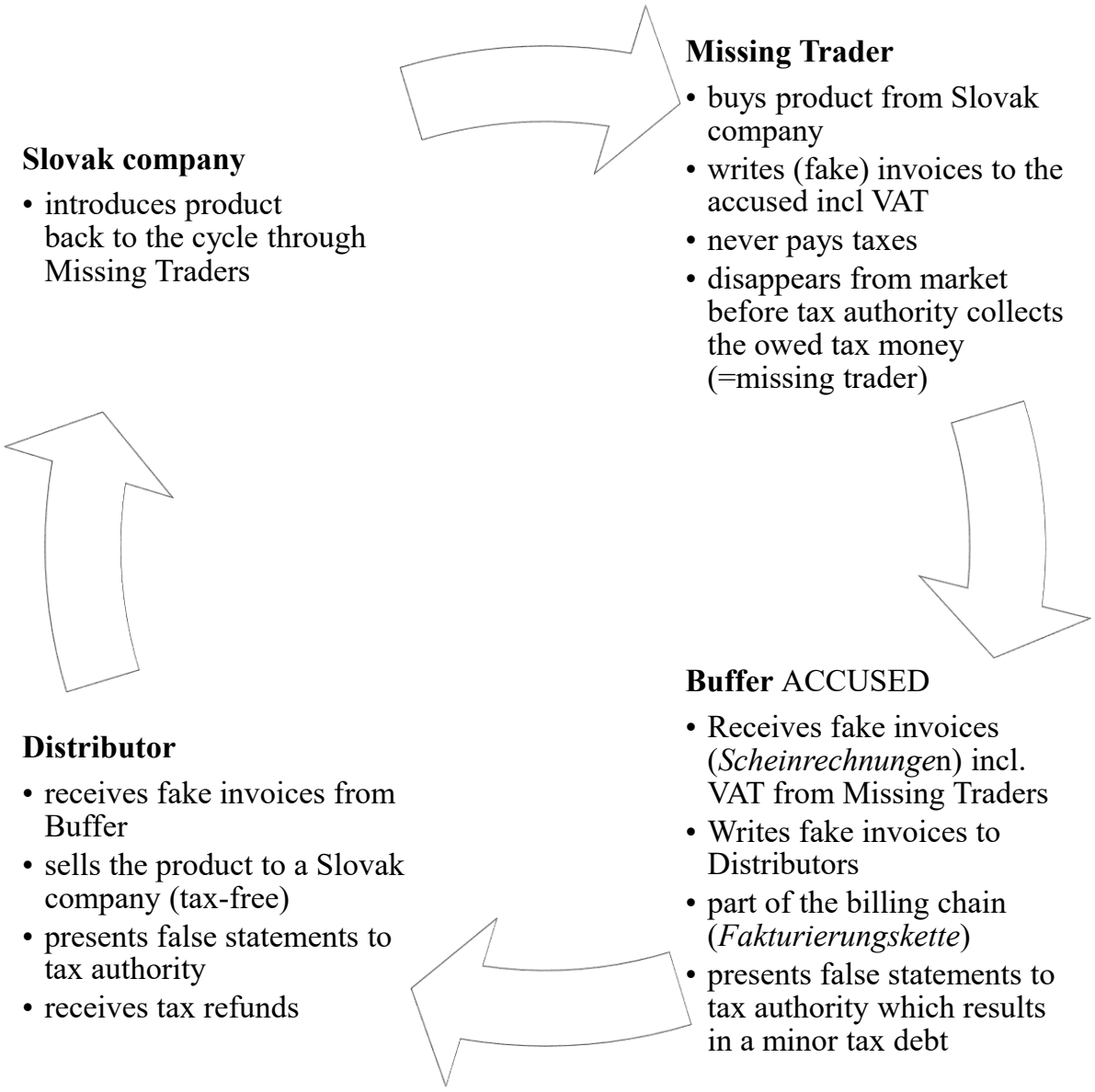
Documents such as VAT monitoring sheets, turnover tax advance returns, bookkeeping accounts, invoices, and account documents were important in proving the offence. These confirmed the manipulation of VAT input and output records, essential to the carousel fraud.
EDPs should request these documents from tax authorities early in the investigation and analyse discrepancies between reported and actual transactions.
The chat histories (e.g., from Viber), email accounts, and seized mobile phones revealed the coordination among the participants, including instructions and planning details.
EDPs must ensure therefore access to and forensic analysis of digital communications is critical to proving the organized nature of the crime and the gang's deliberate strategy.

The court distinguished the roles within the fraud (e.g., “Missing Trader”, “Distributor”, “Buffer”) and identified the accused’s role as part of the “billing chain” Understanding these roles helps in dissecting the carousel’s structure and responsibilities. EDPs should investigate and document the precise roles of each actor to illustrate the carousel’s functionality and the defendant’s deliberate involvement. The EJN offers as well as the EPPO itself workshops and illustrations to learn about new fraud patterns. In relation to Art. 28 it is important to mention that the input from the tax authorities in Chemnitz provided foundational suspicion, enabling the investigation and the coordination with tax agencies in Member States is from a general point-of-view essential to access internal tax records and identify irregularities.
The evidence of a gang agreement (Bandenabrede) was established through testimonies, digital communication, and shared access to email accounts. It was used to demonstrate the organized and deliberate nature of the operation strengthens charges under provisions for gang-based offences.
In summary any EDP should focus, if investigate on gathering evidence that shows coordination, shared intent, and mutual benefit among participants. The court eventually reconstructed the flow of transactions and identified the financial harm caused on the EU-level by unpaid VAT; it hereby established the cross-border nature and its detrimental effect on EU financial interests.

Legend:
*=Source is indicated
**=Team of the Chair visited Court and followed Proceedings live.
***=Relevant academic literature was published.

Country Acronyms:
Belgium=BE; Greece=EL; Lithuania=LT; Portugal=PT Bulgaria=BG; Spain=ES; Luxembourg=LU; Romania=RO Czechia=CZ; France=FR; Hungary=HU; Slovenia=SI; Denmark=DK; Croatia=HR; Malta=MT; Slovakia=SK; Germany=DE; Italy=IT; Netherlands=NL; Finland=FI; Estonia; EE; Cyprus=CY; Austria=AT=Sweden=SE; Ireland=IE; Latvia=; LV; Poland=PL.
Currency: Bulgaria=Bulgarian Lev BGN B; Croatia=Croatian Kuna HRK kn (since 1.1.23 “€”); Czech Republic=Czech Koruna CZK kč; Denmark=Danish Krone DKK kr; United Kingdom=British Pound; British Pounds (GBP) £ (not in the EU 31.1.20); Hungary=Hungarian Forint HUF Ft; Poland=Polish Złoty PLN zł; Romania=New Romanian Leu RON lei; Sweden=Swedish krona SEK kr.

Figure 15: The Terms of "Missing Trader", "Buffer" and "Distributor" Explained

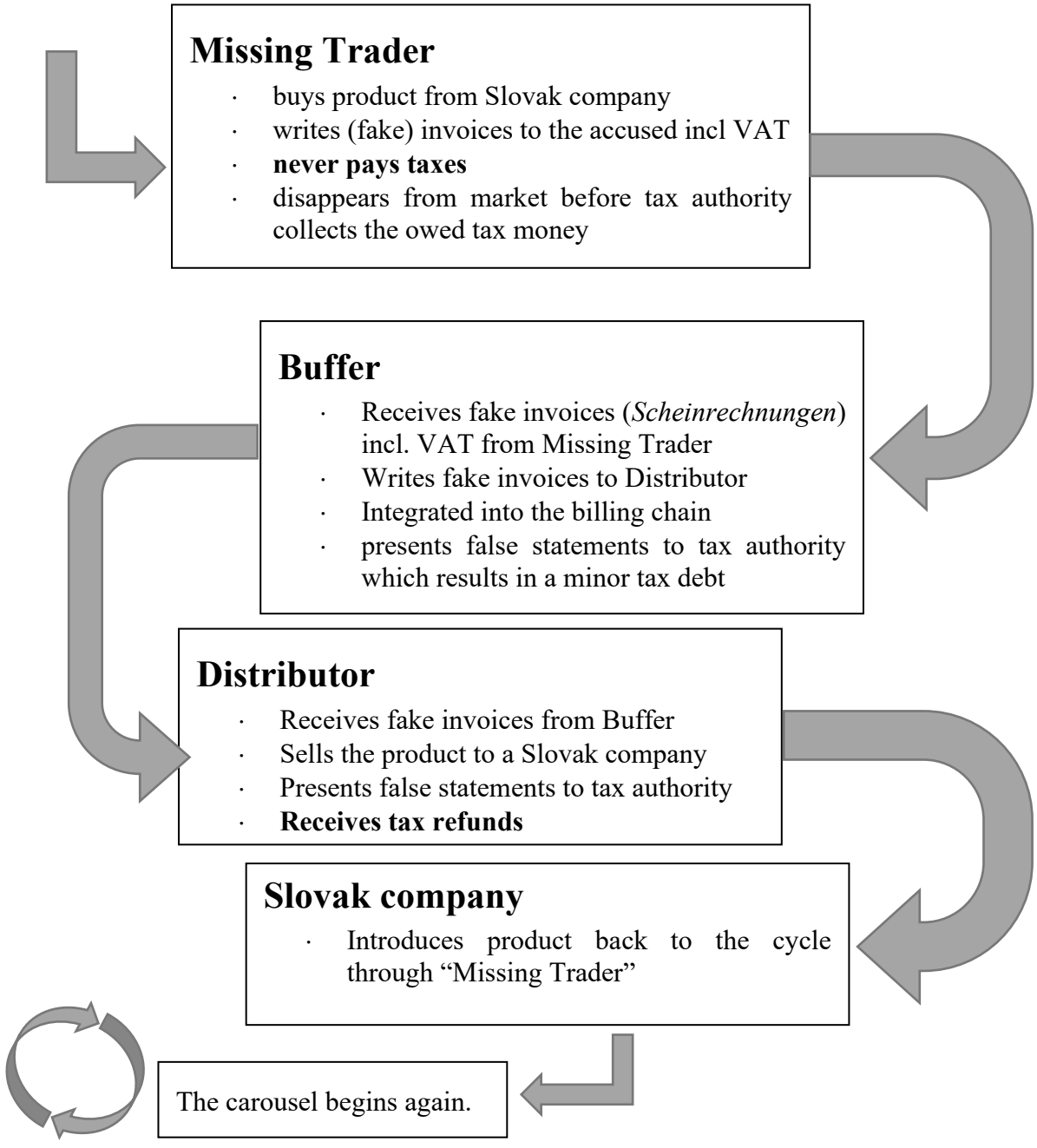


Source: The authors. See above A. I. for the case law references.

Figure 16: VAT carousel fraud acc. to LG Munich I

VAT carousel fraud – Judgment LG Munich I

The facts of the case describe a VAT carousel fraud. Here, there are at least 4 parties involved: the missing trader, buffer, distributor and a foreign European company:



Source: The authors. See above A. I. for the case law references.

Annex III

The following procedural steps summarise the **(ideal) case handled by EDPs**, whereby they typically follow the structure of the general criminal procedure with some special rules: 1. Initiation → 2. Intermediary Proceedings → 3. Main Trial → 4. Appeals → 5. Enforcement:

1. Initiation of Investigation (*Einleitung Ermittlungsverfahren*): **EPPO:** Regional Office and handling EDP receive knowledge of a PIF offence (see above, Directive 2017/1371) e.g. via EPPO-EC reports, OLAF (Art. 12e OLAF Reg.), or EU chanels. Verification and assessment follow under EPPO Internal Rules (Arts. 40, 41, Guidelines Annex 1, 1.a–b). If a reasonable suspicion arises, a case is opened under Arts. 26, 27 EPPO Regulation. The investigation is conducted according to Art. 28 EPPO Regulation, ss. 161, 163 CPC; compliance with internal guidelines required, entry in case management, progress reports, obligations to the Chamber and EP, coordination with national investigating authorities (s. 152 GVG), judge's reservations necessary e.g. Art. 30 para 2 EPPO Regulation. Absolute judicial authorisations: ss. 100c, 100e para. 2 CPC; ss. 100b, 100e para. 2 CPC (competent: State Security Chamber, Regional Court); ss. 112 et seq. CPC (pre-trial detention to secure proceedings, Art. 33 EPPO Regulation); s. 132a CPC. All other authorisations are so-called relative authorisations (e.g. ss. 94, 98 CPC seizure; ss. 102, 105 para. 1 sent. 1 CPC search of suspect; asset arrest for value-based confiscation: ss. 111e, 111j CPC). Art. 33 EPPO Regulation Coordination with police (e.g. ss. 1, 9–13 RiStBV) and organizing re-trial detention handling (Nr. 53 RiStBV). **Defence:** From the beginning, rights to legal counsel (s. 137 CPC); may file motions against searches or seizures (ss. 98 para 2, 107 para. 2, 304 CPC); advise on defence strategy, especially if pre-trial detention is ordered (§§ 112 et seq., 125, 117 CPC), objection to the admissibility of EPPO's evidence (s. 257 CPC), application for discontinuation (s. 153a StPO), inspection (ss. 147, 168b CPC), complaint of procedural errors. The investigating judge reviews measures requiring judicial authorisation (Art. 30 EPPO Reg. in conjunction with national law). The custodial judge rules on arrest warrants and ensures respect for procedural safeguards.

→ Three options: a) Discontinuation due to lack of sufficient suspicion (Art. 39 EPPO Regulation, s. 170 para. 2 CPC), b) Discontinuation due to informal settlement, c) Prosecution if there is sufficient suspicion (Art. 36 EPPO Regulation, s. 170 para. 1, 203 CPC). If an indictement shall be filed, the suspect must have been informed about nemo tenetur and heard in accordance with ss. 136 para. 1 sentence 2 and must have been made aware of the (mandatory) defence. After the file closure note in accordance with s. 169a, the file is inspected in accordance with s. 147 CPC.

s. 172 CPC (*Klage-erzwingung*) does not apply where cessation is based on Union law (Art. 42 para. 3 EPPO Reg.); applicable only in case of national law breaches (s. 3 para. 4 EUStAG).

2. Intermediary Proceedings (*Zwischenverfahren*): The EPPO and the court may order or discontinue proceedings (Art. 40 EPPO Regulation, ss. 153, 153a, 170 para. 2, CPC, s. 2 para. 2 EUStAG), formally or informally, or accept the indictment. EDPs at this stage must follow internal reporting duties and ensure compliance with EPPO Guidelines. Coordination with national investigators is vital (s. 152 GVG). Any defence of the suspect may challenge prosecutorial actions, request disclosure (ss. 147, 168b CPC), file motions for diversion or dismissal (s. 153a CPC), or object to prior actions (s. 257 CPC). The court at this stage (often a chamber) examines the indictment (s. 200 CPC), checks for bars to prosecution (e.g. *ne bis in idem*, statues of limitation, s. 206a CPC). The judge(s) issue the opening order (ss. 203, 207 CPC) and schedule the main trial (ss. 212, 213, 214–218 CPC).

Eventually complaint (*Beschwerde*) filed by the EPPO under s. 202 para. 2 CPC against a non-opening order (*Nichteröffnung*) in the interim proceedings.

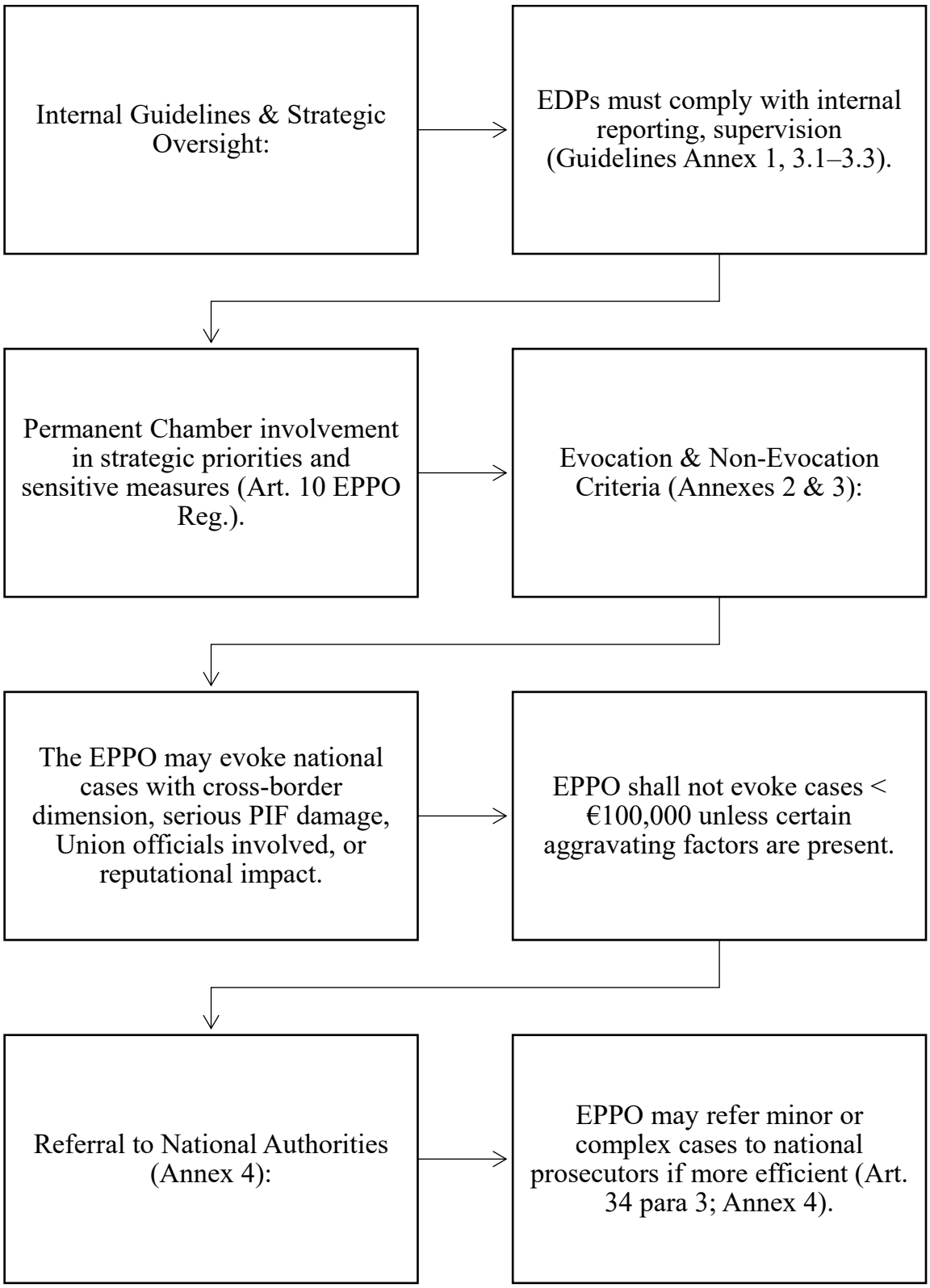
3. EPPO Main Trial (→ Arts. 35–36 EPPO Regulation): The EPPO proceeds via the EDP as s. 226 CPC requests uninterrupted presence of the EDP (*Sitzungsvertetung*); actively participates in the trial by presenting evidence and motions, while respecting fair trial standards and fundamental rights. Defence tasks are participation in trial, raising objections for the accused (see s. 157 CPC for definition) under s. 238 CPC (interlocutory remedy, challenges evidence s. 257 CPC, ensure respect of rights under the ECHR and EU-FCR. A defence lawyer may request exclusion of unlawfully obtained evidence. The judiciary (e.g. presiding judge of an Economic Criminal Chamber) conducts the trial (s. 243 et seq. CPC), decides on motions and verdicts (ss. 268, 275 CPC), and ensures procedural order (s. 238 para 1 CPC). Possible final decisions: dismissal, partial dismissal, acquittal, or conviction (e.g. in VAT fraud cases).

4. Appeal Proceedings (*Berufung*/*Revision*): The **EPPO t**ransfers appeal to the EDP competent to deal with appeal cases in a Federal Criminal Coirt proceeding. EDPs consult with the EPPO College; follow RiStBV nos. 168 et seq; prepare for higher court review (ss. 356, 358 CPC).
Any convicted person or their d**efence laywer m**ay appeal due to s. 296-297 CPC, after having assessed the possibilities within one week (s. 341 para 1 CPC) adressed to the *iudex a quo*, and must submit grounds within one month (s. 345 CPC). They can allege procedural errors (§ 338 CPC) or legal misiinterpretations or missapplications of the substantive law, i.e. the PIF offences (s. 337 para. 2 CPC) e.g. false application of s. 264 CC (subsidy fraud).
The j**udiciary, i.e. t**he higher court (BGH in an appeal against the Economic Criminal Chamber) examines the appeal (ss. 344 para. 2 (especially the grounds), and drafts a decision under 354 et seq. CPC); the judges may confirm, amend, or overturn the decision; often remits to another chamber in case of procedural violations (s. 355 CPC).

5. Enforcement of sanctions in PIF cases → Art. 38 EPPO :
If the final verdict is in force (*Rechtskraft*) the enforcement of the sanctions (*Strafvollstreckung*) is carried out by national prosecution services. The defence role at this final stage is different. Any convicted person can hire a lawyer to assess the conditions in jail or a fcaility. Offenders may challenge enforcement acts or apply for suspension. The judiciary ensures execution of the sentence (e.g. in probation cases) is lawful and proportionate and the national prosecution office is tasked with various decisions. The enforcement judges in a Strafvollstreckungskammer deal with further decisions. If a convicted person e.g. dioes not appear in the facility the national prosecution service can order a search warrant (ss. 459 et seq. CPC).

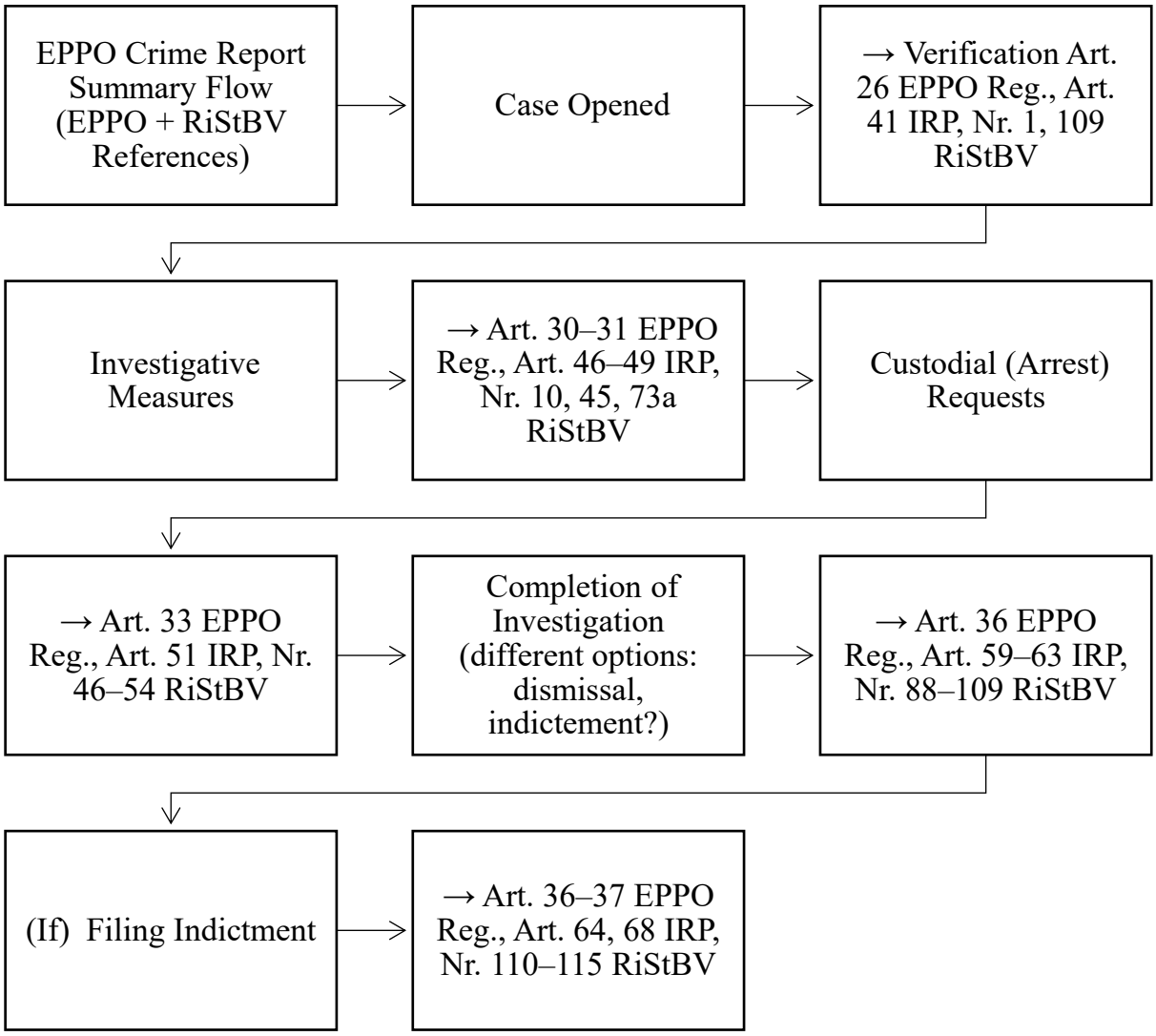
6. Research institutions and national databases interested in the development of the law may, pursuant to ss. 476 and 480 CPC, be granted access to decisions, such as judgments, at the conclusion of proceedings, depending on their competence. The Länder have databses such as *LaReDa* or *NRW.Recht*.

Figure 17: EPPO Investigations Overview as seen from Internal Guidelines



A closer look on the the EPPO's internal procedures is possible in this chart based on EPPO Operational Guidelines on Investigation, Evocation, and Referral of Case (adopted by the College on 21 April 2021 and amended on 7 February 2022).

Figure 18: EPPO Investigation Overview (Procedural Stages)



The chart shows the interconnection between the EPPO Internal Rules of Procedure (IRP, College Decision 03/2020 as amended) and the *RiStBV (Richtlinien für das*

Strafverfahren und das Bußgeldverfahren) for the investigation phase (Art. 26–33 EPPO Regulation) up to the indictment.[1267]

The EDP must begin by verifying admissibility and competence in accordance with Art. 26 EPPO Regulation, Art. 41 IRP, and Nrs. 1 and 109 RiStBV (see above → Art. 26). This initial assessment ensures the offence falls within the EPPO's material, territorial, and personal scope. Once confirmed, the case must be duly registered in the Case Management System, and the verification report completed.

Following registration, investigative measures shall be initiated under Art. 30–31 EPPO Regulation, Art. 46–49 IRP, and Nrs. 10, 45, 73a RiStBV (see above → Art. 30). A coherent investigative strategy must be adopted, including the use of national enforcement authorities, the securing of evidence, and the planning of coercive measures. Where applicable, judicial authorisation is to be obtained in compliance with Art. 30 para. 1 EPPO Regulation and relevant national provisions.

If custodial or asset-related measures are required, the EDP proceeds under Art. 33 EPPO Regulation, Art. 51 IRP, and Nrs. 46–54 RiStBV (see above → Art. 33). Reasoned applications must be submitted to the competent national judge, and the procedural safeguards of the suspect observed throughout. Upon conclusion of the investigative phase, the outcome must be determined under Art. 36 EPPO Regulation, Arts. 59–63 IRP, and Nrs. 88–109 RiStBV. Depending on the findings, options include dismissal, referral, or indictment.

The case file is to be updated accordingly, and the European Prosecutor consulted if necessary. Where an indictment is pursued, the EDP must act under Art. 36–37 EPPO Regulation, Arts. 64, 68 IRP, and Nrs. 110–115 RiStBV (see above → Defence provisions).

The indictment must meet national procedural standards (see above → Annex II, above before A.) and be filed with the competent chamber, together with all required materials for trial commencement. Internal documentation obligations must be observed. This structured approach ensures consistency with EPPO operational procedures and national

[1267] Sources used: Art. 86, 325 TFEU, Art. 5,–8, 13, 22–45 EPPO Regulation, EPPO Internal Rules of Procedure, EPPO Annual Reports, EPPO Guidelines, German RiStBV, German MiStRA, German AStBV, Commentary to the German Criminal Procedure Code by Schmitt/Köhler, C. H. Beck, 2025; Herrnfeld H-H, Brodowski D, Burchard C 2020 European Public Prosecutor's Office: EPPO Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO), Nomos, C. H. Beck, Hart, Baden-Baden; Hauck P 2021 § 11 Europarechtliche Vorgaben für das nationale Strafverfahren. In: Böse M (ed) Europäisches Strafrecht. Enzyklopädie Europarecht, Nomos, Baden-Baden, 543–632; Hauck 2025a; Hauck 2025b; Hauck 2026a; Hauck 2026b; Haller K, Conzen K 2025 Das Strafverfahren. Eine systematische Darstellung mit Originalakte und Fallbeispielen. 10th edn. C. F. Müller, Heidelberg; Vordermayer H, von Heintschel-Heinegg B, Schnabl R, Beckstein W 2023 (eds) Handbuch für die staatsanwaltliche Tätigkeit. 7th edn. Carl Heymanns Verlag, Köln; Burhoff D (Hrsg.) Komplettset für den Strafverteidiger. 3th edn. ZAP Verlag, Bonn; Bogensberger W 2024 Art. 86 TFEU. In: Tomkin J, Kellerbauer M, Klamert M (eds) The EU Treaties and Charter of Fundamental Rights: A Commentary. OUP, Oxford.

law, securing both procedural integrity and effective prosecution (see above → Annex I for a fictitious EPPO training case).

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Index

accelerate proceedings 101
added value 100
administrative controls 153
admissibility of telecommunication surveillance 376
agent provocateur 198
agricultural sector 207
Anstiftung 229
appeals against the judge's decisions 102
arrest warrant
– conditions for an 127
Art. 30 EPPO Regulation 356
Art. 31 EPPO Regulation 102
Article 22 of the EPPO Regulation 95
asset recovery 110
avoid anti-dumping duties 218
Beihilfe 229
Beschlagnahmebeschlussformular 377
Beschuldigter 220
Beweiserhebungsverbote 362
Beweisverwertungsverbote 362
bringing charges or filing an application 105
case management system 102
– EPPO's internal 102
Case Support Officers
– role of EPPO 103
Charter of Fundamental Rights 109
checks 635, 636, 637
CO^2-Certificates 187
completely independent 97
comprehensive legal review 104
concentrating jurisdiction at the regional courts seated at the EDP's offices 111
concept of crime in general 225
conventional mutual legal assistance 101
corruption offences 208
criminal compliance 165
cross-*Laender* investigation groups 111
Cum-ex cases 198
Cum-ex frauds 219
custom debtors 716
customs duties fraud 198
customs offences 100
de facto management (faktische Geschäftsführung) 126
de facto managerial responsibility 126
degrees of suspicion 192
different types of fraud 217
digital investigations 213
disclosure of a lockscreen 375
discretion 100
discretion in the evocation of proceedings 100
duly justified taking into account 108
Durchsicht der Papiere
Search *See Investigation measures*
Durchsuchungsbeschlussformular 368
duty to inform about the right to remain silent 226
e2A 102
EDP 101
– 's place of employment 102
– Abschlussverfügung 125
– Beschuldigtenbelehrung 125
– Case Management System 125
– criminal procedural work obligations/tasks of an 125
– Im´nternal Rules of Procedure 125

– masters of the investigation procedure 101
– procedural flow of obligations 125
– tasks of an 125
– Verfügungstechnik 125
e-file (e-Akte) 102
e-mails 375
encrypted data 376
EPPO Case Number (Aktenzeichen) 125
EPPO Crime Reports 126, 153
EPPO deals 134
EPPO's Case Management System 125
Eröffnungsbeschluss 227
EU Financial Protection Strengthening Act 96
EU-related subsidy fraud 95
European Arrest Warrant 126
European Chief Public Prosecutor 96
European defense 108
European Investigation Order 104
evidence 103
evidence in a possible main hearing 213
exceptions
– to the principle of legality 99
execution of pre-trial detention 604
exemption
– tax area 191
expenditure frauds 206
extradition 126
final conclusion of the proceedings 98
final court sentences 106
final note (*Schlussvermerk*) 226
final report 101
five-point test
– procedural act, s. 264 CPC 131
formation of criminal organizations 94
Formularbeschluss zur Festhalteanordnung 604
four final types of termination 105
fraululent activities with sales tax 192
freezing order (*Vermögensarrest*), s. 111e CPC 127
funding projects 207
Gefahr im Verzug 368
gemeinschaftlicher Tatentschluss 228
general interest of justice 109
German Commercial Code (HGB) 213
German Electronic Portal for Registers 213
German investigation procedure 97
Geschäftsstelle 125
gesetzliches Merkmal der PIF-Straftat 226
guidelines 100
Haftverschonungsantrag 604
Haftverschonungsbeschluss 604
Handelsregisterauszug 213
Hauptverhandlungshaft 603
Hinterziehung der jeweiligen Steuer 192
imbalance between the defense and the EPPO 110
import 188
– of goods from Non-EU-countries 188
indications of the existence of a PIF offence 99
initial suspicion 99
instruction on *nemo-tenetur* 226
interlocutory 105
internal communication 108
intra-community acquisition 190
intra-Community distance selling 184
introduction of the e-file 102
Investigating judge 365
investigative measures 102
– existing national 102
invoices 637

jigsaw puzzle 104
joint meetings 103
judicial officers 110
judicial order 104
jurisdictional disputes 101
lack of a standardized IT infrastructure 101
legal assessement on criminal liability 226
legal obligation to disclose information 598
limitation of proceedings according to §§ 153 (1), 154, 154a StPO 107
limitierte Akzessorietät der Beihilfe 229
local distribution 98
location
– of suspect (known, unknown) 127
main customs office (Hauptzollamt) 153
main focus of the criminal offence 109
main proceedings 105
Mehrwert- oder Umsatzssteuer 192
messanging data 376
Messenger apps 375
minimum rules 96
missing trader 126, 190
missing trader companies 94
MiStra 133
mittelbare Täterschaft 229
money laundering 94
most objective prosecutor in the world 220
mutual assistance 637
mutual legal assistance 102
nationwide jurisdiction 98, 101
nerve of criminal procedure law 94
New Green Deal 206
no forum shopping 108
no longer possible 106
notifications to other bodies (MiStra) *See MiStra*
objektiver Tatbestand 228
Objektivste Anklagebehörde der Welt 220
obligations of ss. 14 UStG 193
obligations of the entrepreneur 193
obtain evidence from other European Member States 110
open the investigation 155
opinion of 22 June 2023, the Advocate General 104
origin of goods 218
payment flows 103
Permanent Chamber 96, 102
petty crime
– burden of a 100
PIF Directive 95
PIF offences in national law 217
police
– ranks (PHK, KK 132
premium claims 207
pre-trial detention 101
– refrain from applying 101
principle of conferral 107
principle of legality 99
privilege of a Union official 356
procedural flow of an EPPO investigation in Germany 125
proposal for the termination of the proceedings to the Permanent Chamber 104
Quellen-TKÜ 376
reassign the proceedings to an EDP in another Member State 108
Rechtspfleger 110
refund
– tax office 187
regional forestry offices 207
reporting head 103

revenue frauds 187
revenue side 95
richterliche Eildienste des Amts- und Landgerichts 364
right information of the suspect 598
right of access to the files 108
right to deduct 189
right to remain silent 129
rights and duties of the EDP 97
rights of the accused 129
Schuld 228
seizure
– of movable property, s. 111b CPC 127
Serviceeinheit 125
settlement procedures, s. 257c CPC 134
shared competence 98
Sitzungsvertretung 110
smartphones 375
special features of national law 97
Spontanäußerung 226
statutory duty to provide information 599
Strafbarkeit 228
straw men' *See VAT fraud, missing trader*
subsidy fraud 100
substantial tax losses
– caused by VAT carousel 127
– fear of 127
– immediate actions 127
sufficient suspicion 105
sufficient suspicion within the meaning of Section 170 (1) StPO 105
summary of the findings 101
Summary Report
– VAT Act 181
supervised by a Permanent Chamber 97
supervision of the case 104
supplying entrepreneur 189
suspicion
– degree of 192
taking of fingerprints 375
Tatbestand 227
Tax Consultancy Act 198
tax evasion 94
termination of proceedings 107
– against conditions 107
TKÜ-Formularbeschluss 410
tobacco smuggling 198
Transparency Register
– money laundering area 214
U-Haft 603
Umsatzstuerkaruselle 198
unlock a smartscreen 375
value-based confiscation, ss. 73 CC 127
VAT carousel fraud proceedings 103
VAT carousel proceedings 99
VAT carousel transactions 94
VAT evasion 193
VAT liability 94
Verfügungstechnik 125
Verwertungsverbot 226
WhatsApp-Chats 376
where the bulk of the offences has been committed 108
Wirecard scandal 198
Wirtschaftsreferenten 110
Zentrale InVeKoS Datenbank 207

Index of Special Legislation

Laws

Act to Improve Transparency Rules for Members of the German Bundestag and to Increase the Penalty Range under § 108e of the Criminal Code 67

Law Implementing Directive (EU) 2017/1371 of the European Parliament and Council of 5 July 2017 on the Criminal Law Against Fraud Affecting the Financial Interests of the Union 66

s. 11 EUStAG 61

s. 63m para 2 OWiG 61

sections 386 (1) sentence 2, 407 (2) AO 62

ss. 6, 7, 9 OwiG 144

Administrative Guidleines (Verwaltungsvorschriften)

Communication with the European Public Prosecutor's Office: Supplement to the Guidelines for Criminal Proceedings and Administrative Fines Proceedings (RiStBV), No. 300 65

MiStra n° 20 61

MiStra n°19 61

MiStra No. 22 61

MiStra no. 23 61

MiStra no. 24 61

MiStra no. 26 61

MiStra no. 27 62

MiStra no. 28 62

MiStra no. 32 62

MiStra no. 33 62, 63

MiStra No. 36a 62

MiStra no. 37 62

MiStra no. 42 63

MiStra no. 43 62

MiStra no. 49 62, 63

MiStra nos. 25–25c 61

MiStra Nr. 13 61

MiStra Nr. 15 61

MiStra. no 52 62

no. 275, para. 5, sentence 2 RiStBV 62

8

Administrative Agreement on the Secondment of Public Prosecutors on the Occasion of their Role as Delegated European Prosecutors for the European Public Prosecutor's Office, dated 11 August 2020, Announcement of 6 January 2021 (Brandenburg JMBl. p. 2) 65

Notification of the Government of the Federal Republic of Germany [pursuant to Article 117 of Regulation (EU) 2017/1939] to the European Public Prosecutor's Office on 18 June 2021 65

* The main laws and EPPO/OLAF frameworks can be found above → A. III. Sources of Law.

This **German EPPO/OLAF volume** opens with Prof. Hauck's and European Delegated Prosecutor Krause-Ablaß' review of EPPO activities in the past two years and suggestions for optimisation. It then leads the reader to a compilation of German and Union laws (EPPO/OLAF Regulations) on fraud (PIF) offences and irregularities. The working methods of the EPPO (EUStA) regional offices (discontinuation or indictment, types of offences, RiStBV, MiStrA, examples) can also be found in the volume. It discusses the role of the EPPO in the fight against fraud, summarising the relevant laws and current case law on fraud. The handbook also contains information and guidelines for defence lawyers in cases of tax or subsidy fraud. In addition, the volume provides an introduction to OLAF's national measures. EDP Dr Anna-Elisabeth Krause-Ablaß has acted as the publication's national expert.

While written in English, the volume includes footnotes that reproduce the original German legislation in German. Easily navigable with the help of visual symbols, it is designed as a quick reference tool for academics, students, practitioners and other interested readers.

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